

THE GOVERNMENT MINUTE

IN RESPONSE TO

**THE TENTH ANNUAL REPORT OF
THE OMBUDSMAN**

ISSUED IN JULY 1998

Government Secretariat

4 November 1998

CONTENTS

Introduction	1
Part I - Investigated Cases	
Buildings Department	2
Correctional Services Department	5
Custom and Excise Department	6
Department of Health	8
Drainage Services Department	10
Education Department	11
Electrical and Mechanical Services Department	15
Environmental Protection Department	16
Fire Services Department	17
Government Laboratory	18
Government Secretariat - Health and Welfare Bureau	20
Government Secretariat - Security Bureau	21
Government Secretariat - Works Bureau	23
Highways Department	25
Home Affairs Department	27
Hong Kong Housing Authority	33
Hong Kong Housing Society	34
Hospital Authority	37
Housing Department	41
Immigration Department	60
Industry Department	61
Inland Revenue Department	62
Judiciary	66
Land Development Corporation	71
Land Registry	72
Lands Department	76
Legal Aid Department	90
Marine Department	93

Post Office	96
Provisional Urban Council	98
Rating and Valuation Department	99
Regional Services Department	101
Securities and Futures Commission	104
Social Welfare Department	106
Student Financial Assistance Agency	108
Territory Development Department	111
Transport Department	113
Urban Services Department	114
Water Supplies Department	119

Part II - Direct Investigation Cases

Government Telephone Enquiry Hotline Services	121
The Fisheries Development Loan Fund	124
The Co-ordination between the Drainage Services Department and the Environmental Protection Department over the Protection of Public Beaches from Being Polluted by Sewage Discharges	127
Arrangement for the Closure of Schools Due to Heavy Persistent Rain	131
The Charging of Management Fees in Home Ownership Scheme (HOS) Estates Managed by the Housing Department	135
Issue and Sale of Special Stamps and Philatelic Products	136
Taxi Licensing System	142

Part III - Studies

Complaint Handling System of the Correctional Services Department	145
Complaint Handling System of the Housing Department and the Hong Kong Housing Society	147

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Introduction

The Chief Secretary for Administration presented the Tenth Annual Report of the Ombudsman to the Legislative Council at its sitting on 22 July 1998. The Administration undertook then to prepare a Government Minute in response to the Ombudsman's report.

2. This Minute sets out the actions that the Administration has taken or proposes to take in response to the cases on which the Ombudsman has made recommendations in his investigation reports. The cases referred to in Parts I, II and III of this Minute follow the same order as those contained in Annexes 6, 9 and 10 of the Annual Report respectively.

Part I Investigated Cases

Buildings Department (BD)

Case No. 1997/2158 : Failing to take proper action on the Incorporated Owners' complaint against unauthorized building works (UBW); refusing to provide the complainant with information on the Department; and failing to take co-ordinated action to resolve the noise problem caused by the UBWs.

3. The complainant, Chairman of an Owners' Corporation (OC), initially complained to the Environmental Protection Department (EPD) on the noise nuisance generated by the UBW in 1994. Later on, he brought the complaint against the UBW to the BD on 9 August 1997 and to the media, a member of the Executive Council and the Kwun Tong Provisional District Board in 1997.

4. The BD inspected the premises on 19 August 1997 and revealed that the UBW had been in existence for several years and its supporting structures were in sound structural condition. There was no reply given to the OC. On 18 September 1997, the OC sent a reminder to the BD. The BD's staff called the complainant on 22 September 1997 explaining the BD's established policy on UBW. On 29 September 1997, the BD made a referral to the EPD and requested their advice, and also sent a letter to the OC as an interim reply to its letters, informing the OC of the recommendations made in the inspection report. The BD's structural assessment was conducted on 16 October 1997 and confirmed that the UBW was not newly erected and there was no immediate structural danger. On 13 November 1997, the BD informed the OC of the result of the structural assessment and that they would take immediate enforcement action against the UBW if the noise nuisance exceeded the EPD's limits, attaching a copy of the Enforcement Policy. The UBW had been relocated to an open space on G/F subsequent to an out-of-court settlement between the OC and the owner of the UBW in December 1997.

5. The BD has formed a Working Group with the EPD to try to resolve the basic problems causing such nuisance. At present, the BD staff would seek EPD's advice on reports of UBW which caused environmental nuisance. If the EPD advised that the nuisance exceeds the statutory limits and

persisted despite EPD's enforcement action, the BD would take parallel enforcement action on the UBW.

6. The Director of Buildings (DB) agreed with the Ombudsman that environmental nuisances are matters for consideration in the enforcement of the Buildings Ordinance against UBW. In fact, before the Ombudsman's investigation, the DB had already included environmental nuisances caused by UBW in his agenda for policy and procedure review. As a result, a Working Group has been formed with staff of the EPD and some major issues were identified. A list of the issues was submitted to the Ombudsman for his information in April 1998.

7. The EPD and BD Working Group is finalizing interdepartmental procedures for pursuing their respective goals of abating environmental nuisances and removal of UBW.

Case No. 1997/2349 : Delay in issuing of demolition order.

8. On 14 March 1996, while investigating another case at the subject building, the BD staff received a verbal complaint from the caretaker that a canopy was being erected over a parking space. Inspection revealed that a metal frame was newly erected across the light-well over the parking space which appeared to serve as support for a canopy. A warning letter was posted on site on the same day advising the owner/occupier to cease work and remove the UBW.

9. The inspection report on the UBW was completed by the BD staff on 22 April 1996 with a recommendation to issue a statutory removal order. The recommendation was endorsed by the Senior Building Surveyor on 12 November 1996, with the instruction for an ownership check and to send an advisory letter to the owner/occupier in the meantime.

10. The request to the Land Registry (LR) was sent on 16 December 1996 and the advisory letter was sent on 17 December 1996. On 3 January 1997, the LR informed the BD that the complainant was the owner of the parking space and the removal order was prepared for signature on 22 January 1997.

11. The removal order was signed on 13 June 1997 and posted on site on 27 June 1997. On 3 July 1997, the BD Registry was instructed to send a

copy of the removal order by registered mail. The removal order was mailed at the Post Office on 7 July 1997.

12. There was delay in taking action against the previous owner in respect of an UBW, as a result of which enforcement action was taken against the complainant after he bought the property. There was also delay in issuing the demolition order to him, leaving him with little time to lodge an appeal. There was also a failure to identify the true "owner" of the UBW at the appropriate time.

13. A letter of apology was sent to the complainant on 1 June 1998.

14. Staff of the Control and Enforcement Division in the BD with responsibilities for removing UBW were and will be reminded from time to time of the need to exercise due care in identifying ownership of UBW.

15. In response to the BD's enquiry for information on the cost of the demolition work, the complainant replied on 14 August 1998 that he did not require to be compensated. He considered the matter settled as his legitimate grievance had been properly acknowledged.

Correctional Services Department (CSD)

Case No. 1997/1608 : Unreasonable treatment in handling a prisoner's requests to make urgent phone calls to his wife in mainland China.

16. While serving sentence in Shek Pik Prison (SPP), the complainant had thrice requested to make urgent phone calls to his wife who was residing in the Mainland. The Ombudsman found that the institutional management of SPP had followed the related Headquarters Instructions and duly acceded to the complainant's requests after having considered his personal factors. As to the alleged delay in approving or arranging the phone calls on the three occasions, it was found that they were all caused by the complainant. The permission to use the telephone for not more than three minutes under normal circumstances is laid down in the departmental standing orders. On the first and second occasions, the management of SPP did flexibly allow the complainant to make two 15-minute calls because of the special circumstances of the requests. On the third occasion, the 3-minute call allowed was not unreasonable as the matter which the complainant wanted to discuss with his wife was not a matter of urgency. In short, there is no evidence suggesting maladministration on the part of the CSD in handling the complainant's request to make urgent phone calls to his wife in the Mainland.

17. The statutory right of communication for convicted prisoners is by means of visits and letters. Nonetheless, requests from inmates for access to telephone have always been considered in a sympathetic and flexible manner having regard to individual merits. Consideration will be given to the reasons as well as the compassionate elements of the requests, taking into consideration the genuine need of certain prisoners for timely communication under special circumstances. In this case, the prisoner was allowed to make distant calls to his family members for 15 minutes on two occasions.

18. The Commissioner of Correctional Services has considered the Ombudsman's recommendation and came to the view that the existing arrangement for handling prisoners' requests for making telephone calls has adequately and reasonably taken care of the interest of both the prisoners and the institutional management with the existing resources. The arrangement has allowed for relaxation of the rules stipulated in the Department's Standing Orders and is in line with the Ombudsman's recommendation.

Customs and Excise Department (C & ED)

Case No. 1997/2087 : Lack of response to the complaint under trade description malpractice; and failing to take appropriate action to follow up on the complainant's complaint.

19. In March 1996, the complainant reported to the Consumer Council that tins of rolled oats of a certain brand on sale in Hong Kong were wrongly labelled in English as 'oatmeal'. Though the importer in Hong Kong provided an explanation to the Consumer Council, the complainant considered the explanation unsatisfactory and that the importer had committed an offence under the Trade Descriptions Ordinance. Accordingly, upon his request, the Consumer Council referred his complaint to the C & ED on 3 July 1996 for further action.

20. On 5 July 1996, the case officer of the C & ED provided an interim reply to the complainant informing him that the matter was under consideration and that he would be informed of the decision in due course.

21. Following the issue of the interim reply, the case officer provided a substantive reply on 13 August 1996 informing the complainant of the Department's decision not to take enforcement action and the reasons for that decision.

22. The complainant followed up by phone in August and September 1996 and was told by the case officer of the decision and the reason again. The case officer promised to re-send his substantive reply to the complainant but he forgot due to heavy workload.

23. The complainant wrote again on 20 July 1997 requesting a written reply from the C & ED and received no reply. Feeling aggrieved on the lack of response to as well as follow-up action on his complaint about trade description malpractice, he lodged a complaint with the Ombudsman.

24. The Ombudsman considered that the case officer failed to respond to the complainant by sending him a written reply and found the complaint about lack of response to the complainant's complaint substantiated.

25. As regards the complaint about failing to take appropriate action to follow-up on the complaint, the Ombudsman was satisfied that the C & ED took appropriate action by issuing a substantive reply to the complainant on 13

August 1996 informing him the decision and reasons for the decision. The Ombudsman considered that the complaint on this issue was unsubstantiated.

26. In compliance with the Ombudsman's recommendation, the Commissioner of Customs and Excise issued a letter of apology to the complainant on 25 March 1998 explaining the decision not to take enforcement action.

27. The C & ED has clear guidelines in handling public enquiries and complaints. The case officer was counselled and reminded of the need to respond to outside correspondence within a reasonable time-frame.

Department of Health (DH)

Case No. 1997/0150 : Failing to inform the complainant on the progress of the toxicological report and refusing to provide the telephone number of the Government Laboratory.

28. The complainant contacted the mortuary several times to check the progress of the toxicological examination. He was told it was not ready and was not told of the involvement of the Government Laboratory (Govt Lab). The complainant alleged that when he became aware of the Govt Lab's involvement, the staff of the mortuary refused his request for the Govt Lab's telephone number. The number was given to him only upon his second request, although there was no witness to substantiate this point.

29. The complainant was authorized by a person to complain against the DH for failing to inform her about the progress of the toxicological examination report relating to the cause of death of her daughter and for refusing to provide the telephone number of the Govt Lab.

30. The DH accepted the findings of the report. The DH considers it impractical to draw up a performance pledge in relation to the release of Post-mortem Examination Reports because the preparation of the report hinges on many factors which are beyond the control of the DH. The Ombudsman accepted the DH's counter proposal to revise the leaflet "Information for Identifiers" as an alternative means to address the matter. The revised leaflet has been distributed since November 1997.

Case No. 1997/1484 : Failing to give advance notice to the patient for the deferment of the dental surgery because of the inefficient appointment system of a dental clinic.

31. The complainant's first scheduled appointment was cancelled because the dental surgery assistant suddenly took sick leave and relief staff was not available. The clinic staff was unable to inform the complainant in time. Her second appointment was postponed because the dentist was injured in an accident and had to take sick leave. The clinic staff called the complainant one day before the scheduled appointment and the message was received by her family member.

32. The complainant complained that the DH failed to give advance notice of the deferment of her dental surgery because of the dental clinic's inefficient appointment system.

33. The DH would request patients with complicated dental problems requiring follow-up appointment to provide the telephone number and correspondence address of both the home and workplace so that clinic staff can contact them promptly by phone and by post if necessary.

34. Staff would be required to make simple records on attempts made by staff to contact patients irrespective of whether the attempts were successful or not.

35. The DH would develop an appropriate system and take measures so that patients who could not be informed of the cancellation of appointments could be served early and that special arrangements would be made for those who have difficulty because of postponement of appointment. The Patient Relations Officer of each clinic is responsible for handling such cases.

Drainage Services Department

Case No. 1997/2258 : Impropriety in handling the flooding incidents in Mongkok.

36. Please refer to Case No. 1997/2260 under the Works Bureau.

Education Department (ED)

Case No. 1997/1272 : Mishandling a complaint against a school principal for having wrongly dismissed the complainant.

37. The complainant was an English teacher at a secondary school. In May 1997, she was requested by the School Supervisor to resign from her post. She considered that her dismissal was in breach of the Code of Aid and the Professional Conduct in Education because she did not receive prior warnings from the Principal.

38. She also alleged that the Director of Education (D of E) and the then Assistant Director of Education (Schools) (AD(S)) who happened to know the Principal personally should not be directly involved in the investigation of her complaint case.

39. The Ombudsman concluded that the complaint was partially substantiated. However, the allegation against the D of E and the then AD(S) in respect of their direct involvement in the investigation could not be established.

40. On 14 January 1998, the Department issued a letter of apology to the complainant.

41. Although the ED does not have a set of departmental procedures advising its staff to declare conflict of interest in handling complaints, there are clear and comprehensive guidelines and instructions on the subject in CSB Circular No. 19/92 which has been brought to the attention of the staff at six monthly intervals. The ED staff should, therefore, clearly understand what to do should a conflict or potential conflict of interest arise in their daily work, be it handling of complaints or other matters. Nonetheless, the D of E has agreed to incorporate such guidelines on declaration of conflict of interest into the departmental circular on handling complaints when it is reviewed later this year.

42. Staff were reminded at Divisional Meetings to strictly comply with the requirements as set out in the General Circular No. 6/94 (now No. 8/97) and ED Administration Circular No. 41/95 in handling incoming correspondence and complaints from members of the public. The said circulars will be re-issued to staff periodically.

43. Between 1 May and 3 July 1997, the complainant has sent 11 letters to the ED relating to the same subject. She was updated on the development of her case on 1, 14 and 30 May in person when she visited the District Education Officer in Tai Po. She was also informed by the ED on 14 May, 24 June and 27 June that her case was receiving attention. The allegation that the ED has delayed in responding to the complainant's letters does not reflect the true picture. Attention should be drawn to the fact that all of the complainant's letters to the Department were related to the same issue. Under such circumstances, time and effort of the officers should be spent on actually investigating the complaint and not answering the complainant's letters which at the time could at best be in the form of simple acknowledgement of receipt.

Case No. 1997/1364 : Mishandling a complaint from a trade union against the unreasonable dismissal of its members.

44. The complainant, the chairman of a trade union lodged a complaint to the Ombudsman against the ED for mishandling a complaint against the Principal of a secondary school over the dismissal of two teachers. The Ombudsman concluded that the complaint was unsubstantiated.

45. Although the ED does not have a set of departmental procedures advising its staff to declare conflict of interest in handling complaints, there are clear and comprehensive guidelines and instructions on the subject in CSB Circular No. 19/92 which has been brought to the attention of the staff at six monthly intervals. The ED staff should, therefore, clearly understand what to do should a conflict or potential conflict of interest arise in their daily work, be it handling of complaints or other matters. Nonetheless, the D of E has agreed to incorporate such guidelines on declaration of conflict of interest into the departmental circular on handling complaints when it is reviewed later this year.

Case No. 1997/1615 : Mishandling a complaint against a school principal for having wrongly dismissed the complainant.

46. The complainant was an English teacher at a secondary school. In May 1997, she was requested by the School Supervisor to resign from her post. She considered that her dismissal was in breach of the Code of Aid and the Professional Conduct in Education because she did not receive prior warnings from the Principal.

47. She also alleged that the D of E and the then AD(S) who happened to know the Principal personally should not be directly involved in the investigation of her complaint case.

48. In addition, she was unhappy over the Department's delay in replying her letters.

49. The Ombudsman concluded that the complaint was partially substantiated. The allegation against the D of E and the then AD(S) for their direct involvement in the investigation could not be established.

50. A letter of apology was issued to the complainant on 14 January 1998.

51. Although the ED does not have a set of departmental procedures advising its staff to declare conflict of interest in handling complaints, there are clear and comprehensive guidelines and instructions on the subject in CSB Circular No. 19/92 which has been brought to the attention of the staff at six monthly intervals. The ED staff should, therefore, clearly understand what to do should a conflict or potential conflict of interest arise in their daily work, be it handling of complaints or other matters. Nonetheless, the D of E has agreed to incorporate such guidelines on declaration of conflict of interest into the departmental circular on handling complaints when it is reviewed later this year.

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investigating the complaint and not answering the complainant's letters which at the time could at best be in the form of simple acknowledgement of receipt.

Case No. 1997/2219 : Failing to ensure that the Management Committee of a school comply with the provisions of the Education Ordinance and The Code of Aid for Primary Schools and to keep the promise of meeting the complainant.

54. The Chairman of a trade union lodged a complaint to the Ombudsman in October 1997 against the ED for mishandling the complaint of its member, regarding her being unreasonably dismissed by an aided primary school. In particular, the complainant complained against the D of E for failing to ensure the School Management Committee (SMC) of the School to comply with the provisions of the Education Ordinance and the Code of Aid for Primary Schools (Code of Aid); and for failing to keep her promise of meeting the teacher concerned and representatives of the union personally. The Ombudsman concluded that the complaint was partially substantiated.

55. An up-dated school circular was issued in early August 1998. A new paragraph reminding aided schools to check carefully the terms and conditions of their employment contracts and ensuring that they are in strict compliance with the Code of Aid and ED Administration Circular has been included.

56. Revision of the Code of Aid to pave way for the implementation of school-based management is in progress. The new Code of Aid will be ready for consultation in mid 1999 for implementation from September 2000.

57. Legal advice is being sought to clarify whether aided schools need to sign employment contracts with permanent teachers at regular intervals.

58. A letter was issued to the SMC of the school in question on 22 July 1998 to record the ED's displeasure over the impropriety of the SMC in handling the case.

Electrical & Mechanical Services Department (E&MSD)

Case No. 1997/2199 : Mishandling a claim for repair cost against the complainant in respect of a traffic accident involving government properties.

59. In October 1994, the complainant was involved in a traffic accident causing damage to government properties. He was later demanded by the Government to pay for the damage which he had settled accordingly. Three years later, he received a letter dated 20 October 1997 from the Director of Electrical and Mechanical Services claiming that a letter dated 29 July 1997 was sent to him demanding payment for the repair work caused by the accident.

60. The complainant considered that it was unfair for the E&MSD to make claim against him nearly three years after the event as he could not confirm whether he had already settled the payment. While he had settled the bill with the E&MSD, he complained to the Ombudsman.

61. The Ombudsman's investigation also covered the Highways Department (HyD) as it was also involved in the matter. Having considered all the relevant facts, it was concluded that the complaint was substantiated.

62. Procedures have been established in respect of the claim coordination process. The HyD will forward a copy of the Police Traffic Accident Report to the E&MSD for traffic accidents involving damage to those equipment which are maintained by the E&MSD.

63. To avoid misunderstanding, a system has been set up to list the breakdown of repair costs with the necessary explanation in demand notes.

Environmental Protection Department (EPD)

Case No. 1997/2418 : Failing to take co-ordinated action to resolve the noise problem caused by the UBWs.

64. The Incorporated Owners (IO) of Yee On Centre complained against the Buildings Department (BD) and EPD in October 1997 for -

- (a) BD's failure to take proper action on the IO's complaint against Unauthorized Building Works (UBW);
- (b) BD's refusal to provide the complainant with information on the Department's policy on UBW; and
- (c) the failure of BD and EPD to take coordinated action to resolve the noise problem caused by the UBW.

65. The Ombudsman's investigation concluded that complaint points (a) and (b) above were unsubstantiated. Point (c) was concluded to be partially substantiated because the BD failed to properly follow up on the referral to the EPD. The EPD also failed to provide any interim reply to the BD in good time. Had some referral arrangement been in place in 1994 for the EPD to alert the BD of cases of suspected UBW, then the BD might have been able to take immediate action.

66. The EPD has agreed to copy the warning letter to other relevant government departments where specific enforcement actions from the departments concerned are envisaged. A BD and EPD Working Group on Environmental Problems related to UBW was established prior to this complaint and the first liaison meeting was held on 25 September 1997. New arrangements in response to environmental problems related to UBW have been developed and referral procedures between the BD and EPD have been put into effect from July this year.

67. The ventilation system at Yee On Centre was relocated in December 1997 and there has not been further complaints.

Fire Services Department (FSD)

Case No. 1997/0616 : Delay in providing rescue service.

68. This was a complaint against delay in providing rescue service to a girl who sustained an injury to her foot at Shek Pai Wan beach, Lamma Island on 30 March 1997.

69. The Fire Services Communication Centre (FSCC) console operators have been issued with the most updated maps to assist them in identifying the location of the incident. The FSD has deployed staff to update the information kept in the database of the FSCC on a regular basis.

70. The Ombudsman's recommendation to ensure that all console operators are able to find out from fire stations, ambulance depots or government departments in the vicinity of a scene of accident other access to the scene is already FSD's usual procedure which all console operators are well conversant with.

71. At present, the FSD has a total of 9 mini fire trucks and 4 village ambulances deployed to Cheung Chau, Lamma Island, Tai O and Ping Chau. The mobility of these mini appliances depends very much on the availability of properly paved village roads or paths. On Lamma Island, the mini trucks can proceed from Yung Shue Wan to Hung Shing Ye Wan. For the part of the journey that is not accessible by those trucks, carrying chairs will be used for conveyance if necessary.

72. It is already FSD's usual practice to enlist the departments concerned, including Hong Kong Police Force (HKPF), Government Flying Service (GFS) and Security Bureau, to work out the procedures for rescue operations in remote areas and guidelines on co-ordination of such operations. Regular meetings between the departments concerned have been held to update the procedures and guidelines.

73. For incidents occurring in areas inaccessible to vehicles, it is impracticable for the FSD to make a pledge on the ambulance arrival time. However, the FSD will continue to enlist the assistance of other departments, e.g. the GFS to provide helicopter and the HKPF to provide marine launch, in conveying rescue crews to the scene of incident in these areas.

Government Laboratory (Govt Lab)

Case No. 1997/0149 : Taking unreasonably long time in producing a toxicological examination report.

74. The complainant was informed by a staff of the Victoria Public Mortuary (VPM) on 16 November 1996 that a post-mortem examination report would be ready for collection on or before 16 December 1996. From 20 December 1996, the complainant contacted VPM several times to check about the progress of the report but was told that it was not yet ready.

75. On 27 December 1996, the Mortuary Officer (MO) promised to check the progress for the complainant. In early January 1997, the MO informed him that the Govt Lab was still studying the case and that he had no idea when the report would be ready. He then requested the MO to supply him with the name of the contact person and telephone number of the Govt Lab but the latter declined.

76. The complainant obtained the telephone number of the Govt Lab through the telephone directory. However, he failed to get in touch with the right person at the Govt Lab. The complainant subsequently complained to the Office of the Ombudsman.

77. By the end of January 1997, the complainant contacted the MO again and requested him to supply the name of the contact person at the Govt Lab. This time the MO gave him the file reference number and the relevant telephone number. He contacted the Govt Lab immediately and the Senior Chemist of the Toxicology Section explained to him that since the laboratory had a heavy workload and the case was not classified as "Urgent", it was processed as a regular case, a report for which would be ready about 100 days after the sample was received.

78. The complainant complained on behalf of a person against -

- (a) the Govt Lab for taking unreasonably long time to produce a toxicological examination report relating to the cause of death of the person's daughter; and
- (b) the Department of Health for failing to inform her of the progress of the said report and refusing to provide the complainant with the telephone number of the Govt Lab.

79. The "Request for Toxicological Examination" form on which all pathologists submit samples to the Govt Lab was modified by including a statement requesting an urgent treatment of the case with reasons to be given by the pathologist requesting the examination.

80. It is anticipated that with the latest version of the toxicological examination submission form there will be considerably fewer submissions marked as "Urgent". It has always been the Laboratory's policy to treat urgent cases with priority and since any ambiguity over the interpretation of "Urgent" would be removed with the introduction of the revised form, all urgent cases will receive priority treatment.

81. To address the problem of excessive backlog of toxicological examinations, the Government Chemist (GC) has put in place some staff redeployment measures to improve efficiency.

82. With regard to the recommendation to train staff the proper way to handle public enquiries and remind them of the need to be helpful to members of the public at all times, the GC did not accept that there is any substantive evidence that their telephone manners or skills are anything but polite and helpful. Therefore there is no reason for any extra training requirement over and above that already received by laboratory staff on induction. Nevertheless, the GC has issued a circular memorandum reminding laboratory staff that responses to enquiries should be as helpful, courteous and complete as possible and that every effort should be made to direct the caller to the right number for the person or section that they require.

Government Secretariat - Health and Welfare Bureau (HWB)

Case No. 1997/0329 : Lack of consultation with the affected students prior to the enactment of the Medical Registration (Amendment) Ordinance 1995.

83. The complainant, who is a Hong Kong permanent resident studying medicine overseas, complained against the HWB (previously known as Health and Welfare Branch) in February 1997 for failing to consult him on the Medical Registration (Amendment) Ordinance 1995 (MRAO 95) prior to its enactment. He further complained about the failure to inform him through his university of this new law.

84. The MRAO 95 was enacted on 3 August 1995 and came into effect on 1 September 1996. Under MRAO 95, all medical graduates from overseas institutions are required to pass the Licensing Examination of the Medical Council of Hong Kong (Medical Council) to qualify for registration to practise in Hong Kong. Prior to the coming into effect of the MRAO 95, medical graduates from the UK and certain Commonwealth institutions were permitted to register to practice without examination. Before the bill was introduced into the then Legislative Council, the HWB had consulted the Medical Council and the Hong Kong Medical Association and issued a press release. The bill was also published in the Gazette. The enactment of MRAO 95 was disseminated to overseas medical students through overseas medical councils.

85. The Secretary for Health and Welfare (SHW) accepted the Ombudsman's recommendation to consult persons adversely affected by any legislative changes in the process and to inform them of changes in a more efficient and direct manner in the future. The SHW would take into account the relevant yardstick and guidelines on proper public consultation.

Government Secretariat - Security Bureau (SB)

Case No. 2753/96 : Delay in processing an immigration appeal.

86. The complainant's brother submitted an application for a student visa to the Immigration Department (ImmD) in May 1995. On 18 September 1995, he was informed by the ImmD that his application was refused. He then lodged a written appeal to the Chief Secretary on 11 October 1995 against the decision of the Director of Immigration (D of Imm). On 4 December 1996, the Secretary for Security (S for S) gave a written reply informing him that he had decided to uphold the decision of the D of Imm. He was dissatisfied with the unduly long time taken by the SB (then Security Branch) to handle his appeal. Feeling aggrieved, he authorized the complainant, who was the sponsor of his application for a student visa, to lodge a complaint with the Ombudsman against the SB.

87. After investigation into the case, a letter of apology was sent by the SB to the complainant's brother.

88. The staff were reminded to give proper attention to all appeal cases which should not be left unattended. An interim reply should be issued to the appellant if the case could not be concluded within a short period of time.

89. The existing procedure for handling non-statutory appeals is simple and straightforward as it only involves two steps, namely departmental review and internal processing. The S for S had looked into ways to streamline the procedure but found no scope for further streamlining. The appeal in question was received at a time when the workload of the internal processing team was extremely heavy and a backlog was rapidly building up. It was a temporary phenomenon which occurred in the period leading to the reunification and is unlikely to happen again. Nevertheless, the S for S has undertaken to review the situation periodically to see if any further improvement could be made.

90. The S for S has found practical difficulty in working out a performance pledge because the actual time required for processing different cases varies a great deal and sometimes depends on factors outside his control. He does not wish to raise any false expectations. Nonetheless, with the introduction of a "bring-up" system in January 1997, the S for S has been able to regularly monitor the progress of appeal cases and thereby keep appellants informed. Furthermore, in order to provide a better service to the public, the S

for S is prepared to look into ways, other than a performance pledge, to give appellants some indication as to how long their cases are expected to take to complete.

Government Secretariat - Works Bureau (WB)

Case No. 1997/2260 : Impropriety in handling the flooding incidents in Mongkok.

91. During the summer of 1997, Hong Kong experienced exceptionally heavy rainfall, which was the highest since record began in 1884. The heavy rainstorms caused flooding in Mongkok on a number of occasions. Three complainants alleged that the flooding problem was due to the Administration's incorrect assessments in the planning and subsequent implementation of the West Kowloon Reclamation project.

92. In response to the Ombudsman's recommendations, the Administration has undertaken various enhancement measures as set out below.

93. To ensure that progress of the drainage improvement and extension works for West Kowloon is on schedule, the WB has enhanced the supervision and coordination of these works, including the scrutiny of regular and frequent reports on the progress of the works.

94. The Drainage Services Department (DSD), Territory Development Department (TDD) and Highways Department (HyD) have repeatedly reminded construction site management and building contractors that illegal discharge and dumping of construction wastes into public drains are unacceptable and that the waste materials should be disposed of in a proper way.

95. Relevant departments have stepped up their inspections at construction sites and strengthened enforcement action against illegal discharge and dumping of construction wastes into public drains. Up to July 1998, seven prosecution cases have been brought against illegal discharge of wastewater from construction sites in the Yau Tsim Mong district, and another eight cases are being processed.

96. The DSD has launched a preventive maintenance programme to inspect, desilt and repair the drains to ensure the effective functioning of the existing stormwater drainage and the gully systems. The construction of two major relief drains has also been advanced to alleviate local flooding in Mongkok.

97. The DSD, HyD and Urban Services Department (USD) have enhanced the cleansing and maintenance of drainage systems both under normal weather and in rainy season to ensure that these systems will give full play to its capacity during rainstorms. The USD has increased the frequency of cleansing gullies at flooding black spots in Yau Tsim Mong district from once every two weeks to twice a week since April 1998.

98. To update the record of underground utility facility, the DSD has carried out comprehensive surveys and detailed reviews of information on newly laid pipes to minimise the problem of uncharted/undocumented facilities. A "utility management system" was also set up in October 1997 in the HyD to coordinate installation of the utilities so as to facilitate the planning and implementation of drainage works.

99. The Administration has launched a public education programme to promote flood prevention. To highlight the importance of the public to keep the drainage system free from illegal discharge and obstructions, leaflets have been distributed to local residents and shop owners in the Mongkok area and exhibitions on the subject were organised in West Kowloon in September 1998.

Highways Department (HyD)

Case No. 1997/0668 : Failing to provide street name plates in four new streets in Fanling in a timely manner.

100. The complainant complained against the HyD, Territory Development Department (TDD) and Lands Department (Lands D) for failing to erect street name plates at four new streets in Fanling in a timely manner.

101. The Ombudsman's recommendation was taken up. The HyD will require project offices to provide street name plates when taking over new roads. If no formal name is available, a temporary name such as that shown in Town Plans will be adopted for the convenience of the road users. The HyD will also bring up cases to the TDD if the absence of street name plates is found on new roads during the routine road inspections.

Case No. 1997/2259 : Impropriety in handling the flooding incidents in Mongkok.

102. Please refer to Case No. 1997/2260 under the Works Bureau.

Case No. 1997/2417 : Mishandling a claim for repair cost against the complainant in respect of a traffic accident involving government properties.

103. The complainant lodged a complaint against the Electrical & Mechanical Services Department (E&MSD) and HyD for mishandling a claim for repair cost against him in respect of a traffic accident involving government properties.

104. The Ombudsman's recommendations were taken up. The HyD has looked into measures to improve the procedure to notify the E&MSD of traffic accident cases involving the E&MSD inventory. A new check list was introduced in April 1998. According to the new check list, relevant information will be passed to the E&MSD at the earliest possible time.

105. The HyD has included a statement in the standard letter to driver/car owners to clarify that further cost of repair may be demanded by

other relevant departments separately. Starting from July 1998, arrangements have been made to include a breakdown of the repair cost with the necessary explanation in the demand notes.

Home Affairs Department (HAD)

Case No. 1372/96 : Unreasonably requiring the resiting of a grave.

106. An indigenous villager of Sai Kung complained against the District Officer's decision requiring him to remove his late father's grave which was located outside the Permitted Burial Ground.

107. In compliance with the Ombudsman's recommendation, the burial certificates have been revised to incorporate the advisory note which reads "It is the responsibility of the permit holder to ensure that the burial or deposit is effected entirely within the permitted area shown on the map attached to this permit. In case of doubt, the permit holder should approach local village representative and, as necessary, the District Lands Office for assistance prior to effecting burial or deposit."

Case No. 1988/96 : Unreasonably destroying the tape recording of the complainant's conversation, distorting the facts given and disparity treatment in the issuing of guesthouse permits.

108. A guesthouse operator lodged a complaint against the HAD for -
- (a) having destroyed, over his objection, the tape recording of his conversation with a HAD officer;
 - (b) the impolite manner displayed by the officer during three telephone conversations with the complainant and for having distorted the facts in his letter dated 7 August 1996 to the complainant relating to his enquiries to the HAD; and
 - (c) the double standards in the issuing of guesthouse permits and the enforcement of the Hotel and Guesthouse Accommodation Ordinance.

109. The complaint at (a) originated from a telephone conversation with the Chief Officer of the Licensing Authority (CO), who was responsible for issuing and renewing licences to hotels, guesthouses, clubs and bedspace apartments. During a conversation with the CO on 6 August 1996, the CO switched on the built-in recording device on his telephone without his prior knowledge. According to the CO, the recording was subsequently recorded over around the close of play on 6 August 1996. However, both the Administrative Officer (AO) and the Assistant Director had not mentioned this fact to the complainant when he rang up the AO requesting her to listen to the

tape and when he lodged a request for a copy of the tape in mid-August. According to the Ombudsman, the actions of these HAD officers raised doubt as to whether the claimed destruction of the tape had indeed taken place on 6 August. The Ombudsman concluded that complaint point (a) is partially substantiated.

110. Regarding complaint point (b), the Ombudsman was of the view that whilst there was room for the CO to improve on his skills in handling telephone conversations on enquiries and complaints, the impatience of the CO in the telephone conversation on 15 August 1996 could not be regarded as rude. There were also no evidence supporting the complainant's accusations that the CO had distorted the facts in his letter dated 7 August. In view of the above, the Ombudsman concluded that complaint point (b) is unsubstantiated.

111. The complainant also alleged, in complaint point (c), about the disparity in the treatment of licence applications, particularly in dealing with unauthorised building works (UBW), the fire resistance capabilities and the acceptance of certificates from professionals. Having considered all the evidence, the Ombudsman concluded that there was no proof that the HAD had singled him out for prosecution or favoured other hotels/guesthouses in processing their licence applications. However, the Ombudsman opined that he did have a ground to feel aggrieved over the disparity in forbidding air-conditioners from protruding more than 450mm from the outer wall while tolerating advertising signs of similar size. Taking into account all relevant factors, including the explanation given by the HAD that control of advertising sign was outside the remit of the department, the Ombudsman was of the view that complaint point (c) is partially substantiated.

112. A letter of apology was sent to the complainant on 9 January 1998 over HAD's handling of his request regarding the destruction of the tape.

113. Staff of the Office of the Licensing Authority had been reminded that any taping of conversations with members of the public should be made with the other party's prior agreement. They were also reminded that agreement from CO(LA) should be obtained before proceeding with the taping of conversations.

114. The HAD took the view that advertising signs call for different treatment and their control is presently the subject of a review by the Planning, Environment and Lands Bureau. The HAD noted that while air-conditioners and advertising signs appear to be similar items, both being objects protruding

from the outer wall, they are in fact quite different from each other with the former being fairly standard in design, weight, dimensions and method of installation.

115. At present, the Director of Buildings is authorised to remove dilapidated and abandoned signs as well as signs threatening public safety and health, but the Licensing Authority of the HAD has no authority over the control of advertising signs. Therefore, pending the outcome of the above-mentioned review, the HAD would prefer not to take into account the presence of advertising signs in processing applications for hotel/guesthouse licences, unless it appears that the sign would have an undue structural effect on the hotel/guesthouse premises. Dangerous sign boards would be referred to the Director of Buildings for action. Moreover, applicants will be reminded that their being granted licences does not obviate the need for them to comply with requirements in other pieces of legislation.

Case No. 1997/0562 : Failing to consult villagers prior to approving a small house development.

116. An application for a small house grant in respect of a particular lot from an indigenous villager of Lam Tsuen San Tsuen was approved by the District Lands Office/Tai Po (DLO/TP) under the New Territories Small House Policy. The villagers asserted that the approval was granted without prior consultation with them to see if there was any objection. According to them, the lot was contiguous to the Tai Wong Yair Shrine (the Shrine) and no development should be permitted. The villagers also asserted that they would have raised strong objection to the development near the Shrine if they were consulted as the development would adversely affect their "fung shui". The complainants also denied that they did not object to the development during a site visit on 28 November 1996 with the Chairman of the Lam Tsuen Valley Committee, the Village Representatives of the concerned villages and other villagers.

117. It has always been an established practice to take into account the "fung shui" and other historical significance of any shrine or monuments which may affect local villagers by consulting them or their representatives in respect of small houses developments.

118. Nevertheless, the District Office (Tai Po) (DO(TP)) has been liaising with the DLO/TP to work out with the villagers on the boundaries of

the "Tai Wong Yair Fung Shui" zone which has implications on future small house grants.

Case No. 1997/0766 : Impropriety in handling complainant's request for making a declaration.

119. The complainant arrived at the Public Enquiry Service Centre (PESC) of the Yau Tsim Mong District Office (YTMDO) on 24 March 1997 to make a declaration. She was told by staff that if she wished to make the 2:30pm session, she should have arrived at the PESC 30 minutes earlier. Since she arrived only a few minutes before 2:30pm, she would have to wait for the next session which was scheduled for 3:30pm. The complainant was aggrieved because she considered it bureaucratic and unreasonable for the YTMDO to have required members of the public to arrive at the PESC 30 minutes prior to the scheduled time for making declaration. She was unfavourably impressed by the unhelpful staff attitude which contradicted the HAD's performance pledge.

120. In the light of this incident, the YTMDO has issued a circular to remind staff of the need to be responsive to clients' needs. In addition, a revised notice has been posted in the DO to facilitate better understanding of the rationale of the administrative arrangement by the public. A letter of apology was sent to the complainant.

Case No. 1997/1403 : Unreasonably approving the division and assignment of a 'Tong' property.

121. Two villagers in Sai Kung complained against the District Officer's decision in approving an application from the "Tong" managers for division and assignment of "Tong" property, despite written objection from four members of the "Tong".

122. A letter of apology was sent to the complainants over the HAD's improper handling of their objection raised regarding the division of the "Tong" property. The complainants were given full details of all factors leading to the approval of the application given by the then District Officer/Sai Kung in 1994 and an explanation on why revocation of the decision is considered unjustifiable.

123. Regular checks would be carried out to ensure that the reviewed and improved procedures for handling the incoming correspondences are adhered to by all staff at all times.

124. The HAD would ensure the legibility of all information given in future Notices of division and assignment of the "Tso/Tong properties".

Case No. 1997/1533 : Not adhering to its own set of guidelines in handling an application for formation of owners' corporation.

125. The HAD had laid down a set of Working Guidelines for applications to convene an owners' meeting under Section 3A of the Building Management Ordinance (BMO). It also stipulated, inter alia, that copies of the HKID cards of the applicants should be submitted to the HAD for verification purposes.

126. In June 1997, the complainants noticed that a group of owners claimed to have obtained 37.5% of the shares of the owners of the Tsuen Wan Centre showing support to the formation of an Owners' Corporation and submitted a Section 3A application to the HAD. They claimed that, judging from their observation, the group of owners could not have obtained sufficient HKID card copies to support the 37.5% shares in question. Hence, they complained that the HAD had not sufficiently verified the identities of the applicants with the HKID card copies of all the supporters. They also complained that the HAD had not adhered to the Working Guidelines in handling an application under Section 3A of the BMO.

127. The HAD has revised the Working Guidelines for Section 3A Applications. Taking into account the Personal Data (Privacy) Ordinance, in particular, the Code of Practice on the Identity Card Number and other Personal Identifiers, submission of the HKID card copies of the applicants is no longer required.

128. A copy of the revised Working Guidelines was forwarded to the Ombudsman in February 1998.

Case No. 1998/0442 - 1998/0449 : Maladministration in regard to the reprovisioning arrangements for the business stalls in a street affected by the Land Development Corporation (LDC) redevelopment programme.

129. A number of ex-street vendors who operated business stalls at Hong Lok Street, where clearance and redevelopment had recently taken place, complained against the LDC and Urban Services Department for -

- (a) lack of adequate consultation/information on guidelines about how street vendors at Hong Lok Street could be resettled;
- (b) ambiguous and ill-defined criteria employed in the reprovisioning exercise;
- (c) arbitrary, unreasonable and prejudicial allotment of stalls in the new bird garden at Yuen Po Street; and
- (d) inadequate removal allowance or other forms of compensation.

130. Upon review of the available information, the Ombudsman decided that the scope of the investigation should also be extended to cover the HAD.

131. The HAD accepted the Ombudsman's recommendation to review the procedures and arrangements with a view to clearly defining the terms of reference of any ad-hoc inter-departmental/organizational working groups and membership of such groups with their respective role in the operation. It will be implemented in future clearance/resumption operations.

Hong Kong Housing Authority (HKHA)

Case No. 1997/1046 : Delay in carrying out modification works to installation of protection cage to water meters.

132. Housing blocks in Yee Ching Court are of Harmony 1A design. Water meters, located in staircase landing of the blocks, were enclosed by mesh panels to prevent interference and vandalism. On the advice of the Water Supplies Department in 1993, an access door was added to the mesh panels in public rental housing blocks owned by the HKHA. The Owners Corporation of Yee Ching Court also requested the HKHA to carry out similar works at the HKHA's cost.

133. Although funding of the works was allocated on 14 December 1995, there was a drastic change of policy on 27 December 1995. The Department intended to put a stop to funding all improvement works in Home Ownership Scheme Courts. Consequently, the improvement works to provide access doors to the water meter chambers in Yee Ching Court were withheld.

134. Improvement works have been provided to Yee Ching Court at the HKHA's cost.

Hong Kong Housing Society (HS)

Case No. 2867/96 : Hastily announcing the redevelopment of Kwun Lung Lau without an acceptable rehousing plan and giving wrong advice to affected tenants on the completion of transfer forms.

135. In December 1996, a group of Kwun Lung Lau (KLL) residents lodged a complaint against the HS for hastily announcing the re-development of KLL without providing an acceptable resettlement plan and giving wrong advice to residents on the completion of the transfer forms.

136. Having examined the reports provided by the HS on redevelopment of old estates; the policy and procedures on redevelopment and rehousing of the affected tenants; the availability of rehousing resources; and past experience in similar redevelopment projects, the Ombudsman felt that the HS had not given due consideration to the wishes and aspirations of the affected tenants and under-estimated their strong sentiments for insitu rehousing.

137. Although the HS had not deviated from its redevelopment rehousing policy by giving 24 months notice and has committed not to demolish KLL Phase I until all tenants are satisfactorily rehoused, the Ombudsman still concluded that the complaint was partially substantiated.

138. As the HS had communicated the dual purpose of the transfer form to the affected tenants there was no evidence to indicate that any contradictory advice had been given by the HS on the use of the transfer form, this complaint was not substantiated.

139. Rehousing of KLL residents is making good progress. Up to the end of September 1998, 490 out of 617 families have moved out. Of the remaining 127 households, 57 will move out in the coming months as they have already purchased flats or accepted some form of rehousing arrangements; 47 have accepted the rehousing arrangements and are waiting for suitable flats. Only 23 have not yet indicated their rehousing preference.

140. The HS is well aware of the need to have a comprehensive rehousing plan prior to the launching of a redevelopment project. It will make available sufficient rehousing facilities as far as possible within its own resources for the redevelopment of its own sites. As the Housing Authority has its own commitments, including the clearance of all old-style Temporary

Housing Areas by 2000, the clearance of all Cottage Areas by 2001, and the reduction of the average waiting time for public rental housing applicants to 3 years in 2005, the Housing Authority could not involve fully in the rehousing process of the HS redevelopment projects.

Case No. 1997/1502 : Mishandling an application under the Sandwich Class Housing Scheme.

141. An applicant of the Sandwich Class Housing Scheme (SCHS) lodged a complaint to the Ombudsman in August 1997 claiming that the HS did not inform applicants when the screening process ended but continued screening process even weeks after the initial interview.

142. At the same time, the HS failed to indicate to applicants that they should inform the HS of any change in their family circumstances.

143. The Ombudsman studied the detailed screening procedural manuals and related standard letters to applicants provided by the HS and concluded that the complaints could not be substantiated.

144. The Administration, together with the HS, is considering whether to state the average processing time of the screening process of the SCHS applications and the definition of "Assessment Period" in the Application Form in the next launch of the SCHS. In the application forms for the Home Starter Loan Scheme (HSLS) launched in April 1998, the average processing time was stated and the HS agreed to notify applicants after the screening process had been completed.

Case No. 1997/1623 : Setting unreasonable eligibility criterion and making changes to complainant's application without his consent.

145. In October 1997, an applicant lodged a complaint to the Ombudsman against the HS for unreasonably requiring an applicant of the SCHS to be the major income earner of the family; and switched his wife to be the applicant without his consent.

146. The Ombudsman felt that although the complainant's wife was the major income earner, the HS should not alter the original application and make her the applicant against the complainant's wishes. The HS could send a letter

to the complainant informing him directly that his application was unsuccessful as he refused to have the major income earner as the applicant.

147. The Administration is considering whether to remove the requirement of having the major income earner of the family to be the applicant for the SCHS. This criterion was removed for the HSLs launched on 17 April 1998.

Hospital Authority (HA)

Case No. 1745/96 : Failing to accord priority in providing Computerized Tomography Scan service to a patient, resulting in delay in his treatment.

148. The patient was admitted to a HA hospital through its Accident and Emergency Department, where a clinical diagnosis of acute and severe stroke was evident on admission. Treatment was given to the patient and the case doctor alerted the patient's family to the patient's extremely poor prognosis. A Computerized Tomography (CT) scan was requested to confirm the type of cerebrovascular disease and the extensiveness of the lesion for prognostic purpose, and to exclude the possibility of other rarer pathologies. Waiting for outcome of the CT scan had no bearing on the immediate resuscitative and supportive treatment rendered to the patient.

149. The Ombudsman concluded that there was no evidence suggesting that the hospital's currently-used queuing system for CT scan service was flawed. Urgent cases would be accorded priority under the system.

150. The HA has promulgated a set of general guidelines to remind clinicians and radiologists of the factors in deciding the relative priority of requests for urgent CT scan.

151. The HA considers that CT scan appointments should be arranged on the basis of clinical need rather than on a first-come-first-served basis. Whether to proceed with an urgent CT scan depends on its added value in saving a patient's life. In deciding the relative priority of each CT scan request, clinicians will take into consideration the patient's morbidity and mortality condition.

Case No. 2750/96 : Negligence in looking after the patient during scanning operation, and failing to notice a blockage of the urinary catheter.

152. The complainant's mother who was suffering from advanced carcinoma of bronchus attended an appointment for bone scan in a HA hospital on 29 November 1996. Upon completion of the examination, she wished to get off the scanning couch but as the footstool had not been replaced in its original position, she fell to the ground. As a result of the accident, she was badly injured.

153. The patient was transferred to the Oncology Ward in December 1996. On 7 December 1996, the medical staff gave a danger notice to her relatives, stating that her renal function had deteriorated. However, her relatives discovered on 8 December 1996 that her lower urine output had been caused by a partially-blocked urinary catheter.

154. The complainant complained against the HA staff for failure to properly look after a patient after completion of a bone scan and to notice a blockage in a patient's urinary catheter.

155. Having reviewed the investigation findings, the Ombudsman decided that the first allegation was partially substantiated and the second allegation was unsubstantiated.

156. Following a comprehensive review of the case, the hospital has implemented improvement measures to minimise recurrence of similar incidents. The existing guidelines on scanning operations were elaborated to provide radiographers with step-by-step guidance on the proper procedure. Radiographers were reminded of the need to explain the scanning procedure to patients and to ensure that the procedure is fully and clearly understood.

Case No. 2833/96 : Lack of consideration of medical staff towards the well-being of the patient, resulting in a delay in giving suitable medical treatment to the late son of the complainant.

157. The complainant was dissatisfied with the care provided by the HA to his son (the patient) in the treatment of malaria. The patient died of malaria. He complained against the HA for lack of consideration towards the well-being of a patient, resulting in a delay in giving suitable medical treatment.

158. The HA Head Office has issued two internal circulars in September 1996 and January 1997 respectively to raise clinicians' awareness about malaria and the proper handling of patients suspected of malaria infection, including transfer of essential medical information upon patients' admission to hospitals.

159. The hospital concerned has reviewed the reporting system and put in place effective improvement measures. Automatic batch print-out of laboratory test result is now scheduled at hourly intervals. For emergency test

with abnormal results, the laboratory will inform users immediately of the result for prompt action.

160. The HA has also reminded all clinical staff to respond proactively to patients with symptoms of suspected rare communicable diseases, and to make use of the emergency laboratory services for malaria which are available on a 24-hour basis since September 1996.

Case No. 1997/0826 : Failing to attend to the patient promptly and perfunctory manner in handling a complaint against the medical staff.

161. The complainant's father was admitted to a HA hospital on 27 December 1996 for a minor stroke. The patient was later found to have vomitted blood and an urgent upper endoscopy (OGD) was performed on him. At around midnight on 11 January 1997, the patient's condition became unstable and he died later in that morning.

162. The complainant was dissatisfied that the duty doctor had not promptly responded to urgent paging or showed up on two occasions despite the patient's poor condition. He also felt aggrieved that his complaint was mishandled by the hospital's Patient Relations Officer.

163. It is HA's established practice to require duty medical staff to respond to urgent calls as soon as possible. To ensure compliance, a quality improvement target focusing on "Quality Assurance in Direct Patient Care" has been incorporated into the HA's 1998/99 Annual Plan. All hospitals are now required to establish a mechanism to ensure timely response of doctors to emergency calls and attendance to patients.

164. The HA has undertaken a comprehensive review on clinical audit, risk management, complaint management, clinical supervision and professional accountability. As a result of the review, initiatives have been implemented to enhance supervision and monitoring of junior staff, clinical audit to proactively safeguard professional standards and practices and complaint management at both the hospital and Head Office levels. In addition, a consultancy in risk management was commissioned with the aim of assessing the current risks in selected HA hospitals and advising on strategies and action plans to manage them.

165. The HA issued a substantive reply and an apology to the complainant.

Case No. 1997/1955 : Failing to act fairly and openly in the allocation of the overnight carpark at a medical rehabilitation centre.

166. The complainant is a disabled person living near a HA hospital. Under a carpark allocation pilot scheme to make use of vacant overnight carparking spaces at the hospital, the complainant was once allocated an overnight carparking space. Owing to over-subscription for overnight carparking and a prevailing allocation policy to accord priority to hospital staff and HA staff, the complainant was unsuccessful in a subsequent allocation exercise. The complainant alleged that the hospital had failed to act fairly and openly in the allocation exercise.

167. The HA issued an apology letter to the complainant for the inconvenience caused to him.

168. The pilot scheme was terminated in April 1998. If a similar scheme is implemented again in future, the HA will ensure that the allocation of carparking spaces is open and fair to all eligible applicants.

Housing Department (HD)

Case No. 1161/96 : Failing to inform prospective buyers of an HOS court of proposed construction of a funeral parlour in the vicinity of the court.

169. The complainant owned a flat in Tin Yau Court. He claimed that when he purchased his flat in 1992, the sales brochure contained no information on the planned construction of a funeral parlour in the vicinity of the block. Neither was the planned use of land mentioned in the HD pamphlet introducing the development of Tin Shui Wai New Town to the prospective purchasers. It was not until early 1993 that he learnt about the funeral parlour plan from the newspapers. The complainant considered that this was unfair to him as well as other flat owners.

170. Guidelines for the preparation of Home Ownership Scheme (HOS) flat sales brochures were revised to avoid a recurrence of similar complaints in the future. Existing or proposed offensive uses of land, if any, adjacent to HOS blocks for sale have been included in the sales brochures for information and reference of potential purchasers.

Case No. 2099/96 : Delay in the payment of Domestic Removal Allowance to the complainant upon his removal from a Temporary Housing Area (THA) unit to a public housing estate.

171. The complainant and his two sons originally resided in Shatin Tau THA. Upon clearance of the THA, the complainant accepted the offer for rehousing to Lee Hing House, Lee On Estate in July 1996. The tenancy commenced on 1 August 1996, but he did not receive the Domestic Removal Allowance (DRA) until 11 October 1996.

172. The procedure of effecting payment of DRA to clearees was re-examined by the departmental Working Group on Process Re-engineering on the Business of Temporary Housing Clearance Sub-section in 1997. The revised procedures and arrangements are clearly stated in Financial Instruction No.36 of 1997/98 dated 3 March 1998; all households accepting first rehousing offers will receive the DRA upon signing the tenancy agreement. If they refuse the offer, they will receive the DRA about 11 working days upon accepting subsequent offers.

Case No. 2125/96 : Maladministration in handling complainant's rehousing from a THA unit to a public rental housing flat.

173. The complainant resided alone in Sheung Shui THA. Due to the clearance of the THA, he was offered a public rental housing unit in Wah Sum Estate and the deadline for accepting the offer was 11 June 1996. However, he was out of town at the time. Being unable to get in touch with him, the Housing Officer of Sheung Shui THA deposited a notice at his unit informing him of the rehousing offer. The complainant did not turn up until 21 June 1996. On that occasion, the Housing Officer handed over the offer letter to him and advised him to approach Wah Sum Estate Office to see if it was possible to arrange for a delayed intake. As he had not accepted the offer by 11 June 1996, the housing unit in Wah Sum Estate was reallocated to another person in July 1996.

174. The complainant, however, denied that he had been given the offer letter on 21 June 1996 when he met the Housing Officer.

175. The THA staff were briefed to offer the necessary assistance to clearerees whenever being approached, e.g. despite the fact that the date for intake in the offer letter has lapsed, a telephone call to the reception estate would be made to check if the offer is still available.

176. On the delivery of offer letters to clearerees of THAs, the staff were briefed, as far as practicable, to be accompanied by a witnessing officer in delivering the offer letters, to ask the clearerees to acknowledge receipt of the offer letter and to maintain a proper record of the delivery.

Case No. 2317/96 : Mishandling the repair of waste water pipes.

177. The complainant, a resident of Lei Cheng Uk Estate, complained against the HD for failing to handle the problem of the blockage of underground soil pipes properly, resulting in his flat being flooded four times from July to September 1996. He also complained that the HD staff were negligent in their duties and behaved badly.

178. Technical Guideline No. 34 on Attendance to the Backflow of Sewage of 29 September 1997 was issued to all estate and maintenance staff.

Case No. 2387/96 : Unilateral deletion of complainant's name from the tenancy of a public housing unit.

179. In October 1989, the principal tenant (father of the complainant) of a public housing unit approached the Estate Management Office (EMO) for deletion of the complainant, the complainant's wife and son, from the tenancy as they had moved out of the unit for some 6 months and he had lost contact with them. Accordingly, the EMO issued notice to the complainant and relevant persons of the proposed deletion but no response had been received. Various home visits were conducted which revealed that the complainant, his wife and son, were not residing in the unit. Having followed through the established procedures, the EMO effected the deletion on 27 November 1989. However, the names of the complainant, his wife and son had remained on the tenancy card which had not been amended.

180. After the death of the tenant, the complainant turned up to claim succession of the tenancy in October 1996.

181. Management guidelines (MB Circular No.4/98 of 3 March 1998) on the request for deletion/addition of family members were issued to EMOs: if the tenant's copy of tenancy card is not available for amendment at the time of deletion/addition, the tenant should be given a letter reaffirming that action on deletion/addition has been completed.

Case No. 2736/96 : Unreasonably requiring the complainant to reinstate his HOS flat before selling it back to the Housing Authority.

182. The complainant applied in July 1996 for resale of an HOS flat in Kwong Lam Court to the Housing Authority. During inspection of the flat, he was informed by the maintenance staff of the requirement to carry out the reinstatement works before handing over the flat to the Housing Authority.

183. The reinstatement cost the owners should bear under the Deed of Mutual Covenant is clearly stated in the letters of acceptance of flat-owners' sell-back offers.

Case No. 1997/0226 : Installing a busbar at an HOS block without consultation.

184. The complainant is residing in an HOS block, On Shing Court, Sheung Shui. In upgrading the power supply of the housing block, the Department had installed a busduct outside the external walls of his flat. He was dissatisfied that the residents had not been consulted on the routing of the busduct and claimed that the busduct had affected the safety of his family as well as living environment.

185. A survey was conducted in March 1998 to solicit views from all the owners of On Shing Court about the existing routing of busduct installed. Since the majority of owners opted to maintain the original design (even though the Department has committed in the questionnaire to pay for any relocation costs), the existing routing of busduct therefore should remain unchanged.

186. An instruction was issued to all maintenance staff to collaborate with the estate management staff for consultation with rental tenants, owners, or owners incorporations in the planning of maintenance and improvement projects.

Case No. 1997/0380 : Impropriety in handling complainant's case on surrender of tenancy after obtaining a flat under the HOS.

187. The complainant was a public rental housing tenant of Upper Wong Tai Sin Estate. In December 1991, the complainant and his wife successfully acquired an HOS flat using a Green Form, and signed an undertaking to return his public rental housing unit to the Department in two months. However, a copy of the undertaking was not passed to the Upper Wong Tai Sin Estate Office for follow-up. The complainant had continued to occupy the housing unit since then.

188. The flat concerned was recovered. Cases involving purchase of HOS flats by tenants of Upper Wong Tai Sin Estate have been thoroughly checked. There was no other outstanding flat which was overdue for recovery.

189. The Department has carried out a review on the procedures for recovery of estate units from purchasers of HOS, Private Sector Participation Scheme and the Home Purchase Loan Scheme to improve the system, in

particular to revise the computer duplication reports to avoid any oversight in flat recovery action by estate staff.

Case No. 1997/0401 : Failing to include the relevant legislation and right of appeal in Notice to Quit.

190. Due to clearance, a Notice to Quit (NTQ) was served on the complainant, together with other tenants of the Mui Lee THA on 30 November 1996. The complainant filed an appeal against the NTQ in January 1997. The appeal was considered and was dismissed by the Appeal Panel on the grounds that the appeal period has lapsed. The complainant complained against the Department for not including the relevant appeal clause in the NTQ to remind him of his right of appeal.

191. The contents and practices of issuing NTQ and Revocation Notices were reviewed. The Department has already issued guidelines (Management Branch Circular No.22/97 of 26 November 1997 on Termination of Licences in THA Clearance) which state that as in the case of other kinds of NTQ, NTQ issued in connection with clearance of THAs should bear a notice of termination of licence containing - (a) name and residential address of the tenant; (b) authority under which the licence is to be terminated; (c) reasons for termination of the licence; (d) termination date of the licence and the evacuation deadline; (e) action to be taken to recover the THA flat; and (f) details of the tenants' right of appeal, including the time limit and procedure for lodging an appeal.

Case No. 1997/0402 : Failing to include the relevant legislation and the right of appeal in Notice to Quit; and unfair allocation of rehousing units.

192. Due to clearance, NTQs were served on the complainant (and other residents) of Mui Lee THA on 30 November 1996. The complainant complained against the Department for failing to explain to the residents their right of appeal under the relevant provisions of the Housing Ordinance when the NTQs were served and for treating him unfairly in the allocation of public rental housing.

193. The contents and practices of issuing NTQs and Revocation Notices were reviewed. The Department has issued guidelines which state that as in the case of other kinds of NTQ, NTQ issued in connection with clearance

of THAs should bear a notice of termination of licence containing - (a) name and residential address of the tenant; (b) authority under which the licence is to be terminated; (c) reasons for termination of the licence; (d) termination date of the licence and the evacuation deadline; (e) action to be taken to recover the THA flat; and (f) details of the tenants' right of appeal, including the time limit and procedure for lodging an appeal.

Case No. 1997/0446 : Unreasonably deleting the complainant's grandson's name from the public housing tenancy.

194. The complainant was the principal tenant of a public rental housing unit in Lower Wong Tai Sin (2) Estate. In May 1996, the complainant applied for deletion of her daughter-in-law from the tenancy as the latter had already re-married and moved out of the unit. As the complainant's 7-year old grandson was under the legal guardianship of his mother, his name was also deleted from the tenancy (with the agreement of the complainant). The complainant considered that the deletion of her grandson was not acceptable because she had to take care of him.

195. A letter of apology was sent to the complainant by the relevant Estate Manager.

196. Relevant amendments to the guidelines on addition/deletion of household members in public rental housing were issued.

Case No. 1997/0604 : Mishandling the deletion of tenancy.

197. The complainant was a registered member of a public housing unit at Kai Yip Estate. After marriage in 1990, the complainant, together with his wife and two sons, continued to live with his parents in the unit (though his wife and children were not authorised occupants). In 1991, the complainant applied for public rental housing (PRH) through the General Waiting List. As the complainant hoped to apply for separate accommodation instead of living with his parents, he chose to apply for deletion of his name from the tenancy of the unit at Kai Yip Estate. In February 1997, he was informed by the Estate Office to move out from the unit on 15 August 1997.

198. The Department has all along been revising the policy of addition/deletion in response to circumstances and as when required. For

instance, a Management Branch Circular No.20/97 'Guidelines for Handling Requests for Deletion of Family Members' was issued on 24 October 1997 with a view to tightening the deletions of household members from Double Rent/Market Rent paying households to prevent possible abuses and artificial deletion to circumvent the assets assessment. According to the Chief Executive's Policy Address in October 1997 and Housing Authority's 1998/99 Corporate Plan, the Department will conduct a comprehensive review on some of the existing policies, including the existing procedures for addition/deletion of household members in 1998/99.

Case No. 1997/0723 : Delay in handling and resolving the window seepage problem; and delay in providing a substantive reply to the complainant.

199. The complainant brought a flat in Hong Pak Court in 1993. During the warranty period, he had reported problems of water seepage from the windows to the management office. Although the Property Management Agency of Hong Pak Court had carried out occasional repair works in the past four years, the water seepage problems still persisted. The complainant was dissatisfied for not being given a clear and timely reply.

200. Working groups have been set up to review the process in handling latent defects both during and beyond the defects liability period with a view to streamlining the process and to ensuring prompt response to affected tenants. Implementation is expected to be in place in late 1998.

201. A letter was issued to the complainant on 28 August 1997 informing him of the findings on the defects, the Department's commitment to undertake the repair works and conveying apologies for the inconvenience caused.

Case No. 1997/0835 : Negligence in monitoring the HD's works projects leading to contamination of water supply to two housing estates in Ma On Shan and for evading its responsibility after the incident.

202. On 1 March 1997, the fresh water supply to over 1,000 households in two public housing estates in Ma On Shan, namely Chung On Estate and Kam Fung Court was contaminated by salt water. An investigation committee was set up by the Department to investigate the cause of contamination. The

committee concluded that the incident was a result of a mistake in cross-connecting the fresh and salt water mains by the contractor.

203. The Department has reviewed the consultant monitoring system and has tightened up the consultant management procedures by implementing a comprehensive and objective performance assessment system on consultants whereby a scoring system is used and the assessment period has been shortened from 6-monthly to quarterly.

204. The Department has further strengthened the monitoring of consultants' performance through a Technical Auditing System. This has been implemented on site and it focuses on checking consultants' performance in controlling the quality of construction works. The system will be fully developed at all stages of work by the end of this year.

205. Management Branch Instruction No. M04/98 was issued on 8 June 1998 to all management staff on actions to be taken in handling incidents relating to contamination of potable water supply. These include informing residents of the reasons for water suspension and giving them warning not to consume any water from the tap if the potable water supply is found or suspected to be contaminated; issuing timely notices and/or reports to inform all residents of any incidents which have direct, significant or adverse affects on their well-being, keeping them adequately posted of the developments and suitably addressing their concerns; and taking a proactive stance in pursuing/negotiating claims, tendering advice and assistance to residents in making legitimate claims for compensation.

Case No. 1997/1206 : Unreasonably requesting applicants of HOS flats to submit their application forms in person, and failing to respond to a complaint letter.

206. The complainant, a tenant of Tai Hang Tung Estate, intended to apply for a Phase 19A HOS flat. On 14 June 1997, his wife submitted the application form to the Estate Management Office (EMO). Upon checking by the estate staff, a discrepancy pertaining to the particulars of the complainant's daughter was detected. In addition, the undertaking for surrender of the public housing unit upon successful application of HOS flat was not signed. The estate staff therefore requested the complainant to turn up on 16 June 1997 (deadline for application) with the necessary document for verification. However, the complainant had sent the application form (together with a

complaint letter) on 15 June 1997 to the Home Ownership Centre (HOC) directly. As the form had not been endorsed by the EMO, the HOC returned the application to the complainant on 20 June 1997, requesting him for re-submission by 25 June 1997.

207. The requirement of certification of the applications by Estate Office has been incorporated in the Phase 19C HOS application forms.

208. A letter of apology was sent to the complainant on 13 January 1998.

Case No. 1997/1276 : Unreasonably refusing to provide enclosures to the corridor ends of an HOS court.

209. The complainant, on behalf of the Owners' Corporation of Tung Hei Court complained against the Department for failing to provide enclosures to corridor ends at Tung Hei Court. The Department had treated Tung Hei Court differently as other HOS courts built in the same phase were provided with this facility.

210. The Department is making arrangement to submit the request of Tung Hei Court Owners' Corporation for the installation of enclosures at corridor ends on each floor of Tung Hei Court to the Home Ownership Committee for consideration and decision.

Case No. 1997/1349 : Ineffectively managing a market resulting in unauthorised occupation of common area.

211. A complaint was raised against unauthorised occupation of the refuse collection point by two shopstall operators in Sha Kok Estate market, which caused obstruction to the passageway and inconvenience to other shop operators.

212. The Sha Kok Estate Office issued warning letters to the shopstall operators causing obstruction. The situation has been closely monitored by the Department.

213. A set of clear guidelines on intensified enforcement programme against shop front obstructions was issued.

214. A Working Group for Intensified Enforcement Action against Shop Front Obstructions (Phase II Programme) has completed its Yellow Line Scheme Proposal which has been put in effect in all estates by stage with effect from 1 April 1998. The proposal has been implemented in Sha Kok Estate Market since 1 August 1998.

Case No. 1997/1455 : Maladministration in connection with a flooding incident at an HOS court.

215. The heavy rainfall on 2 July 1997 had caused serious flooding to Mei Chung Court, especially at level 1 of the carpark, play area near Lok Chung House, ground floor of Fu Chung House and the management office. Investigation revealed that the flooding was caused by the overflowing of a natural stream course north of Mei Chung Court.

216. The three complainants were the chairman and vice-chairmen of the "Follow-up committee on the landslide and flooding incidents of Mei Chung Court residents and Mutual Aid Committee". They had a total of 28 complaints against the Department, focusing on -

- (a) the site formation and building of the estate;
- (b) the management of the estate;
- (c) the small scale flooding which occurred on 8 May 1997 at the estate, the remedial actions taken and advance warning on flooding; and
- (d) the handling and remedial actions taken on the flooding and landslide which occurred on 2 July 1997.

217. The Ombudsman concluded that of all the 28 complaints lodged, only 6 complaints were partially substantiated -

- (a) on the complaint that due to drainage block on 2 July 1997, the owners of flats C and E of 1st and 2nd floors had suffered loss - on the basis of the minutes of the meeting held on 2 August 1997 at the HD Headquarters, the HD and the property management agent were aware of the flooding caused to the flats;
- (b) according to the Deed of Mutual Covenant of Mei Chung Court, the HD and the property management agent had a degree of responsibility over the drainage system at the adjacent lands. Therefore, the HD's belated decision to look into the cause of flooding on 8 July 1997 (after the small flooding on 8 May 1997)

was inappropriate. Taking into account that the flooding on 2 July 1997 which was caused by the exceptionally heavy rainfall, the Ombudsman concluded that the complaint (at para. (c) above) was partially substantiated.

218. Even though the area in question is out of the management responsibility of the Department, arrangement has been made with the Property Management Agency to periodically inspect the area outside the estate and if necessary, to inform the relevant departments for actions.

219. The Department has provided on-the-job training related to risk management and crisis management to staff. A set of standing instructions in the event of emergencies including typhoons, landslides, rainstorms and serious fires has been issued for staff compliance. In the event of emergencies, an emergency command centre will operate at the HD Headquarters, and staff in the estates will arrange emergency duty rosters.

220. Rectification and improvement works to the external catchment outside the estate boundary, including demolition of the existing footbridge and building another footbridge with raised headroom across the stream course near Shing Mun Tunnel Road, have been carried out by various government departments. Extension of the existing surface drainage channel along the footpath to connect to the existing stream course, and the diversion of the U-channel situated near the temporary footbridge to the stream course were completed by the Drainage Services Department. Construction of kerbs along the boundary fence of the estate to prevent intrusion of water from the footpath into the estate was completed by the Department.

Case No. 1997/1487 : Wrongly advising about the eligibility for purchasing an HOS flat.

221. The complainant (and her mother) purchased an HOS flat in Yue Fai Court in 1980. After her marriage, the complainant moved out of the flat and gave her share of ownership to her mother in 1986. In 1993, her family was put on the waiting list of Phase 15B HOS and was invited to attend an interview. She claimed that during the interview, she was advised by the HOC staff to complete the formalities of cancelling her HOS ownership records. After she had completed the formalities, she was told that she could apply for HOS flats in future. However, when she applied for the Home Purchase Loan,

she was told that her application was rejected because she was an ex-owner of an HOS flat.

222. The Computer Division and Computer Services Section of the Department have been studying on the enhancement of the computer system and the building up of a database to keep track the records of ex-ownership and existing ownership of HOS flats.

Case No. 1997/1511 : Not effectively following up on the complaint about bad smell coming from a neighbouring flat and delay in cleaning up the scene after a dead body was found inside the flat.

223. On 28 July 1997, a complaint was received about presence of odour smell on the 4th floor, Block 8 of Lower Ngau Tau Kok Estate. The estate staff found that the source of bad smell came from a flat. The police was called upon to force open the door of the unit. The tenant's corpse was found and was removed. As the only other authorized person of the flat was hospitalised, the estate staff managed to contact the sister of the deceased tenant on the following day to clean up the unit. The estate staff also arranged cleaning of the corridor and staircase on 29 , 31 July and 1 August 1997.

224. The HD casts doubt on whether its staff should enter the premises for cleaning and clearing up without permission and against the interest and free will of individuals. Legally speaking, the grant of tenancy confers upon the tenant a right to the exclusive possession of the premises for the term of the tenancy. Unless there is express provision in the tenancy agreement, the landlord shall not interfere with the tenant's exercise and use of right to possession. Notwithstanding the death of the tenant, and even if the premises are not occupied, unless the tenancy is otherwise terminated by notice to quit, the Housing Authority shall have no authority to enter the premises except as provided in the tenancy agreement or otherwise empowered under the Housing Ordinance. In this connection, there appears to be no provision authorising the Housing Authority to enter for the purpose of abating nuisance, etc.

225. As far as the case is concerned, the tenancy was still on-going and there were personal belongings and properties of the deceased tenant and his hospitalized brother in the premises. The sister of the deceased was more or less the administrator of their properties. As the clearing and cleaning work would involve removal of personal properties in the premise, prior permission from either the tenant, the authorized occupant or their representatives was

indispensable. To enter the premises without such prior permission is ultra vires and illegal. It seems inappropriate for a Government department to care for the interest of the public by unlawful means.

226. To offer timely assistance to tenants in cleaning or clearing up their premises in the overall interest of the public is one of the day-to-day management functions. The estate staff are professionally trained to exercise their discretion to handle such cases on their individual merits in a prompt, reasonable and legal manner. Owing to the diversified nature of these cases, the Department does not consider it appropriate to set some guidelines that will inhibit the exercise of judgement and management flexibility and act beyond the powers conferred on the Department by the Housing Ordinance.

Case No. 1997/1538 : Misleading tenants that they would be permitted to install split-type air-conditioners and failing to consider the needs of tenants by demanding them to remove those split-type air-conditioners installed on the external walls and refusing to accept their proposals regarding the new guidelines on installation.

227. The complainants had installed split-type air-conditioners (A/C) without prior application. As the condensers of the A/C were attached to the external wall of their housing units, they were advised to re-install the condensers inside their units for safety purposes.

228. With regard to the review of the mechanism for checking cases of non-compliance by tenants, Housing Officers of the Department will, based on the information provided in the "declaration form on occupation status", visit households to check whether the installation of A/Cs complies with the specifications. The inspection report will be verified and signed by a Housing Officer and endorsed by an Assistant Housing Manager. The Housing Officer is required to follow up any case of non-compliance with the tenants and take remedial action accordingly.

229. In order to strengthen the communication between Estate Offices and tenants, the Department, apart from making continuous use of the usual communication methods such as home visits, newsletters, leaflets/posters and Estate Management Advisory Committees (EMAC) meetings, is planning the production of a video tape. The video will introduce to tenants the various acceptable ways of installing A/Cs. From Stage II of the enforcement

programme onwards, the video will be shown at Estate Offices and EMAC meetings and be lent to Mutual Aid Committees and other resident groups.

230. Besides, a coordinator, who is of the rank of Housing Officer or Assistant Housing Manager, will be appointed to oversee the implementation of the enforcement programme to eradicate the problem of non-standard installation of A/Cs in each estate. Before a Notice to Quit is issued to a tenant in breach of the rules of installation, the staff of the Estate Office would first visit him and provide him with technical advice to help him carry out remedial action. Such cases would also be referred to a working group for consideration to ensure that the tenants have been given proper assistance.

231. As for the issuing of an approved plan on the location for the installation of A/Cs to each new tenant, the Department has already incorporated the plan and guidelines on installation into the notice of occupation of flats. The tenants are required to acknowledge receipt of such documents.

Case No. 1997/1696 : Mishandling a public housing application and lack of response to a telephone enquiry.

232. The complainant, together with her sister, applied for public housing through the General Waiting List in July 1996. Her choice of location included Lung Tin Estate. She complained that she was not allocated a housing unit in Lung Tin Estate though there were vacant flats. Besides, during the vetting interview, she was required to sign the undertaking that upon successful allocation of a unit in Lung Tin Estate, she would not be given Green Form eligibility unless she moved into the estate. In July/August 1997, she made an enquiry through the hotline but no reply was given to her.

233. The contents of the declaration applicable for Lung Tin Estate were reviewed and the relevant terms and time limit have been clearly stated.

Case No. 1997/1726 : Ineffectively managing a market resulting in unauthorised occupation of common area.

234. The complainant is the market stall operator in Sha Kok Estate. He complained against the unauthorised occupation of common area by his neighbouring shop tenant for selling fruit.

235. A set of clear guidelines on intensified enforcement programme against shop front obstructions was issued.

236. A Working Group for Intensified Enforcement Action against Shop Front Obstructions (Phase II Programme) has completed its Yellow Line Scheme Proposal which has been put in effect in all estates by stages with effect from 1 April 1998. The proposal has been implemented in Sha Kok Estate Market since 1 August 1998.

Case No. 1997/1815 : Unreasonably terminating the right of occupancy without advance warning.

237. Six units of Block 4, Kwai Shun THA were affected by landslide of the adjacent slope on 8 May 1997. As a longer period was required to carry out the necessary rectification works to the slope, the licensees were informed that they might opt for re-location to vacant units in other blocks of Kwai Shun THA or for a rent-free bedspace of a Transit Centre until the units in Block 4 were ready for re-occupation. All affected licensees had opted to be rehoused to other units in other blocks except the complainant, who did not show his intention nor respond to the letters sent to him. His licence fee was in arrears for two months. Under the circumstances, a Notice to Quit was served to him on 30 August 1997.

238. Instructions concerning the waiving of the occupation licence fee for occupants who have made their own accommodation arrangements when the housing units are closed are being prepared by the Department.

Case No. 1997/1852 : Selectively enforcing against breaches of tenancy in an estate market.

239. The complainant is the tenant of a market stall in Lee On Estate. He complained against the Department for -

- (a) not taking proper enforcement action against neighbouring stall operators for offences relating to trade deviation and shop front obstruction;
- (b) differential treatment by way of increasing the rental of the stall operated by the complainant whereas rentals for other stalls have been reduced; and

- (c) taking enforcement action selectively against the complainant.

240. Shopstall operators are required to obtain licences/permits from appropriate authorities and to have them displayed at the prominent places of their shopstalls. The estate staff and the management company have been cooperating in taking the enforcement actions against the operations of unauthorised side trades.

241. Guidelines on intensified enforcement programme against shop front obstructions (Phase II Programme) - "Yellow Line Scheme" were issued. The Scheme has been implemented in Lee On Market since 1 June 1998. The operation has been very successful.

Case No. 1997/1892 : Delay in responding to complainant's letter, discriminatory treatment in giving a reply and maladministration in planning a refuse collection point.

242. In May 1997, the complainant (the Chairwoman of the Parents-Teachers' Association of a school) learned of a proposal to construct a refuse storage area (RSA) within the confines of the Hing Tung Estate Phase 4 adjacent to the school. She wrote to the Department on 13 May 1997 objecting to the location of the RSA but did not receive a substantive reply until 15 August 1997. She knew that a reply on the same issue was given to the Provisional Eastern District Board on 29 July 1997 by the Department in response to its letter of 23 June 1997. She also expressed dissatisfaction with the Department for failing to take the close proximity of the school and the health of the school children into consideration at the preliminary planning stage of the RSA.

243. Both the principal of the school and members of the Parents-Teachers' Association were briefed on the site selection of the RSA and the improvement measures during the meetings on 12 December 1997. However, the Department would be prepared to repeat the same if necessary.

244. The Department agreed to include consultation on a need and project basis where the RSA is in close proximity to schools and residential buildings, etc. Drawing up of guidelines for consulting parties directly affected by the construction of any proposed RSAs in their close proximity is being considered.

Case No. 1997/2039 : Delay in letting out a market stall, and entry into another market stall without prior notice.

245. The shopstall concerned at Lee On Estate market had been vacant since February 1996. Four open tenders had been conducted to let out the shopstall but none was successful as the tendered rents, including those offered by the complainant, were considered unacceptably low. In view of the lukewarm response, the designated trade of the shopstall was changed and an Open Instant Rental Tender Exercise was conducted in June 1997 in which the complainant made a successful bid. During a routine patrol to the market in July 1997, the Housing staff found that the roller shutter of the shopstall was half opened and the shopstall was unattended. They entered the premises in order to make a closer inspection and to take photos for record purposes.

246. A letter of apology was issued to the complainant on 9 March 1998 for having entered her shopstall without her consent.

247. It is the established policy not to set any minimum rent in the tendering exercise including letting by direct negotiation and this practice has been vetted and agreed by the ICAC. The policy was established following representations from tenants that setting a minimum rent had the effect of driving tender prices upwards. Open rental tendering without setting any minimum rent offers an opportunity for prospective tenants to suggest the reasonable rent level from business view point. Setting minimum rent in the conditions of tender is only applied to Open Instant Rental Tender Exercise for unpopular premises where tenderers have to be given an indication of value to start making their bids.

Case No. 1997/2060 : Mishandling an application for addition of names into a tenancy, and the processing of compassionate rehousing.

248. The complainant was an unauthorised occupant in Chuk Yuen South Estate. In 1990, the principal tenant, the complainant's father-in-law, applied for addition of the complainant to the tenancy but was rejected by the Department. In 1996, the principal tenant applied for addition of the complainant and complainant's wife to the tenancy again on compassionate grounds. The Department sought advice from the Social Welfare Department (SWD) but subsequently did not take the recommendation of the SWD to accept the application for addition.

249. A MB Circular No.9/98 of 27 April 1998 on two-way communication link with the SWD has been issued to estate staff on the requirement to keep the SWD informed of the actions taken by the Department irrespective of whether the SWD's recommendations have been accepted or not.

Case No. 1997/2114 : Ineffectively controlling the sale of unauthorised goods by market stall operators.

250. The complainant, a market stall operator of Shun Lee Estate, complained against the Department for not taking enforcement action against her neighbouring stall operator for selling unauthorised goods for some three years, despite her repeated complaints. The complainant felt aggrieved because her business has been adversely affected.

251. Guidelines on intensified enforcement programme against shop front obstructions (Phase II Programme) - "Yellow Line Scheme" were issued. The Scheme has been implemented in Shun Lee Estate Market since 1 June 1998.

252. The Department is reviewing the existing work procedures and guidelines on enforcement of tenancy conditions of market stalls.

Case No. 1997/2387 - 1997/2390, 1997/2398 - 1997/2399, 1997/2457, 1997/2470 : Giving wrong advice about occupation date of the new housing estate.

253. A group of residents of Shek Lei Estate (which was due for development) complained that although the Department was aware of the delay of the construction works of Shing Kwok House, Kwai Shing East Estate and the contract for the project of Shing Kwok House was terminated on 29 March 1997, it still rehoused them to Shing Kwok House and informed them that the flats were ready for intake in May 1997. In fact, the Department was not certain that the flats could not be completed in time when the intake arrangements were made.

254. The HD would, as soon as possible, take the initiative to inform residents of the detailed information and possible effects on them when facing

difficulties in implementing development projects. The HD would explain to them the relevant follow-up actions, maintain frequent contacts with them, listen to their views and actively resolve their problems and eliminate their anxiety.

255. If the allocated flats cannot be taken-in on schedule and the delay may cause anxiety and perplexity to residents, the HD would, as soon as possible, take the initiative to provide other suitable choices or to make temporary arrangement to assist the residents to resolve their difficulties.

Immigration Department

Case No. 2752/96 : Delay in processing an immigration appeal.

256. Please refer to Case No. 2753/96 under the Security Bureau.

Case No. 1997/1423 : Being rude to the complainant while under Immigration custody.

257. A foreign visitor was detained in July 1997 for being suspected to be an impersonator of a holder of a Nigerian passport. He complained against Immigration staff for throwing his meal box onto the floor and directing him to eat the contents spilt on the ground.

258. To avoid possible allegations of ill-treatment, facilities for videotaping the interviews and the taking of statements have been installed.

Industry Department

Case No. 2798/96 : Mishandling the complainant's application to participate as an exhibitor in the Hong Kong Technology Exhibition.

259. The Technology Exhibition was held in January 1997 to showcase local technological achievements and recent technology advances. The complainant wished to participate in the Exhibition as an exhibitor. He complained that he was asked to submit an application by an officer of the Department despite the fact that the closing date for application had already lapsed. At the end, the complainant's application was not accepted because all the exhibition booths had been fully subscribed. However, this had not been explained to the complainant.

260. Two letters of apology, one from the Industry Department and one from the officer in question, were sent to the complainant in December 1997, explaining why his application was not accepted.

Inland Revenue Department (IRD)

Case No. 2733/96 : Raising a demand for salaries tax without ascertaining the taxpayer's chargeability, failing to effectively convey the tax demand, and taking tax recovery action unjustifiably.

261. The complainant was employed by Employer A, then transferred to the holding company Employer B, and was afterwards employed by Employer C. While Employer B and Employer C had filed employer's return in respect of the complainant, Employer B later advised that its employer's return previously filed was erroneous.

262. The IRD issued the complainant a tax return for the year of assessment 1994/95. In the absence of any response from the complainant despite the issue of a reminder and a compound offer, the IRD raised an estimated assessment based on the employer's return filed by Employer B and Employer C. The demand note was sent to the complainant, care of Employer B's address. As the demand note and its reminder had been undelivered, the IRD sent a notice for recovery of tax to the complainant's banker and a copy of it to the complainant care of Employer B's address. The complainant responded to the IRD and complained to the Ombudsman.

263. While noting that the confusion in this case could have been avoided had the complainant duly observed his obligations under the Inland Revenue Ordinance, the Ombudsman found that the IRD had failed to take into consideration the information from Employer B or clarify with it the complainant's chargeability before issuing the demand note.

264. The Ombudsman considered that the IRD's failure to clarify the complainant's address at an early stage, its arbitrary use of an "obsolete" address (care of Employer B's address), its subsequent decision to adhere to the "obsolete" address and the inadequate attempt to communicate with the complainant, and its inability to make use of available information and possible sources of information had contributed to the failure in effectively conveying its tax demand.

265. The IRD had already extended an apology to the complainant for the problem arising from the mailing of notices.

266. The IRD has implemented the procedure of trying to obtain the taxpayer's forwarding address from the bank before issuing recovery notice if

the taxpayer is an individual and there are indications that he might not have knowledge of the tax demand.

267. Comprehensive guidelines were issued by the Department on updating of Taxpayers' Address and Manual Follow-up of Undelivered Mail (on 22 July 1997) and on creation of Taxpayer's Address (on 26 September 1997).

268. However, the complainant's failure to fulfil his obligations under the Inland Revenue Ordinance had a contributory role in leading to the complaint.

Case No. 1997/0619 : Delay in responding to a tax objection.

269. On 20 May 1994, the complainant filed an objection to a Profits Tax assessment. The IRD then advised that it allowed a conditional hold-over of tax in full. Later, the IRD wrote and explained its reason for the assessment and invited the complainant to withdraw objection. The complainant then addressed the various points raised by the IRD and later sent two letters seeking IRD's reply. In the absence of a reply from the IRD the complainant lodged a complaint with the Ombudsman in April 1997.

270. The case was found to have been unattended to during the period September 1994 to August 1995. The IRD suggested that the possible causes were the unfortunate tearing away of the action tag which coincided with an oversight of its staff in returning the file to the filing rack. The case was further delayed by the leave plan and posting arrangement for the subject officer preparing the objection report.

271. The IRD staff were reminded of the need to pay greater attention to safeguard against the recurrence of oversights and delays similar to those encountered on the present occasion, and the Department had adopted a revised performance target and monitoring mechanism for the processing of tax objections. Under the new performance pledge, the standard response time for notice of settlement of objection and notification of decision by the Assessing Officer would be within four months from the date of receipt of the notice of objection, and the performance target in this regard is 98%.

272. The IRD had conducted a review on the existing staff deployment arrangement with a view to preventing or reducing disrupting of work flow in

the event of movement and transfer of staff members. It was found that the existing policy on staff transfers, mainly to cater for staff development and operational needs, was in order. It was however considered that a good handover system would help to reduce disruption of work and would facilitate the supervisor in deciding whether any part of the outstanding work of the outgoing officer should be taken up by other officers as a temporary measure. A circular on (a) Standardised handover list; (b) Flexible arrangement of job; and (c) Working guidelines on work priorities was issued on 6 September 1997.

Case No. 1997/0697 : Failing to give a prompt reply to a taxpayer's enquiries, and forwarding his tax papers to an incorrect address.

273. The complainant received a notice for recovery of tax from the IRD and was informed by his banker that upon IRD's request, the tax demanded had been settled from the balance in his bank account. He wrote to the IRD in December 1996 seeking clarification on the matter. However, despite repeated reminders, he did not receive any reply after a lapse of a few months. He therefore complained to the Ombudsman that the IRD had failed to give a prompt reply. Further, while informing the IRD that he would be leaving Hong Kong in August 1994 and expected to return around June/July 1995, the complainant also provided his contact address in the United States and the United Kingdom for his contact in the interim. In spite of this, the IRD continued to send tax papers to an incorrect address.

274. The IRD admitted that the unduly long time taken for a reply to reach the complainant was due to the Department's delay in linking his enquiry letter with his tax file and the failure to update his address in the Department's computer record.

275. A detailed reply and an apology were given to the complainant on 1 May 1997.

276. In September 1997, the IRD implemented the procedure of trying to obtain the taxpayer's forwarding address from the bank before issuing recovery notice if the taxpayer is an individual and there are indications that he might not have knowledge of the tax demand.

277. Comprehensive guidelines were issued by the Department on updating of Taxpayers' Address and Manual Follow-up of Undelivered Mail

(on 22 July 1997) and on creation of Taxpayer's Address (on 26 September 1997).

Case No. 1997/1291 : Abusing the official capacity in obtaining the personal data kept by the Department and using it for private purpose.

278. The complainant had a rental dispute with Mr A. In the course of proceedings in the Small Claims Tribunal Mr A who identified himself as a staff member of the IRD, had produced information on all properties of the complainant as evidence to support his claim. The complainant suspected that Mr A had taken advantage of his official position in the IRD to obtain such information and felt aggrieved because her privacy was apparently infringed upon.

279. The Ombudsman investigated and concluded that it could find no evidence to substantiate the complainant's allegation. However, the Ombudsman was of the view that had Mr A declared his interest before initiating the on-line enquiries at IRD's computer to gain access to the complainant's information, the personal information of the complainant could have been better protected. A warning letter was issued by the IRD to Mr A on the basis that he had not properly exercised the power conferred on him when making the said on-line enquiries. Further procedures were also devised by the IRD to prevent improper access to taxpayers' records.

280. A circular was issued in October 1997 to remind all IRD staff of their oath of secrecy and to introduce a new form to enable section leaders to request for computer on-line activity log records for the purpose of reviewing the on-line checks conducted by their staff to ensure that there is no abuse of the on-line system.

281. Moreover, internal guidelines were drawn up for conducting on-line background checks. Briefly, the guidelines specify that officers should not conduct background checks or other investigatory procedures where a conflict of interest is likely to arise. The officer in question also responded by undertaking that guidelines in performing on-line checks would be strictly followed by him in future.

282. An apology letter was sent to the complainant in January 1998 to express the Department's regret towards the unpleasantness caused to her.

Judiciary

Case No. 1163/96 : Ill manner of a staff member who kept a client waiting for an unduly long time and inappropriately arranging a joint interview for the client; failing to give timely notification that attendance at a tribunal hearing was not required.

283. The complainant approached the Labour Tribunal for assistance over a dispute with his employer. He claimed that while being interviewed by the Labour Tribunal officer handling his case, the latter was summoned to attend court duties for over an hour. When the complainant later found out that the Tribunal Officer had already returned to his office from court duties, he was received rudely by the Tribunal Officer who shouted at him that he should wait outside.

284. Later, the Tribunal Officer resumed the interview, but this time he was simultaneously interviewing the complainant and another client who was also seeking claims against the same employer. At the end of the interview, the Tribunal Officer told the complainant that if his employer would offer the compensation sought as an out of court settlement such that the scheduled proceedings would be called off, he would be informed accordingly. However, when the complainant attended the hearing on the scheduled morning, he was told by a Court Clerk that his employer had offered the claimed compensation three days ago, and hence he did not need to attend court that day.

285. Salient points of the procedures in the Tribunal including the making of appointments have been included in the "Guide to Court Services - Labour Tribunal" pamphlet. A notice prepared by the Registrar in March 1996 detailing the ten main steps involved in the filing of a claim has been displayed prominently on the notice board in the Tribunal. The Registrar, Labour Tribunal has prepared another notice to cover the need to wait under certain circumstances. The notice is posted up in the public waiting lobby, consultation room and Tribunal Officer's room.

286. The Registrar, Labour Tribunal has issued circular to remind staff of the proper manner in handling claimants when they are called upon to handle other urgent tasks. The Registrar will remind the Tribunal Officers about this from time to time.

287. The appointment system of the Labour Tribunal is not an area properly falling within the domain of the Judiciary Administrator. The system

is part of the practice and procedure of the Labour Tribunal and is under the purview of the Chief Magistrate and the Principal Presiding Officer. The appointment system is kept under review and further improvements will be introduced if and when necessary.

Case No. 1432/96 : Failing to provide a client with assistance in pursuing his claims for compensation from the security guard company appointed by the Bailiff's Office.

288. The complainant complained against the Judiciary for failing to provide him with assistance in pursuing his claims for compensation from a guard company for loss he suffered as a result of the company's failure to properly watch over the goods and chattels seized upon the execution of a distraint warrant taken out by him and placed under its custody.

289. The booklet "A Guide to Court Services - Bailiff's Office" was published in May 1998. The guide covers the role and responsibility of the Bailiff's Office in the execution of court orders and judgments so that users would have a better understanding of the services provided by the office.

290. The Judiciary is instigating formal means of monitoring the performance of guard companies.

Case No. 2029/96 : Mistakenly giving out an incorrect copy of a written judgment.

291. The complainant was one of six appellants in a criminal appeal case who submitted an application for leave to appeal against his conviction in September 1994. After hearing his oral submission, the Court refused to grant him leave to appeal orally and no written judgment had been handed down. The Court then proceeded to deal with the appeal of other co-defendants.

292. The complainant wrote to request the Judiciary for a copy of the Court's written judgment dismissing his application in October 1994. In response, the Directions Judge of Criminal Appeal directed that a copy of the judgment with the appeal case number quoted by the complainant be sent to him. As no written judgment had been given by the court, the judgment only dealt with the appeal of other five appellants which was of the same appeal case number as the complainant. Upon receiving the document, the complainant

informed the Judiciary of the 'mistake' and reiterated his request. He was then informed that his application was dismissed orally and no written judgment on his particular case would be provided. The complainant then lodged a complaint against the Judiciary for having mistakenly given him a copy of a written judgment not concerning his application for leave to appeal against conviction.

293. The complainant's request was dealt with promptly by registry and court staff. The original request for written judgment dated 10 October 1994 was received by the High Court Registry on 12 October 1994. A reply was given to him on 20 October 1994 (8 days). The second inquiry dated 28 October 1994 and received by the High Court Registry on 7 November 1994 was given a reply on 10 November 1994 (3 days).

294. In his letter of 10 October 1994, the complainant asked for written judgment of his case which he quoted as "HC 120/92". When cases went on appeal, they were assigned a separate case reference. In the case of HC 120/92, its Court of Appeal reference is "CA 19/94". In accordance with normal court procedures, his request was referred to the Directions Judge of Criminal Appeal. The court ordered that his request be acceded to. He was therefore given a copy of the written judgment of CA 19/94. When the complainant wrote on 28 October 1994 claiming that the judgment was not what he needed because it dealt with the appeals of other defendants, the Registrar replied to clarify that his "application for leave to appeal against conviction was orally dismissed. There was no written judgment."

295. There was no maladministration. Judiciary staff did nothing wrong which warrants any apology.

296. The case involves the execution of court orders by Judiciary staff. Anything which relates to court cases is, by definition, outside the Judiciary Administrator's responsibility and therefore the Ombudsman's jurisdiction.

Case No. 1997/2036 : The Summons Section of Kwun Tong Magistracy failing to serve a summons on the Urban Services Department (USD) staff member concerned.

297. The complainant alleged that he was assaulted by the USD officers and was later prosecuted by the Police for assaulting public officers. The case was heard in Kwun Tong Magistracy but the prosecution offered no evidence

against the complainant and he was then released. The complainant applied to the Judiciary for the issue of a private summons to the USD officer concerned. The complainant provided the name and office address of the USD officer. When the Bailiff served the summons at the given address, he was told that there was more than one officer bearing the same name. The summons could not be served. The Bailiff's Office then asked the complainant to provide the identity card number of the defendant which the complainant's solicitor did. The Bailiff's Office called the USD Headquarters but was told that the defendant had been transferred to Sai Yee Street Office. The bailiff then called the Sai Yee Street Office but was informed that the defendant had been transferred out. No further information on the whereabouts of the defendant was provided. At the first hearing, the Court in the absence of the defendant, ordered that a Warrant of Arrest be issued against the defendant. The First Clerk was asked by the trial magistrate to refer the matter to the Department of Justice to see whether they see it fit to intervene. The Department of Justice advised that they had no intention to intervene. On a subsequent mention hearing, the complainant applied to the court to withdraw the summons. The Court also ordered that the Warrant of Arrest be cancelled.

298. In serving summonses, the bailiffs are executing the orders of the court under the relevant laws. Bailiff service is effected by hand or post unless there is a specific direction from the court as to the mode of delivery. In the case of private summonses, there is an established practice of more than 20 years' standing that personal service is the courts' preferred mode of service. From the Courts' point of view, in dealing with criminal cases, the court prefers certainty of knowledge that a summons has actually been served. Because the number of private summonses is few and far between, the bailiffs have hitherto adhered to the practice on personal service for private summonses. Certainty of knowledge of successful service of a summons is important because failure to attend court in answer to a summons may result in a Warrant of Arrest being issued against a defendant. The bailiffs have to comply with the established court practice and they do not have a choice in the mode of delivery of private summons as suggested by the Ombudsman who thought that the bailiffs might consider in the first instance to deliver the summons by post. The Judiciary Administrator cannot issue office instructions or guidelines to the bailiff staff on a matter relating to court practices. The Judiciary Administrator has therefore referred the Ombudsman's recommendation to the court leaders concerned for consideration.

299. The Ombudsman thought that the bailiff should be responsible for the failure to deliver the private summons in this case. The reason being that

the bailiff should have considered delivering the summons by post to the USD Headquarters after personal service has failed. The bailiffs should have taken a more proactive stance to find out the whereabouts of the defendant. It is a widely recognised principle that bailiffs serve summonses on the basis of information provided by the plaintiffs. If the service cannot be effected because they have not been given proper identification or if the address is incorrect, their responsibility is to report the matter to the court from which the summons originated. Unless the court has other instructions, the bailiff's role finishes thereat. In the present case, failure to deliver the summons has resulted from the plaintiff's failure to provide adequate information to identify the defendant and his address at which service could be effected. It is wrong to expect the bailiff to trace the whereabouts of the defendant on behalf of the plaintiff. On the mode of delivery of the summons, as pointed out in the above paragraph that the bailiffs have to follow the long standing practice of delivering it by personal service. They do not have the discretion or choice as to the mode of delivery.

Land Development Corporation (LDC)

Case No. 1997/2269 : Demolishing complainant's property without giving prior notice and explanation for the action.

300. The complainant complained on behalf of another person against the LDC and the Lands Department (Lands D) for demolishing that person's property without giving them prior notice and explanation for the action.

301. The property in question was resumed by Government in 1978 but was not yet handed over to the LDC at the time of the incident. The adjoining site, formerly occupied by a cooked food bazaar, was handed over by the Lands D to the LDC in June 1997 for demolition. A joint venture partner of the LDC had employed a specialist asbestos sub-contractor to remove the asbestos roof of the bazaar and during an operation in the third week of July, an asbestos roof panel was inadvertently removed from the said property.

302. A site visit was arranged after the incident and was attended by, amongst others, a representative of the LDC. Since then, the complainant had repeatedly demanded the LDC to account for the demolition action and, through the Lands D, asked for a meeting with the LDC. The LDC, in a meeting with the complainant, told him that the LDC was not a party to the matter and suggested him to supply to the sub-contractor detailed lists of goods which he claimed were damaged and lost.

303. The LDC has already arranged a meeting with the complainant, attended by representatives from the Lands D and other parties concerned. The parties have explained to the complainant their respective roles and responsibilities in the case and advised him of the way the dispute might be settled.

Land Registry (LR)

Case No. 1997/1022 : Having erroneously removed the record of complainant's land title from the land register.

304. The complaint was against -

- (a) the LR having erroneously removed the record of his title to certain lots from the land register; and
- (b) the Lands Department (Lands D) having erroneously removed the records of his title to certain lots from the 'A' Rent Roll.

305. The error occurred in this case was a single incident. The implementation of the Ombudsman's recommendation would require the comparison of each and every entry in a register with the registered documents. There are over 4 million documents registered in the New Territories Land Registries. This re-checking exercise would not be cost-effective and it would involve considerable manpower and computer resources and would affect the daily operation of the registries. It was therefore not feasible and practical for the LR to implement the recommendation.

306. An apology letter was issued to the complainant on 26 August 1997.

307. In order to prevent future occurrence of similar error, staff in the North New Territories Land Registry were immediately reminded of the followings -

- (a) the importance of maintaining an accurate land register;
- (b) to exercise greater care in performing registration work, particularly over the interpretation of easily misleading descriptions;
- (c) to be more customer-oriented and to handle enquiries more flexibly;
- (d) to explain to customers their work procedures clearly;
- (e) to proactively keep customers informed of the progress of their investigation and follow-up action.

308. A written instruction was given to all LR staff drawing their attention to the case and providing them with guidelines in dealing with similar cases.

309. The Land Registration Officers of the respective New Territories Land Registries have briefed all registration staff on the case and refreshed them on the registration procedures.

310. The Registration Instructions File and Registration Precedent Case List had been updated.

311. Staff were reminded at the New Territories Divisional Management Meeting of the importance of good customer service; that prompt action should be taken to investigate into cases of registration errors; and enquirers should be kept informed of the progress of the case.

312. Staff will be constantly coached and reminded to exercise care in registration work.

313. Experience sharing sessions will be held regularly with in-house legal officers to enrich staff's legal knowledge in land registration.

314. The registration work is kept under close monitoring to ensure a high accuracy rate.

Case No. 1997/1268 : Perfunctory manner in checking for land encumbrance.

315. The complainant submitted an application to the District Lands Office/Tai Po (DLO/TP) in October 1992 for a Free Building Licence to construct a small house. On receiving the complainant's application, the DLO/TP requested the LR to provide a report on title on the lot in question on 26 August 1993 and on 8 February 1995. The two replies given by the LR on 20 October 1993 and 17 February 1995 inaccurately confirmed that there was no encumbrance on the lot. In fact, the replies should record the registration of a Deed of Grant of Right of Way as encumbrance. Relying on the incorrect information, the DLO/TP approved the application in July 1995.

316. In August 1995, on advice by the Legal Advisory and Conveyancing Office, Tai Po (LACO/TP) that the lot in question was subject to a Deed of Grant of Right of Way, the DLO/TP informed the complainant verbally of LACO's finding. In August and in October 1996, the DLO/TP also informed him of the need to discharge the Deed or to relocate the site.

317. In July 1997, the complainant was requested to make his decision quickly in order to enable the DLO/TP to expedite processing his application. Hence, he lodged a complaint to the Ombudsman. The complaint was against -

- (a) the DLO/TP of the Lands D for delay in processing his application for a Free Building Licence to construct a small house; and
- (b) the LR for the perfunctory manner in checking for encumbrance in connection with the said land on which the small house was proposed to be built, causing further delay in the processing of the complainant's application.

318. The LR admitted that, due to the negligence on the part of the subject officers, the registered encumbrance was inadvertently omitted from the reports on title. The omission was also caused by the confusion arising from the former manual registration practice of recording the transactions affecting different sections/sub-sections of the same lot under the same deed register folio.

319. The Land Registration Officers of the respective New Territories Land Registries have briefed all staff of the Reports on Title Section on the case and also reminded them to exercise greater care in preparing the reports on title.

320. The counter-checking system for preparing the reports on title cases has been improved. For cases prepared by inexperienced staff, the Clerical Officer in-charge would counter-check all these cases. For cases prepared by experienced staff, although it is not possible to counter-check all these cases due to the volume of work involved, the Land Registration Officers and the Clerical Officers in-charge would counter-check at least 35% of the cases.

321. The "Guidelines for the Preparation of Reports on Title" which standardise the practices in preparing the reports on title cases for both Urban and New Territories Land Registries were compiled and issued to the staff concerned in March 1998. The Guidelines will be reviewed and updated when circumstances warrant.

322. More on the job training, coaching and guidance will be given to new staff who has to handle reports on title cases.

323. Staff of the Reports on Title Section will be constantly coached and reminded to exercise care in their work. Doubtful cases which involve legal interpretation will be cleared with in-house legal officers.

324. The Senior Land Registration Officers will discuss with staff on issues relating to procedures and problems on the preparation of reports on title during the monthly experience sharing session which is held at each New Territories Land Registry.

325. Reports on title are prepared according to the information contained in land registers. Staff of the Registration Section are therefore reminded, in the course of registering a deed to review doubtful cases on the title so that the records are in order.

326. An apology memo was issued to the DLO/TP on 16 October 1997.

Lands Department (Lands D)

Case No. 483/96: Failing to conduct a ground survey and provide information showing the resumption limit of land prior to resumption and impropriety in permitting and accepting as correct the resumption limit set out by a contractor.

327. The complainants lodged a complaint against the Transport Branch, Highways Department (HyD) and District Lands Office, Yuen Long (DLO/YL) of the Lands D for -

- (a) failure to conduct the ground survey and provide them with information showing the resumption limit of land adjoining their lots prior to the land resumption in December 1995;
- (b) improperly permitting the contractor to set out the resumption limit and erect a temporary fencing in December 1995 and accepting the resumption limit set out by the contractor as correct; and
- (c) failure to conduct the actual ground survey despite their complaint of the incorrect resumption limit.

328. The Department wrote to the complainants with a full explanation on the exact resumption limit of the project which affected her and her family's lots, how it was worked out and what exactly the role and responsibilities of the contractor were in the context of the setting out of the resumption limit in this case so as to clear any remaining doubts.

Case No. 1790/96 : Impropriety in processing complainants' applications for small house development.

329. The two complainants (father and son) had applied to be granted two adjoining pieces of Government land to build small houses. The applications were objected to by several villagers upon posting of notices by staff of the DLO/YL, and the complainants were advised that their applications could not be processed until the objections were resolved. The DLO/YL did not conduct a proper investigation to ascertain whether the objection should be upheld or rejected.

330. Following discussions with the objectors, the objections to the complainants' applications were withdrawn. The offer of basic terms to the complainants was issued on 4 June 1998 and accepted on 8 June 1998.

Case No. 2042/96 : Failing to consult villagers prior to approving a small house development.

331. The complainants' objection to the grant were that the site was too close to a nearby shrine and the nearby villages had not been consulted in respect of application.

332. The Director of Lands (D of L) stated that all the normal consultation processes had been followed and that it was not normal for notices to be posed in one village in respect of a small house application within another village. Regarding the nearby shrine, the D of L pointed out that it was small, hidden by tall vegetation and almost nobody in the village knew of its existence before the complaint.

333. A meeting was held on 27 April 1998 amongst the District Lands Office/Tai Po (DLO/TP), District Office/Tai Po (DO/TP), Chairman of Lam Tsuen Valley Rural Committee and village representatives of San Tong, San Tsuen and Lung A Pai. It was agreed that villagers of San Tong, Lung A Pai and Siu Om Shan would compromise on the "Tai Wong Yair Fung Shui Zone". The DLO/TP and DO/TP will liaise closely to finalize the fung shui zone for administrative purpose.

334. The Ombudsman's recommendation that "fung shui" matters be taken into account in relation to small house developments is already the standard practice in the department.

Case No. 2860/96 : Delay in processing an application for change of name of licensee in a Government Land Licence.

335. Upon the death of his father, the complainant applied to transfer the Government Land Licence (GLL) held by his father to his name in 1990. The application was initially processed in a satisfactory manner but then was held in abeyance for about 4 years awaiting confirmation from the complainant that he had not previously received any ex-gratia compensation from the Environmental Protection Department (EPD). After the confirmation was received, the DLO/YL had put this type of work into a low priority category.

336. An apology letter was sent to the complainant by the DLO/YL on 20 May 1997 and a new GLL was issued to him on 31 July 1997.

337. The staff of the DLO/YL were advised to adopt a more responsive and total approach in processing applications by keeping applicants informed of the status and notifying them of the need to rectify irregularities in one go.

Case No. 1997/0407 : Delay in processing application for building a small house.

338. The complainant's application was delayed by about 11 months due to the fact that the case file could not be located within the DLO/YL. It was later discovered that the file had been on loan to an outside firm acting on behalf of Government in connection with a litigation.

339. A letter of apology was sent to the complainant on 27 November 1997. The DLO/YL Standing Office Instruction No. 5/97 was issued on 4 November 1997 to ensure file movements are properly documented.

Case No. 1997/0651 : Delay in processing an application for a Free Building Licence.

340. The application was delayed for two reasons -

- (a) the DLO/TP was initially advised by the Tai Po New Territories Land Registry (TPNTRLR) that there was no encumbrance affecting the lot under application; this advice later proved to be wrong, and
- (b) upon initially discovering that there was an encumbrance over the lot the DLO/TP had only verbally advised the applicant of this and had not done so in writing.

341. The DLO/TP issued a circular on 22 December 1997 to remind his staff that issues of material consequence which will affect an application should be notified to the applicant in writing and appropriately followed up. An apology letter was issued to the complainant on 12 December 1997.

342. No action can be taken for title checking of Building Licence cases as the Legal Advisory and Conveyancing Office does not normally check title either before or after the issue of offer letters.

343. It was unfair to put the blame on the Department whereas the DLO/TP was the "victim" of two inaccurate reports. The complainant obviously contributed to the delay by ignoring the DLO/TP's verbal advice as well as written advice given in August and October 1996 that the position of the proposed small house had straddled on a Right-of-Way previously granted by him to his neighbour. The conclusion by the Ombudsman should therefore be reconsidered.

Case No. 1997/0755: Failing to take enforcement action against an illegal structure and poorly co-ordinating with the USD in handling this complaint.

344. The complaint was against the Lands D and Urban Services Department (USD) for failure to take action to clear an illegal structure at Cheung Sha Wan Road and poor co-ordination between the two departments in replying to his complaint.

345. The complaint was lodged against an illegal structure at Cheung Sha Wan Road to both the Lands D and USD in March 1997. The complainant requested the clearance of the structure. The USD replied in April 1997 to the complainant advising that the District Lands Office/Kowloon West (DLO/KW) of the Lands D was responsible for any action on the structure whereas the DLO/KW also replied in April 1997 pointing out that the case had been referred to the USD for action. The complainant was not satisfied with the replies.

346. After investigation, the Ombudsman advised that prior to replying to the complainant, the DLO/KW should have first consulted the relevant department on their respective responsibilities. Furthermore, when advising the complainant of the referral of the case to other department, the DLO/KW should give reasons for referral and explain the restrictions faced by Government or the department in taking enforcement action against the structure. The Ombudsman concluded that the complaint against the Lands D is partially substantiated.

347. Following the Ombudsman's recommendations, the Lands D would further inform the complainant of the actions taken or to be taken and explain to him their restrictions in relation to the clearance of the structure.

348. The Lands D agreed to improve their co-ordination and liaison with other concerned government departments with a view to streamlining and improving their complaint handling procedures and reviewing and updating, if necessary, relevant departmental guidelines and instructions relating to the definitions of illegal structures and division of responsibilities in relation to control, enforcement and clearance of illegal structures.

349. The Lands D would consider the issue of a joint reply to similar complaints/enquiries where appropriate. All officers in the DLO/KW were advised of the need to follow the recommendation before sending reply to any complainant of similar nature.

Case No. 1997/0763 : Mishandling an application for relocation of a temple.

350. Arising from the clearance of the Tiu Keng Leng Cottage Area, the Lands D processed an application for a new site for the Po Yin Temple (the Temple) over a period of about 7 years. The Temple operator has received ex-gratia payments as a result of the clearance. In March 1997, an Interdepartmental Committee decided not to approve the private treaty grant of the site applied for by the Temple but rather decided that a smaller site, more comparable in size to the previous operation, should be granted to the Temple on a short term tenancy basis. The Committee also decided that if the Temple could demonstrate its ability to operate the tenancy site in a reasonable manner, after a period of time it would review the decision and would give consideration to the grant of the site by private treaty.

351. The Temple operators felt aggrieved at the decision and considered that the case had been mishandled.

352. The D of L would help identify a suitable site for relocation of the Temple for consideration of the complainant by way of a land grant or a Short Term Tenancy. There is no guarantee that the implementation of the recommendations will resolve the matter unless the Temple operator is willing to abide by the current Government policy.

Case No. 1997/0928 : Failing to provide street name plates in four new streets in Fanling in a timely manner.

353. The names of the streets concerned were gazetted in January 1995, but the street name plates were not installed until April 1997. The Ombudsman considers that the HyD, Territory Development Department and Lands D all had not taken proper follow-up actions on their part to monitor the relevant progress of the project. There was also an apparent lack of co-ordination among the three departments to see to it that the erection works would be properly carried out. This has resulted in a substantial delay of over two years in the erection works for the street name plates.

354. Representatives from the departments concerned met in October 1997 to review the relevant monitoring and inter-departmental co-ordination procedures. A bring-up system has been set up in the Survey and Mapping Office of the Lands D to monitor the progress of the erection of street name plates in the New Territories.

355. From experience, the 3-month lead time for the erection of street name plates is considered appropriate.

Case No. 1997/1468 : Delay in processing application for building a small house; and mishandling the small house application.

356. The complainant applied to the DLO/YL for a Government land site to build a small house in 1992. Notices were posted. One objection was received but was withdrawn subsequently. Shortly thereafter the case file was lost. A new file was not opened till late 1995 and when notices were again posted, several villagers objected on Fung Shui grounds. The complainant was advised that the application could not be processed further until the objections had been resolved.

357. A letter of apology was issued to the complainant on 3 March 1998. Unfortunately the fung shui objection could not be resolved, despite much effort by the DLO, DO & Provisional Regional Council personnel and therefore the application was rejected.

358. A new bar code filing system along with other checks have now been put in place to improve the monitoring of file movement.

359. The D of L did not accept that the DLO/YL should not have reposted notices in respect of the application in 1996.

Case No. 1997/1793 : Unreasonably requiring the complainants to erect a retaining wall in connection with the redevelopment of their village houses; and delay in processing their application for redeveloping their village houses.

360. The complaint was made because the District Lands Office/Shatin (DLO/ST) felt that Certificate of Exemption (C of E) in respect of site formation works could not be issued due to the existence of a nearby slope. On submission of development plan for the houses the AP had shown the site formation level to be raised by 0.75m and as such Geotechnical Engineering Office (GEO) said the site met the requirements for issue of C of E. The DLO/ST however disagreed and was of the view that the criteria to exempt should be based on existing conditions and not proposed conditions. Regarding the claim of delay in processing the application, the application was processed within 9 months although the case was not straightforward.

361. The department has discussed with the GEO to reconcile the difference in opinion on the interpretation of PNAP No. 147 for site formation works exemption. It was confirmed that in all doubtful cases the matter will be referred to the GEO for their decision.

Case No. 1997/1938 : Delay in processing the application for small house development; and mishandling the small house application, resulting in putting him in a disadvantaged position in the application process.

362. The complainant applied in 1981 to the District Lands Office/Sai Kung (DLO/SK) for the grant of a Government site to build a small house, but over 10 years passed before he was told that due to lack of suitable sites, his application could not be approved. In September 1997 the Planning Department (Plan D) drew up a Village Extension Area which would produce 20 small houses. The complainant was advised that he would have to be recommended by a Village Committee before he could be allocated one of the sites.

363. A letter of apology was sent to the complainant by the DLO/SK on 26 June 1998. The processing of the small house sites is being undertaken as quickly as possible.

364. The Lands D did not accept the Ombudsman's conclusion that the first complaint was substantiated because it related to events which took place between 6 and 17 years ago. The complainant had made no complaint at that time. A letter in 1986 made it clear that his application had been unsuccessful. No new sites had been identified since then. During that era it was not the culture in the New Territories to reject applications for sites for building small houses.

Case No. 1997/2062 : Mishandling a request for correction of land records.

365. The complainant owned land in Tai Po inherited from his grandfather. In 1992 he discovered that one lot was missing from the relevant land records and wrote to the TPNTLR in November 1992 requesting it to correct the records accordingly but his request was referred to the DLO/TP. Since February 1993 over ten letters were sent to the DLO/TP either by himself or the solicitors' firm representing the case. However no substantive reply was given to him by the DLO/TP.

366. The DLO/TP upon receipt of the first request in December 1992, after making preliminary enquiries, did not take follow up action on the case due to heavy workload and low priority of the case. An interim reply letter was issued in September 1994 and another one in April 1995 to the complainant's legal representatives advising that legal advice was being sought. However legal advice was only sought in December 1996 which was given in March 1997. Despite the legal advice and further checking, the owners of the lots in question could not be ascertained. There are no procedural guidelines on how to deal with requests for correction of land records and the processing time depends very much on the complexity of the individual case. The complainant's case was a complicated case because it was difficult to determine the existence of the lot in question, the registered area, if the non-payment of Government rent would affect the title and if there had been any land transactions involving the lot but not registered with the Land Registry. A substantive reply was finally issued in December 1997 informing the legal representatives that it was not possible for Government to rectify the land records as it was not a party to the sub-division and unless the complainant could prove that the lot existed without affecting the legal entitlements of other

sub-sections and that he was legally entitled to the subject lot, the DLO/TP would be unable to consider the request further. The Ombudsman considered even though this particular service was not included in the Performance Pledge, the time taken to deal with the matter was unreasonable.

367. An apology was given to the complainant prior to the Ombudsman's recommendation for the delay in responding to his request.

368. In view of the broad spectrum of enquiries associated with land title, the D of L agreed with the Ombudsman to let individual DLOs implement existing instructions regarding the time frame for replying to requests for verification of land title. For straight forward cases, the response time of 4 weeks set out in the Performance Pledge would be followed but for complicated cases, the time frame would be decided by the DLOs.

Case No. 1997/2095 : Wrongly permitting the removal of a footpath without prior consultation with the affected residents.

369. In September 1995 the complainant and other residents of Nam Shan Village raised objection to the removal of the footpath close to their houses No. 43 to 46. In October 1995, they were informed in writing by the DLO/SK that the developer had been advised not to enter onto the footpath to undertake site formation works as it stood on Government land. The DLO/SK also stated that there was no question of the Office giving consent to encroachment by the private development.

370. In October 1997, the complainant noticed that works was being carried out at the subject site to remove the footpath.

371. The complainant expressed dissatisfaction with the Lands D for permitting the developer to remove the footpath which was contrary to the DLO/SK's commitment given to complainant and others without prior consultation with the affected residents.

372. The DLO/SK advised that the problem had arisen due to inaccurate mapped features and also that the portion of the footpath most affected was recently constructed and unauthorised.

373. Arrangements are now being made with the owners of Lot 1021 in DD 220 to surrender his lot to Government in exchange for a free building

licence on Lot 708 SA in DD 220. Parallel actions are being taken with the owner of Lot 995 in DD 220 to rectify the lot boundaries by shifting the lot northwards upon surrender of Lot 1021 in order to enable the subject footpath to remain intact. The administration's response depends on the co-operation of the adjoining lot owners. To date matters are proceeding smoothly and it is hoped that the matter will be resolved by about January 1999.

Case No. 1997/2175 : Delay in handling an application for a small house grant and unreasonably refusing a complainant's application.

374. The complainant applied in February 1997 for a small house grant but his application was rejected in May 1997 after his repeated enquiries to the District Lands Office/North (DLO/N) on progress of the case. Upon receipt of the reply, the complainant telephoned the DLO/N and was advised to obtain planning permission for his site as it was outside a "V" zone. Upon his approach to Town Planning Board (TPB), he was told otherwise. He considered that there had been a delay by the DLO/N in responding to his application and that staff of the DLO/N had been irresponsible in giving him the wrong advice and rejecting his application without good reasons.

375. The Ombudsman noted that the Lands D Performance Pledge for processing small house applications was 34 weeks for a straight forward case and the complainant was informed of the outcome of his application about 3 months after its receipt. The Ombudsman concluded that this complaint point was unsubstantiated.

376. The DLO/N's file did not indicate any note as to the alleged advice given by staff that the complainant should apply to the TPB for planning permission. In accordance with the Land Instructions, DLOs would consider applications within the environs of a recognized village or "V" zone in a Development Permission Area/Outline Zoning Plan which encircles a recognized village and is larger than the 300 feet village environs. In accordance with current policy, the application could not be approved. The Ombudsman noted that the DLO/N only made an internal check on the land status and the zoning and did not liaise with the Plan D. The Ombudsman considered that the application should not have been rejected without a proper site inspection and liaison with the Plan D.

377. The DLO/N carried out a site inspection to determine the exact location of the site with the complainant's father who was authorized to handle

any matter concerning the complainant's application. The initial site was not suitable and the complainant's father agreed to look for a new site. He was given a period of 3 months from 26 June 1998 to make an application for a further site, failing which his application will be rejected and his priority cancelled. Any further application will be dealt with in accordance with the priority list.

Case No. 1997/2176 : Delay in handling an application for a small house grant.

378. The complainant submitted an application for a small house site to the DLO/N many years ago but it had not been approved. In February 1997 he applied again to the DLO/N for building a small house on Government land but he had not received a response from the DLO/N. The complainant also alleged disparity in treatment given in processing and approving other applications from the village representative whereas no follow-up action had been taken on his applications.

379. The complainant in fact first submitted an application in November 1988 which was classified as one for a small house site in a proposed Village Expansion Area (VEA). It was acknowledged that month. He was however unsuccessful in the allocation of a VEA site on a first-come-first-served basis and thereafter submitted an application for a site on Government land in February 1997. This application was acknowledged on the same date by the DLO/N. The Ombudsman considered that the processing time taken in determining the application should be counted from the date of the second application. The processing time in the Performance Pledge for straight forward applications is 34 weeks and the Ombudsman considered that there were no complications in the application other than the heavy workload and limited staff resources of the DLO/N. If the case was considered not to be straight forward, the DLO/N should have advised him accordingly. It was considered that there was no disparity in treatment regarding the complainant's case and the cases referred to by him. The Ombudsman concluded that given a lapse of over one year after submission of the second application, that the complainant had grounds for complaint.

380. A letter of apology was issued by the D of L in November 1997 in view of the failure by the DLO/N to give a substantive written reply. The DLO/N subsequently wrote to the complainant notifying him of the up-to-date situation and arranged for a site inspection to be carried out with his authorized

person. The site in question was deemed unsuitable and the complainant has been given 3 months from 26 June 1998 to identify a suitable site, failing which his application will be rejected and his priority cancelled. Any further application will be dealt with in accordance with the priority list.

381. The D of L considered that the processing of 34 weeks should be counted from the start date of processing the application on 19 November 1997. This is because on that date, the DLO/N introduced a new system to tackle the large volume of applications whereby all applications would be processed in accordance with a priority list based on the date of the application. The application on this basis was considered to be made in 1988.

Case No. 1997/2185 : Improperly treating the survey report prepared by complainant's surveyor as a reference document, not taking action to enable the complainant to build a balcony over government land and failing to give substantive replies to his letters.

382. The complainant had been granted a building license in 1986, but the construction of his small house was held up, due to encroachment by a Government Short Term Tenancy and the problem of inconsistent boundary with Government's land record. The Ombudsman concluded that the complaint was partially substantiated.

383. An apology letter was issued by the D of L to the complainant on 20 April 1998. No further action is required.

Case No. 1997/2246 : Delay in handling an application for small house development.

384. In August 1997, the complainant submitted his application for small house development on Government land by post to the District Lands Office (DLO/TM). He provided his correspondence address by letter the next day and received an acknowledgement card from the DLO/TM a few days later. One month later, the complainant approached the DLO/TM for a response and in October 1997 received through his elder brother a request from the DLO/TM that because he had not given a correspondence address, he should contact the DLO/TM. When he contacted the DLO/TM, he was told that there was no knowledge of his small house application and he provided a location plan to the DLO/TM in October 1997. However the DLO/TM in November 1997

requested him to complete a standard small house application form before the application could be processed further. The complainant also felt aggrieved that the DLO/TM requested him to submit one document at a time, thus causing additional delay in handling his small house application.

385. The Ombudsman noted that from the copy of the acknowledgement card provided by the complainant, it was sent by post by the General Registry of the DLO/TM to the complainant's correspondence address acknowledging receipt of his application letter for a small house grant. A subsequent letter sent by the complainant in September 1997 again did not give a correspondence address or telephone number but stated the name of his elder brother and it was through this that the land staff of the DLO/TM traced him. Again the Ombudsman noted that an acknowledgement card was sent by post from the General Registry of the DLO/TM to the complainant acknowledging receipt of his letter in September. The complainant was informed by the DLO/TM when he telephoned in October 1997 of the need to submit a duly completed standard application form together with a site location plan. The form not attached to his letter of October 1997 and the DLO thus requested the same in November 1997.

386. The Ombudsman found that there was a case of breakdown in communication between staff of different sections of the DLO/TM and that the office system needed improving. The Ombudsman also found that the Lands D had published a pamphlet on how to apply for a small house and the requirement of a completed standard application form and a location plan was stipulated in the pamphlet and the complainant should have the responsibility to provide both in the first place.

387. An investigation was conducted by the DLO/TM on the handling procedure for incoming correspondence from the public. The result revealed that it was the practice of the General Registry of the DLO/TM to send out an acknowledgement card to the sender and then pass the letter to the Building and Land Registry for filing without attaching the envelope so that the bulk of the file could be reduced. However this overlooked the fact that in some cases the address of the sender is not shown in the letter but only on the envelope. The DLO/TM instructed the General Registry to check whether the sender's address was shown in the letter, and if not, pass the letter to the Building and Land Registry with the envelope attached. The defect in the system was acknowledged and the procedure suggested by the DLO/TM is now in operation.

Case No. 1997/2449 : Delay in processing an application for Certificate of Compliance for a small house.

388. The delay in providing the Certificate of Compliance (C of C) for this site was caused by two factors -

- (a) the development was found to be off site, and
- (b) the DLO/YL's case file was lost.

389. The case file has been "re-established" and action regarding the off site development and the issue of C of C is now in hand.

390. A letter of apology was sent to the complainant on 8 June 1998, and action is being taken to resolve the off site development and the issue of the C of C.

Legal Aid Department (LAD)

Case No. 1997/0478 : Failing to actively pursue two legal aid cases and suitably inform the legally aided person of their progress, and having taken an unduly long period before reaching a decision on whether to further pursue the case through legal proceedings.

391. The complainant indicated that about three years ago he had applied for legal aid to pursue two cases in relation to the injury caused to his son and to the subsequent medical treatment received by his son. Since then, however, the Department's professional officers had only interviewed him thrice to discuss his cases. During the first interview, he was received by a Legal Aid Counsel in an attempt to better understand his claims. However, it was only after two years and with the assistance of the former Legislative Council Secretariat that he received a second interview by another Legal Aid Counsel of the Department. On this occasion, he was told that his cases would be brought before a barrister for further consideration. In this connection, he claimed that all along the contents of medical reports so obtained by the LAD for his cases were never made known to him. On the third occasion he was given, upon the court's order, an interview which lasted for only about 15 minutes by another Legal Aid Counsel who had then presented a brief summary of the professional opinion on his cases, the contents of which he could hardly understand.

392. The complainant was not satisfied that it took the LAD more than three years to inform him that the grant of legal aid had to be terminated since his cases could not be pursued through the court, and that during this period the Department did not seem to have taken action to actively pursue the matter for him. He could not understand why he had not been duly informed of the progress of the LAD's examination of the cases, or explained the implications of the contents of medical reports obtained by the Department on his claims.

393. The Ombudsman observed that the complainant applied for legal aid in June 1993 and limited legal aid was granted to him in February 1994 for obtaining medical records for further considering the merits of his claim. The Ombudsman considered that the LAD had duly followed its procedure for processing legal aid applications in this case and that the long time taken to obtaining the required medical reports was due to complexities of the legal procedure and constraints set by the opposite party. A clerical oversight for not updating the file movement had also caused delay in processing the case for some time.

394. With regard to the allegation that the LAD had not suitably informed the complainant of its progress in handling his case, the Ombudsman concluded that though much of the misunderstanding between him and the LAD could have been avoided had the professional staff be able to spare more time to explain the position to him in greater details, there was no evidence to suggest that the LAD staff had neglected his concern over the progress of the matter.

395. A Departmental Circular was issued to all staff in the Applications and Processing Division reminding them to keep proper file movement records. The procedure is now being followed in all cases.

Case No. 1997/1853 : Inappropriately advising a complaint to withdraw his appeal lodged with the Registrar, Supreme Court against the refusal of legal aid.

396. The complainant first applied for legal aid on 2 June 1997 to continue to defend a High Court case. His application was refused by the Director of Legal Aid (DLA) on the ground of excepted proceedings on 11 June 1997. He filed an application for appeal against the refusal. The appeal was scheduled to be heard on 12 August 1997 and he was prepared to attend the appeal hearing. However, he received a phone call from the Department on 4 August 1997 asking him to visit the Department as soon as possible. He made the visit on the same day and was advised by a Legal Aid Counsel to withdraw his appeal and applied for legal aid afresh because he stood a good chance of being granted legal aid without going through the appeal hearing. Though he would like to consult his solicitor and wait until 12 August 1997 to make a decision whether to withdraw his appeal or not, he was told he should do so immediately. He did so but this new application was also turned down as he failed to pass the means test. He appealed against the refusal of legal aid on his second legal aid application. The case was heard and dismissed on 10 September 1997. Feeling aggrieved by the advice he had received, the complainant lodged a complaint with the Ombudsman.

397. A letter of apology was sent to the complainant on 11 February 1998.

398. With regard to the recommendation that it should consider the need to show prominently the status of means test and merits test of an

application in the case file, the Department considered this case to be an isolated incident. With the implementation of the One Stop Service in the Department since September 1997, such problem is unlikely to occur again in future.

399. It is the current practice to explain to all applicants the reasons for refusal to be followed by the standard refusal notice indicating the appropriate ground(s).

Case No. 1997/1939 : Withholding payment of alimony due to a complainant and not giving her any reply despite repeated enquiries.

400. The complainant was granted legal aid to institute divorce proceedings against her husband (now ex-husband). By consent application of the complainant and her ex-husband, it was agreed that her ex-husband should pay a lump sum in full and final settlement of her ancillary matters. The complainant stated that her ex-husband had started to pay the lump sum by instalment since August 1996 and that the lump sum had been fully paid up to the LAD in July 1997. However, she had not received any payment of the money from the LAD up to the time when she lodged this complaint. For this reason, she contacted the LAD to enquire about the matter. Despite repeated inquiries, she was not given the reasons as to why no payment was made to her and when the lump sum would be released to her. Feeling aggrieved, she complained to the Ombudsman. The Ombudsman noticed that the LAD was constrained to release any interim payment to her due to the first charge and that the LAD had informed her of the effect of the first charge and the progress of her case upon receipt of her enquiries on all occasions.

401. The LAD has been exploring ways within the Department to speed up payments to legally aided persons and has introduced internal pledges as announced in Departmental Circular (Accounting) No. 6/97. The Department is considering the feasibility of launching performance pledge in respect of payments to legally aided persons. As to factors outside the Department's control, that is the time taken by assigned solicitors in preparing the bill of costs, the long waiting time for call-overs and taxation by court, the Department is considering ways to improve the situation together with the Judiciary and the legal profession.

Marine Department (MD)

Case No. 2431/96-2433/96: Disparity in processing applications for additional decks on Class III stationary vessels when it had approved a similar application in 1995.

402. This case comprises three complaints to the Office of the Ombudsman concerning three Class III vessels in Aberdeen Typhoon Shelter.

403. Case No. 2431/1996 : The complainant applied for replacement of a Class III vessel (Licence No. 30227A) with an additional deck in April 1996. The application was rejected. The complainant felt aggrieved as a similar application from another person of Class III vessel (LN 30282A) was approved by the department in 1995.

404. Case No. 2432/1996 : The complainant applied for modification and enclosing of the second deck to his Class III vessel (LN 30217A) in June 1996. The application was rejected. The complainant felt aggrieved as a similar application from another person of Class III vessel (LN 30282A) was approved by the department in 1995.

405. Case No. 2433/1996 : The complainant applied for covering approval to the modification of his vessel, a Class III vessel (LN 30253A), with an additional deck and the addition of two buoyancy tanks in June 1996. The application was not processed as he was then being prosecuted by the department for illegal alteration to the hull and superstructure of his vessel. The complainant felt aggrieved as a similar application from another person of Class III vessel (LN 30282A) was approved by the department in 1995.

406. The department explained its policy concerning Class III stationary vessels to the Hong Kong and Kowloon Floating Fishermen Welfare Promotion Association in a letter dated 8 September 1997. In the same letter, the department also invited the Association to advise and promulgate the information to its members. In addition, notices have been put up on the notice boards of all the department's licensing offices with a view to informing the public that the case of vessel 30282A was against all precedents, and owners/operators of vessels are advised not to submit similar applications as they would be rejected.

407. The department formally informed the owner of vessel 30282A in a letter dated 16 September 1997 that the approval had been granted to him in

error and that any future modification/replacement of the vessel would be subject to the department's policy and based on the vessel's former dimensions.

Case No. 1997/1810: Prohibiting the handling of containers at the eastern end of a Public Cargo Working Area.

408. The complainants, i.e. cargo operators of a Public Cargo Working Area (PCWA), alleged that the MD had not advised them of any prohibition on the handling of containers at the eastern end of the PCWA when they commenced operation. It was noted that Berth No. 1 and No. 2 were located in close proximity to a nearby residential estate. The MD had received numerous complaints from the residents of the nearby estate about the noise nuisance from the handling of containers in these two berths since they started operation. On 8 August 1997, the MD imposed an extra restriction on the cargo operators prohibiting them from carrying out container handling activities within 60 metres from the eastern boundary of the PCWA. The MD further explained that this restriction had all along been included in the Engineering Conditions (EC) for Permanent Land Allocation of the PCWA. However, the complainants complained that they had not been informed of this restriction when they moved to the present PCWA site.

409. In the circumstances, the complainants' feeling of "being unfairly treated" is understandable. They apparently mistook the Department's tolerance of such irregularities as MD's tacit approval of such activities normal practice. The Ombudsman considers that the MD, in not announcing the prohibition right at the commissioning of the PCWA and in its failure to take active enforcement action, has given the cargo operators an incorrect message that container handling activities were permitted in Berth No. 1 & No. 2.

410. The prohibition of container handling at Berth No. 1 and No. 2 of Tuen Mun PCWA has been incorporated as a Special Condition in the Berth Tenancy Agreement which became effective on 1 February 1998.

411. Since 15 August 1997, the MD has stepped up enforcement action against those cargo operators who failed to comply with the additional Special Condition. The operators concerned now accept the need to comply with the Special Conditions.

412. A proposal of moving the whole Tuen Mun PCWA about 100 metres westwards away from Hanford Garden is being worked out in

consultation with the Director of Environmental Protection and other concerned government departments. This measure will reduce the effect of noise from cargo handling impacting on residents of Hanford Garden and avoid the need to prohibit the handling of container cargo at the eastern end of the Area (closer to Hanford Garden). As an alternative, the Director of Lands counter-proposes that cargo operations should be prohibited within 40 metres from the eastern end. The displaced cargo operator will be given a direct Short Term Tenancy of the adjacent site to the west of the PCWA, i.e. Site 27 (the length of the Site is 40 metres) at an appropriate rent. The counter proposal is also being considered by concerned departments.

Post Office (PO)

Case No. 1997/1618 : Failing to entertain the complainant's request for a copy each of two call-for cards and unhelpful staff attitude.

413. In late July 1997, the complainant received two call-for cards for collection of two Recorded Delivery (RD) items at the On Ting Post Office. He collected the items on 28 July 1997 and later found one of them was in fact addressed to someone else. He immediately handed that RD item to the On Ting Estate Management Office of the Housing Department. But in the evening of 5 August 1997, he was questioned by the Police in connection with a case of suspected theft of other people's mail.

414. At 8:30 a.m. on 6 August 1997, the complainant phoned the Kowloon Post Office. An officer undertook to refer the case to the Controller of Posts (New Territories) for action. At 3 p.m. on the same day, he went to the On Ting Post Office and requested a copy each of the two call-for cards which he had returned to that office on 28 July 1997. His request was turned down by an officer. As no further response from the PO was received, he called the Assistant Controller of Posts (New Territories) on 12 August 1997 but the latter said the incident happened due to the complainant's fault. The officer refused to tell the complainant his name and telephone number.

415. Feeling aggrieved, the complainant complained against the PO for

- (a) failure to entertain his request for copies of the two call-for cards;
- (b) unhelpful staff attitude; and
- (c) the wrong issue of the call-for card to him which led to his unpleasant encounter with the Police.

416. The Postmaster General (PMG) investigated the case and provided his comments to the Ombudsman. The Ombudsman's findings and observation were as follows -

- (a) The two call-for cards had been destroyed upon collection of the two RD items by the complainant. Nevertheless, the PO provided him with copies of the delivery receipts which he signed for the two RD items on the same day he called at the On Ting Post Office, i.e. 6 August 1997. The delivery receipts were regarded as evidence in support of his claim that he collected the RD items in good faith. Hence, allegation (a) above could not be substantiated;

- (b) In the absence of an independent witness, there was insufficient evidence to support the complainant's allegation that officers who handled his case had been unhelpful or impolite to him. Hence, allegation (b) above could not be substantiated; and
- (c) The real cause of the complainant's unpleasant incident was that he had been wrongly issued with a RD item call-for card which he was not supposed to receive. When giving the item to him, the counter staff at the On Ting Post Office had taken for granted that the call-for card had been correctly sent to the addressee. They did not specifically ask him if he was collecting the item on somebody's behalf, despite the fact that his name differed from that of the addressee. In fact, there was no requirement for the staff to do so, provided that the collector could produce a call-for card and a valid proof of identity and sign on the delivery receipt. On the part of the collector, he or she might not pay attention to the fact that by signing on the delivery receipt, he or she had made a declaration of having been authorised to collect the item on behalf of the addressee.

417. Having regard to the above findings and observation, the Ombudsman concluded that the complaint should be partially substantiated.

418. The PO agreed that apart from requiring the person who came to collect registered or RD items to sign on the delivery receipt, it would make it a standard procedure for counter staff to verbally confirm with the person if he or she was an authorised agent of the addressee, in case the name of the person collecting the postal item differed from that of the addressee. All counter staff were briefed on this procedure.

Provisional Urban Council (PUC)

Case No. 1997/2629-1997/2631 : Maladministration in the implementation of the Yellow-line Scheme.

419. The complainants, lessees/registered assistant of poultry stalls in Ngau Chi Wan Market, lodged a complaint against the PUC and Urban Services Department (USD) for allowing the modification of the "Yellow Line Scheme" during its implementation process, so that it would be additionally extended to the side of the end walls. Furthermore, the lessees of the corner stalls were allowed to apply for demolition of the end walls. The complainants considered that the maladministration of the PUC and USD had led to disparity in treatment between the corner stalls and the middle stalls.

420. The PUC has no difficulty in principle in accepting the Ombudsman's recommendation to strengthen its monitoring mechanism on the USD in the implementation of the PUC's policy. Under the Council's current policies, the Director of Urban Services is required to seek the PUC's approval before modifying a scheme already approved by the PUC, where this would involve a significant change of policy. The Chairman of the PUC can assure the Ombudsman that the PUC monitors the work of the USD most carefully and if there is any variance between a Council decision and implementation by the Department, the Council will have it rectified.

Rating and Valuation Department (RVD)

Case No. 2449/96 : Delay in notifying concerned ratepayers of the cessation of reduced rates as a result of the supply of filtered fresh water.

421. The complainant received a notification letter on 26 November 1996 from the RVD informing him that the reduced rates payable for his premises in Castle Peak Road, Tsing Lung Tau had ceased to be applicable with effect from 28 December 1995 in view of the availability of filtered fresh water supply from a government water main. An appropriate demand note would be issued to him in due course.

422. The complainant was dissatisfied with the unduly long time (nearly a year after the cessation of the reduced rates) taken to notify ratepayers and felt that there might be co-ordination problems between government departments. The complainant also considered that it was unfair to have the effective date of cessation backdated to December 1995 and that the department should inform and explain the rationale of the cessation to the concerned ratepayers. Feeling aggrieved, he lodged a complaint against this Department with the Ombudsman.

423. The RVD agreed to amend Departmental Standing Technical Instruction (DSTI No. 215). Procedures on special reviews would be included to enable staff to action on changes in water supply position of tenements as and when required. The procedures would also explain clearly the involvement and responsibility of senior officers to ensure that all such reviews are properly conducted and monitored.

424. The RVD agreed to provide more information to ratepayers regarding the reasons or events leading to the cessation of reduced rates to enable them to better understand the situation.

425. The RVD discussed with the Water Suppliers Department (WSD) on promoting effective communication between the RVD and WSD and improving the work process. The WSD agreed to supply the RVD on a regular basis the Progress Report on mains water supply to villages in the New Territories and a list of improvement projects relating to the conversion of unfiltered supply to filtered supply.

Case No . 1997/0111 : Failing to recover rates in default promptly, and not serving the Notice of Claims in accordance with the Small Claims Tribunal Ordinance.

426. The complainant's property at Ngau Tau Kok, Kowloon (the property) was rented out on 11 July 1994. Since 8 November 1994, the tenant became the registered ratepayer of the property, but the rates for the unit had been in default since 1 April 1995 despite repeated notices sent to him. The RVD filed the case at the Small Claims Tribunal (SCT). On 2 September 1996, a Notice of Claims(NoC) was served on the complainant at the address of the property by registered mail. The complainant stated that she did not receive the NoC as it was not sent to her place of residence as required under the SCT Ordinance. An award was granted against the complainant by the SCT in her absence at the hearing on 11 October 1996. The complainant was therefore aggrieved by the Department's mistakes in handling her case.

427. The RVD has reviewed the procedures and prioritising arrangements and adopted a number of measures. To reduce the processing time, an additional demand note will be sent by post to the "Owner/Occupier" at the address of the property when rates (irrespective of the amount) are not settled within 2 weeks from the date of the Reminder. To ensure that proper recovery action will be taken on every default case, the RVD has revised the priority order for conducting property title search for the issue of "Warning letter before taking legal action" (LBA). The old priority order took into account only the outstanding amount while the new one considers both the outstanding amount and the date from which the amount becomes outstanding. The new priority order is (a) Accounts with total amount over \$15,000; (b) Accounts with earliest rates outstanding for more than 3 quarters; (c) Accounts with total amount due ranging from \$8,000 to \$15,000; (d) Accounts with total amount due ranging from \$5,000 to \$8,000; (e) Other outstanding accounts.

428. In handling a rates-in-arrears case where it is known that the tenant is the registered ratepayer, whilst it is still not feasible to conduct a comprehensive search for the up-to-date correspondence address of the owner, a measure has been introduced that when the LBA is sent to the owner by post to the address of the property (which is the subject of the outstanding rates), a copy of this LBA will also be sent to the owner at the correspondence address (if different from the property address) as registered in the ownership records kept in the Land Registry.

Regional Services Department (RSD)

Case No. 1997/1284 : Making serious mistakes in the planning, design and construction of a restaurant site at a new park.

429. In December 1996 the complainant succeeded in an open tender exercise and was awarded a concessionary right to provide restaurant service at a newly completed park owned by the Provisional Regional Council. That right would subsist for a period of 3 years from 1 January 1997 to 31 December 1999.

430. At the time when the venue was handed over to the complainant on 1 January 1997, the RSD was actively liaising with its works agent Architectural Services Department (Arch SD) to complete some outstanding items of work inside the venue premises. These included removing the sanitary fittings inside the kitchen area, opening up the sealed windows at the internal seating area and installing a propulsion fan at the kitchen.

431. The complainant inspected the venue on 11 December 1996 and 17 December 1996 and was aware that some minor works at the venue were still pending completion. He nevertheless agreed to take over the venue on 1 January 1997.

432. Shortly after the complainant had taken over the venue in January 1997, he employed his own contractor to decorate the venue area and rushed to commence his restaurant service on 31 January 1997. The complainant only lodged his application for a food business (i.e. restaurant) licence in May 1997.

433. The main complaint lodged after the commencement of the restaurant business was that there was insufficient electricity supply. A 60 Amp 3-phase power supply was provided to the venue area but this power supply could not support the installation of air-conditioning at the internal seating area. Though clause 18 of the tender agreement specifies that the concessionaire may at his own expense provide his source of electricity supply, the complainant insisted that the RSD should upgrade the electricity supply for him, and in the meantime he did not allow the government contractors to go into the venue area to finish the outstanding items of rectification work, in particular to open the sealed windows of the premises. The air circulation of the enclosed premises therefore could not meet the restaurant licence condition for ventilation and the processing of the restaurant licence application was thus held up.

434. Hoping to resolve the licensing controversy quickly, the RSD increased the power supply to 150 Amp 3-phase. While this work was in progress, the complainant allowed the sealed windows be opened and other rectification work be completed by the government contractor. The licensing conditions having been complied with, the restaurant licence was issued to the complainant on 15 August 1997.

435. In relation to the above incident, the complainant lodged a complaint to the Ombudsman in August 1997.

436. The RSD pointed out that when the park in question was opened to public use in 1996, the department hoped to provide food supply service to the users in the park at the earliest possible time. In December 1996 when the complainant was awarded the tender to provide restaurant service at the venue commencing on 1 January 1997, the RSD and Arch SD were working hard aiming to complete all the outstanding work in time. The complainant was briefed of the situation and he appeared equally willing to commence his business early. So the venue was handed over to the complainant on 1 January 1997 with a clear undertaking to complete the outstanding work for him.

437. The RSD did not expect that the complainant would just ignore his legal obligation to apply for a restaurant licence before operating his food business. The complainant rushed to commence business on 31 January 1997, and he stopped the government contractor from doing the outstanding rectification work whenever he found such work would hinder his preparation to commence business.

438. He further complained against the RSD for inadequate electricity supply at the venue, despite the terms of the tender agreement which require the concessionaire to acquire additional electrical power with his own resources.

439. The complainant took advantage of the ex-gratia decision made by the RSD to increase the electric power supply to the venue by treating it as an admission of design fault when planning the restaurant site. The complainant then lodged a complaint to the Ombudsman regarding the incident. In RSD's view, the Ombudsman's findings that the complaint is substantiated should be confined within the administrative scope that some outstanding items of rectification work remained unfinished when the venue was handed over to the complainant. It is regretted that the Ombudsman's treatment of RSD's decision

to increase the power supply was unnecessarily construed (by the complainant) as an admission of a design fault.

440. After the release of the Ombudsman's report, the complainant demanded a substantial sum of damages as recompense. When the RSD refused, the complainant instituted a high court action against the department by relying upon the Ombudsman's report as evidence. Moreover, he stopped paying the monthly licence fee and electricity charges since April 1998. Not until the Department of Justice had issued a warning letter to him did he repay part of the outstanding fees and charges.

441. The Department of Justice has legally represented the RSD and filed a defence rebutting many of the allegations made by the complainant. The RSD is pleased to let the court try the matter and determine the contentious issues on the basis of admissible evidence and legal principles and make a finding of the truthfulness of the complainant's case.

442. The RSD accepted the Ombudsman's recommendation to review all steps of the hand-over procedures of its premises to the successful tenderer. Specific efforts have been made and instructions were issued to operation divisions in the RSD to ensure that all new food venues constructed by the Provisional Regional Council are structurally licensable before they are to be let by tender, and tenderers will be informed in writing of the actual electricity power supplied to the venue. Lastly, under no circumstances would a tenderer be allowed to commence his restaurant service before he obtains the necessary food business licence. Upon request, the RSD will assist the tenderer to go through the licence application procedure.

Securities and Futures Commission (SFC)

Case No. 1997/2225 : Failing to inform the proper procedures to apply for replacement certificates; and failing to take adequate follow-up action on application for replacement certificates.

443. Following establishment of the SFC in 1989, staff of the SFC Licensing Department have invited registrants previously registered by SFC's predecessor, the Office of the Commissioner for Securities and Commodities Trading, to replace their registration certificates.

444. In May 1997, the complainant, a registrant since July 1986, applied to replace the registration certificates for himself and his company.

445. Upon paying the requisite fees for the replacement certificates, the complainant was invited to accept two conditions minded to be imposed on his new registration certificate which he found unreasonable.

446. The complainant maintained that he had sent a letter to the SFC refusing to accept the two conditions and demanding the SFC to either refund the fees or state the reason why the conditions were imposed on him. This letter, according to the SFC Licensing Department's records, was never received.

447. In October 1997, he complained to the Ombudsman after he had received no response from the SFC to his letter.

448. Upon being notified of the complaint, the SFC explained to the complainant the rationale behind its intention to impose the two conditions on his registration and reminded him that in its letter inviting him to accept the two conditions, he was informed of his right to appeal to the SFC Appeals Panel if he was not satisfied with SFC's intention to impose the conditions, an opportunity which he failed to avail himself of.

449. The SFC Licensing Department has fully implemented the Ombudsman's recommendations since 13 May 1998 by issuing an internal memorandum to all staff of the Department. The memorandum reminds Licensing staff of the need to inform registrants of the SFC's intention to impose conditions on their certificates at the earliest opportunity and to ensure that all outstanding applications are followed up within a reasonable period of time and, in any case, no more than one month.

450. The SFC Licensing Department has also amended its Licensing Procedures Handbook by including the Ombudsman's recommendations as part of the internal procedures for its staff to observe.

Social Welfare Department (SWD)

Case No. 1997/1745 : Inappropriately advising the complainant that she could apply for comprehensive social security assistance due to her late father.

451. The complainant lodged a complaint on 30 August 1997 to the Ombudsman against Mong Kok Social Security Field Unit (MKSSFU) about -

- (a) being misadvised by an officer that she could apply for the Comprehensive Social Security Assistance (CSSA) due to her late father through the Supreme Court resulting in a waste of her time and effort;
- (b) delay in the release of the burial grant; and
- (c) poor attitude of the officer.

452. A letter of apology was sent to the complainant on 21 January 1998.

453. A general circular was issued to all Social Security Field Unit (SSFU) staff to remind them to familiarise and refresh themselves regularly with the procedures on CSSA payments. The proper handling of cases will also be discussed at staff meetings. Subject to availability of resources early next year, the SWD will review, prune and update the Manual, thus making staff's task easier and avoiding the occurrence of mistakes.

454. The Work Improvement Teams of all SSFUs have been involved and requested to examine and devise tools to prevent oversight or wrong assessment of CSSA payments. This will be an ongoing process.

455. The information sheet on burial grant was revised to reflect the need for the applicants to provide copies of the documents/papers if required and staff were reminded to take note of this requirement.

456. The concerned officers in MKSSFU have good record for being conscientious and responsible. MKSSFU has been shouldering a very heavy workload during the past year due to continuing increase in CSSA applications. Unfortunately, the incident took place at a time when MKSSFU was inundated with new applications and affected by staff turnover. It was unfortunate that oversight occurred on this occasion.

Case No. 1997/1817 : Mishandling an application for care and attention home service.

457. The complainant lodged a complaint on 9 September 1997 to the Ombudsman against SWD's negligence, resulting in the delay of processing the application for infirmary service for his father.

458. A letter of apology was sent to the complainant on 6 March 1998.

459. The SWD is updating the guidelines on caseload management to ensure efficient handling of applications.

Student Financial Assistance Agency (SFAA)

Case No. 1997/1847 : Delay in handling an application under the Local Student Finance Scheme and poor attitude of the processing officer.

460. The complainant submitted an application for financial assistance under the means-tested Local Student Finance Scheme (LSFS) for the academic year 1997-98 in April 1997. Following an interview with his mother in June 1997, the SFAA wrote to the complainant to seek clarification on some doubtful transactions on his bank accounts. In response to the SFAA's requests, the complainant sent by facsimile some relevant documents to the SFAA in late July 1997. Although the SFAA's processing officer discovered that one of the documents that was supposed to have been sent by facsimile to the SFAA was missing, it was not until five weeks later that the officer wrote to the complainant and asked him to re-submit the missing documents. As the complainant did not know that he had not provided the documents in question, he telephoned the officer to seek clarification. In the course of their conversation, the complainant felt that the officer was very impatient and had spoken in a very unpleasant tone.

461. The complainant lodged a complaint against the SFAA for the delay in handling his application for financial assistance under the LSFS and the poor attitude of the processing officer.

462. Upon completion of this investigation, the Ombudsman took the view that if the SFAA had adopted a more pro-active approach and taken timely action to request the applicant for the missing documents earlier, the processing of the application could have been completed sooner. The complaint concerning the delay in the processing of the complainant's application was therefore substantiated. As regards the second complaint against the attitude of the officer, the Ombudsman was of the view that as the encounter was one-on-one without the presence of an independent witness, there was no indisputable evidence to suggest that the officer had been impolite or impatient to the complainant. The complaint against the officer was therefore not substantiated.

463. In the course of his investigation, the Ombudsman observed that there was a discrepancy between the information provided in the SFAA's 1997-98 Performance Pledge about notifying the application result to current students within three months from the date of receipt of application, and the Guidance Notes accompanying the application form indicating that such period

of notification would only apply to those applications submitted with complete information. The Ombudsman considered that this discrepancy in information would possibly lead to misunderstanding or confusion among applicants.

464. The SFAA accepted the Ombudsman's recommendations and issued an apology letter to the complainant in May 1998. The SFAA has also reviewed the Performance Pledge and the Guidance Notes accompanying the application forms to ensure that the information correlate with each other. A report on the implementation of the recommendations was forwarded to the Ombudsman for his information and retention.

Case No. 1997/2396 : Miscalculating a grant of student assistance.

465. The complainant sought financial assistance under the means-tested LSFS for three consecutive academic years from 1994-95 to 1996-97. Owing to a coding error which occurred during the processing of the complainant's 1994-95 application, the amount of his grant entitlement was miscalculated, resulting in an overpayment to the complainant. In the following year, the same erroneous code was allotted to the complainant's 1995-96 application for assistance, again resulting in his being overpaid the amount of grant than he was actually entitled.

466. The coding error was not detected until the complainant re-applied for financial assistance for 1996/97. He was asked to refund the difference that had been overpaid to him in the previous two years.

467. The complainant thus lodged a complaint against the SFAA for miscalculation of the grant of financial assistance made to him for the 1994/95 and 1995/96 academic years.

468. Upon completion of this investigation, the Ombudsman concluded that there were grounds for the complaint. The Ombudsman noted that there were areas of ambiguity in the 1994-95 and 1995-96 guidelines for the processing of applications, and that carelessness on the part of the case officers had also contributed to the miscalculation of the financial assistance.

469. The Ombudsman recommended that the SFAA should step up the frequency of auditing and double checking the work of its processing staff. The SFAA, in fact, has since May 1998 re-organized the Application Processing Unit that serves the LSFS and set up a Support Team to plan and

under-checking activities in a more systematic manner, and to provide more systematic on-the-job training to new processing staff. The role of the new Support Team is to ensure that the guidelines of the scheme are well understood by all processing staff members and any possible coding or judgement errors can be identified and rectified where necessary.

Also, the SFAA has introduced a new formula to assess the cost of the scheme, and the amount of assistance under the LSFS in order to improve the scheme's efficiency, transparency and fairness. The formula has been implemented in the 1998/99 academic year.

Case No. 19 streets in Fai

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Territory Development Department

Case No. 1997/0769 : Failing to provide street name plates in four new streets in Fanling in a timely manner.

471. The complaint made to the Ombudsman was against the Highways Department (HyD), Territory Development Department (TDD) and Lands Department (Lands D).

472. The complainant bought a unit under the Home Ownership Scheme at Wing Fai Centre in Fanling in July 1996. From a street guide book available in the market, he noticed that the names of the four new streets, Fan Leng Lau Road, Wo Muk Road, Luen Chit Street and Ma Sik Road, were clearly listed out. However, upon his gaining possession of the flat, he noticed that there were no street name plates in these streets thus causing inconvenience to him and other members of the public.

473. Upon investigation, the Ombudsman concluded that the complaint was substantiated.

474. Following the Ombudsman's recommendations, the HyD, Lands D and TDD met on 7 October 1997 to discuss ways and means to improve the current arrangement for erection of street name plates. It was agreed that project offices should be responsible for initiating street naming procedures and the erection of street name plates should be carried out under the capital works contract for the road construction. The street naming procedures would be advanced to take place at the detailed design stage and should be initiated after the authorization of the proposed roadworks under the Roads Ordinance. In the event that street names would not be available before road opening, temporary street name plates showing the road reference number would be provided in order to facilitate easy reference by the general public and emergency vehicles.

475. For on-going projects the TDD will remind project officers to find out the current state of street naming procedures for the new roads under construction and take necessary follow-up actions for timely installation of street name plates under the road works contract as far as possible. As part of the procedure for taking over new roads for maintenance, the HyD would ask the respective project office for confirmation of funds for the HyD to install any outstanding street name plates. Upon receipt of the confirmation of funds the matter would be regularly brought up to officers concerned. Any missing name plates would be identified via the HyD's half yearly road inspection

programme and this would provide a further check on any delay in erection of street name plates.

476. The Director of Territory Development has issued a memorandum to all the Development Offices under his control detailing action that needs to be taken to avoid the recurrence of similar incident.

477. The Senior Land Surveyor of the Lands Department has distributed a memorandum to relevant staff of the Lands D on "Follow-up Action on Erection of Street Name Plates".

478. The Director of Highways will issue a Technical Circular to ensure that new street name plates will be installed before the opening of the road for public use.

Case No. 1997/2206 : Impropriety in handling the flooding incidents in Mongkok.

479. Please refer to Case No. 1997/2260 under the Works Bureau.

Transport Department

Case No. 2310/96 : Providing misleading information to the Transport Advisory Committee that 90% of the taxis on return to the other side of the harbour were on-hire.

Case No. 2347/96 : Misinforming the Transport Advisory Committee that only 10% of the taxi on return trip across the harbour were empty, and that after opening of the Western Harbour Crossing, the Cross Harbour Tunnel would be congestion-free.

480. A complaint was received about the TD misleading the Transport Advisory Committee (TAC), when seeking advice on the taxi tolls for the Western Harbour Crossing (WHC), that only 10% of taxis crossing the harbour were empty, and that after the opening of WHC, the Cross Harbour Tunnel would be congestion-free. The former part of the complaint was found substantiated whereas the latter part was found unsubstantiated.

481. The TAC was informed of the detailed statistics on the vacancy rate of taxis using the three cross-harbour tunnels at its meeting on 23 September 1997.

Urban Services Department (USD)

Case No. 1997/0754 : Failing to take enforcement action against an illegal structure and poor co-ordination with the Lands Department in handling this complaint.

482. The complainant lodged written complaints with both the Lands Department (Lands D) and USD during March 1997 against an illegal general store erected on the pavement. In response, the Director of Urban Services (DUS) replied to him in April 1997 that the control of illegal structure should fall outside the USD's responsibility and that the case had been referred to the Lands D and Buildings Department (BD). Meanwhile, the concerned District Lands Officer of the Lands D also replied to him one week later that the provision store was a wall stall structure and the case had been referred to the DUS for action. The complainant was dissatisfied that both the USD and Lands D had shirked the enforcement responsibility and this had resulted in inaction by both departments against the illegal structure.

483. The complainant complained against the Lands D and USD for failure to take enforcement action against an illegal structure and poor co-ordination between the two departments in handling this complaint and taking enforcement actions.

484. The USD wrote to the complainant in October 1997 informing him of the actions taken and explaining to him the restrictions in relation to the clearance of the structure. The District Officer concerned also wrote to the complainant in November 1997 informing him of the decision of the Inter-departmental Working Group on Tidy Up Exercise that having regard to the circumstances of the case and the policy concerned, it would not be appropriate to arrange a special clearance operation of the structure under complaint. Nevertheless, the USD would continue to take appropriate actions against the store operator should he be found obstructing the pavement outside his store with his belongings.

485. The USD conducted a review of the departmental guidelines on the clearance of illegal hawker structures from unleased land under the Crown Land Ordinance (Cap. 28) and informed the Director of Lands and the Director of Housing of the revised guidelines in April 1998.

486. The Lands D and USD considered that the issue of a joint reply to similar complaints where appropriate might give rise to confusion on the line of command. It was agreed that the Lands D and USD will deal with each case having regard to departmental guidelines in force and there will be close liaison between the two departments before a reply is sent.

Case No. 1997/1596 : Mishandling the enrolment of two multi-gymnasium training courses.

487. The complainants thought that applicants for these courses had to be made in person at the Yau Tsim Recreation and Sports Office. So early in one morning in August 1997 which was the enrolment starting date, they arrived at the Office and queued up. They alleged that they were in the middle of the queue with only 15 people ahead of them. When their turn came, they handed in the application forms for one course to the staff. However, they were told that this course had been fully subscribed. They immediately applied for another course but this course was also said to be full.

488. The complainants opined that the two courses had a total of 60 places. Hence, they should have had a fair chance of securing a place in the courses. They were disappointed and surprised to learn that their applications were unsuccessful. They queried if their applications had been handled properly.

489. On the basis of the information provided by the USD, the Ombudsman concluded that the complainants were not aware of other more convenient methods for enrolment in these courses, such as the SPORTIX (a computerized booking system under which a registered user may enrol a programme by telephone).

490. The USD accepted the Ombudsman's recommendations and has introduced new publicity channels for the promotion of the SPORTIX, such as the Internet Web-site starting from January 1998 and the Self Service Information Kiosk at Hong Kong Park, Kowloon Park, City Hall, Hong Kong Cultural Centre and Science Museum with effect from February 1998. Subject to the availability of funds, the USD will also consider promoting the SPORTIX through Announcement of Public Interest (API) on television in the next financial year.

Case No. 1997/2156, 1997/2325-1997/2327, 1997/2329, 1997/2332-1997/2333, 1998/0302 : Maladministration in regard to the reprovisioning arrangement for business stalls in a street affected by an LDC redevelopment programme.

491. The Markets and Street Traders Select Committee (MSTSC) of the Provisional Urban Council (PUC) at the private session of a meeting on 22 July 1998 discussed in detail the Ombudsman's Investigation Report in relation to this complaint. The USD aims to submit a paper to the MSTSC at its meeting in November to seek its approval of the formal response of the PUC and USD to the Ombudsman's Report.

Case No. 1997/2372-1997/2374 : Maladministration in the implementation of the Yellow-line Scheme.

492. In order to solve the obstruction problem to the passageways in public markets caused by stall holders displaying goods in the passageways, the USD in November 1992 introduced the Scheme to control market obstruction. Two markets, namely the Fa Yuen Street Market and the Shek Tong Tsui Market were selected for trial from April to June 1993. To control the lessees' display of their commodities, a yellow line was painted on the floor at the front of each stall. The position of the line was such that there should be a space of a width of not more than 0.7 metre between the stall front and the yellow line, and the passageway between two rows of stalls should have a width of at least one metre. Lessees were allowed to display their commodities within the space in front of the stall up to the yellow line. The Council was briefed on the trial scheme in July 1993. In May 1994, in order to facilitate blitz operations against obstruction, the Council approved the Scheme being implemented in four more markets and extended to ten markets in December 1994. In March 1995, approval was given to implement the Scheme to another 18 Council markets.

493. The Market Sub-Committee of the Council decided to strictly implement the Scheme in Ngau Chi Wan (NCW) Market in December 1996. At a special meeting of the Market Management Consultative Committee (MMCC) of the NCW Market, some lessees requested the USD to tolerate the placing of commodities beyond the yellow lines, particularly for the corner stalls. A compromise was reached whereby the lessees of corner stalls might display their commodities within the yellow line which was

additionally painted at the side of the end walls, provided that the passageway remaining would be at least one metre in width.

494. The addition of a yellow line at corner stalls was also implemented in 21 Council markets. On 23 June 1997, the Market Sub-Committee of the Council agreed to demarcate the yellow line at the side of the end walls of corner stalls.

495. In October 1994, a small corner market stall of Po On Road Market applied to demolish the end wall of the stall and the application was subsequently approved in September 1995. On 13 January 1997, the Market Sub-Committee of the Council agreed to the USD's recommendation in Committee Paper "Design and Layout of Urban Council Markets" that new markets should be designed to achieve openness. Under this policy, all corner stalls in new markets will not have end walls and will be provided with a display area similar to that as delineated by a yellow line.

496. On 21 July 1997, the market staff of Wong Tai Sin District Office (Environmental Health) informed the stall lessees at the NCWMMCC meeting that they might seek approval from the USD to demolish the end walls. As at 10 December 1997, a total of 131 market stalls in ten Council Markets had their end walls removed.

497. The complainants, lessees/registered assistant of poultry stalls in NCW Market, lodged a complaint against the PUC and USD for allowing the modification of the "Yellow Line Scheme" (the Scheme) during its implementation process, so that it would be additionally extended to the side of the end walls. Furthermore, the lessees of the corner stalls were allowed to apply for demolition of the end walls. The complainants considered that the maladministration of the PUC and USD had led to disparity in treatment between the corner stalls and the middle stalls.

498. Both the USD and PUC did not agree that they acted unfairly to the middle stall holders. However, they have no difficulty in principle in accepting the Ombudsman's recommendations. Under the Council's current policies, the DUS is required to seek the PUC's approval before modifying a scheme already approved by the PUC, where this would involve a significant change of policy and/or deployment of resources. As regards strengthening the monitoring mechanism of the Council over the USD, the PUC monitors the work of the Department most carefully and if there is any

variance between a Council decision and implementation by the Department, the Council will have it rectified.

Water Supplies Department (WSD)

Case No. 2838/96 : Mistakenly requesting a water consumer to settle water charges which had been paid, and demanding him to account for the recorded decrease in water consumption without proper justification.

499. This was a complaint against the WSD for -

- (a) mistakenly requesting the complainant to settle the water charges of his account whilst in fact payment had already been effected; and
- (b) demanding him to account for a recorded decrease in water consumption without proper justification and without due consideration of the circumstances of his case.

500. Point (a) complaint arose due to the misunderstanding of the complainant who received a letter from the WSD, in which a sentence seeking the consumer to settle his outstanding water bill was included. Yet the payment of the water charges in question was already effected by autopayment. The Ombudsman considered this complaint as partially substantiated. For Point (b) complaint, it is just a coincidence that during the complainant's dispute over his unusually high water charges with the WSD, the latest consumption statistics of his accounts triggered the computer system to generate a Suspected Defective Meter Notice to him. The Ombudsman considered this complaint as not substantiated.

501. A letter of apology was issued to the complainant.

502. The relevant information on high-low consumption checking and reasons for issue of related notices has been incorporated in the Water Infolink and the Internet Home Page of the WSD. In order to enhance its operational transparency, information on the mechanism of high-low consumption checking would also be included in the Suspected Defective Meter Notice and the Notice of High Water Consumption in the coming reprint.

Case No. 1997/1044 : Unreasonably sending a complainant a water bill on 29 June 1996 covering the period from 2 May 1994 to 2 May 1996.

503. This was a complaint against the WSD for -

- (a) overcharging the complainant for his water bill covering the period from 2 May 1994 to 2 May 1996;

- (b) unreasonably sending him a water bill on 29 June 1996 covering the period from 2 May 1994 to 2 May 1996; and
- (c) failure to provide flushing salt water supply to his flat.

504. For Point (a) complaint, it was found that the main cause of high water consumption was due to the unauthorized extension of inside service to the flushing cistern found in the complainant's premises. Point (b) complaint was lodged by the complainant because the WSD had deferred the issue of a revised bill covering the questioned period. Point (c) complaint was also raised due to the fact that the complainant was not aware of the availability of salt water for flushing purpose in the area concerned. The Ombudsman considered point (a) complaint as unsubstantiated, while points (b) and (c) complaints were partially substantiated.

505. In response to the Ombudsman's recommendations, the Director of Water Supplies has considered the feasibility of simplifying the method of calculating water charges in respect of water charge disputes, and is satisfied that the method being used now has been shown as clearly as possible to avoid any unnecessary misunderstanding.

506. To ensure that proper procedures are adhered to at all times, supervision of the inexperienced clerical staff in Consumer Accounts Team has been tightened up through coaching and closer monitoring.

507. To step up publicity, the rate for fresh water for flushing has been incorporated in the Water Infolink and the Internet Home Page of the WSD. Besides, such information had also been included in the newly published Customer Guide which could be obtained in all Customer Enquiry Centres.

Part II

Direct Investigation Cases

Efficiency Unit (EU), Chief Secretary for Administration's Office

Government Telephone Enquiry Hotline Services

The Study

508. The Ombudsman has conducted a direct investigation on the provision of government telephone enquiry hotline services and made some recommendations.

Managing some problems in the short term

509. The EU conducted a survey to take stock of the current telephone enquiry services provided by departments. The survey report sets out the current position and highlighted areas for improvement.

510. Individual departments were invited to consider how the recommendations made in the report might apply to their telephone enquiry systems. The EU worked with those departments where their Interactive Voice Processing/Response Systems (IVPS/IVRS) were identified to have great potential for improvement. As a result, a number of improvements were made. For instance, eight systems were improved by having menu design and application trees streamlined and additional voice and fax ports and other special features installed to strengthen the systems. Besides, assistance has been given to departments to broaden the language coverage of their systems. In respect of the 20 IVPS/IVRS where the need to broaden the language coverage was identified, 14 have since been installed with a Putonghua version. Improvement work in respect of the remaining systems is underway.

511. The EU will continue to provide support and advice to departments in the implementation of various improvements to their IVPS/IVRS.

512. The EU will continue to monitor and assist departments in the implementation of the other survey report recommendations, particularly in setting service standards for their telephone enquiry services and publishing such standards in their performance pledges.

513. A User Guide to Effective Telephone Enquiry Services was issued to all government departments providing information on good practice and practical tips for managers and operators whilst addressing the major failings and frustrations caused by poor telephone enquiry services. Specifically, the Guide provides advice on the following topics:

- (a) Planning and setting up of telephone enquiry services: determining needs and requirements;
- (b) Optimum deployment of resources: staff and technology;
- (c) Reviewing and monitoring: service standards and management information; and
- (d) Roles and assistance in delivering effective telephone enquiry services.

514. From a practical angle the Guide offers useful tips for managers on matters relating to their daily operations which include training for enquiry staff, how best to publish enquiry numbers, when to publish enquiry numbers as hotlines (with a definition of hotline), level of support required for a hotline, getting prepared for any influx of calls and ways to monitor service performance, etc. As for operators, the Guide provides a handy checklist to assist them in the delivery of services.

Implementation of major improvements at the departmental level

515. It is clear that the present combined application of interactive technology and human effort in providing telephone enquiry services has not proved to be entirely satisfactory in meeting customers' rising needs. The EU sees the potential in the development of the intelligent call centre concept - the application of the computer telephony integration technology in providing telephone enquiry services.

516. To take the concept forward, the EU has commissioned the Management Services Agency to conduct two pilot projects implementing intelligent call centres in the Water Supplies Department and Labour Department. It is expected that the proposed call centres would be ready for live-run in mid 1999.

Longer and broader term improvements

517. Other than implementing improvements to individual telephone enquiry systems in departments, the EU is also exploring the possibilities of

providing a telephone enquiry service which supports a range of public services and which may well cut across the traditional boundaries of departments, hence providing a "one stop shop" for users of these services. In this pursuit, the EU sees impressive advances in other parts of the world, including the Brisbane City Council of Australia, which clearly demonstrate the benefits and practicability of such approach - the concept of one-numbered call centre with supporting information technology, an effective customer-oriented business process and staff with the right service culture.

518. To arouse interest within the civil service, an Exhibition on Reinventing Service Delivery was organised in late April 1998 inviting representatives of the Brisbane City Council to present how their systems achieved their purposes. Response from heads of departments/customer service managers has been very positive. The EU is planning to conduct a study into the feasibility of setting up such a call centre in one of the key service areas.

519. The EU has provided the Ombudsman's Office with a progress report on a regular basis.

Agriculture and Fisheries Department (A&FD)

The Fisheries Development Loan Fund

520. The Ombudsman has conducted a direct investigation on the administration of the Fisheries Development Loan Fund and made some recommendations.
521. The A&FD has, in consultation with the Fisheries Development Loan Fund Advisory Committee (FDLFAC), reviewed the need for the Fisheries Development Loan Fund (the Fund) having regard to its objectives vis-à-vis the present day needs of the fishing community. Members of the FDLFAC have advised unanimously that the broad objective of the Fund for the development of distant water fishing fleet is still appropriate and meets the present day needs of the fishing industry. Having considered the outstanding applications and initial proposals for loan and the growing demand for loans for building modern steel-hulled fishing vessels, the Administration, on the recommendation of the FDLFAC, proposed and the Finance Committee approved on 7 November 1997 an increase in the loan capital of the Fund from \$7 million to \$100 million. During the period between November 1996 and July 1998, the A&FD received a total of 33 applications/initial proposals for loan totalling some \$84.7 million.
522. The Fisheries Development Loan Fund Regulations (the Regulations), which are administrative rules, govern the administration of loans from the Fund.
523. In consultation with the FDLFAC, the A&FD has reviewed the Regulations and recommended strengthening of the arrangements for loan security and repayment of loans under the Fund. These include granting loans direct to a member of a fishermen's co-operative society, instead of to the society concerned so as to facilitate recovery of the sum outstanding in the event of default, and requirements for a quarterly repayment pledge, insurance against loss of the vessel and the borrower's death and disablement and additional collateral for large loans (each of \$1 million or above). Following the Finance Committee's approval on 7 November 1997, the A&FD has incorporated the new arrangements into the revised Regulations.
524. The A&FD has introduced a new arrangement to advise the fishermen's co-operative societies in writing on their responsibilities and

liabilities towards their members' loans and that they could request the staff of the department for a briefing before sanctioning their members' loans.

525. To ensure that the fishermen's co-operative society concerned would have the ability to honour its covenant under the loan agreement, the repayment ability and the total outstanding loan amount of the co-operative society will be taken into account when considering loan applications from its members. Steps will be taken to ensure that the approved maximum total amount of debts of the co-operative society would not be exceeded if the loan is granted. The requirement for additional security would minimise the chance of default payment by borrowers.

526. In consultation with the FDLFAC, the Fish Marketing Advisory Board and fishermen groups, the A&FD has reviewed the criteria for assessing the grant of loans and adopted a new set of criteria including the fishing experience, previous loan repayment records, outstanding financial commitments and repayment ability of the borrower and the repayment ability of the fishermen's co-operative society or guarantors concerned. However, as there are technical difficulties in requiring the borrower to declare all his available assets, the A&FD has counter proposed, as a practical alternative, to require the borrower to provide additional collateral security in case of large loans (each of \$1 million or above). This counter proposal has been accepted by the Ombudsman.

527. In consultation with the FDLFAC, the Fish Marketing Advisory Board and fishermen's organisations, the A&FD has reviewed the loan handling procedures and incorporated the improvement measures into the revised loan handling procedures to tighten up the controlling mechanism for the disbursement and repayment of loans.

528. In consultation with the FDLFAC, the A&FD has reviewed the appropriateness of the continued management and control of the Fund by the department. At a meeting on 28 August 1997, the FDLFAC members were of the unanimous view that the A&FD was the most appropriate agency to be vested with the responsibilities of monitoring and controlling the Fund and other similar funds, taking into consideration of the department's expertise in capture fisheries and its primary objective to promote the development of the fishing industry. Nevertheless, the A&FD will keep in view possible opportunities to implement the recommendation.

529. The A&FD has some reservation on recommendation of setting out what constitutes "genuine reasons" for the purpose of granting extension for repayment and the maximum number of extensions to prevent any abuse. Each application for extension of loan repayment period is considered on its individual merits. It is not possible to list out exhaustively all "genuine reasons" for such extension as circumstances varies from one case to another. Moreover, setting a maximum number of extensions is considered not practical as it would not be appropriate to refuse an application for loan extension simply on the grounds that it has exceeded the maximum number of extensions. The A&FD has, however, listed some examples of "genuine reasons", including loss of life or severe health problems of principal crew members, detention of vessels by another country for a long period of time and serious vessel damage, in the revised loan handling procedures as a reference for consideration of applications for loan extensions.

530. The revised loan handling procedures and the Regulations are now put in effect. This will greatly enhance the management of loan repayment and minimise chances of bad debt. In addition, a guideline on fisheries loan applications and repayment was sent to fishermen's associations and co-operative societies to help them understand the new arrangements.

**Drainage Services Department (DSD)
and Environmental Protection Department (EPD)**

The Co-ordination between the DSD and the EPD over the Protection of Public Beaches from Being Polluted by Sewage Discharges

The Study

531. The Ombudsman has conducted a direct investigation into the co-ordination between the DSD and EPD over the protection of public beaches from being polluted by sewage discharges and made some recommendations.

Departmental Procedures and Contingency Plans

532. The DSD has completed the contingency plans for those sewage treatment facilities close to the gazetted beaches and would expedite the process of drawing up contingency plans for other sewage treatment facilities. The departmental contingency plan was drawn up in January 1998 and included in a handbook. The departmental task force set up in December 1997 will review and update the plan regularly.

533. A detailed review was completed. A revised technical circular providing more guidelines on the types of serious incidents to be reported to the headquarters and the reporting procedures was issued. The technical circular will be reviewed on an annual basis. When necessary, revisions and supplements will be drawn up and promulgated.

534. A handbook on "General Contingency Plan for Incidents Commonly Encountered in Sewage Treatment Facilities with a Potential of Generating an Environmental Nuisance & Typhoon/Rainstorm Emergency Procedures" was compiled and distributed to the relevant staff for reference in dealing with emergency situations.

535. The DSD has distributed copies of the contingency plans to all staff. Briefings on dealing with emergency situations have been given to staff of all levels. The contingency plan and guidelines are being translated into Chinese and would be reviewed and updated regularly.

536. In the EPD, briefings have been conducted for all concerned staff by the line management, including the requirement to follow the communication procedures set out in the Beach Pollution Response Plan.

Following each revision of the plan, the updated version would be circulated to all concerned staff. The plan is being revised regularly to update emergency telephone directory and improve on the procedure. The emergency telephone directory will continue to be updated as and when required and also on a quarterly basis. The staff concerned in the EPD are fully conversant with the English version of the Plan. The need for Chinese translation will be kept under review.

537. The response flow chart, incident notification form and the communication procedures set out in the Beach Pollution Response Plan now provide clear and specific guidance to staff of both departments in addressing problems in communication.

Risk and Crisis Management

538. A DSD/EPD liaison meeting at Assistant Director (AD) level has been set up to promote better co-ordination on operational issues concerning DSD's sewage treatment facilities and sewerage works. Meetings were held on 19 February 1998 and 3 June 1998 and are expected to continue on a regular basis.

539. The DSD has organised a series of in-house media training courses and workshop for over 100 professional staff. In addition, some DSD staff have attended overseas conferences on crisis management and locally organised workshops of Crisis Response and Crisis Prevention. Basic aspects of risk management and crisis management have been included in the Sewage Operator Certification Programme courses for plant operators.

540. Existing arrangement for EPD staff to attend media training and related crisis management courses will continue. The EPD will continue to explore with the DSD suitable training courses on risk & crisis management for staff.

Co-ordination and Communication between Departments

541. The Senior Environmental Protection Officer (SEPO) will continue to help to improve the co-ordination and communication between DSD and EPD. An emergency contact person list for DSD facilities has been drawn up. The SEPO will co-ordinate the updating of the list and other contingency action plans.

542. In the event of any incident which has the potential of generating an environmental nuisance, the SEPO will provide advice to the Sewage Treatment Divisions and assist in liaison work with EPD, as and when necessary.

543. The regular DSD/EPD liaison meeting at AD level mentioned above is intended to identify and work on matters of their mutual concerns.

544. In dealing with similar situations in future, the principal department (the Correctional Services Department in the present case) would keep the Architectural Services Department (Arch SD), the works agent, informed of the communication with the workmen of Arch SD's contractor which took place without Arch SD staff in attendance.

The Beach Pollution Response Plan

545. The Beach Pollution Response Plan will continue to be reviewed and updated regularly.

546. The EPD has included a provision in the Beach Pollution Response Plan to the effect that departments covered by the Plan should report changes in contact persons and telephone numbers to the EPD. Dates are now inserted for all such telephone lists and amendments to avoid confusion. The EPD will then amend the relevant pages and distribute to all concerned parties.

547. The Regional Services Department's contingency plan has been incorporated as an annex into the Beach Pollution Response Plan.

Environmental Consciousness and Compliance with Licence Conditions of Sewage Treatment Facilities

548. Flowcharts to deal with various types of incidents in accordance with the Water Pollution Control Ordinance (WPCO) licence requirements have been prepared to provide good guidance to the plant operators. The EPD has been working closely with the DSD on the comprehensive review of the WPCO licences issued to DSD's facilities. The extensive discussions on compliance requirements and discharge standards for individual plants have helped to ensure clear understanding of the licence requirements. Such close liaison will continue to promote full compliance of statutory requirements.

549. The DSD staff have attended courses on environmental management & auditing and other relevant courses. The training programme will be reviewed regularly and suitable new courses will be identified. The EPD would continue to provide assistance to the DSD to promote understanding and awareness among staff on the environmental statutory requirements.

550. The EPD has stepped up inspections to all private & government STPs, other local pollution sources, e.g.. unsewered properties, pumping stations, and DWFIs in the beach hinterland. The consultancy study to identify measures to reduce the risk of pollution and to lessen the impact in cases of pollution incidents was completed and the immediate measures identified have been implemented. The EPD is now preparing a "Beach Pollution Reduction Study" to examine in detail the technical feasibility of medium and long term measures and also a submission for funding of improvement works. The study is scheduled to start in early 1999.

The Beach Water Quality Monitoring Programme

551. The EPD will continue to explore feasibility to further shorten the time for analysis on beach water quality through technological advance.

The Sewerage Masterplan and Small Sewage Treatment Plants

552. The EPD will continue to monitor closely the progress of the sewerage master plan (SMP) implementation and support DSD's efforts in informing the public on the progress of such works through regular reports, DSD facts sheets and publications, consultative meetings with local residents and briefings for the Provisional District Boards.

553. The temporary pumping system at Tung Tau Rotating Biological Contactor Plant was commissioned on 26 March 1998 and all treated effluent has since been diverted to Stanley STW with no discharge made to St. Stephen's beach. The permanent pumping system is scheduled to be completed in end 1998. The feasibility of phasing out other small sewage treatment plants are being examined progressively in the upcoming review of sewerage master plans.

**Education Department (ED)
and Hong Kong Observatory (HKO)**

Arrangement for the Closure of Schools Due to Heavy Persistent Rain

The Study

554. The Ombudsman has conducted a direct investigation into the arrangements for the closure of schools due to persistent heavy rain and made some recommendations.

Revised System

555. To address the Ombudsman's recommendations, a series of inter-departmental meetings took place in late 1997 and early 1998 which resulted in a revised Rainstorm Warning System (RWS). The meetings were attended by representatives from the Security Bureau (SB), ED, HKO, Drainage Services Department (DSD), Transport Department (TD), Geotechnical Engineering Office/Civil Engineering Department (GEO/CED), Home Affairs Department (HAD), Information Services Department (ISD) and Hong Kong Examinations Authority. The Education and Manpower Bureau, Labour Department and Economic Services Bureau were also consulted at various stages.

556. The revised system was put into effect starting from 23 March 1998. It includes the issuance of the Amber signal as an early alert of inclement weather. The ED has coupled school closure with the revised RWS, and has improved communication channels with other relevant departments. It has stepped up publicity to educate students and parents the correct meaning of the rainstorm warning signals, and has sent revised circulars to schools to alert them of the new system and the need to set up contingency plans. Specific actions taken are described below.

ED

557. In special circumstances such as floods, landslips and serious traffic jam, the Director of Education (D of E) may announce closure of schools even in the absence of the Red Rainstorm Warning (RWS) or Black Rainstorm Warning (BWS). A school circular issued in March 1998 clearly indicated to the school head that he or she may close the school if conditions warrant such closure. If such circumstances arise, District Education Officers are always ready to offer assistance.

558. The ED has established wider network with the HKO, ISD, DSD, Regional Command & Control Centres of the Hong Kong Police Force (HKPF) and Fire Services Communication Centre of the Fire Services Department (FSD) for gathering timely information on weather and environmental conditions (including flood reports and flooding black spots, landslip reports, and other road and traffic situations) during inclement weather.

559. The ISD, HKPF, DSD and FSD will supply to the ED emergency information or alert messages on major incidents.

560. The ED has established direct computer linkage in the office and in the homes of some officers to gain access to first-hand weather information round the clock. Relevant officers who need to communicate outside office hours have mobile phones and home faxes.

561. The Emergency Duty Team will normally be activated in the ED Headquarters from 5:45 a.m. to implement the D of E's decision for school closure, answer press and public enquiries and entertain requests by individual schools for announcements on the cancellation of school activities. Where necessary, the ED would mobilize the Emergency Duty Team at earlier hours.

HKO

562. The revised RWS is a forecast system as recommended by the Ombudsman. The Amber/Red/Black rainstorm warning signals are designed to be issued before the prescribed rainfall levels for these signals are reached, to the extent permitted by current science and technology.

563. The landslip warning operated by the HKO in collaboration with the GEO/CED is based on criteria derived from the analysis of historical data on rainfall and the occurrence of landslips. These criteria are different from those for flooding. It has therefore been decided to retain the issuance of landslip warnings independent of the rainstorm warning signals.

564. Since the implementation of the new arrangements in March 1998, four rainstorms involving the issuance of the Red and/or Black signals occurred (26 April, 2 May, 24 May and 9 June). The media and the public have noted the forecast element in our operation of the revised RWS.

565. The need of the Flood Warning was reviewed as recommended by the Ombudsman. With the Amber signal going public and serving similar purposes, it was decided to stop issuing the Flood Warning. However, as there is a special need to alert people to flooding in the low-lying plains of the northern New Territories, the HKO in consultation with the DSD drew up a new procedure to issue a Special Announcement of Flooding in the Northern New Territories, to be broadcast by radio and television, whenever heavy rain affects the area.

566. The HKO issued the Special Announcement of Flooding in the Northern New Territories on 6 occasions so far this year. On all occasions significant flooding requiring some form of government responsive action did occur. The DSD reported that the special announcement had provided them prompt warning, thus improving their responses to flooding.

ED and HKO

567. The ED has coupled school closure with the HKO's revised rainstorm warning system, which is a forewarning system. When the RWS or BWS is in force before school starts, all kindergartens and schools will close and students should stay home. If, however, the RWS/BWS is issued when classes are in session, students should remain in school until conditions are safe after school hours to release them. This coupling has been put into practice, and so far runs satisfactorily.

568. General publicity programmes about the meaning of the rainstorm signals and the action to be taken by students, parents and schools were mounted.

569. New arrangements for the revised RWS were first announced to the media via a press release on 12 February 1998 to give time to organisations, information service providers, etc. to review and amend their weather-related procedures. A press conference involving relevant departments was held at the HKO on 23 March 1998 to launch the revised RWS and related arrangements.

570. The ED stepped up publicity in March 1998, including the publication of a bilingual leaflet, poster and bookmark, a windscreen label. The ED also revised the school circulars in March 1998 to apprise school authorities of the new school closure arrangements and other administrative procedures and of the need to draw up a contingency plan to cover all likely situations.

571. The HKO has distributed pamphlets through HAD offices to convey to the public the meaning of the rainstorm signals. The HKO officers have made good use of television and radio interview opportunities to explain the meaning of the RWS. The HKO also publicises the revised RWS to school parties visiting the Observatory.

572. The SB has incorporated the revised RWS in the "Hong Kong Contingency Plan for Natural Disasters", and has published a revised publicity booklet "Weather Warnings and Precautionary Measures" (in Chinese and English).

573. The ISD's new Announcement of Public Interest (API) on the revised RWS is being regularly broadcast on radio and television. Also, a publicity message is being carried regularly on free slots on many local newspapers.

574. Special coverage on the revised RWS and related arrangements are available on the homepages of the HKO and other government departments.

575. The pre-rain season liaison meeting between the ED and HKO was held on 12 May 1998. Both the ED and HKO found the existing annual liaison very useful and would continue such liaison to review arrangements in the light of experience gained and to re-confirm communication channels. The HKO also paid annual pre-rain season visits to relevant departments including the DSD, TD, GEO/CED, RSD and USD.

576. The ED and HKO representatives explained the new school attendance arrangements and the revised RWS to representatives of school-bus operators and drivers at the liaison meeting with the TD on 28 February 1998. The Committee on Home-School Co-operation was briefed by the ED on 1 April 1998.

577. The revised RWS, which includes the dissemination of the amber rainstorm signal as an early alert, has been generally well received. The ED is satisfied with the outcome of the implementation of the Ombudsman's recommendations and will strive to improve the efficiency and effectiveness of the arrangements in the light of experience gained. The HKO will continue working on fine tuning of the system in the light of experience gained. The various arrangements will be reviewed at the end of the rain season in collaboration with relevant departments.

Housing Department (HD)

The Charging of Management Fees in Home Ownership Scheme (HOS) Estates Managed by the HD

578. The Ombudsman has conducted a direct investigation into the charging of management fees in HOS estates managed by the HD and made some recommendations.

579. The Department agreed to the Ombudsman's recommendations in principle. The Home Ownership Committee of the Housing Authority has on 3 September 1998 approved a proposal to change the mode of charging management fees in the affected HOS estates based on undivided shares. The proposal will take effect on 1 April 1999, together with the annual adjustment, if any, of management fees for HOS estates.

Post Office (PO)

Issue and Sale of Special Stamps and Philatelic Products

The Study

580. The Ombudsman has conducted a direct investigation into the issue and sale of special stamps and philatelic products and made some recommendations.

PO's Response

581. The PO accepted the conclusions and agreed to implement the 18 recommendations made by the Ombudsman. Details of the follow-up actions taken or to be taken in response to the recommendations are set out below.

Stamp Issuing Programme

582. The annual programme is normally announced via various channels, such as the media, in October/November of the preceding year. These include press releases, newspaper advertisements, philatelic newsletters to existing and potential customers, quarterly Philatelic Bulletin to Local Standing Order Service (LSOS) customers and also on the PO's internet website.

583. The PO however needs to retain flexibility to introduce additional items in response to special events and demand in Hong Kong - for example, the issue of souvenir covers to publicise the First Legislative Council Elections of the Hong Kong Special Administration Region in May 1998, which was decided in February 1998. Special order forms were sent to LSOS customers when additional stamp products were issued on top of the annual programme.

584. On logistics, the PO has been continuing the issue of new stamps on Sundays and public holidays while demand continues, thereby avoiding adverse impacts on other postal services. This arrangement has been in force since the "Paralympic Games" stamp sheetlet issued on 1 June 1997 and will be reviewed in the light of changes in demand.

585. Ad hoc sales of stamp products become necessary when demand may far exceed limited stock. In August 1997, the PO successfully implemented balloting arrangements for the sale of the 1996 Annual Stamp

Pack and the 1996 Prestige Annual Album. For all stamp products issued in 1997 including new stamp issues, sufficient stock was maintained to meet anticipated demand. The situation in recent new stamp issues proves that the PO has been able to supply enough stamp stock to meet demand.

Sales Arrangements

586. The recommendation to cease permanently the off-counter sales arrangements to PO staff and special clients has been implemented since the issue of "Hong Kong Migratory Birds" new stamps on 27 April 1997. Staff and special clients have been advised to make use of the advance order services for ordering stamps and related products.

587. The PO has considered the various concerns expressed by the public on the LSOS. In addition, in April 1997, an independent consultant conducted a study on the LSOS to identify how customers wanted the PO to enhance the service. In the light of the consultant's recommendation, eight improvements have been made since 1998 to the LSOS in accepting orders in order to better serve the PO's customers. The improvements include more customer-friendly application forms together with a guide on product details, provision of three different plans for ordering, provision of an option to pay issue by issue subject to certain conditions and by credit cards, extension of the LSOS to more products (including stamp booklets, presentation packs and picture cards), improvement to the Hong Kong Post Stamp telephone hotline system, arrangements to allow customers to join the service at any time of the year, provision of special order forms to LSOS customers for products introduced on top of the annual stamp issuing programme and shortening the collection time for LSOS orders from three working days after issue to the first day of issue. Looking ahead, the PO is committed to continuing to secure customer feedback and to make further improvements.

588. The PO's aim is to deliver orders under the Local Advance Order Service (LAOS) three weeks after the release date. This has been achieved for all issues beginning with the "World Bank" issue released on 21 September 1997. The PO has also enhanced the LAOS to cover more products like stamp booklets, presentation packs and picture cards. Other improvements include setting up of a customer database for past LAOS customers and sending them LSOS application forms in the October 1997 promotion campaign. The PO will continue to look for ways to improve this service.

589. As a result of the deliberation of the Post Office Review Committee on Stamp Issuing Arrangements, there has been a change in payment arrangements for the 1998 LSOS whereby LSOS customers are no longer required to pay for the complete set of issues in a year. This has brought the LSOS broadly in line with the Stamp Dealer Standing Order Service (SDSOS). Moreover, the LSOS has been further improved by reducing the time of collection of orders from three working days after issue to the first day of issue, tallying with the arrangement for orders under the SDSOS. Furthermore, in line with the arrangement that LSOS customers are no longer required to pay for the complete set of issues in a year, the requirement for stamp dealers to place a refundable deposit has been cancelled since 1998.

590. Manpower deployment, including the use of temporary staff has been reviewed before each issue in the light of experience, with a view to ensuring adequate arrangements and assistance to queuing customers (e.g. help with completing order forms). The advance ordering services have proved to be very popular and have taken away the queues from the counters. As a result, the counter situation has improved significantly.

591. With the continuing improvements in the LSOS and LAOS, the counter situation has improved significantly for the recent stamp issues. Queues no longer exist on the first day of sales. The need to contract out part or all of the physical operations of the philatelic service has been overtaken by event. Nevertheless, we would consider this recommendation should such a need arise in future.

Customer Service

592. On means to increase the overall transparency of the philatelic market, the PO has already released, on request, information on first day sales of new issues. This information is now reproduced in the quarterly Philatelic Bulletin. In addition, the total sales of every stamp issue are also published in the Philatelic Bulletin 12 months after the respective issuing dates.

593. The PO has considered the recommendation to announce the total printing quantities. Factors to consider include the transparency of the philatelic market, the need to deter speculative activities and the impact of the improvements introduced to the service. It is considered that this matter has already been overtaken by event with the introduction of the LSOS and LAOS, whereby customers could order philatelic items without ceiling.

594. A well controlled system exists in monitoring the production schedule of the printers. Moreover, longer lead time has been allowed for stamp production. Specifically, new stamps are now required to arrive Hong Kong in good time, i.e. two months before the issuing date. With the earlier delivery date, any delay in delivery can be compensated by the longer lead time. Since the "Year of the Ox" issue in February 1997, there has been no delay in delivery which has affected the issuing date for the period under review.

595. The PO will make every effort to ensure delivery of stamps in good time. If there are problems, the PO will make use of press releases, philatelic newsletters, newspaper advertisements and posters to explain to the public.

596. The PO has explored the feasibility of accepting orders through the telephone or Internet. In view of the fact that the heat of speculation on stamps has cooled down, the PO considers that the demand for new stamps and philatelic products is maintained at a steady level and that the current channels provided to the public for placing advance orders and outlets for purchasing stamps are sufficient to meet demand of the public.

597. Having said that, the PO will continue to improve its services to better meet customers' needs. For the placement of orders through the Internet, the Hongkong Post Stamps website has been enhanced to a bilingual version since August 1998 to facilitate customers to purchase postal souvenir products through the newly introduced Mail Order Service. The feasibility of accepting orders for stamps through the Internet will be further explored in the light of demand, security and resources available.

598. The PO has reviewed the condition on repurchasing unused stamps, and revised the commission rate from 15% to 30% in order to maintain a suitable deterrent against speculative activities. The rate will be reviewed as necessary in the light of changing circumstances.

599. The PO will continue to build on the LSOS, LAOS, balloting and other systems to help maximise convenience to customers, and reduce the need for customers to queue. Details are set out in earlier paragraphs.

600. The PO will continue the practice to pre-pack products for sale on the first day of issue such as pre-packing the stamp sheetlets/souvenir sheets in packs of ten or twenty, pre-packing postage labels in sets. The PO has also

resumed the sale of serviced first day covers at philatelic offices on the first day of issue with effect from November 1997.

601. The PO will continue reminding customers to evaluate their needs carefully before placing orders/making purchases as the market price of stamps may go down as well as up. The message is printed on all LSOS and LAOS order forms for new stamp products.

Publicity

602. The PO has widely publicised the annual issue programme through different media by press releases, newspaper advertisements, philatelic newsletters to existing and potential customers. Since July 1997, the PO has published a quarterly Philatelic Bulletin to LSOS customers. The programme has also been announced in the Philatelic Bulletin as well as on the PO's Internet website.

603. The LSOS and LAOS are prime services for Hongkong Post Stamps and the PO has been actively promoting them. A promotion campaign on the LSOS was launched on 15 October 1997. As a result of such promotion, the PO has signed up a total of 56,000 accounts which exceeded its expectation. Moreover, the LAOS is widely publicised and advertised before each new stamp issue and has been popularly made use of for the recent issues. All of these indicate that the advance order services are well known and received by the public.

604. The Hongkong Post Stamps website has been improved. All information is provided in both Chinese and English. The revamped website also provides users with more information than before, and the design is more interesting and interactive.

605. The PO agrees with the Ombudsman's conclusion which recognises the unprecedented demand for Hong Kong stamps that the PO had to meet in 1997 and its efforts in improving its services to meet customers' needs. It is particularly pleased with the Ombudsman's acknowledgement of the considerable improvements it has made in enhancing the efficiency and fairness of its arrangements.

606. The PO pledged to continue to do all it can to further improve its services to meet changing customers' needs and expectations. In fact, it has implemented all the recommendations made by the Ombudsman.

607. In addition, in March 1997, the PO set up a Review Committee on Stamp Issuing Arrangements to review the special stamp issuing and sales practices and procedures. The Review Committee comprises Post Office senior management staff and representatives from the Independent Commission Against Corruption. The Review Committee has been turned into a standing committee which meets once every year, or more often as necessary, to review stamp issuing arrangements.

608. Looking ahead, the PO will continue to be committed to listening to customers' feedback and to implementing further service improvements.

Transport Department (TD)

Taxi Licensing System

609. The Ombudsman has conducted a direct investigation into the taxi licensing system and made some recommendations.

610. The Administration responded to the initial findings of Ombudsman's investigation before the final report was published. In its final investigation report, the Ombudsman has requested to be kept informed of any further actions to be taken by the Administration in this subject as well as the deliberation of the Transport Advisory Committee (TAC) in its review of taxi licensing system.

611. The TAC review was conducted in response to public concern about sharp increases in taxi licence premiums in 1996 and early 1997, and a working group under the TAC was set up in March 1997 i.e. before the Ombudsman decided to conduct a direct investigation into this subject.

612. In July 1998, the TAC completed its review and concluded that high taxi licence premiums did not have a direct impact on the quality of taxi services and the present taxi licensing system should be maintained. The executive summary of the TAC's deliberation and the full report have been forwarded to the Ombudsman.

613. Having regard to the conclusion of the TAC review, the Administration has the following response to the Ombudsman's recommendations.

614. In order to avoid possible abuse of the taxi licence renewal procedures, the Government will look into the extent of the problem and possible means to ensure a sufficient supply of taxis on the road. This will be done in consultation with the taxi trade to balance the objective of ensuring sufficient supply of services and the practical constraints on taxi operators.

615. The TAC has recommended that taxi drivers who have been convicted of serious offences (e.g. personal injury and indecent assault) should be banned from driving taxis, or applying for a taxi driving licence, for a certain period of time. The objective is to safeguard the safety and interest of passengers as well as the image of the taxi trade and Hong Kong as a whole. Proposals will be developed for public consultation.

616. The TAC considers that rather than relying on sanctions, it is equally, if not more, important to introduce incentives to help improve service standards and the conduct of taxi drivers. The TD will follow up with the TAC's recommendation e.g. introducing a taxi driver award scheme in conjunction with the taxi trade and/or interested parties.

617. The TAC considers that given the fragmented and individualistic trade structure, it is worthwhile to consider improving the quality of taxi services through promoting different modes of operation within the taxi trade, e.g. group operators established by pooling together existing taxi owners. The TD will discuss this further with the taxi trade.

618. The TAC has concluded there is no direct relationship between movements in taxi licence premiums and changes in taxi fares and rentals; and that high taxi licence premiums do not have any direct impact on the quality of taxi services. It is therefore not appropriate for the Government to intervene in regulating the level of taxi licence premiums which is subject mainly to the overall investment climate (as demonstrated clearly in the recent economic downturn).

619. In the response to the Ombudsman's investigation, the TD has pointed out that the measures introduced after the 1994 TAC Taxi Policy Review have been able to make it more difficult to speculate in taxi licences by reducing the flexibility in the licensing system. It has never been TD's intention to remove all flexibility which would harm normal financing and investment activities.

620. The TD has also pointed out that the licensing regimes for different non-franchised public transport modes (like taxis and public light buses) as well as commercial vehicles like licensed coaches and goods vehicles have been developed over the years for individual trades which have different operating environment and requirements. The current taxi licensing system is fair and open, and it is not appropriate to standardise the licensing framework for different commercial/ public vehicles simply for the sake of achieving consistency without regard to their own operational characteristics.

621. The measures recommended by the Ombudsman to ensure a maximum number of licensed taxis are providing service on the roads are considered not necessary because taxis operate in response to demand, according to market forces. Taxi operators have every incentive to keep their

taxis on the road to generate income from rental and/or fare receipts. There are no economic reasons for licence holders to hoard taxi licences. If there is an unmet passenger demand for taxi services, the Administration could issue additional licences to redress the balance. At present, the number of "idle" taxis are relatively small and there is sufficient supply of taxis on the roads.

622. There is no incentive for the successful bidder to delay registration. Apart from the reasons mentioned above, the 12-month non-transferable period is counted from the date of first registration of the taxi and not from the date of notification of acceptance of tender.

623. It is not clear how increasing the transparency and representation of the Taxi Licences Review Committee would dampen speculation. The factors taken into consideration for the issue of new licences are already well known to the trade: the demand for taxi services, the financial viability of the trade and the capacity of the road system. If, to increase transparency means making known the meeting dates of the Taxi Licences Review Committee, this may induce rather than dampen speculation.

624. The taxi licensing conditions impose obligations on the taxi owners to provide accommodation and maintenance for their taxis. If taxis create a parking problem, they are subject to Police enforcement action. If the taxis are inadequately maintained, they fail the vehicle examination. So far these aspects have not been issues of concern. The TD has serious reservations as to whether, as the regulator, the Administration should be directly involved in monitoring the accommodation and maintenance facilities available to each taxi, which are the responsibilities of the operator. To do so would have substantial resource implications. It would be much more cost-effective to manage by exception.

Part III Studies

Correctional Services Department (CSD)

Complaint Handling System of CSD

625. The Ombudsman has conducted a study of the complaint handling system of the CSD.

626. The existing information booklets for inmates, together with other information channels provide comprehensive information on the department's internal complaint handling system. The CSD will consider as to whether an additional leaflet, or additional information, should be provided.

627. The CSD is aware of the need for an efficient and responsive internal complaint handling system. The Department has reviewed and restored a target response time for handling of complaints.

628. The existing system of complaints classification is working smoothly and effectively. The need to standardize the classification of internal and external complaints will be considered carefully.

629. The CSD does not see a general problem of inmates from the Mainland having difficulty to understand the Chinese information booklets. The welfare officers in institutions are ready to help when necessary.

630. The recommendation to strengthen training on Putonghua, communications and complaint handling skills and techniques for prison staff, particularly those in the front line will be pursued as the department's on-going efforts in running its staff training and development programmes.

631. Procedural fairness in the administration of the Prison Rules 68B is safeguarded by existing provisions. The Prison Rules, like all other provisions governing the management of prisons are kept under constant review. The Department will take into account the need to maintain prison order and discipline at all time and the well being of individual inmates within the prison community.

632. Requests from inmates for access to telephone have always been considered in a sympathetic and flexible manner having regard to the reasons as well as the compassionate elements of the requests. For example, prisoners with family members living outside Hong Kong and prisoners who have genuine needs (e.g. to call a parent who is hospitalized) may be allowed to use the telephone on a case-by-case basis. Uncontrolled access to telephone service by prisoners is not desirable for security reason.

633. All provisions governing the operation of the CSD, including the Prison Rules, Standing Orders and regulations, are kept under constant review with a view to updating them to take into account changing circumstances. This is an on-going activity of the Department.

634. The need for issuing guidelines to assist inmates' understanding will be considered according to the merits of the particular circumstances.

635. The Director of Administration is conducting a review on the Visiting Justices system.

**Housing Department (HD)
and Hong Kong Housing Society (HKHS)**

Complaint Handling Systems of HD and HKHS

636. The Ombudsman has conducted a study of the complaint handling systems of the HD and HKHS.

637. The suggestions made in the Study Report, which was issued in June 1998, are being considered carefully by the HD and HKHS.