THE GOVERNMENT MINUTE

IN RESPONSE TO

THE ELEVENTH ANNUAL REPORT OF

THE OMBUDSMAN

ISSUED IN JULY 1999

Government Secretariat

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Introduction

The Chief Secretary for Administration presented the Eleventh Annual Report of The Ombudsman to the Legislative Council at its sitting on 7 July 1999. 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 and II of this Minute follow the same order as those contained in Annexes 6 and 9 of the Annual Report respectively.

Part I
Investigated Cases

Agriculture & Fisheries Department (AFD)

Case No. 1998/1683, 1998/1686, 1998/1735: Improper handling of an application for Livestock Keeping Licence; delay in taking action against an unauthorised building works (UBW) and handling a complaint about illegal waste discharge and nuisance and failing to take action against a farm for keeping livestock without a licence.

3. During the period from October 1997 to April 1998, a group of villagers lodged complaints to AFD, Lands Department (Lands D) and Environmental Protection Department (EPD) against a pig farm carrying out unauthorized construction works, making illegal discharges and causing environmental nuisance. In June 1998, they lodged complaints to The Ombudsman against AFD, Lands D and EPD on the following issues :

(a) Improper processing of the farm's application for a Livestock Keeping Licence.

(b) Delay in taking action against the farm carrying out unauthorized construction works.

(c) Delay in following up complaints against the farm making illegal discharges and causing odour.

(d) Failing to take action against the farm keeping livestock without a Livestock Keeping Licence during the period from December 1995 to April 1997.

4. Due to the outbreak of avian influenza towards the end of 1997, AFD had not been able to closely follow up the villagers' complaints during the period from October 1997 to April 1998. The Ombudsman in December 1998 considered the complaints (a) to (c) against AFD partially substantiated.

5. The Ombudsman's recommendation to actively follow up the complaint until it is resolved has been accepted. AFD regularly inspects the farm to ensure sanitary conditions to address the problem of odour. From 6 to 8 May 1999, AFD and EPD officers stayed in the complainant's houses from 8:00 a.m. to 10:00 p.m. to establish the extent of odour problem and identify the sources of odour. AFD and EPD have also provided the complainants with

telephone numbers of subject officers who would go to the farm at short notice both during and after office hours to investigate their complaints about odour. To solve the problem, the Department has worked out and implemented a programme with the farm operator to remove pigs in phases from the unlicensed structures and to improve the waste treatment facilities.

6. In late April 1999, the farm operator, on advice from AFD and EPD, engaged the Hong Kong Productivity Council (HKPC) to improve the waste treatment system and mitigate nuisances caused by odour. AFD's regular farm inspections revealed that the farm operator had adhered to the timetable of removing pigs. The farm has also improved the waste treatment facilities to the required standard and increased the daily wastewater handling capacity to mitigate potential odour. Moreover, HKPC has been working with the farm operator to mitigate odour by using deodorizers and installing odour curtains over the waste treatment facilities.

7. AFD has briefed the complainants regularly on the progress of AFD's follow-up actions and improvement work done by the farm operator. The complainants have acknowledged that the situation has improved significantly.

8. AFD will continue to follow up the case closely. The likelihood of the farm causing environmental nuisance will further diminish as the farm operator increases the frequency of cleaning his pig sheds and completes adoption of all the measures proposed by HKPC.

9. The Ombudsman's recommendation to provide farmers with guidelines on the proper size of waste treatment facilities with respect to the number of livestock was accepted. On 25 and 30 March 1999 AFD, EPD and HKPC held technical seminars for farmers on the design, sizing and operation of livestock waste treatment facilities. Guidance notes from the seminar have been distributed to livestock farmers and agricultural organizations.

10. The Ombudsman's recommendation to make regular inspections to ensure the waste treatment facilities are up to standard was accepted. AFD officers inspect each livestock farm at least once every six months to ensure the waste treatment facilities are up to standard.

11. AFD, EPD, Lands D and Planning, Environment and Lands Bureau (PELB) held a meeting on 12 March 1999 to explore ways to implement The Ombudsman's recommendation to consider setting up a statutory minimum distance requirement between a livestock farm and a residential premise.

12. The inter-departmental meeting held on 12 March 1999 concluded that there were no objective criteria on which to base a minimum distance between

livestock farms and residences. As an alternative, the inter-departmental meeting proposed and implemented the following measures to overcome the problem :

(a) AFD and EPD would issue farmers with guidelines on minimizing odour. These have been prepared and distributed to livestock farmers;

(b) when applying for a new livestock farm licence, applicants would be required to submit plans of waste treatment facilities, specifying proposed location and measures to mitigate environmental nuisance. AFD and EPD would assess the proposals carefully to ensure the facilities would not cause nuisance to surrounding residents. Lands D would not approve the applicant's construction work or regularize the farm structures until AFD approved the proposals;

(c) EPD would consider reviewing odour control measures through a consultancy study on disposal of livestock waste;

(d) PELB would co-ordinate relevant departments to explore possible control tools for tackling odour nuisance from livestock farms;

(e) AFD would ask Planning Department to consider differential land use for intensive livestock farms and crop farms in the notes of statutory plans; and

(f) EPD would explore the possibility of reviewing the existing Livestock Waste Restriction Areas and the Livestock Waste Prohibition Areas taking into account the Territory Development Strategy.

13. On 23 March 1999, AFD informed The Ombudsman of these alternative strategies. No objections to this series of measures were received.

Airport Authority

Case No. 1998/1931 : Failing to provide sufficient and advance notification to the residents living underneath the new flight paths about the likely effect of the airplane noise.

14. The complainant was a resident in Fotan, Shatin. He lodged a complaint against the Airport Authority (the Authority) as well as Civil Aviation Department (CAD) for failing to provide sufficient and advance notification to the residents living underneath the new flight paths about the likely effect of the airplane noise. The Ombudsman found the complaint against the Authority substantiated and made some recommendations.

15. The Authority accepts the recommendations of The Ombudsman where applicable.

16. In respect of the recommendation to conduct, at 5-year intervals, a review of Noise Exposure Forecast (NEF) contours based on up-to-date traffic forecast and operational data, and to carry out additional reviews in response to specific requirements, or as required by internal planning reviews as a result of major changes in assumptions, e.g. traffic forecasts, aircraft traffic mix, flight paths, etc., the Authority will conduct a full review of the NEF contours at 5-year intervals as agreed with the Administration. The next scheduled update is in 2003.

17. The Authority maintains close liaison with CAD on the implementation of the recommendation to increase efforts in terms of public relations promotion activities. On the part of the Authority itself, it maintains regular contact with the media on noise issues. Issues that may have a new impact on the ambient noise levels are conveyed to the public through press releases, e.g. on the operation of the North Runway. And in late July this year, the Authority provided copies of the 1998 EIA update to libraries maintained by the Legislative Council, EPD, the Provisional Municipal Councils and the Public Enquiry Service Section of Home Affairs Department.

18. As regards the recommendation to consider providing noise mitigation measures for the affected residents if the assessment of noise levels measured on site indicates that other residential area falls within the coverage of the NEF 25 contour, the Authority understands that the Government will consider the most appropriate measures that need to be taken in the event of adjustments in the NEF 25 contour.

19. The Authority has not been and is not actively involved in the aircraft noise issue because CAD is responsible for the development and approval of the flight paths for Hong Kong International Airport. The Authority will nonetheless maintain close liaison with CAD on the dissemination of information on the subject.

Architectural Services Department (ArchSD)

Case No. 1998/0656 : Failing to take prompt action to solve the water leakage problem in the school staff quarters which resulted in wastage of water and accumulation of excess water charges.

20. In March 1997, the principal of a secondary school (the complainant), informed ArchSD that there might be leakage in the underground water pipes leading to the menial staff quarter and the school applied for emergency repair. The leakage was later repaired in May 1997.

21. The complainant considered that Water Supplies Department, Education Department and ArchSD had failed to take prompt action to solve the water leakage problem which resulted in wastage of water and accumulation of excess water charges. The Ombudsman found the complaint against ArchSD partially substantiated and made some recommendations.

22. On 2 September 1998, in response to The Ombudsman's recommendations, ArchSD had already reminded all staff dealing with repair projects at aided schools to handle requests for emergency repairs promptly, respond to related correspondence expeditiously, and to provide the estimated cost for repair works based on the market rate.

23. Upon the request of the Secretary of Education and Manpower in early July 1998 to review the whole process of major maintenance and repairs at aided schools, the ArchSD has also submitted proposals to streamline procedures for emergency repairs. The revised procedures, which has been implemented in October 1999, allow schools to seek the service of works departments direct for emergency repairs (not exceeding $200,000), without having to seek prior approval from Education Department. ArchSD is now able to respond direct to schools' requests for emergency repairs, and ensure that works are attended to promptly.

Buildings Department (BD)

Case No. 1998/0313 : Failing to resolve a water seepage problem and delay in identifying the cause of the problem.

24. The complainant reported to Regional Services Department (RSD) about water seepage on the ceiling of his premises. The seepage was caused by the swapping of kitchen and toilet on the floor immediately above.

25. Upon receipt of RSD's referral, inspection by BD's Dangerous Building Section (DBS) revealed no structural danger and advisory letter was issued to the owner of upper floor to take step to stop the seepage. BD's Control & Enforcement Division (C&ED) further investigated and concluded that the swapping of kitchen and toilet was not unauthorized building works (UBW).

26. RSD's dye test later confirmed that the cause of the seepage was the defective floor tiles. C&ED staff followed up the matter with the upper floor owner who later repaired the defective tiles.

27. The problem of water seepage arises usually from defects in buildings or unauthorized building works which are at present handled by two different divisions in BD with different performance pledges. The Department agrees that there are merits in principle in setting a performance pledge for handling seepage complaints and this will be given due consideration when the proposed reorganization of the Department is given effect.

28. All departments concerned have agreed that a consolidated reply from one department does not constitute a better standard of service to the public insofar as water seepage is concerned. It is believed that the general public would prefer actual solution of the water seepage problem to a consolidated reply from the departments. BD considers that the problem should be tackled in some other ways as detailed below.

29. BD has obtained funding approval for commissioning a consultancy study on investigation methods for water seepage. Preparatory work for the appointment of a consultant has commenced. When the study is completed by the end of 2000, BD will have more modern methods to identify the cause of water seepage more readily and more reliably, and hence improve the service to deal with seepage complaints.

30. In addition, a "Practice Note to Authorized Persons and Registered Structural Engineers" has been issued and another one will soon be issued,

calling upon these building professionals to help in preventing water seepage problems. In this regard, BD believes that when buildings are designed and constructed, attention should be paid to the following :

(a) avoiding water-borne piping in concrete floor and roof slabs;

(b) ensuring adequate water-proofing construction and design;

(c) refusing to accept poor workmanship in laying and fixing water-borne piping;

(d) refraining from using sub-standard sanitary fitments; and

(e) preventing ponding of water.

Case No. 1998/1220 : Failing to identify an unauthorized structure during an inspection and to offer a written explanation for the issue of a superseding order.

31. A removal order was served on the complainant as owner to remove an unauthorized rooftop structure (URS). The complainant later removed the URS. During the compliance inspection, another unauthorized building works (UBW) comprising a room with a door was found on the staircase landing on roof level. A superseding order was then issued to remove the new UBW.

32. Complainant claimed that the said "new UBW" was erected before BD staff's first inspection for the old UBW. She also argued that it was only a cabinet. She was expecting a compliance letter from BD for the completion of the removal of the old UBW but instead she received a superseding order which also caused her misunderstanding and confusion.

33. The Ombudsman concluded that BD staff failed to notice the existence of the "new UBW" and so this item is partially substantiated. For the superseding order, The Ombudsman considered that a compliance letter to discharge the first order should first be issued and then a new order served in case new UBW found. Hence this item is substantiated.

34. In response to The Ombudsman's recommendations, the following actions have been taken :

(a) apology in writing was sent to the complainant on 5 November 1998;

(b) staff are reminded to exercise due care in the inspection of UBW. Supervisors will monitor through vetting of inspection reports and discussions with Team Leaders; and

(c) in addition, BD has put in place an improved procedure in cases where the UBW under an old order are removed but new UBW are erected, viz. :

(i) send letter to owner confirming compliance with the old order (this letter is to be registered in the Land Registry); and

(ii) send covering letter with the above advising the owner that new UBW are discovered and request the owner to remove the UBW voluntarily, otherwise a new order will be issued (this letter will not be registered in the Land Registry).

Case No. 1998/1604 : Delay in taking follow-up action after serving a Demolition Order.

35. Subsequent to a complaint in December 1996 regarding an unauthorized partitioning of a premise that blocked the exits to the staircases, BD issued an order on 14 April 1997 requiring the owner to complete improvement works within 60 days. On 11 August 1997 and 8 September 1997, the owner wrote to BD that one of the exits would be completed in February 1998 and requested extension of time for the completion of the remaining exits. BD did not turn down the application until 16 April 1998. In February 1998, the owner completed one exit leading to two staircases to improve the situation.

36. BD on 3 July 1998 agreed in principle to the owner's improvement proposal submitted on 25 April 1998 but did not specify a time frame for completion.

37. The owner subsequently completed the improvement works as noted from BD's inspections in October and December of 1998.

38. In response to The Ombudsman's recommendations, the following actions have been taken :

(a) the improvement works to the fire escapes have all been completed in December 1998; and

(b) BD set the clearance of outstanding orders as the first priority of the work of its Control and Enforcement Division. Removal orders can now be followed up closely upon their expiry. With BD's successful planning programme, outstanding orders issued before 1 January 1996 have been steadily reduced from 6 220 as at the beginning of 1996 to 3 372 at present. In addition, new resources were allocated this year to remove high risk unauthorized rooftop structures and unauthorized building works affecting fire safety.

39. BD actually followed up the progress of the improvement works closely. Although the owner took 17 months after expiry of the order to complete all the remedial works, BD considers that there was no undue delay because the owner commenced the works with the provision of exit to two of the staircases completed in February 1998. The risk in case of fire was thus improved to the extent that, if this had been the situation upon first discovery, an order would not have been issued.

40. For the owner's application on 11 August 1997 for extension of time, The Ombudsman considered BD's refusal made on 6 April 1998 was an undue delay. He considered that BD's explanation of continuing communication with the owner during the period might be credible, but there was no file record to support that substantive action has been taken to follow up the matter.

Civil Aviation Department (CAD)

Case No. 1998/1847, 1998/1930, 1998/2011, 1998/2084, 1998/2771, 1998/3338 : Wrong decision in setting the new flight paths resulting in noise nuisance to nearby residents.

41. Please refer to Case No. 1998/1875, 1998/1929, 1998/1932, 1998/2012, 1998/2052, 1998/2053, 1998/2054, 1998/2055, 1998/2056, 1998/2062, 1998/2258 below.

Case No. 1998/1875, 1998/1929, 1998/1932, 1998/2012, 1998/2052, 1998/2053, 1998/2054, 1998/2055, 1998/2056, 1998/2062, 1998/2258 : Failing to provide sufficient and advance notification to the residents living underneath the new flight paths about the likely effect of the airplane noise and wrong decision in setting the new flight paths resulting in noise nuisance to nearby residents.

42. The complainants are residents living underneath the new flight paths. They claimed that since the opening of the new airport in July 1998, aircraft noise pollution had been transferred from Kowloon City to Shatin, Tsuen Wan, Ma Wan, Tsing Yi and Sheung Wan. They also claimed that the new flight paths had taken them by surprise. As from September 1998, when the eastern departure path was used, planes flew out of Hong Kong over Tsim Sha Tsui, Causeway Bay, North Point and Eastern District. This also prompted residents on the Hong Kong Island to lodge their complaints. The complainants lodged complaints against the Airport Authority (AA), CAD and Environmental Protection Department (EPD) with the Office of The Ombudsman respectively during the period of July to November 1998. The Ombudsman carried out an investigation into the complaints and issued an Investigation Report on 31 March 1999.

43. In relation to The Ombudsman's recommendations, the Administration has taken the following actions :

(a) six additional noise monitoring terminals have been provided since May 1999 to enhance the monitoring of aircraft noise, including that arising from the second runway operation. These terminals are located at Mid-levels in Central, North Point, Shaukeiwan, West Tsuen Wan, Tsing Lung Tau and Tai Lam Chung. Together with the six terminals previously installed at Sha Lo Wan, Tung Chung, Sham Tseng, Tai Lam, Tsing Yi and Tai Wai, there are now a total of twelve noise monitoring terminals for monitoring aircraft noise in areas under the

flight paths;

(b) a full review of Noise Exposure Forecast (NEF) contours will be conducted by the AA at 5-year intervals as agreed between the AA and the Administration. Additional reviews may be carried out in response to specific requirements, or as required by internal planning reviews as a result of major changes in assumptions, e.g. traffic forecast, aircraft traffic mix, flight paths, etc.;

(c) prior to the opening of the Second Runway on 26 May 1999 for use from 10:00 a.m. to 4:00 p.m. each day, CAD together with EPD have conducted briefings to 12 Provisional District Boards, namely Tuen Mun, Tsuen Wan, Sai Kung, Northern, Kwai Tsing, Islands, Central & Western, Kowloon City, Shatin, Wong Tai Sin, Southern and Eastern. CAD has also conducted some on-site noise measurements together with residents and members of Provisional District Boards of concerned areas after the opening of the Second Runway. Initial assessments of the noise measurements indicate that the noise levels are in compliance with the provisions set out in the Hong Kong Planning Standards and Guidelines. Moreover, to facilitate public access to the measured noise data, arrangement has been made to disseminate the information to the Provisional District Boards of concerned areas on a regular basis;

(d) since October 1998, aircraft arriving between 0:00 a.m. and 7:00 a.m. are required to land from the southwest, subject to acceptable wind direction and strength as well as the pre-requisite that flight safety will not be compromised. This aims to reduce the number of aircraft overflying districts like Shatin, Kwai Chung, Tsuen Wan and Tsing Yi;

(e) starting October 1998, aircraft departing on Runway 07 between 0:00 a.m. and 7:00 a.m. are required to use the southbound route via the West Lamma Channel, subject to operational and safety considerations. This aims to reduce the number of aircraft overflying populated districts like Hung Hom, North Point, Shaukiwan and Chai Wan. After considering the views of the concerned residents, CAD conducted a detailed assessment in late 1998 and advanced the timing from 0:00 a.m. to 11:00 p.m. for all departures on Runway 07 via the West Lamma Channel effective from 7 January 1999;

(f) the implementation of the noise mitigating measures set out in (d) and (e) above has been closely monitored. Compliance records since implementation of the measures in October 1998 indicate that a high percentage of compliance has been achieved during the periods

covered by the measures. These measures could not be applied only on a small number of occasions due to various operational reasons including prevailing wind conditions, maintenance of navigation aids prior to flight calibration, or air traffic conflicts; and

(g) CAD and EPD will continue to monitor the noise impact at various districts and liaise with the AA for conducting, at regular intervals, a review of NEF contours based on up-to-date traffic forecast and operational data. As a result of these reviews, the Administration will consider the most appropriate measures that need to be taken in the event of adjustments in the NEF 25 contour.

44. In line with international practice, the NEF 25 contour has been adopted as the planning criterion for noise sensitive developments near the Hong Kong International Airport at Chek Lap Kok. According to the findings of the Environmental Impact Assessments carried out in 1991/92 and the update to the assessments in 1997/98 as well as the results of aircraft noise measurements in various districts, it has been confirmed that except a small number of residents in North Lantau, predominantly in Sha Lo Wan, all other residential developments are outside the NEF 25 contour.

45. Notwithstanding the above, the Administration is mindful of the concern of the residents of some districts over the impact of aircraft noise. CAD has therefore introduced noise abatement take-off procedures since mid-August 1999 and will prohibit relatively noisy aircraft types to use the airport during night time with effect from the next scheduling season commencing in late October. CAD will also continue to explore the feasibility of additional noise mitigating measures.

Case No. 1998/1913, 1998/2895 : Failing to provide sufficient and advance notification to the residents living underneath the new flight paths about the likely effect of the airplane noise.

46. Please refer to Case No. 1998/1875, 1998/1929, 1998/1932, 1998/2012, 1998/2052, 1998/2053, 1998/2054, 1998/2055, 1998/2056, 1998/2062, 1998/2258 above.

Companies Registry (CR)

Case No. 1998/3029 : Unreasonably reversing the Companies Registry's previous practice of allowing dormant companies to apply for striking off under section 291 of the Companies Ordinance.

47. In the past, the Registrar accepted for administrative purposes requests from dormant companies for them to be struck off under section 291 of the Companies Ordinance.

48. This position remained until the CR's prosecution policy was changed as announced by Companies Registry External Circular No. 6/97 dated 1 December 1997.

49. After the issue of the Circular, it was found necessary to clarify the implications of the New Prosecution Policy with regard to "section 291 requests". Consequently, on 5 January 1998, Companies Registry External Circular No. 1/98 was issued to explain the position.

50. According to the Circular No. 1/98, as from 1 February 1998, all requests for striking off under section 291 must be made in a revised format of confirmatory letter. In paragraph (f) of the confirmatory letter, an undertaking must be given to file all annual returns until the actual striking off takes place.

51. As dormant companies are statutorily exempted from filing the annual return under section 344A of the Companies Ordinance, they will be unable to comply with the ongoing requirement of filing the annual returns as per the said undertaking.

52. Subsequent to the change in practice, it was no longer possible for dormant companies to apply for striking off after 1 February 1998.

53. A director of a dormant company (the complainant) complained to The Ombudsman that the Registrar had unreasonably reversed the previous practice of allowing dormant companies to apply for striking off. He complained that there was no explicit announcement of such change of policy in the Companies Registry External Circular No. 1/98 dated 5 January 1998. The complainant was aggrieved by the CR's refusing the application from his company for striking off.

54. In response to The Ombudsman's recommendations, the following follow-up actions have been taken or will be taken :

(a) The CR's publicity strategy has been reviewed and the following steps will be taken with a view to informing the members of the public more explicitly of any future policy changes :

(i) External Circulars will be issued to professional bodies and organizations;

(ii) notices will be placed in and around the public areas and notice boards of the CR;

(iii) "flyers" will be distributed through counters in the CR and by way of outgoing correspondence;

(iv) advertisements will be placed in five Chinese language daily newspapers and two English language daily newspapers to advise the business and commercial communities;

(v) pamphlets in English and Chinese will be disseminated;

(vi) announcements will be placed on the CR's Home Page on the Internet; and

(vii) announcement will be placed on the Interactive Voice Response System enquiry hotline.

(b) The following steps will be taken to ensure that adequate and effective co-ordination amongst the CR's various sections is well in place before the implementation of any future policy changes :

(i) implementation Steering Group chaired by the Registrar of Companies and attended by heads of various sections has been set up to oversee co-ordination among the CR's various sections;

(ii) Internal Circulars will be issued to staff of the CR;

(iii) Q & A Circulars will be issued to front line staff of the Registry to assist them in answering public enquiries; and

(iv) briefing sessions will be held by section heads with their staff.

Correctional Services Department (CSD)

Case No. 1998/0089 : Unreasonably demanding the complainant to return a letter given to him by the Long-term Prison Sentences Review Board; delay in delivering to him another letter from the Board, depriving him of the opportunity of providing the Board with information; providing him with the same vegetarian meal every day and unreasonably refusing his request for playing Chinese billiard.

55. The prison management received a letter dated 10 November 1997 from the Long-term Prison Sentences Review Board (the Board), informing the complainant that the review of his sentence originally scheduled for October 1997 had been postponed to November 1997. The covering memorandum from the Board Secretary however stated that dispatch of the letter to the prisoner should be pending the Board Secretary's further notification (confirmation of the date of the review). Missing the point made in the covering memorandum, the prison management mistakenly delivered the letter to the complainant on 12 November 1997. A few days later, the prison management received a further memorandum from the Board Secretary stating that the review would be further postponed to December 1997. The Board Secretary also requested the prison management to return its letter dated 10 November 1997 addressed to the complainant to the Board Secretary. Hence, the complainant was asked on 18 November 1997 to return the letter. The Ombudsman considered the complaint on unreasonably demanding the complainant to return a letter given to him by the Board unsubstantiated.

56. On 22 November 1997, the prison management received another letter dated 20 November 1997 from the Board Secretary for onward delivery to the complainant. As the complainant indicated to a prison officer on 26 November 1997 that he did not need to see the letter and would wait until the outcome of the review of his sentence by the Board, the management did not issue the letter to him until 2 January 1998. The Ombudsman considered that the prison management had not followed the procedural guidelines concerned in handling the letter from the Board to the complainant and concluded that the complaint on delay in delivering to the complainant another letter from the Board, hence depriving the complainant of the opportunity of providing the Board with information was substantiated.

57. The Department's records revealed that different types of seasonal vegetables were provided to prisoners on a vegetarian diet. There was no evidence to suggest that the management had given the complainant the same kind of vegetarian meal to the complainant every day. The Ombudsman found the complaint unsubstantiated.

58. Like other prisoners, the complainant was allowed to play Chinese billiards inside the recreation complex from 1:00 p.m. to 2:00 p.m. everyday. Hence the prison management rejected the complainant's request for playing the same game again in the dining hall from 4:00 p.m. to 5:00 p.m. every day. The Ombudsman found the complaint on unreasonably refusing the complainant's request for playing Chinese billiard unsubstantiated.

59. The case was an isolated incident of an officer not following the relevant procedural guidelines. The Commissioner of Correctional Services has caused the heads of institutions to be reminded of their duties to ensure strict and consistent compliance with current instructions, which have been re-circulated.

Case No. 1998/0500, 1998/0501 : Unreasonably transferring the complainant to a cell which was with less desirable conditions and impeding him to make enquiries about the prices of different categories of prisoners' meals and to apply for legal aid to sue the Commissioner of Correctional Services.

60. On 23 February 1998, the complainant, a prisoner, was transferred by the prison management from one cell to another cell which the complainant considered as having less desirable conditions and where radio reception was poor. He considered the transfer unreasonable. The Ombudsman noted that the transfer was made on security grounds in pursuance of a departmental instruction. The complaint was unsubstantiated.

61. On 23 February 1998, the complainant requested the prison management to provide him with the prices of different categories of prisoners' meals. In response, the prison management asked the complainant to give justifications for his request. While the complainant considered the prison management had deprived him of his right to know about the prices information, The Ombudsman considered that the prison management was not obliged to provide the information, and that the prison management's handling of the request was not unreasonable. The Ombudsman found the complaint unsubstantiated.

62. On 23 February 1998, the complainant indicated to the prison staff that he would like to apply for legal aid to sue the Commissioner of Correctional Services. While the complainant alleged that the prison staff had asked him to provide reasons for the legal aid application, the prison management maintained that the complainant was only asked to confirm his intention in writing in line with established practice. The Ombudsman considered that the

action taken by the prison staff was inappropriate since the complainant had his right to make legal aid applications and it would be up to the Legal Aid Department to consider the application. The Ombudsman found the complaint on impeding the complainant to apply for legal aid to sue the Commissioner of Correctional Services substantiated. The Ombudsman also observed that the existing departmental instruction on the handling of prisoners' application for legal aid only contained arrangements for legal aid applications in respect of criminal cases but not civil actions.

63. The Commissioner of Correctional Services has considered The Ombudsman's recommendation. The existing procedure facilitating prisoners applying for legal aid does not require prisoners to put their requests in writing. The Commissioner of Correctional Services has caused rectification of the anomaly in Shek Pik Prison.

Case No. 1998/1290 : Delay in delivering specialist medicine to the complainant.

64. On 29 April 1998, the complainant, a prisoner serving sentence in Ma Po Ping Prison (MPP), attended the Ear, Nose and Throat (E.N.T.) specialist clinic at Shek Pik Prison and was prescribed a specialist treatment "Drixoral". On 1 May 1998, the prison management made arrangement for a workman to collect the specialist medicine at Sai Ying Pun (SYP) E.N.T. clinic, the home clinic of the visiting E.N.T. specialist. However, as the signature on the prescription chit could not be verified at the SYP clinic, no medicine was issued by the SYP clinic. Noting the situation, the prison staff immediately consulted the prison doctor of MPP who advised that the administration of the specialist medicine was not urgent and a replacement drug was prescribed and administered by the prison doctor for the complainant.

65. On 2 May 1998, the prison staff found out that the medicine could be obtained from Queen Mary Hospital. Having considered the medical opinion of the prison doctor and for the purpose of more effective deployment of staff resources, arrangement was then made for a workman to collect the medicine on 8 May 1998 when the workman was sent out to other hospitals/clinics for other dispatch duties. The course of treatment prescribed by the specialist was subsequently administered on the complainant. The Ombudsman found the complaint unsubstantiated but made two recommendations to prevent recurrence of similar incidents.

66. Heads of institutions have fully implemented The Ombudsman's recommendations.

Case No. 1998/1565 : Disparity in treatment in considering the complainant's application for depositing money into prison.

67. On 8 June 1998, the complainant, a prisoner, requested the prison management to allow him to deposit $3,000 into his property account in the prison. He claimed that his friend wished to settle a debt owed to him. However, as he could not provide further details on his request, his application was rejected. On 9 June 1998, he made a similar request to the Superintendent of the prison. As he still could not give more particulars about his case, the prison management again turned down his request. Upon the complainant's request, the prison management made arrangement for him to have an interview with the Visiting Justices of Peace on 12 June 1998. During the interview, he retracted his story and stated that his uncle wished to hand in $3,000 to him to enable him to establish his own business upon discharge from prison. The Visiting Justices of Peace advised him to provide more detailed information to the prison management for re-consideration. However, the complainant could not provide even the full name or address of his uncle. In the circumstances, his application was not further considered.

68. The Ombudsman considered that the prison management had carefully examined the complainant's case before rejecting his request. The complaint was unsubstantiated.

69. The Commissioner of Correctional Services has carefully considered the need for specific guidelines on processing prisoners' applications for depositing money into prisons. It has been a long-standing and well established practice for the Department to allow prisoners to receive appropriate amounts of money from relatives or friends for genuine needs such as paying tuition fees and purchasing books in pursuing education/training programmes in prisons. However, there have been cases that the prisoners had abused this channel for illicit pecuniary transactions. Heads of institutions would therefore critically examine every request for depositing money into a prisoner's property account on its own merits and exercise prudent discretion to avoid abuse. It would not be practicable to promulgate hard and fast rules to specify the amount of money or exhaust the different circumstances for which the request should be entertained or rejected. The promulgation of specific guidelines in this regard is therefore considered not practicable.

Case No. 1998/2194 : Unreasonably rejecting the complainant's application for depositing money into prison.

70. On 28 July 1998, the complainant, a prisoner, approached Deputy Commissioner of Correctional Services during the latter's visit to the prison

and requested to deposit $2,000 from his friend for paying fines upon discharge and return to China. His request was referred to the prison management for follow-up.

71. After studying the case, the prison management rejected his request because he was unable to provide the particulars of this friend and that the relationship between the complainant and the alleged friend could not be established. Moreover, the prison management noted that the complainant had never declared any visitor on his visitor list.

72. The Ombudsman considered that the prison management had carefully studied the complainant's case before rejecting his request. The complaint was unsubstantiated.

73. The Commissioner of Correctional Services has carefully considered the need for specific guidelines on processing prisoners' applications for depositing money into prisons. It has been a long-standing and well established practice for the Department to allow prisoners to receive appropriate amounts of money from relatives or friends for genuine needs such as paying tuition fees and purchasing books in pursuing education/training programmes in prisons. However, there have been cases that the prisoners had abused this channel for illicit pecuniary transactions. Heads of institutions would therefore critically examine every request for depositing money into a prisoner's property account on its own merits and exercise prudent discretion to avoid abuse. It would not be practicable to promulgate hard and fast rules to specify the amount of money or exhaust the different circumstances for which the request should be entertained or rejected. The promulgation of specific guidelines in this regard is therefore considered not practicable.

Case No. 1998/2195 : Unreasonably rejecting the complainant's application for depositing money into prison.

74. On 22 July 1998, the complainant, a prisoner, requested the prison management to allow him to deposit $3,000 from his relative/friend. Since he had never declared any visitor on his visitor list and had no relative or friend visiting him during his imprisonment, the prison management rejected his request. On 23 July 1998, he made the same request to the prison management again and claimed that the friend who was going to hand in money was an ex-prisoner whom he came to know about during his last imprisonment in another prison in 1995. The management also turned down his request because he could not provide particulars about the alleged friend. On 28 July 1998, a similar request he made to the Deputy Commissioner of Correctional Services was rejected again.

75. On 14 August 1998, he approached the prison management and stated that a friend from the Mainland would visit him in October 1998 and he requested to receive $3,000 from this friend. After confirming the particulars of his friend and the background of his request, his request was approved.

76. The Ombudsman considered that the prison management had carefully examined the complainant's case in processing his request. The complaint was unsubstantiated.

77. The Commissioner of Correctional Services has carefully considered the need for specific guidelines on processing prisoners' applications for depositing money into prisons. It has been a long-standing and well established practice for the Department to allow prisoners to receive appropriate amounts of money from relatives or friends for genuine needs such as paying tuition fees and purchasing books in pursuing education/training programmes in prisons. However, there have been cases that the prisoners had abused this channel for illicit pecuniary transactions. Heads of institutions would therefore critically examine every request for depositing money into a prisoner's property account on its own merits and exercise prudent discretion to avoid abuse. It would not be practicable to promulgate hard and fast rules to specify the amount of money or exhaust the different circumstances for which the request should be entertained or rejected. The promulgation of specific guidelines in this regard is therefore considered not practicable.

Case No. 1998/2196 : Unreasonably rejecting the complainant's application for depositing money into prison.

78. On 28 July 1998, the complainant, a prisoner, requested the prison management to allow him to receive $3,000 from his friend. The management turned down his request since he failed to ascertain the identity of his alleged friend. On the same day, he made the same request to Deputy Commissioner of Correctional Services during the latter's visit to the prison. His request was referred to the prison management for follow up action. On 30 July 1998, the prison management interviewed him but he failed to ascertain the identity of his friend whom he said would hand in $3,000 to him. Considering that he never declared any visitor on his visitor list and had no relative or friend visiting him during his imprisonment, the management did not accede to his request.

79. The Ombudsman considered that the prison management had carefully examined the complainant's case before rejecting his request. The complaint was unsubstantiated.

80. The Commissioner of Correctional Services has carefully considered the need for specific guidelines on processing prisoners' applications for depositing money into prisons. It has been a long-standing and well established practice for the Department to allow prisoners to receive appropriate amounts of money from relatives or friends for genuine needs such as paying tuition fees and purchasing books in pursuing education/training programmes in prisons. However, there have been cases that the prisoners had abused this channel for illicit pecuniary transactions. Heads of institutions would therefore critically examine every request for depositing money into a prisoner's property account on its own merits and exercise prudent discretion to avoid abuse. It would not be practicable to promulgate hard and fast rules to specify the amount of money or exhaust the different circumstances for which the request should be entertained or rejected. The promulgation of specific guidelines in this regard is therefore considered not practicable.

Case No. 1998/2417 : Unreasonably rejecting the complainant's application for depositing money into prison

81. On 10 August 1998, the complainant, a prisoner, requested the prison management to allow him to receive $6,000 from a friend who would visit him. He was however unable to explain for the background of his request. Neither could he substantiate his claim that the friend was his ex-employer and that the money was his outstanding wage. As such, his request was rejected on 13 August 1998.

82. The Ombudsman considered that the prison management had carefully examined the complainant's case before rejecting his request. The complaint was unsubstantiated.

83. The Commissioner of Correctional Services has carefully considered the need for specific guidelines on processing prisoners' applications for depositing money into prisons. It has been a long-standing and well established practice for the Department to allow prisoners to receive appropriate amounts of money from relatives or friends for genuine needs such as paying tuition fees and purchasing books in pursuing education/training programmes in prisons. However, there have been cases that the prisoners had abused this channel for illicit pecuniary transactions. Heads of institutions would therefore critically examine every request for depositing money into a prisoner's property account on its own merits and exercise prudent discretion to avoid abuse. It would not be practicable to promulgate hard and fast rules to specify the amount of money or exhaust the different circumstances for which the request should be entertained or rejected. The promulgation of specific

guidelines in this regard is therefore considered not practicable.

Case No. 1998/3226 : Unreasonably rejecting the complainant's application for depositing money into prison.

84. On 25 September 1998, the complainant, a prisoner, requested the prison management to allow him to receive $1,000 from his relatives and friends for emergency use after discharge from prison. Having considered his case, the prison management approved his request. On 8 October 1998, a visitor handed in $1,000 to him and the management deposited the money into his property account.

85. The Ombudsman considered that the prison management had handled the complainant's request properly. This complaint was unsubstantiated.

86. The Commissioner of Correctional Services has carefully considered the need for specific guidelines on processing prisoners' applications for depositing money into prisons. It has been a long-standing and well established practice for the Department to allow prisoners to receive appropriate amounts of money from relatives or friends for genuine needs such as paying tuition fees and purchasing books in pursuing education/training programmes in prisons. However, there have been cases that the prisoners had abused this channel for illicit pecuniary transactions. Heads of institutions would therefore critically examine every request for depositing money into a prisoner's property account on its own merits and exercise prudent discretion to avoid abuse. It would not be practicable to promulgate hard and fast rules to specify the amount of money or exhaust the different circumstances for which the request should be entertained or rejected. The promulgation of specific guidelines in this regard is therefore considered not practicable.

Department of Justice (D of J)

Case No. 1999/0225 : Assisting in the compilation of unofficial guidelines, which were materially at variance with the official guidelines, for issue to the returning officers of the Legislative Council general election.

87. In the first Legislative Council Election, the complainant contested with two other candidates in the Regional Council Functional Constituency (FC) election held on 24 May 1998. The complainant was declared elected. His victory was subsequently challenged by an election petition lodged by one of the other two candidates.

88. The Court ruled that no one was duly elected in the election for the Regional Council FC. Therefore, a by-election was held on 29 October 1998. The three candidates were the same as those in the May election. In this by-election, the complainant was elected to the Legislative Council.

89. During the trial of the election petition, it was revealed that there was an inconsistency between the internal guidelines issued to the Returning Officers by the Registration and Electoral Office (REO) and the Guidelines issued by the Electoral Affairs Commission (EAC) in respect of the determination of questionable ballot papers in the six "special FCs" (including the Regional Council FC). Three questionable ballot papers which should have been rejected, were accepted by the Returning Officer for the Regional Council FC, resulting in the victory of the complainant. The decision to accept these three papers was made in accordance with the internal guidelines.

90. Subsequent to the Court's ruling, the complainant lodged a complaint with The Ombudsman against the REO in relation to this matter. In the course of their investigation, The Ombudsman found that the D of J was a party to the preparation and collation of the unofficial guidelines. As a result, The Ombudsman decided that the scope of their investigation should also be extended to cover the D of J.

91. Both the REO and the D of J have fully co-operated with The Ombudsman in the investigation into the complaint. Upon completing the investigation, The Ombudsman concluded that the complaint was substantiated.

92. An apology letter dated 15 March 1999 personally signed by the Secretary for Justice was sent to the complainant. Separately an apology letter dated 15 March 1999 personally signed by the Chief Electoral Officer was also sent to the complainant.

93. Before The Ombudsman started the investigation, both the D of J and the REO had conducted a review of the matter. The REO recommended to the EAC the implementation of certain improvement measures to prevent recurrence of similar incidents in future. The EAC has accepted the REO's recommendations as has the D of J. The recommendations were incorporated by The Ombudsman into his own recommendations.

94. The REO, with the advice of D of J, had amended the internal guidelines for the Returning Officer for use at the by-election for the Regional Council FC held on 29 October 1998 to ensure that they were entirely consistent with the relevant statutory provisions.

95. The REO and D of J are now taking the necessary follow-up actions to implement the improvement measures for future elections, including the first District Councils election and the second Legislative Council election to be held in November 1999 and September 2000 respectively.

Education Department (ED)

Case No. 1998/0655 : Failing to take prompt action to solve the water leakage problem in the school staff quarters which resulted in wastage of water and accumulation of excess water charges.

96. On 6 March 1997, the Principal of a secondary school (School), informed the Architectural Services Department (ArchSD) with a letter, which was also copied to the ED, that there might be leakage in the underground water pipes leading to the menial staff quarter and the School applied for emergency repair. The quotation obtained by the School for the repair work was over $8,000. This application by the School is in line with the Code of Aid for Secondary Schools (September 1994), which states that repairs costing less than $8,000 can be charged to the School and Class Grant*, and requests for subsidies for repairs costing $8,000 or more may be considered if they are of an emergency nature. It is also in line with the procedure on applications for emergency repairs stipulated in the Administration Circular No.22/94 dated 30 March 1994.

97. ED wrote to ArchSD on 7 March 1997 seeking advice with regard to the school's application, and sent a reminder to ArchSD on 7 April 1997.

98. ArchSD's reply on 17 April 1997 estimated the cost for the repair to be $3,000, below the limit of $8,000 for charging to the School and Class Grant. The School should therefore have the works carried out by its own contractor directly. The Principal was informed of ArchSD's recommendations on 18 April 1997.

99. In April 1997, the Water Authority informed the School that unless repair of the leakage was done, water supply would be disconnected.

100. A letter dated 7 May 1997 from the Principal advised that the School had contacted the contractor introduced by ArchSD but the quoted cost was $8,000. Meanwhile, the School sent a letter to the Office of Water Authority requesting it not to disconnect the water supply and informing it that the staff of the School had already been instructed to close the water main when water supply was not required.

101. On 8 May 1997, ED wrote to ArchSD with regard to the Principal's enquiry, requesting advice and assistance to the school. A reminder was sent

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* The School and Class Grant is paid to schools half-yearly in advance to enable schools to pay for the operations in relation to the running of schools and to purchase library books.

to ArchSD on 30 May 1997. It was learnt that the work had been completed at the cost of $6,000.

102. Though the work had already been completed, the Principal was not satisfied with the Water Authority charging the School a high water fee (approximately $4,000) due to the leakage of underground water pipes. He considered the water charge unreasonable and wrote to the Director of Education (D of E) on 26 February 1998 seeking her assistance to appeal personally to the Director of Water Supplies for him to reconsider the request for waiver for water leaked. On 27 February 1998, D of E directed a review of the procedures for emergency repair. At the same time, D of E also spoke to the Director of Water Supplies personally who agreed to look at the case again. The Department replied to the Principal on 28 February 1998 informing him of development, copied to the Director of Water Supplies. The Water Authority explained in their reply dated 9 March 1998 to the Principal, copied to the Director of Education, that full waiver for the water leaked would be granted only if the necessary repair was completed within 21 days from the date of their High Consumption Notice to ensure that water would not be wasted by undue delay in repair work.

103. The Ombudsman's recommendation to review the procedures for emergency repairs and to handle correspondence relating to emergency repairs expeditiously were accepted. ED has worked out with ArchSD and other departments concerned on ways to streamline the procedures for emergency repairs. Under the streamlined procedures, blanket approval is given for works departments to proceed with emergency repairs with estimated cost not exceeding $200,000. The streamlined procedures have been implemented starting from October 1999 and will be reviewed in six months' time.

104. ED has difficulty creating a special grant to the school on an exceptional basis to cover part of the water bill under dispute as recommended by The Ombudsman. However, ED proposed to consider giving special approval, under the exceptional circumstances, for the school to charge part of the water bill under dispute to the School and Class Grant. The proposal was accepted by both The Ombudsman and the school and has been implemented already.

105. ED received a memorandum from The Ombudsman on 25 January 1999 which advised that there was no need to provide any further progress report on the case as all the recommendations in the Investigation Report were implemented.

Case No. 1998/1845, 1998/1869, 1998/1871, 1998/1872 : Unfairly approving a Catholic sponsoring body to operate a newly built primary school; unjustly allowing a new primary school to grant 20 marks to the siblings of the pupils who had opted to study in that school during the Discretionary Places Admission stage and unreasonably transferring 100 Primary One school places from one School Net to another.

106. After the Central Allocation exercise for Primary One Admission (POA) 1998 cycle, a group of parents residing in Riviera Gardens and Water Side Plaza in Tsuen Wan expressed concern over their children not being allocated Primary One (P1) school places within their own school net. Having read reports in the local press, The Ombudsman brought up the case to the ED on 19 June 1998. In response, ED provided detailed information and relevant documents on the POA system and the schedule for the Central Allocation processing on 3 July 1998.

107. In August 1998, a formal complaint was lodged with The Ombudsman by a group of parents residing in Riviera Gardens and Water Side Plaza. The Ombudsman forwarded the complaint to ED on 19 August 1998 for investigation. ED conducted an investigation and replied to The Ombudsman on 7 September 1998.

108. Regarding the same complaint, The Ombudsman informed ED on 12 October 1998 of his intention to conduct an investigation into the complaint. ED replied with further information on 26 October 1998.

109. The Ombudsman sent a Draft Investigation Report to ED for comment on 15 March 1999. ED commented on the report on 30 March 1999. The Ombudsman's approved Investigation Report together with copies of replies to the complainants were forwarded to ED for retention on 31 March 1999.

110. Following is a summary of the results of The Ombudsman's investigation.

111. Complaint point (a): unfairly approving a Catholic sponsoring body to operate a newly built primary school - the investigation revealed that the allocation of schools by ED to applicant bodies was made on the basis of merits of the individual applicant bodies. Religious affiliation had not been one of the criteria for allocation of schools. In the circumstances, the Director of Education should not be faulted for complaint point (a). The Ombudsman concluded that this complaint point was unsubstantiated.

112. Complaint Point (b): unjustly allowing a new primary school to grant 20 marks to the siblings of pupils who had opted to study in that school during

the Discretionary Places Admission (DPA) stage - the investigation revealed that the guidelines for awarding points to P1 applicants had explicitly stated that only applicants having "sibling(s) studying in the primary school" would be eligible for the 20 marks. The guidelines did not say that "sibling points" could be awarded to applicants whose siblings were not studying in the school under application but had exercised their option to do so. Since the applicants' siblings concerned were at the time of application during the DPA stage studying in two other schools, The Ombudsman was of the view that the award of the "sibling points" in this particular case was inappropriate. The Ombudsman considered this complaint point partially substantiated.

113. Complaint Point (c): unreasonably transferring 100 Primary One school places from one School Net to another - after investigation, The Ombudsman appreciated that it was the time constraint which did not allow ED to provide the number of P1 school places to be available in Nets 62 and 63 for parents' information in early March 1998. However, it was pointed out that ED should have explained clearly in the "Choice of Schools Lists" that certain schools concerned were required to serve two nets and the effect thereon. Had ED adequately explained the allocation mechanism to the public, the misunderstanding would have been cleared. Hence, The Ombudsman considered that this complaint point was partially substantiated.

114. The Ombudsman's recommendation to consider reviewing the wording in relation to the award of "sibling points" as mentioned in the "Points System Applicable for the Allocation of Discretionary Places" with a view to preventing recurrence of similar complaints was accepted.

115. The Ombudsman was advised that a review of the wording of the Points System had been conducted by the POA Committee at its meeting on 2 December 1998. The POA Committee was of the view that the Points System served as a general guideline for schools to admit students during the DPA stage. In line with the spirit of School-based Management, schools should exercise their own discretion when awarding points to applicants under the Points System. In this connection, schools were advised to apply such discretion consistently in processing applications through seminars on POA exercise. The POA Committee decided that the wording of the Points System be retained.

116. The Ombudsman appreciated that ED had duly considered his recommendation. The Ombudsman also noted that the POA Committee had conducted a review on the wording in relation to the award of the Points System and decided the existing wording be retained. As such, The Ombudsman was prepared to accept that the existing wording be retained.

117. The Ombudsman's recommendation to consider adding a remark in the "Choice of School Lists" highlighting that certain primary school(s) might have to serve another school net to cater for the demand from that net was accepted.

118. The Ombudsman was informed that the recommendation had been discussed by the POA Committee on 1 June 1999. Members raised no objection to the proposed arrangement. All schools participating in the POA System were informed of the arrangement in late June 1999. No strong objection has been received from schools so far. The recommendation will be implemented in the next Central Allocation in March 2000.

Environmental Protection Department (EPD)

Case No. 1998/1685, 1998/1688, 1998/1737 : Improper handling of an application for Livestock Keeping Licence.

119. Complaints were lodged by some villagers in Ng Ka Tsuen, Yuen Long in July 1998 against the Agriculture & Fisheries Department (AFD), Lands Department (Lands D) and EPD for maladministration in handling an application for a Livestock Keeping Licence from a farm operator.

120. The farm of concern was originally a small farm engaged in chicken rearing in the past. The farm however switched to the rearing of pigs in about mid 1997 and built unauthorised structures as additional pigsties as well as wastewater treatment facilities very close to the residence of the nearby villagers. A number of complaints were made by the villagers to the relevant departments in relation to the illegal farm structures, the close proximity of the wastewater treatment facility, the offensive odour and the illegal discharge from the farm.

121. They questioned why a Livestock Keeping Licence could be issued to the farm by the authority when the farm had so many problems.

122. The Ombudsman conducted a thorough investigation of the case and concluded that the complaint against EPD was not substantiated.

123. As recommended by The Ombudsman to actively follow up the complaint until it is resolved, EPD staff have continued to keep the farm under close surveillance. Since issue of The Ombudsman's investigation report in December 1998, EPD staff have already conducted more than 30 inspections of the farm compared to the general practice of six inspections per year, inclusive of 10 joint inspections with AFD officers. Liaison with the complainants was closely maintained by telephone or site discussions at an interval of about twice a month. Pager numbers of the relevant EPD and AFD officers have also been given to the complainants to make it possible to arrange urgent investigations after office hours. EPD has initiated a prosecution against the farmer for an illegal discharge detected in April 1999.

124. At the request of EPD, the farmer has appointed a consultant to carry out improvement works for the wastewater treatment facilities. Test results of a discharge sample taken on 25 June 1999 indicated that the treated effluent met the statutory standards.

125. The farmer has also implemented some abatement measures to reduce odour. Subsequent to a series of investigations conducted by EPD and AFD, a draft proposal for further improvement measures was submitted by the farmer on 23 June 1999. EPD will continue to follow up the case until the problem is completely resolved.

126. To consider The Ombudsman's recommendation of setting up a statutory minimum distance requirement between a livestock farm and residential premises, AFD, EPD, Lands D and the Planning, Environment and Lands Bureau held a meeting on 12 March 1999 to explore the feasibility of implementation. The meeting considered that there were practical difficulties with the implementation as there were no objective criteria on which to set the distance, and that the odour could be blown far away at different directions depending on weather and topographical conditions. The meeting however recommended some alternative measures to prevent odour nuisance in future cases.

127. In response to The Ombudsman's recommendation of providing farmers with more detailed guidelines on sizing of waste treatment plant, EPD and AFD have organised, with the assistance of the Hong Kong Productivity Council, technical seminars for farmers on 25 and 30 March 1999. Guidance notes on the design (i.e. sizing) and operation of the livestock waste treatment plants were again distributed to the farmers.

128. On the recommendation of conducting regular inspections to farms, EPD has been conducting regular inspections to inspect the treatment facilities at a frequency of not less than six times per year. As indicated in paragraph 123 above, EPD has continued the stepped up surveillance to this particular farm.

Case No. 1998/1933, 1998/2013 : Failing to provide sufficient and advance notification to the residents living underneath the new flight paths about the likely impact of the airplane noise.

129. Please refer to Case No. 1998/1932, 1998/2012 under the Civil Aviation Department.

Government Secretariat - Civil Service Bureau (CSB)

Case No. 1998/0591 : Unfair examination arrangement for the complainant in the Common Recruitment Examination 1997.

130. The 1997 Common Recruitment Examination (CRE) was conducted in two parts - Part I and II. It is a standard practice that CSB makes special arrangements for individual candidates with a disability who require special assistance in sitting for the examination, including special examination venue and special equipments.

131. The complainant, a partially sighted candidate, sat for CRE Part I and was provided with magnified examination question papers (from A4 size to A3 size) and extended examination time (from 45 minutes to 60 minutes for the language papers). After the examination, the complainant rang up the Civil Service Examinations Unit (CSEU) responsible for arranging the examination and indicated he would prefer the Chinese Task paper in CRE Part II to be printed in bold, thick and enlarged print on A4 size paper if he was invited to CRE Part II. He stated that the enlarged papers for the Use of English paper in CRE Part I were "just acceptable" to him.

132. The complainant subsequently took CRE Part II on 10 January 1998 with the Chinese Task paper specially printed for him as requested (with Chinese characters in bold, thick and enlarged print on A4 size paper). The English Task paper was enlarged from A4 to A3 size as similarly arranged in CRE Part I.

133. The complainant complained to CSEU after sitting for CRE Part II that he had considerable difficulty in reading the English Task paper. He argued that his request for further enlargement was meant to cover both the Chinese and English Task papers. He demanded that another examination be arranged for him or special allowance be given in assessing his performance in the English Task paper.

134. After careful consideration, CSEU decided that the complainant's request could not be acceded to, as special examination arrangements had already been made to accommodate his requests as far as possible to enable him to sit for the examination. It would not be fair to other candidates if he were to be given a second chance or special allowance in marking his papers. CSEU also noted that the invigilator of the English Task paper had confirmed that the complainant had not made any complaints or special requests at the time of examination, when special arrangement could still be made.

135. On receipt of CSEU's reply, the complainant complained to The Ombudsman in March 1998. The Ombudsman completed his investigation in August 1998 and concluded the complaint was not substantiated. Nevertheless, The Ombudsman has made a recommendation to CSEU.

136. CSEU has implemented The Ombudsman's recommendation. CSEU has also reviewed the procedures for handling requests for special assistance from examination candidates with a disability such that all requests for special assistance will be confirmed with the candidates both verbally and in writing.

Case No. 1998/2396 : Failing to inform the complainant of the result of the Civil Service Bureau's investigation in respect of his complaint lodged with the Bureau.

137. The complainant was an ex-civil servant. He joined the Government as a Workman II in 1984 and last served in the Hong Kong Police Force on probation as a Traffic Warden before his service was terminated under CSR 186(1) on 16 June 1997.

138. In his letter of 19 June 1997 to the CSB, he enquired about the possibility of reverting back to his former office of Car Park Attendant II in the Water Supplies Department as well as his eligibility for any compensation or pension benefits on termination. An interim reply was issued to him on 4 July 1997 while the Commissioner of Police was requested to provide the necessary information for investigation into his complaint. Whilst the case was being processed internally within the Bureau, four more letters were received from him between February and August 1998 enquiring about the position of his case. The subject officer, who assumed the post in early July 1997, had not responded to his enquiries as she was unable to trace the relevant case file for follow-up action.

139. In August 1998, he filed a complaint to The Ombudsman about the failure of the Bureau to inform him of the result of his enquiry. Communication with the complainant was resumed upon receipt of his complaint to The Ombudsman. The Ombudsman conducted an investigation and the Investigation Report with recommendations was forwarded to the Bureau in March 1999. The Bureau accepted the findings and recommendations of the Report and apologised unreservedly for the way in which the complainant's case had been handled.

140. The two recommendations of The Ombudsman were accepted and implemented by the Bureau :

(a) a letter was issued to the complainant on 1 April 1999 to convey CSB's apology and to inform him that CSB would advise him of the outcome of the investigation into his case as soon as possible; and

(b) Civil Service Bureau Internal Circular No. 2/99 on the complaints/enquiries handling system in Civil Service Bureau was promulgated on 28 May 1999.

Government Secretariat - Home Affairs Bureau

Case No. 1998/0297 : Providing misleading information regarding the status of three historical buildings; abuse of power and misconduct of staff.

141. The complainant on behalf of a church lodged a complaint against the Antiquities and Monuments Office (AMO) of the former Broadcasting, Culture and Sport Bureau which has come under the Home Affairs Bureau's jurisdiction with effect from 9 April 1998 for :

(a) provision of misleading and inconsistent information regarding the status of three historical buildings, viz. the Vicarage, the Caretaker's Quarters and the Amah's Quarters of the church, proposed to be demolished under the Planning Application No. A/K1/101;

(b) abuse of power and impropriety in grading the entire church compound, with the exception of the Christian Centre, as "Grade II Historical Buildings"; and

(c) misconduct of the staff of the AMO for trespassing on the church's premises.

142. The complaint was received via The Ombudsman on 5 March 1998.

143. The church compound is occupied by a single storey church sanctuary erected in 1905 and three ancillary buildings – the Old Vicarage, built in 1909 and the Amah's Quarters and the Caretaker's Quarters, both built around 1910. There is also within the church compound a seven-storey Christian Centre constructed in 1976. The main church sanctuary was graded as a Grade II historical building by the Antiquities Advisory Board (AAB) in 1990 but the three ancillary buildings were not graded on that occasion.

144. The grading of historical buildings is a regular exercise conducted by AAB to assess the historical and architectural merits of historical buildings. The results will be used as a reference for the AAB and AMO to identify buildings for declaration as monuments under the Antiquities and Monuments Ordinance.

145. For church expansion purposes, the complainant submitted an application to the Planning Department (Plan D) for developing school and staff quarters within the church compound in November 1996. As the application proposed demolition of the church's three ancillary buildings, AMO was consulted and pleaded for the preservation of the three buildings

because of their historical significance. However, basing on AMO's response and its previous comments on a similar application by the church in 1994, the Plan D misinterpreted the whole church compound as having Grade II historical status.

146. On this basis, the Grade II status of these buildings was mentioned in the paper of the Metro Planning Committee (MPC) of the Town Planning Board (TPB). As the relevant MPC paper was not referred to the AMO, the misrepresentation of the grading of the three ancillary buildings could not be rectified.

147. After considering the application, the TPB advised the church in March 1997 that it did not approve the application. One of the five reasons for the rejection was the need to demolish the three ancillary buildings which were referred to as Grade II historical buildings. However, it should be stressed that the application was rejected not solely on the ground of heritage conservation.

148. At the request of the applicant, the application was reviewed in May 1997. Although the grading status of the three ancillary buildings was clarified and the Plan D explicitly informed the TPB members that those buildings were not yet graded, the application was still rejected.

149. At the request of the TPB, the Antiquities Advisory Board assessed the three ancillary buildings of the church in November 1997 and awarded a Grade II status to the entire church compound excluding the Christian Centre. Prior to the grading exercise, some members of the Antiquities Advisory Board and staff of the AMO visited the church's compound on 8 November 1997. However, the church maintained that the visit to inspect the church buildings was made without its written consent.

150. The complainant also felt aggrieved that the historical status of the three ancillary buildings remained unclear since the church submitted its application to redevelop the church compound in November 1996. The church also found it difficult to accept the subsequent rating of the entire church compound including its carpark as Grade II historical buildings.

151. Two complaint letters were sent to AMO in December 1997 and February 1998 respectively objecting to the grading of the church compound. The AAB considered the complaint a misunderstanding of the grading system and requested AMO to clarify with the church. Despite explanations by the AMO, the complainant subsequently lodged a complaint with The Ombudsman in March 1998 against AMO and Plan D for the complaint points set out above.

152. After an investigation by The Ombudsman, it was established that the complaint points (a) against AMO was substantiated whereas the complaint points (b) and (c) were both unsubstantiated.

153. In response to the recommendations of The Ombudsman, the AMO has taken the following actions :

(a) Letter of apology to the complainant

A letter of apology was issued on 8 September 1998 to the church over the unpleasant incident.

(b) Reminding staff to handle all future re-development applications with due care and diligence

Two special meetings were conducted with the staff of AMO in August 1998 to remind them to handle all re-development proposals with due care and diligence. Thereafter, staff responsible for handling re-development proposals meet monthly to discuss problems and difficulties encountered.

(c) Strengthening the co-ordination between Plan D and AMO

(i) AMO held a special meeting with the Plan D on 30 September 1998 to review critically the existing arrangements in processing redevelopment proposals which might affect sites of cultural heritage. The meeting agreed to a number of follow-up actions :

(A) the Plan D would seek the AMO's comments whenever redevelopment proposals involve pre-1960 buildings;

(B) for planning applications, the relevant papers would be forwarded to AMO for comments when considered necessary or the AMO be invited to attend the relevant meetings whenever necessary; and

(C) the AMO would provide Plan D with lists of historical buildings and archaeological sites with site plans and explanatory notes;

(ii) as a follow-up to point (C) under (i) above, a copy of the record which comprises 67 declared monuments, about 500 graded historical buildings and some 200 archaeological sites with detailed site plans and explanatory notes has been forwarded to

Plan D. Additional sites identified and assessed in the two recently completed territory wide surveys on historical buildings and archaeological sites will be incorporated into the record after completion of the analysis and study of the survey data; and

(iii) meetings between AMO and Plan D to discuss the impact of various development projects which may affect heritage sites and matters of common interest are being held from time to time.

Government Secretariat - Security Bureau

Case No. 1998/2689 : Failing to give the complainant a substantive reply in relation to his application for his wife and son's stay in Hong Kong.

154. In May 1995, the complainant's wife and son entered Hong Kong from the Mainland as visitors. After entry they applied to the Immigration Department (ImmD) for extensions of stay in Hong Kong on the ground that they had to look after the complainant, who was old and of poor health. The ImmD rejected their applications.

155. In January 1996, the complainant petitioned the former Governor against ImmD's decision to refuse the applications by his wife and son. In accordance with the established procedures for handling petitions to the Governor, the then Security Branch (SB)(currently the Security Bureau) was authorized to reply on behalf of the former Governor to the complainant's petition. Before replying to the petition, the SB would have to seek comments from the ImmD on the case.

156. Between March 1996 and April 1997, the complainant repeatedly wrote to the former Government House and the SB, asking for the outcome of his petition. As the SB had not yet received any comments from the ImmD, the SB could merely acknowledge receipt of the complainant's letters and immediately referred them to the ImmD for action, who was to review the refusal decisions before submitting comments to the SB.

157. The ImmD did not complete the review until April 1997. On 11 April 1997, the SB received a memorandum from ImmD stating that they decided to allow the complainant's wife to remain in Hong Kong on humanitarian grounds, whilst the complainant's son had to return to the Mainland. On the same day, the SB conveyed the ImmD's decision to the complainant by letter.

158. The Ombudsman was satisfied that the SB had acted expeditiously in referring the complainant's petition and subsequent letters to the ImmD for a review, and that the SB had monitored the progress of the review. However, before the ImmD came up with a decision, the SB was not in a position to give the complainant a substantive reply. The Ombudsman therefore found that the complainant's complaint against the SB was unsubstantiated, but his complaint against the ImmD was substantiated. The Ombudsman has also made recommendations to the SB and the ImmD.

159. The SB and the ImmD accepted The Ombudsman's recommendations and have taken action accordingly.

Home Affairs Department (HAD)

Case No. 1997/2687, 1998/0076 : Failing to conduct public consultation.

160. The complainants are flat owners of a private residential estate. They complained against the Lands Department and the Home Affairs Department for failing to conduct consultation before granting approval to a development company to construct three new residential towers in the estate in 1996, thus depriving the property owners there of access to such information.

161. All District Officers and Division Heads in HAD Headquarters have been reminded to strictly observe the guidelines in the two relevant General Circulars when considering the need for public consultation.

162. The Ombudsman is satisfied that HAD has fully complied with the recommendation.

Case No. 1998/0951 : Not adhering to the Department's own Working Guidelines in handling an application under Section 3A of the Building Management Ordinance in respect of the formation of an Owners' Corporation for a group of private residential buildings.

163. The complaint is against HAD for unreasonably approving the application for waiver of the land search fees from the Executive Committee of a proposed unified Owners' Incorporation of a private residential estate.

164. For The Ombudsman's recommendation to consider reviewing HAD's practice on the granting of waiver of land search fees and formulating a set of specific guidelines governing the circumstances under which a "second" waiver could be granted, HAD has reviewed its procedures for the granting of waiver of land search fees and come to the conclusion that HAD's usual practice of granting only one waiver should be the norm and a second waiver would continue to be granted in exceptional cases where it can be fully and completely justified, each case to be examined on its individual merits. HAD has reservations in drawing up guidelines on granting of a second waiver as this might imply that it is now policy to grant a second waiver. Also, there is no practical form such guidelines can take given that there are too many possible scenarios that could be encountered and a guideline would tend to say each case will be considered on its individual merits. These have been fully explained to The Ombudsman.

165. While recognising that HAD has duly considered the recommendation and reviewed the procedures, The Ombudsman remains of the view that some specific guidelines governing the granting of a second waiver should be formulated. In the light of The Ombudsman's latest advice, HAD had promulgated specific guidelines on the granting of a second waiver. The Ombudsman is satisfied that HAD has fully complied with the recommendation.

166. For The Ombudsman's recommendation to consider economising, where appropriate, the use of public funds such as providing photocopies of the ownership records obtained from the Land Registry, HAD has considered the option of photocopying ownership records obtained from the Land Registry and providing them free to the owners, but found that such an arrangement would be contrary to the provisions under the Land Registration (Fees) Regulations. Upon HAD's explanation, The Ombudsman has accepted that it would not be viable for HAD to provide photocopies of ownership records to the owners.

Case No. 1998/1047 : Impropriety in handling Tso matters and failing to reply to the complaint letters.

167. A member of a Tso complained against a District Officer's decision to register the appointment of a Tso manager and for delays in replying to his letters. The Ombudsman found the complainant's allegation regarding impropriety on the part of the District Officer in handling the appointment of the Tso unsubstantiated since the appointment was made by the Tso in a general meeting of the Tso members and passed by a majority of its members. However, The Ombudsman also found that the District Officer did not comply with the procedure laid down in General Circular No. 8/97 in handling correspondences with the complainant. Thus, the complaint regarding failure to reply to complaint letters was substantiated.

168. In compliance with The Ombudsman's recommendation, a letter of apology explaining matters was sent to the complainant.

Case No. 1998/1466 : Appointing the manager of a Tso without the consent of the members concerned and failing to take prompt action on complaint received.

169. A descendent of a Tso complained against a District Officer for appointing a Tso manager without the Tso members' consent and for failing to take prompt action on her complaint on the change of manager. The Ombudsman found the allegation regarding malpractice in appointment of the

manager unsubstantiated but, since the District Officer did not acknowledge receipt of a copy of a birth certificate sent by the complainant to the District Office, the complaint regarding failure to take prompt action was substantiated.

170. In compliance with The Ombudsman's recommendation, a letter of apology explaining the reasons for not sending a formal acknowledgment of receipt of copy of birth certificate from the complainant was sent.

Hong Kong Housing Society (Housing Society)

Case No. 1997/2433 : Maladministration in handling matters relating to the construction and sale of flats of a housing estate.

171. A Green Form purchaser of a Verbena Heights unit complained in February 1998 that the Housing Society failed to exercise appropriate supervision over the construction of the building. This led to the thicker than necessary structural walls in the building, which greatly reduced the internal floor area of his purchased unit. He also felt that he had been misled by Housing Society as the information on the areas of individual units contained in the sale brochures differed from those of the completed units. He also complained against the Housing Department for failing to inform him that the purchased unit was not an Home Ownership Scheme (HOS) unit and was aggrieved that he was not eligible for HOS mortgage privileges.

172. The definition of "saleable area" is now included in all sales brochures of the Housing Society, including those for resale units of Verbena Heights.

173. A separate booklet on resale of Flat-for-Sale Scheme (FFSS) units has been published to distinguish FFSS units from HOS units.

174. The Housing Society has always exercised tight control over its construction projects. The thickness of the walls in various blocks in the Verbena Heights are structural requirements and is not a result of lack of supervision on the contractor.

175. It is a statutory requirement for authorized persons to submit to the Legal Advisory and Conveyancing Office of the Lands Department a certified copy of saleable areas and the authorized person had mistakenly assumed the wall thickness to be uniform throughout the building. After a review on all saleable area calculations by an independent building surveyor, it was noted that due to the non-standard design of the buildings, some of the units have their areas overstated while others have their areas understated. For those overstated areas, the Housing Society refunded to the affected purchasers any excess purchase price and costs including overpaid stamp duty, interests and legal charges. For those understated cases, purchasers were not asked to pay any additional price. The Housing Society also allowed the purchasers to rescind the purchase with an option to rent the unit on a three-year term and provided them with a green form status for future purchase of government assisted housing.

176. To ensure the accuracy of measurements, the Housing Society has appointed independent surveyors to counter-check the information on areas of individual units provided by the project architects. The Housing Bureau considered these arrangements reasonable.

177. At present, there is no legislation regulating the disclosure of information in sales brochures by property developers in the sale of uncompleted flats. The Housing Bureau plans to introduce the Sales Descriptions of Uncompleted Residential Properties Bill in 1999/2000 to regulate the disclosure of sales information, including inter alia, the floor area measurement, by property developers. The Housing Society will observe the requirements of the future legislation.

Case No. 1998/0109 : Maladministration in handling matters relating to the construction and sale of flats of a housing estate.

178. A Green Form purchaser of a Verbena Heights unit (who had applied with assistance of the civil services Home Financing Scheme) complained in February 1998 that the Housing Society failed to exercise appropriate supervision over the project architect. This has led to discrepancies on the saleable area of units as disclosed by the sales brochures from that of the completed units. He also felt that the compensation packages offered by the Housing Society were unfair to public rental housing tenants who had returned vacant possession of their flats to the Housing Authority.

179. The definition of "saleable area" is now included in all sales brochures of the Housing Society, including those for resale units of Verbena Heights.

180. It is a statutory requirement for authorized persons to submit to the Legal Advisory and Conveyancing Office of the Lands Department a certified copy of saleable areas and the authorized person had mistakenly assumed the wall thickness to be uniform throughout the building. After a review of all saleable area calculations by an independent building surveyor, it was noted that due to the non-standard design of the buildings, some of the units have their areas overstated while others have their areas understated. For those overstated areas, the Housing Society refunded to the affected purchasers any excess purchase price and costs including overpaid stamp duty, interests and legal charges. For those understated cases, purchasers were not asked to pay any additional price. The Housing Society also allowed the purchasers to rescind the purchase with an option to rent the unit on a three-year term and provided them with green form status for future purchase of government assisted housing. In the complainant's case, special arrangements have also been made for him to dispose of his Verbena Heights flat and allowing him to

purchase another Flat-for-Sale Scheme unit at Kai Tak Garden Phase II should he wish to do so in future.

181. To ensure the accuracy of the information provided by the project architects, the Housing Society has appointed independent building surveyors to counter-check the information on areas of individual units provided by the project architects. The Housing Bureau considered these arrangements reasonable.

Hospital Authority (HA)

Case No. 1998/0747 : Failing to give the complainant proper medical treatment and improperly asking him to sign a "Discharge Against Medical Advice" form.

182. The complainant attended the Accident and Emergency Department (AED) of an HA Hospital. He was admitted to the Hospital for suspected cervical spine problem. Since the patient was not a Hong Kong citizen and his medical problem did not require immediate medical intervention, the attending doctor advised the patient that he could seek medical treatment upon returning to his home country. The patient agreed to the suggested arrangement. As the investigation, treatment and continued observation of his condition had not been completed before discharge, the patient was requested to sign the "Discharge Against Medical Advice" (DAMA) form. The attending doctor had provided the patient with a letter certifying his condition to enable him to seek medical treatment when he returned home.

183. The complainant later complained against the HA Hospital for :

(a) failure to provide proper medical treatment to him; and

(b) improperly requesting him to sign a DAMA form.

184. In the course of The Ombudsman's investigation, the medical certificate provided to the patient could not be located. Having reviewed the findings, The Ombudsman concluded that complaint point (a) was unsubstantiated; and complaint point (b) partially substantiated.

185. The Hospital management had conducted a comprehensive review and adopted the following improvement measures to prevent or minimize recurrence of similar incident :

(a) a series of communication forums had been conducted to remind medical staff to give clear explanations to patients on their medical conditions;

(b) a task group under HA Head Office had been formed to review the guidelines on the use of the DAMA form. A new "Discharge with Acknowledgment of Medical Advice" form has been designed to replace the DAMA form for patients wishing to discharge themselves after acknowledging that they have been given due medical advice;

and

(c) prevailing patient medical record management policies and practices had been reviewed and reinforced to ensure proper handling and safe-keeping of patients' medical records.

Case No. 1998/1134 : Failing to provide the complainants' son with immediate medical treatment as a result of the application of the triage system.

186. The complainants' son was referred by a general practitioner to attend an HA hospital for his eye problem. After assessment at the Acute Care Clinic of the Hospital, the patient was triaged to be suffering from a non-urgent eye condition and was given a non-urgent appointment in 11 months' time. The patient subsequently sought treatment from a private ophthalmologist and received a laser treatment. The complainants were dissatisfied with the triage system of the Hospital, and the long waiting time before their son could be attended by a doctor.

187. The Ombudsman noted that the triage system of the Acute Care Clinic of the Hospital is to ensure that priority treatment could be given to patients according to their clinical need. The patient in this case was assessed to be suffering from a non-urgent condition and hence advised to book for a non-urgent appointment. The assessment was conducted in accordance with the triage guidelines by a professionally trained triage nurse. The waiting time for appointment in this case was not at variance with that of other non-urgent cases. The patient had also been advised to return to the Clinic before the scheduled appointment should his eye condition deteriorate.

188. Having reviewed this case, The Ombudsman concluded that the complaint was unsubstantiated.

189. In response to The Ombudsman's recommendations, the following actions has been taken :

(a) the Hospital has put up notices and arrange regular announcements in both English and Cantonese in the waiting hall to :

(i) publicize the services provided by the Acute Care Clinic of the Hospital; and

(ii) heighten patients' awareness that those who have been triaged as having non-urgent eye problems would only be seen by doctors

through booked appointments at a later date;

(b) the Hospital has put up notices in the waiting hall informing patients of the expected waiting time for non-urgent appointment; and

(c) the Hospital has put up notices at both the waiting hall and the appointment office providing the latest information on the waiting time of other HA eye specialist clinics for patients' reference.

Case No. 1998/1480 : Wrongly giving the complainant epidural injection that was not preservative-free; not informing her of the mistake immediately; and failing to provide adequate supervision on individual hospitals, thus causing the mistake.

190. The complainant delivered a baby girl in an HA hospital on 13 December 1997. During the labour process, she was given epidural injection. She only realized in late April 1998 that the epidural injection she received contained preservative when it was disclosed by the media. The complainant felt that she was deprived of her right to be told, and was concerned about whether her new born baby would be affected by the epidural injection.

191. Since the introduction of the Centralized Intravenous Admixture Service (CIVA Service) in March 1997, the pharmacy of the HA hospital prepared epidural infusion for the anaesthetic department in an aseptic environment. The anaesthetic "Fentanyl" had been used to centrally prepare epidural infusion. Initially, Fentanyl in 2ml ampoule size was used. To improve the efficiency of the preparation process, starting from 7 April 1997, Fentanyl in 10 ml vial pack was used instead to reduce the number of ampoules to be opened.

192. As informed by the manufacturer of Fentanyl on 12 March 1998, the Hospital discovered that the 10 ml vial pack used during the period from 7 April 1997 to 12 March 1998 was not preservative-free. During the period, a total of 526 patients were given Fentanyl for epidural anaesthesia which contained the preservative "Parabens".

193. After the error was discovered, HA immediately carried out an intensive investigation on the effects of Parabens on patients. Vigorous literature review had been conducted and expert advice sought. The results showed that Fentanyl containing Parabens had no harmful effects. The only adverse effect may be allergic reaction. The clinicians of the Hospital had reviewed all the case records and found no evidence of such acute reaction. It was therefore considered not necessary to recall the patients. After balancing

between the patients' best interests and their right to information, HA decided that it was not appropriate to inform the concerned mothers as it would only cause them unnecessary panic and worry.

194. However, as a result of media enquiries, HA issued a press release on 17 April 1998 on the incident. In order to handle possible enquiries from the mothers involved and to alleviate their concern, the Hospital had set up a hotline service from 18 April to 1 May 1998 to answer their questions.

195. The Ombudsman noted that HA's decision of not informing the complainant and other mothers of the incident was consistent with its standing practice, i.e. patients should be informed only when actual harm or adverse effects have occurred or are anticipated. Having reviewed the investigation findings, The Ombudsman considered that HA had already immediately taken remedial measures as soon as the error was discovered.

196. The Ombudsman concluded that complaint against HA for wrongly giving the complainant epidural injection that was not preservative-free was substantiated; and the complaints against HA for not informing the complainant of the mistake immediately and failing to provide adequate supervision on individual hospitals unsubstantiated.

197. The Ombudsman noted that HA has adopted the following improvement measures to prevent recurrence of similar incident :

(a) <u>At the individual hospital level (For Aseptic Dispensing)</u>

(i) All dispensing protocols and formulary have been reviewed since the incident;

(ii) the source, manufacturer, pack size and any prerequisite of each ingredient are specified on the worksheet for each preparation;

(iii) full product information of each ingredient is filed with the respective master formula; and

(iv) when any amendment to ingredient specification become necessary, it must be endorsed by a pharmacist and must be accompanied with hard copy of manufacturers' product information.

(b) <u>At the Head Office level (For All Products)</u>

(i) Review product inserts of pharmaceuticals against standard

recommendations to ensure all product data sheets contain relevant information, with a view to compiling a database to enable structured recording and easy retrieval of relevant information;

(ii) review labels and the packages of pharmaceutical products and require the manufacturers to supply more information to the HA;

(iii) all pharmaceutical staff are reminded to be more cautious in the checking of product inserts, when in doubt, all information should be double-checked; and

(iv) all pharmaceutical staff are reminded to adhere to good pharmaceutical practice at all times.

198. In response to The Ombudsman's recommendations, the following actions has been taken :

(a) HA issued an apology letter to the complainant for inappropriately giving her epidural injection with anaesthetic "Fentanyl" which contained the preservative "Parabens" during her labour. She was reassured once again that there would be no harmful effect nor potential risk to both herself and her baby; and

(b) actions have been taken to implement the improvement measures.

Housing Department (HD)

Case No. 1997/1988 : Unreasonably and unfairly charging management fees in a HOS estate at a uniform rate irrespective of the sizes of flats and the undivided shares allotted.

199. There were two different charging methods in Home Ownership Scheme (HOS) estates managed by the Hong Kong Housing Authority (HKHA): for estates completed prior to 1989, owners were required to pay management fees set at a flat rate, and for estates completed thereafter, they were required to pay management fees according to the undivided shares allotted. Since King Ming Court was completed in 1988, the uniform rate of management fee was adopted. The Owners' Association of the Court complained that such a charging method was unfair to those owners whose flats were smaller than others in the Court.

200. At the meeting held on 3 September 1998, the Home Ownership Committee (HOC) of the HKHA endorsed the proposal to change the charging method of management fees in 44 HOS estates built before 1989 from a uniform rate to differential rates based on undivided shares as laid down in the respective Deeds of Mutual Covenant. The change has taken effect on 1 April 1999.

Case No. 1997/2136 : Unreasonably deleting the complainant's name from the tenancy and failing to provide rehousing upon clearance of the housing estate.

201. The complainant shared a flat in Shek Lei (II) Estate with his nephew who was the registered tenant. Both of them subsequently got married, and lived with their wives and children in the same flat. In December 1995, the Department announced the redevelopment of the Estate. In response, the complainant and his nephew applied for addition of their wives and children to the tenancy, splitting of tenancy and allocation of separate housing flats.

202. Since the complainant was not the registered tenant, the Department had to delete the complainant from the tenancy after he had got married and could not accept his application for addition and splitting. On the deletion from the tenancy, the complainant and his family would have failed to meet the requirements for rehousing upon redevelopment of the Estate, and therefore would not be allocated public housing. In order not to delay the allocation arrangements for the registered tenant and his family (who were eligible for rehousing), the Department deleted the complainant from the tenancy.

203. Since the Department had approved a similar application for splitting made by another tenant, The Ombudsman considered the Department's approval improper and unfair to other applicants.

204. A think-tank has been set up to review various management policies, (including the splitting policy) with a view to removing possible inconsistency.

Case No. 1997/2217 : Unreasonably deleting the complainant's name from the tenancy and failing to provide rehousing upon clearance of the housing estate.

205. The complainant shared a flat in Shek Lei (II) Estate with his brother who was the registered tenant. Both of them subsequently got married and lived with their wives and children in the same flat. In December 1995, the Department announced the redevelopment of the Estate. In response, the complainant and his brother applied for addition of their wives and children to the tenancy, splitting of tenancy and allocation of separate housing flats.

206. Since the complainant was not the registered tenant, the Department had to delete the complainant from the tenancy after he had got married and could not accept his application for addition and splitting. On the deletion from the tenancy, the complainant and his family would have failed to meet the requirements for rehousing upon redevelopment of the Estate, and therefore would not be allocated public housing. In order not to delay the allocation arrangements for the registered tenant and his family (who were eligible for rehousing), the Department deleted the complainant from the tenancy.

207. Since the Department had approved a similar application for splitting made by another tenant, The Ombudsman considered the Department's approval improper and unfair to other applicants.

208. A think-tank has been set up to review various management policies, (including the splitting policy) with a view to removing possible inconsistency.

Case No. 1997/2619 : Delay in processing the application for inheritance of tenancy.

209. The complainant applied for inheritance of a tenancy of a public housing flat in Shek Pai Wan Estate in November 1995 with the written consent of his younger brother, after the death of the tenant (his mother). The application, however, could not be further processed because of the lack of

income proof from the younger brother. After the announcement of the redevelopment of the Estate in mid-1996, the younger brother, who was deaf and dumb, recanted his previous consent and insisted to become tenant. The complainant was dissatisfied that HD had delayed in processing his application, so that he could not inherit the tenancy before his younger brother recanted his consent.

210. In response to The Ombudsman's recommendation, the Management Branch Instruction No. M11/98 on "Application for Transfer of Tenancy" has been issued on 9 September 1998 for staff compliance.

211. The Department will continue to offer assistance to those with special needs.

Case No. 1998/0184 : Failing to notify the complainants who were landowners on land resumption; lack of response to their objection letter and delay in implementing the clearance exercise.

212. The complainants who were landowners of Shek Po Tsuen, were informed by the tenants in June 1997 that the Government would implement a clearance exercise in Shek Po Tsuen in December 1997. In response, the complainants sent an objection letter to the District Officer/Yuen Long who subsequently referred the letter to the HD and Lands Department (Lands D) for reply. However, both of the Departments did not make a direct reply to the complainants. The complainants were dissatisfied that the HD and Lands D had failed to notify the landowners on land resumption and had delayed in implementing the clearance exercise without explanation.

213. The Ombudsman's recommendations have been incorporated in the Operations and Redevelopment Division Circular No. 2/98 on "Handling of Referrals and Postponement of Clearance" and Departmental General Circular No. 3/99 on "Procedures in Handling Public Complaints".

Case No. 1998/0227 : Impropriety in handling an incident of lost-items reported by the complainant who was a tenant.

214. On 23 December 1997, some persons left a dog in Kai Yip Estate Office. Later a man came to the Office and picked the dog, but the security guard did not record the case until 27 December 1997. As the security guard was dismissed and the case record was incomplete, it was difficult to ascertain whether the dog belonged to the complainant.

215. The existing procedures in handling reports of lost-items in estate offices have been reviewed. The relevant guidelines have been drawn up and will be issued for staff compliance.

Case No. 1998/0902 : Mishandling the complainant's application for public housing under the Single Elderly Persons Scheme.

216. The complainant, who is a single senior citizen, applied for public housing under the Single Elderly Persons Priority Scheme in May 1995. In making an enquiry with the Department in April 1998, he was told that the Department had sent a letter offering a flat in Tin Wan Estate to him. However, as he did not turn up for completion of the intake formalities on the scheduled date, the offer was cancelled. He claimed that he had not received the Department's offer letter, and therefore was dissatisfied that the Department had sent him a standard letter stating that his refusal to accept the housing offer in Tin Wan Estate was considered "reasonable" by the Department.

217. Applications Section Circular No. 3/98 on "Speed up Letting of Flats" has been issued on 2 June 1998 to estate staff for compliance of the procedure in contacting the applicants for not-turning-up for intake.

218. A letter of apology has been issued to the complainant on 29 September 1998.

219. The wording of the standard letter (to applicants who have not turned up for intake) has been revised and put into use since July 1998 to convey a clearer and more accurate message to applicants, with a view to minimising the chances for misunderstanding.

Case No. 1998/1231, 1998/1650, 1998/1666, 1998/2911, 1998/2985, 1998/3028, 1998/3211 : Unreasonably laying a communal salt water pipe which ran through the complainants' HOS flats without their knowledge.

220. In the supply of salt water to the lower floor flats of Kwong Ming Court, a section of the exposed communal salt water pipe (32 mm in diameter) is routed through the kitchen ceiling of the flats on 23/F and 11/F. The complainants claimed that such a design was not mentioned in the relevant sales brochures, and that their attention had never been drawn to this point at the time of flat purchase. Furthermore, they were worried that if the salt water pipe burst, not only their families would be jeopardised, but losses of their household property would also result.

221. The plumbing design is a standard design for Harmony 1-Option 7 blocks and has been approved by the Water Authority. In response to the complaints lodged by the complainants in Kwong Ming Court, the design of the building has been revised. The communal salt water pipes will be re-routed to the outside of flats in the forthcoming editions of Harmony standard drawings.

222. The salt water pipes passing through the flats were not indicated in the sales brochure as it was impossible to include every detail. Generally the floor plans in sales brochures only briefly show the layout of each floor. The salt water pipe in question is situated at ceiling level and was not indicated in the floor plan. The Department, after review, has improved the content of the sales brochures, starting from HOS Phase 19C, to show such exposed pipes on the floor layout plan.

223. The Property Management Agent (PMA) of Kwong Ming Court has consulted the views of the owners on the proposal of conducting regular inspection of the communal pipes inside their flats. The PMA has adopted the views of the majority of owners and has conducted regular inspection on a quarterly basis with effect from March 1999.

224. Under the Deed of Mutual Covenant, existing insurance protection for claims arising from burst of pipes in the Court are covered by the Collective Fire & Extra Perils and Public Liability Insurance Policies. It would not be appropriate to require the Housing Authority (HA) to provide household insurance as additional protection to the concerned owners' property that is beyond HA's fault or responsibilities.

225. However, the Department, as the estate manager, has consulted the views of the owners in respect of the Department arranging household insurance for the owners with the premium to be paid by themselves or to be paid from the management fee. Indicative premium for the household insurance was explored and owners were consulted of the arrangement. Of the 104 out of 224 owners who responded to an opinion survey conducted by the PMA in May 1999, the majority (78 owners) disagreed to the arrangement. Only 19 agreed to have the insurance premium charged to the management fee and one agreed to pay by the insured owners.

226. Since there was no intention of deceiving the Home Ownership Scheme (HOS) purchasers in the case of Kwong Ming Court, the Department does not agree to The Ombudsman's allegation that the Department has "selectively" provided information on the sales brochure and therefore should issue written apologies to the complainants. The Department however regrets for the anxiety and disappointment that were caused by the incident to the

concerned owners.

Case No. 1998/1274 : Mishandling the complainant's application for the deletion of names from the HOS tenancy.

227. The complainants (a couple) applied to purchase an Home Ownership Scheme (HOS) Phase 18B flat. In the vetting interview, their names were found duplicated in an HOS tenancy at Yue Tin Court (husband) and a Private Sector Participation Scheme (PSPS) tenancy at Kornhill (wife) respectively, and they were requested to undertake deletion from the respective tenancies. The husband's name was deleted in January 1997 without documentary proof but the wife's name was not deleted until May 1998 when the relevant document was provided. The complainants complained that there was a disparity in the treatment of their deletion applications.

228. In order to standardise the procedures for deletion of household members in HOS and PSPS estates, the Management Branch Instruction No. M30/98 on "Deletion in HOS and PSPS Estates" has been issued on 31 December 1998 for staff compliance.

229. A letter of apology has been issued to the complainant on 14 December 1998.

Case No. 1998/1462 : Improperly handling the complainant's application and complaint as well as poor attitude of a member of the staff.

230. The complainant applied for Home Ownership Scheme (HOS) Phase 19C by "Green Form". In making an enquiry about his application with the Home Ownership Centre (HOC), he was dissatisfied with the poor attitude of an HOC staff. Besides, he was dissatisfied that upon receipt of his complaint against the HOC staff through the HD Hotline, the Department disclosed his particulars to the complainee's supervisor who was also involved in the complaint case.

231. Management Branch Instruction No. M29/98 on "Interview with Tenants" has been issued on 29 December 1998 to remind all management staff to record down the particulars after interview with tenants.

232. Departmental General Circular No. 3/99 on "Procedures in Handling Public Complaints" has been issued on 30 March 1999 to remind the complaint officers not to assign any staff under complaint to be responsible for investigation of the complaint.

233. The Ombudsman's recommendations have been disseminated to all staff through the in-house journal of the Department - "House Talk" in January 1999.

Case No. 1998/1701 : Delay in handling the complainant's application for external transfer on medical grounds.

234. In April 1997, the complainant (a tenant of Choi Wan II Estate) applied in writing for external transfer on medical grounds. She alleged that she had waited for over a year and although numerous telephone enquiries had been made, the estate staff could not give her a definite reply.

235. The application could not be processed further until the relevant medical supporting documents were received at the end of August 1997, and the occupancy position of the complainant's flat was confirmed. Subsequently, the complainant completed an application form for special transfer in June 1998. Since August 1998, five transfer offers have been made by the Department but they were all turned down by the complainant.

236. Management Branch Instruction No. M34/99 on "Guidelines on Handling Application for Special Transfer on Social or Medical Grounds" has been issued on 28 June 1999 for the compliance of the estate staff, with a view to enhancing the monitoring of the progress of public housing tenants' applications for transfer and improving the quality of service.

Case No. 1998/1713 : Mishandling the complainant's cancellation of autopayment of rent and not putting the rent arrears notices in envelopes.

237. The complainant (an ex-public rental housing tenant whose tenancy had been terminated by the Notice-to-Quit) complained that :

(a) although the Department had stopped his autopayment of rent in February 1998, the Department debited his monthly rental payment from his autopay account in March and April 1998. The autopay arrangement was, however, found to have been stopped again in May 1998 without prior notice; and

(b) the Department had sent him the rent arrears notices without putting them in envelopes, in breach of the Personal Data (Privacy) Ordinance.

238. A letter of apology has been offered to the complainant on 1 February 1999.

239. Management Branch Instruction No. M32/99 on "Cancellation of Autopay upon Issue of Notice-to-Quit" has been issued on 14 June 1999 to remind the management staff to take prompt action in the cancellation of the tenant's autopayment of rent upon service of Notice-to-Quit and to give the tenant a prior written notification on arrangements for payment of mesne profit.

Case No. 1998/1733 : Mishandling the complainant's application for waiver of overdue interest payment.

240. The complainant's father purchased an Home Ownership Scheme Phase 18C flat, and had to settle the balance of payment by 20 April 1998. The purchaser died on 31 March 1998, and the complainant inherited the property. The complainant claimed that she needed time to deal with the relevant documentation in connection with the death of her father, and was therefore unable to pay the remaining balance in time. Since April 1998, she has repeatedly applied for waiver of overdue interest payment.

241. Under the existing policy, a waiver application can be considered in case of genuine hardship. The complainant's application could not be processed any further since no documents in support of genuine hardship were provided by her despite repeated requests.

242. The Department will state in the notifications to the applicants requesting for waiver of overdue interest payment that financial hardship is one of the major considerations in approving applications.

Case No. 1998/3120 : Mishandling the complainant's application for deletion of tenancy.

243. The complainant applied in 1993 on grounds of marriage to transfer his share of ownership of a flat in Ka Lung Court to his father. His application was cancelled in January 1994 since the necessary supporting documents (e.g. marriage certificate) were not provided as required. Subsequently, a consent to assign his share of ownership to his mother was issued by the Department in October 1994. The deletion of tenancy, however, could not be effected as the complainant had not informed the estate office of the execution of the transfer and had not provided the relevant documentary proof.

244. In processing the request for deletion of tenancy, the estate staff asked the complainant to sign an undertaking to forfeit all future public housing benefits without making reference to his marriage, which was the reason for the tenancy deletion.

245. A letter of apology has been issued to the complainant on 30 April 1999.

246. Management Branch Instruction No. M30/98 on "Deletion in HOS and PSPS Estates" has been issued on 31 December 1998 for staff compliance.

247. Staff training will be strengthened accordingly.

Case No. 1998/3248 : Mishandling the complainant's application to purchase an HOS flat.

248. The complainant applied to purchase an Home Ownership Scheme (HOS) flat under Phase 19C with his mother and brother by "White Form". Upon his request, his mother's name was deleted from the application. The application was therefore changed from Nuclear to Non-nuclear White status. However, the previous Nuclear White priority number was mistakenly entered into his flat selection letter. The mistake was detected after the complainant had selected an HOS flat in accordance with the wrong priority number, and the selection was cancelled.

249. A letter of apology has been issued to the complainant on 21 May 1999.

250. The current checking procedure for manual issuing of flat selection letters before the implementation of Home Ownership Centre Imaging System Phase III has been reviewed and relevant guidelines have been issued for staff compliance.

Immigration Department (ImmD)

Case No. 1998/0329 : Delay in processing the complainant's applications for Hong Kong Special Administrative Region passport and the Hong Kong Permanent Identity Card.

251. The complainant was born in China in 1971. He was the holder of a PRC Passport and a student in Singapore at the time of complaint. His father was a Chinese citizen who had the right of abode in Hong Kong at the time of the complainant's birth.

252. On 21 July 1997 the complainant submitted applications for Hong Kong Special Administrative Region (HKSAR) passport and Hong Kong Permanent Identity Card (PIC) via the Chinese Embassy in Singapore, but the applications were not received by the ImmD until 6 August 1997. On the understanding that the applications' result would be notified within six to eight weeks' time, the complainant inquired about his applications on 12 December 1997, but was informed that the applications were still under process. In January 1998, the complainant arrived in Hong Kong and had an interview with ImmD's staff on 26 January 1998. He was told that his case was a special one requiring further consideration. Feeling aggrieved by the delay on the part of the ImmD in processing his applications, the complainant lodged a complaint with The Ombudsman against the ImmD.

253. The Ombudsman's Office noted that the unprecedented nature and the legal complications involved in this case were the main reasons for the applications to require longer processing time. The case had also involved two applications (for the PIC and the HKSAR passport) which were inter-linked and this had added complexity to it. The consideration process was continual, and delay was also not evident. Having considered all relevant materials in this case, The Ombudsman found that this complaint was unsubstantiated.

254. The Ombudsman recommends that the ImmD introduce clarification in the relevant guidance notes in regard to the requirement, where applicable, of the possession of the Certificate of Entitlement for certain category of PIC applicants.

255. In view of the on-going development of the right of abode issue arising from the Court of Final Appeal's judgment which may have implications on the Certificate of Entitlement scheme, the ImmD will arrange to include the relevant information about the requirement in the relevant guidance notes once the situation is clear.

256. For those non-routine HKSAR passport applications where the published processing time frame cannot be met, the ImmD have taken measures to send interim replies to the applicants and inform them the progress of their applications.

Case No. 1998/0876: Delay in processing the complainant's application for a Hong Kong Special Administrative Region passport and in attending to his complaint.

257. The complainant submitted an application for Hong Kong Special Administrative Region (HKSAR) passport at the drop-in box at Tai Po Immigration office on 10 January 1998. On 17 February 1998 he attended the immigration office to provide supporting documents regarding his claim to Chinese nationality and requested priority to be given to his application on the grounds that he wished to travel on a passport rather than his Hong Kong Certificate of Identity (valid until 2006), and that he intended to travel around the end of March 1998. On 26 March 1998, he lodged a complaint by e-mail against the inefficient handling of his passport application. The complaint was copied to The Ombudsman. Whilst the ImmD was attending to his complaint and his application, he repeated his complaint on 2 April 1998 to the ImmD by fax and again copied it to The Ombudsman. On the same day, his application was approved. He collected his passport on 3 April 1998.

258. The Ombudsman noted that the case was a non-routine application that required record checks and further supporting documents from the applicant. The waiting time for non-routine applications would vary from case to case and also depend on the volume of such applications and the resources position at a given time. Besides, the complainant's application did not fall within the priority category because he held a Hong Kong Certificate of Identity that would be valid until 2006. His reason for requesting early processing of his application did not merit special consideration under the ImmD's priority scheme. Therefore, The Ombudsman found that there was no undue delay in processing the complainant's application.

259. The Ombudsman also noticed that the complainant had lodged two complaints on 26 March 1998 and 2 April 1998 respectively. Before the ImmD could give a reply to the first complaint, the complainant contacted the Department by phone on 30 March 1998. The ImmD took the opportunity to acknowledge the complaint. As regards the second complaint lodged on 2 April 1998, the ImmD acknowledged receipt by phone on the same day. A full reply was sent to the complainant on 27 April 98 after an investigation into the complaint was completed. Under the circumstances, The Ombudsman found that this complaint was unsubstantiated.

260. In response to The Ombudsman's recommendations, amendment to the messages on the Internet Webpage has been effected to indicate that the meeting of the performance pledge(s) will also depend on the circumstances of individual cases. Corresponding amendments to the Notes of Guidance and acknowledge cards will be effected when the documents are due for reprint after exhausting the remaining stock.

261. For non-routine HKSAR passport applications, the ImmD has taken measures by informing the applicants by letter the prospective completion dates of their applications when they have submitted all their documentary proofs.

Case No. 1998/1916: Mistakenly requesting the Correctional Services Department to bring the complainant to the immigration office for an interview.

262. The complainant was detained in the Victoria Prison (VP) pending deportation to his home country. On 15 January 1998, at 9:28 a.m. he was taken by staff of the Correctional Services Department from the VP to the Victoria Immigration Centre (VIC) for an interview with an immigration officer. He had sat in the immigration office for about two hours without being interviewed and was later informed that he was not supposedly to be interviewed on that day. At 11:55 a.m. he was escorted back to the VP. The complainant later came to know that the VP was visited by Visiting Justices of Peace on the morning of 15 January 1998. He was dissatisfied that he had been deprived of an opportunity to meet the Visiting Justices of Peace. Feeling aggrieved, he lodged a complaint to The Ombudsman.

263. The Ombudsman found that the complaint was substantiated and noted that the above-mentioned mistake was a human error made by one of the immigration staff. As a result, no immigration officers interviewed the complainant on the morning of 15 January 1998. As regards the schedule of Visiting Justices of Peace, it was prepared by the Government Secretariat. Neither the management of the VP, nor the immigration staff could have known the exact date of the visit beforehand. Prior to the visit, the complainant did not raise any request for interview with the Visiting Justices of Peace. Therefore, there was no reason for the ImmD's staff to prevent the complainant from meeting the Visiting Justices of Peace.

264. In response to The Ombudsman's recommendations, written apologies were sent out to the complainant and the Correctional Services Department within one week upon receipt of The Ombudsman's report.

Case No. 1999/0273: Delay in handling the complainant's application for his wife and son's stay referred to the department by the Security Bureau.

265. The wife and son of the complainant arrived in Hong Kong from the Mainland as visitors in 1995. Subsequently they applied to stay in Hong Kong in order to take care of the complainant who was ill, but their applications were refused by the ImmD. The complainant then wrote to the former Governor for help. His letter and subsequent reminders were referred to the then Security Branch (currently the Security Bureau) for a reply, who then re-directed all the letters to the ImmD for a review of the case. However, due to heavy workload at that period and the loss of the relevant files, the ImmD did not re-consider the cases until late 1996. After considering all the supporting documents re-submitted by the complainant, the ImmD decided to allow the complainant's wife to remain in Hong Kong for residence in April 1997 but refused the application by his son. In view of the delay in giving him a reply regarding the applications for stay of his wife and son, the complainant lodged a complaint to The Ombudsman. Having looked into the case, The Ombudsman found that this case was substantiated.

266. In response to The Ombudsman's recommendation, a written apology was sent out to the complainant within one week upon receipt of The Ombudsman's report.

Inland Revenue Department (IRD)

Case No. 1998/1770: Failing to handle an estate duty case in accordance with the Estate Duty Ordinance; adopting a double standard towards the clients; abuse of power and delay in advising the complainant on the submission of an account.

267. The complainant's mother was a Hong Kong resident. She passed away outside Hong Kong. The administratrix of the estate sent a statement of the deceased's estate to the complainant through her solicitors and sought the complainant's agreement to distribute the estate. The complainant reported the case to the Estate Duty Office (EDO). EDO raised enquiries after receiving the report and concluded that there was no estate duty liability as the estate was held outside Hong Kong. The complainant contended that EDO's decision was incorrect. The Ombudsman found that there was no evidence to support the complainant's contention. The complaints were unsubstantiated.

268. To assist taxpayers applying for probate, the Probate Registry (PR) produced a booklet entitled "Probate Registry". EDO distributed approximately 700 to 800 copies of the booklet each month. In early 1998, the PR was revising the booklet and was unable to replenish the stock kept by the EDO. EDO did not have resources to photocopy the whole booklet which contained eight pages. As a temporary measure and with the agreement of the PR, EDO extracted some important notes from the booklet and prepared an information leaflet for the information of taxpayers. The PR had confirmed that the leaflet served the purpose of providing general information to applicants for probate on the steps to be taken after obtaining the estate duty exemption certificate. The complainant alleged that EDO had abused the power of the PR by producing an incomplete information leaflet. While appreciating the positive and expeditious measure taken by the EDO, The Ombudsman did not accept the lack of resources as an excuse for omitting some material parts of the original booklet and found the complaint in this respect partially substantiated.

269. The Ombudsman's recommendations were duly implemented.

Case No. 1998/3328: Over-assessing the complainant's tax in an identical manner for two consecutive tax years.

270. The complainant is a civil servant. In the year of assessment 1997/98, he received Home Finance Allowance (Rent) (HFA(Rent)) and utilised part of the allowance to pay rent for quarters. IRD miscalculated his income by

aggregating his basic salary, acting allowance and HFA(Rent), and further grossing up his liability by 10% in respect of his receipt of the HFA(Rent). The effect was an over-assessment of his tax payable by nearly $30,000. A similar mistake occurred in the year of assessment 1996/97.

271. The Ombudsman found that the mistakes in both years were caused by the automatic matching of the income amounts as reported by the complainant and his employer. To the extent of the amount utilised to pay rent, the HFA(Rent) is not taxed as income. Instead, an amount equal to 10% of the total income (excluding the HFA(Rent) used to pay rent) is assessed as "quarters value". Nevertheless, the Treasury included the whole amount of HFA(Rent) received by the complainant as taxable payroll emoluments in its Return of Payroll Emoluments (IR56C). The computer matching programme captured the higher figure reported by the Treasury and issued assessment accordingly, thus resulting in the over-assessment. It has been IRD's practice to use a special indicator to identify cases where automatic income matching is considered inappropriate. IRD officer forgot to insert the indicator on settling the complainant's objection for the year of assessment 1996/97.

272. The Ombudsman appreciated that, with a huge number of demand notes issued annually, automation of the assessment process is inevitable and that it would be impracticable for the IRD to conduct final checks on all Notices of Assessment and Demand for Tax before they are sent to the taxpayers. The Ombudsman was pleased to note that IRD had taken prompt remedial actions by extending an apology to the complainant, sending him a revised assessment and setting a special indicator for the complainant in the computer record to avoid recurrence of the mistake.

273. As a further measure to ensure accuracy, IRD had requested the Director of Accounting Services (DAS) to consider the feasibility of segregating the HFA(Rent) into two parts in the IR56C: (i) rent payment to be shown in the box "Deduction of Rent"; and (ii) cash allowance forming part of the total income to be shown in the boxes "Taxable Payroll Emoluments" and "Analysis of Taxable payroll Emoluments". The Ombudsman recommended that IRD should actively follow up the matter with the DAS.

274. DAS had indicated that there would be difficulty in implementing IRD's proposal due to lack of computer resources. IRD is actively devising a better internal control system to avoid similar error in assessing the HFA(Rent).

Case No. 1998/2180: Failing to respond to the complainant's letter within a reasonable period of time.

275. Upon the request from an agent in the United States, the bailiffs' office in Hong Kong served a summons from the United States on the complainant in July 1997. The service was unsuccessful and a second attempt was made in May 1998. It failed again. The bailiffs then left a message at the complainant's office on 17 and 25 June 1998 requesting him to contact the Bailiffs Kowloon Summons Office. In response, the complainant sent a letter to the Judiciary Administrator (JA) on 30 June 1998 querying about the manner of the bailiffs in handling the matter. He alleged that the bailiffs were by-passing his legal representative both in Hong Kong and abroad and thus breached the Codes of Professional Conduct. Failing to receive a response from the JA, he complained to The Ombudsman.

276. As the service of foreign process is governed by the Rules of the High Court, the complainant's queries on the manner of the service in his case was outside the purview of the JA. The letter of the complainant was referred to the Registrar of the High Court for direction. It was the Court's decision to serve the summons personally on the complainant. Whether the Court considered it appropriate to send him a reply was also a judicial decision.

277. Nevertheless, the JA office accepted that an interim reply should have been sent to the complainant informing him that his letter had been placed before the Registrar of the High Court for direction.

278. It is the practice of the JA office to inform the enquirer/complainant that his/her enquiries/complaints would be referred to the appropriate authority for consideration where it is appropriate to do so. A memorandum was issued on 2 February 1999 to all section heads of the Judiciary reminding them of the practice and the procedures to do so.

279. The JA office has already sent the complainant a letter on 26 March 1999, explaining the facts of the case to him and extending an apology for any inconvenience caused as a result of the absence of an acknowledgement of his letter.

The Land Registry (LR)

Case No. 1997/2591: Failing to enter correctly the complainant's ownership of a property on the land record.

280. The complainant owned a property (the property) which she acquired jointly with her husband and her mother in 1994. On 18 October 1997, the complainant offered the property for sale through an estate agent. The next day, the complainant was informed by the estate agent that according to the land search they made, the complainant, her husband and her mother were not the current owner of the property. The complainant then asked the estate agent to conduct a land search again. On 20 October 1997, the estate agent told the complainant that the result of the second search was the same as the previous one and faxed to the complainant a copy of the relevant computerised register. The estate agent refused to market the property until the ownership to the property was clarified.

281. On 21 October 1997, the complainant and her husband conducted a land search of the property at the Shatin New Territories Land Registry (STNTLR). The computerised register produced did not show the complainant, her husband and her mother as the current owner. Enquiries with staff of STNTLR revealed that the entry regarding the ownership of the complainant, her husband and her mother to the property was recorded in the paper form register, but the entry was omitted when the paper form register was converted into computerised register on 24 May 1995. The staff admitted that there was an error, apologised for the same and keyed in the missing entry in the computer system right away.

282. The complainant and her husband requested the updated computerised register at once so as to enable them to instruct the estate agent to market the property. However, due to system constraints, the updated computerised register could only be made available threedays later. The complainant was not satisfied with the arrangement and lodged a complaint.

283. The Land Registry explained that the existing computer system was designed by the Information Technology Services Department. For security reason and to ensure data accuracy, all input data/amendments are batch processed by the computer. The processed data will be printed on the next working day for verification by Land Registry staff. Therefore, a total of three days are required to complete the addition and verification of omitted data into the computer.

284. LR has completed a Strategic Change Plan (SCP) which recommended an overall review of the existing computer system, including replacement of the batch-processing program by an on-line registration programme with the aim to shorten the time required for data updating. The replacement will need to be implemented along with other recommendations in the SCP, scheduled to take place in 2002.

285. To avoid reoccurrence of similar incident, staff are reminded to handle enquiries on search of land records with flexibility and to provide assistance wherever possible. In particular when an error is found on a computerised register which is the subject of a search, a letter will be issued upon request listing out the data to be amended and stating that the amendment is in progress, with copies of relevant registered documents attached as supporting evidence of the correct data.

Lands Department (Lands D)

Case No.1998/0016: Failing to conduct public consultation; infringing upon the complainant's privacy; and failing to reply to an enquiry according to the time frame set within the performance pledge of the department.

286. A flat owner of a private residential development in Tuen Mun complained against the District Lands Office/Tuen Mun (DLO/TM) of the Lands D for :

(a) failing to consult the Tuen Mun District Board and the tenants of the private residential development concerned before granting approval to the developer to build three additional residential towers within the development;

(b) not responding to his request for information within the targeted response time under the Code on Access to Information;

(c) infringing upon his privacy by giving his particulars to the developer; and

(d) failing to reply to his enquiries according to the time set in Lands D's performance pledge.

287. For complaint (a), after investigation, The Ombudsman noted that Lands D would not consider any public consultation for lease modification applications involving normal types of uses such as commercial and residential but would consult all Government departments concerned to assess the impact of the proposed modification on the community and whether public consultation was necessary. The Ombudsman also noticed that Lands D did not require the developer to carry out consultation given the developer's legal rights in respect of the proposed additional residential development.

288. Having regard to the General Circular No. 2/95 on District Administration stipulating that "departments should consult District Boards on local matters that are likely to affect the livelihood, living environment or well-being of the residents within a district. If departments are not sure whether they should consult District Boards on any particular matter, they should seek the advice of the Director of Home Affairs or the District Officers (DO) concerned", The Ombudsman accepted that Lands D had generally fulfilled its role of seeking the advice of the DO concerned on whether public consultation should be conducted by seeking comments from the District Office/Tuen Mun

on the lease modification application. The Ombudsman was therefore of the view that this complaint against Lands D was unsubstantiated.

289. For complaint (b), the complainant made a written request, using the prescribed form under the Code on Access to Information, to the Access to Information Officer of DLO/TM for a copy of the notes of the Tuen Mun District Land Conference which covered the approval of the subject lease modification. The request was refused on 30 December 1997. According to paragraph 1.16 of the Code, where possible, information will be made available within 10 days of receipt of the written request. If not possible, the applicant will be given an interim reply within 10 days of receipt of the request. The target response time will then be 21 days from the receipt of the request. Paragraph 1.18 of the Code states that responses may be deferred beyond 21 days only in exceptional circumstances which should be explained to the applicant and any deferral should not normally exceed a further 30 days.

290. The Ombudsman concluded after investigation of the procedure within DLO/TM that the office took too long to reject the request and that the heavy workload and the fact that this was the first case in the office under that Code were not an excuse. The Ombudsman considered that this complaint was substantiated.

291. For complaint (c), the complainant had written to DLO/TM requesting information on the developer's proposal on the additional residential development. DLO/TM when replying to the complainant copied the reply to the developer with the name and address of the complainant stated. The intention was to alert the developer about the complainant's request so that the provision of the data required by the complainant could be expedited by the developer.

292. The Ombudsman concluded that DLO/TM should not have disclosed the complainant's identity and address to the developer without the complainant's consent and in doing so had caused embarrassment and inconvenience to the complainant. The Ombudsman considered this complaint was substantiated.

293. For complaint (d), the complainant wrote to DLO/TM in October 1997 objecting to the proposed additional residential development and at the same time complained about the intrusion into his privacy. The complainant wrote to DLO/TM again in November 1997 asking why his previous letter had received no response and his letters were eventually acknowledged early December 1997.

294. The Ombudsman observed that paragraph two of the Director of Administration's General Circular No. 6/94 which was promulgated on 21 June 1994 said, amongst other things, that replies to incoming correspondence should be sent within 10 days at the latest. If that was not possible, an interim reply should be sent within the period (this Circular was replaced by General Circular No. 8/97 on 9 December 1997). The Ombudsman also noted that Lands D's performance pledges stated that a response to an enquiry would be made within four weeks. The Ombudsman considered that DLO/TM had failed to respond within the time limits specified in Director of Administration's General Circular and that it had also not complied with Lands D's performance pledge. The Ombudsman considered that the complaint was substantiated.

295. The overall conclusion of The Ombudsman was that the complaint was partially substantiated.

296. The Ombudsman's recommendations were followed, and this case is considered closed by The Ombudsman.

Case No. 1998/0017(I): Failing to respond to the complainant's request for information within the target response time under the Code on Access to Information.

297. Please refer to Case No. 1998/0016 above.

Case No. 1998/0183: Failing to notify the complainants who were landowners on land resumption and lack of response to their objection letter.

298. The complainants complained that :

(a) the Lands D and the Housing Department (HD) failed to serve notices directly to the owners concerned regarding the clearance of their structures at Hung Shek Road, Yuen Long; and

(b) the Lands D and the HD failed to reply to the letter from complainants referred to them by the District Office/Yuen Long (DO/YL).

299. Regarding complaint (a), The Ombudsman observed that the District Lands Office/Yuen Long (DLO/YL) had sent an application form for clearance to the Yuen Long Clearance Unit, HD in May 1996 and expected that the sites concerned could be cleared in December 1997 for the implementation of a

public project. In October 1996, Yuen Long Clearance Unit conducted a pre-clearance survey and posted clearance notices on the affected structures. In accordance with the Lands Resumption Ordinance (Cap. 124), after any land resumption proposal is approved by the Executive Council, Lands D should send a copy of the gazette notice on the land resumption and the offer letters on ex-gratia compensation to the affected landowners, and post a copy of the gazette notice at the sites to be resumed. However, as Executive Council's approval of the land resumption was given in December 1998 and the gazette notice was published in January 1999, Lands D could only send out the gazette notice and offer letters to the affected landowners after January 1999. In this respect, The Ombudsman considered that both Lands D and HD had acted in accordance with established procedures and relevant legislation and this part of the complaint was not substantiated.

300. Regarding complaint (b), upon receipt of the complaint letter dated 9 June 1997 via DO/YL and after considering that its contents mainly involved consultation matters and long-term development of the area affected by the clearance, Lands D referred the letter to the Project Manager/New Territories North (PM/NTN) on 30 July 1997 and asked him to give a direct reply to the complainant. As for HD, since it found that the letter referred from DO/YL focused on the entire resumption exercise and related compensation matters, it gave a reply to DO/YL on 25 June 1997, saying that it was not in a position to answer the letter. A detailed reply was given to the complainant by PM/NTN on 19 March 1998.

301. The Ombudsman considered that Lands D and HD should liaise with departments concerned and clarify their respective roles in the issues mentioned in the letter. After a consensus on further actions had been reached, they should inform the complainants of the situation and/or the reasons why the complaint was referred to other departments. However, Lands D and HD only stated their position to DO/YL and referred the case to PM/NTN respectively without informing the complainants. Although relevant government departments conducted consultations with the complainants and representatives of the affected villagers and provided information on matters associated with the development in writing, Lands D and HD were not entirely relieved of the responsibility to reply to the complaint letter. The Ombudsman concluded that this part of the complaint was substantiated.

302. The Ombudsman's recommendations have been implemented.

Case No. 1998/1005: Unfairly treating the complainant in respect of the development of small house, resulting in double penalty payments.

303. The complainant complained against District Lands Office/Yuen Long of the Lands Department (DLO/YL) for unfair treatment in respect of his small house development resulting in penalty payments for breach of height restriction and for retrospective issue of Certificates of Exemption (Cs of E).

304. In accordance with the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121), prior to the commencement of construction of a small house, the applicant has to obtain the relevant Cs of E. In addition, upon completion of the construction of the small house, the applicant has to apply for a Certificate of Compliance (C of C) certifying that the small house is built in compliance with the relevant licence conditions.

305. In April 1992, the complainant, in accordance with the requirements under the licence conditions, wrote to DLO/YL setting out the boundary of the lot upon which he would construct the small house and requested the latter to confirm the boundary. The complainant then proceeded with the construction of the small house and submitted an application for the C of C to DLO/YL in February 1993 upon completion of construction of his small house. However, it was later found that the complainant's small house exceeded the height limit prescribed under the licence conditions and the construction of the small house commenced without the relevant Cs for E. The complainant was then fined for breach of height restriction and for retrospective issue of the Cs of E. The complainant was dissatisfied and considered that DLO/YL should have reminded him of the need to apply for the C of Es, as well as the height restriction, when they received his request in respect of the lot boundary of his small house in April 1992. The Ombudsman considered that DLO/YL should have reminded the applicant of the need to apply for the relevant Cs of E prior to the commencement of the respective construction works and therefore the complaint in this respect was substantiated. However, it was noted that the height restriction had been specified under the licence conditions and therefore the complaint in this respect was not substantiated.

306. The Ombudsman's recommendation is agreed and has been implemented.

Case No. 1998/1684, 1998/1687, 1998/1736: Improperly handling the complainant's application for Livestock Keeping Licence; delay in taking action against UBW as well as handling a complaint about illegal waste discharge and nuisance.

307. The complainant claimed that he complained to the Agriculture & Fisheries Department (AFD), Lands D and Environmental Protection Department (EPD) between October 1997 and April 1998 against a pig-rearing farm near his residence for erection of illegal structures for pig-rearing and waste disposal facilities; illegal discharge of effluent; and causing serious environmental nuisances. He claimed that the issues remained unresolved by June 1998 and therefore raised the case with The Ombudsman.

308. The pig-rearing farm in question fell within the control area under the Livestock Waste Control Scheme and its operation required a Livestock Keeping Licence from AFD. The farm operator submitted an application for the aforesaid licence to AFD in December 1995 stating that the subject premises would be used for rearing chicken and pig, and its operation would comply with the requirements set out by the EPD. AFD, in consultation with EPD and Lands D, considered the application against the licensing requirements and issued the licence to the farm in April 1997.

309. However, it was later found that subsequent to the granting of the licence, the farm had illegally changed the premises originally specified for chicken-rearing for pig-rearing; erected illegal structures for pig-rearing and waste disposal facilities; and discharged effluent illegally. Upon receipt of the complaints, AFD, EPD and Lands D conducted a series of site inspections to investigate the matters and issued warnings to the operator requiring the latter to rectify the situation. Despite repeated warnings, the operator had failed to rectify the situation. Lands D therefore cancelled the letter of approval granted to the operator in October 1998 and AFD also cancelled the relevant Livestock Keeping Licence subsequently. All departments concerned have continued to monitor the operation of the pig-rearing farm in question.

310. As far as Lands D was concerned, The Ombudsman noted the roles played by Lands D in the processing of the subject application for a Livestock Keeping Licence were confined to the checking of land status and issuance of the letter of intent to AFD and revising the relevant letter of approval in respect of the agricultural structures concerned. The Ombudsman noted that Lands D had issued the letter of intent to AFD in accordance with established practices, and that while the relevant letter of approval was not revised due to resources constraint, the decision was acceptable. Therefore, The Ombudsman considered that the complaint against Lands D for maladministration in the handling of the application for Livestock Keeping Licence was not

substantiated. In addition, The Ombudsman noted that the handling of complaint against nuisance caused by odour arising from the farm in question was not within the work of Lands D and therefore considered that the complaint against Lands D in the delay in handling the relevant complaints was not substantiated.

311. However, The Ombudsman noted that although Lands D had noticed the premises specified in the letter of approval for use as chicken-sheds had been used for pig-rearing during the site inspection in August 1997, it did not take follow-up actions until receipt of a complaint in April 1998. The Ombudsman therefore considered that the complaint against Lands D for delay in taking the necessary actions against the unauthorized building works was partially substantiated.

312. Lands D agreed to The Ombudsman's recommendations. While enforcement action against unauthorised agricultural structures erected on private agricultural land was accorded very low priority in the list of land administration work, Lands D will work closely with departments concerned and assist in relevant complaint cases.

Case No.1998/2719: Improperly granting a site for car parking purpose.

313. A company complained against District Lands Office/Tuen Mun (DLO/TM) of Lands D for improperly granting a site in Area 16, Tuen Mun on a short term tenancy to a car park operator.

314. The company identified certain sites within Tuen Mun which it considered suitable for use as public car parks and requested DLO/TM to tender the sites for the latter purpose. DLO/TM replied that the company's suggestion in respect of the site in Area 16, Tuen Mun would be considered. However, the company later discovered that the site was granted direct to another car park operator at rather low rent and felt aggrieved.

315. DLO/TM responded that the site formed part of a Short Term Tenancy site previously let by Abbreviated Tender System (ATS) to a car park operator whose tenancy commenced on 20 May 1996. The site was originally scheduled for sale by auction on 23 June 1998 and the aforesaid tenancy was terminated on 19 May 1998. However, the auction was cancelled due to the suspension of the land sales announced by the Government on 22 June 1998. Knowing that the land sales programme had been suspended, the original car park operator wrote to DLO/TM on 29 June 1998 requesting permission to resume operation of the car park on the subject site on a monthly basis subject to terms similar to those specified in the original tenancy agreement.

316. In accordance with established procedure, any site put out under public tender should be for at least one year in order to make it attractive to the tenant, and depending on the nature of the use of the site and its availability the term would normally be three years certain. In addition, it would normally take four months to complete the procedures for public tender and then two months at the end of the tenancy to clear and fence off the site prior to the land sale. As the land would probably be included in the first lots to be sold when land sales resumed in the next financial year, it was decided at the Lands Administration Meeting (LAM) of the Lands D to regrant the site to the original operator. The case was dealt with as a cancellation and re-issue following clearance from LAM. If the previous operator's request was rejected the land would have remained vacant for some time and resulted in loss of revenue, as well as the need for land control expenditure.

317. The Ombudsman's recommendations are not accepted. It is considered that the procedure in place allows for flexibility in determining whether or not a site should be put out for public tender and that if at all possible a site would indeed be put out for public tender in order to obtain the most competitive bid.

318. Lands D considered that in this case, it had acted correctly as from an overall land administration point of view, and the action taken was considered to be the most practical way to deal with this particular case. The site was disposed of in August 1999, and the tenancy was terminated with effect from 19 June 1999.

Legal Aid Department (LAD)

Case No. 1998/2064: Loss of documents; reassignment of solicitor without prior notice; acceptance of payment into court without the complainant's consent; and incompetence and unpreparedness of case officers.

319. The complainant was a civil servant. She was granted legal aid in 1992 to claim employees' compensation and common law damages against the Government in respect of an accident which occurred at her place of work.

320. The complainant alleged that the LAD had lost the documents she had submitted. The documents contained information on the medical expenses incurred by her arising from the accident. She considered that the failure to submit these documents as evidence during the hearing on 20 July 1998 had led to the delay in litigation and unnecessary increase in legal costs.

321. After investigation, The Ombudsman concluded that this allegation was unsubstantiated due to lack of evidence showing that the said documents had ever been in the custody of LAD.

322. The complainant further complained that LAD had reassigned the professional officer handling her case without prior notice.

323. The Ombudsman noted that the professional officer initially representing the complainant was transferred to another division of LAD and reassignment to another officer was therefore necessary. Since deployment of staff was an internal affair of the Department, it was unnecessary and inefficient to notify or seek the consent of legally aided persons before reassignment. In view of the above, The Ombudsman concluded that this allegation was unsubstantiated.

324. The complainant noticed that the "Statement of Damages" was revised without her consent when being interviewed by the assigned Counsel on 6 July 1998. She complained that the offer of out-of-court settlement was made without her authorization.

325. The Ombudsman observed that the "Statement of Damages" was only an estimate given to the opposite party and the court for information. It was not any kind of offer. Authorization by the legally aided person was not necessary. The allegation was thus found unsubstantiated.

326. The complainant also complained about the manner of the Law Clerk and professional officer handling her case. The Ombudsman opined that as the complainant failed to give details of the circumstances under which the Law Clerk had been rude to her, no follow-up actions could be taken.

327. During an interview with the professional officer on 30 July 1999, the complainant was accompanied by her friends. She alleged that the professional officer had shouted at them. Investigation revealed that the complainant's friends had spoken on her behalf too frequently in response to questions raised by the professional officer during the interview. In order not to hinder progress of the meeting, the professional officer had no alternative but to interrupt her friends in order to proceed with the interview. This allegation was therefore found unsubstantiated by The Ombudsman.

328. In addition, the complainant alleged that the professional officer had threatened her during a telephone conversation on 20 August 1998. She felt threatened when being asked to which organizations she had complained and when being told that the numerous complaints would lead to delay in concluding her case. LAD responded that the objective of the said conversation was to determine whether the professional officer should continue to represent the complainant. Moreover, it was not suitable for another officer to contact her as details of the case should be kept strictly confidential between the lawyer and the client.

329. Nevertheless, The Ombudsman commented that it was inappropriate for LAD to instruct the complainee to contact the complainant and discuss the contents of the complaint. Furthermore, the mention of the correlation between the number of complaints and the progress of litigation may give the complainant the impression that she was being urged to withdraw her complaints. This allegation was therefore found partially substantiated.

330. A letter of apology was sent to the complainant on 19 February 1999.

331. A departmental circular providing guidelines to staff handling complaints has been circulated and will be re-circulated periodically.

Case No. 1998/3091: Failing to notify the complainant of the restored hearing date of a court appeal.

332. The complainant was an inmate at the Victoria Prison.

333. The complainant initially lodged a complaint against the Correctional Services Department (CSD) of withholding a court document, thus he had no

prior knowledge of the date of court appearance.

334. In the course of investigation, The Ombudsman included LAD as a department being complained against with regard to the failure to notify the complainant in advance of the restored hearing date for the appeal hearing against refusal of legal aid scheduled for 10 December 1997.

335. On 14 October 1997, LAD sent a memorandum to CSD, for the attention of the Superintendent of Victoria Prison advising him of the said hearing date. A standard letter informing the complainant of the details of the hearing together with the Notice of Appeal were attached to the memorandum.

336. LAD's view was that according to the usual practice, CSD would forward the enclosures to the complainant upon receipt of the memorandum.

337. The Commissioner of Correctional Services is under a duty to control all incoming and outgoing mails to inmates under Rule 47A of the Prison Rules. In order not to influence their screening, normally LAD just encloses the document for CSD's attention with the hearing date highlighted. This has been the Department's practice for years.

338. The Ombudsman concluded that the complaint was substantiated as LAD had not requested CSD to relay the details of the hearing to the complainant or pass the Notice to him. Also, it was not mentioned in the memorandum that the attached letter was intended for him. The Ombudsman thus opined that LAD had failed to ensure that the above documents could reach the complainant.

339. In sending documents to inmates, LAD now addresses all correspondence to the inmates direct via the Commissioner of Correctional Services, and where there is a hearing date, the notice of the hearing is sent well in advance of the hearing dates.

340. In respect of the procedure of arranging inmates to attend Court other than asking the Court to issue a correct order, LAD is not in a position to interfere with the work of CSD.

341. LAD has had discussions with the Judiciary in relation to appeals by legal aid applicants. The Judiciary will soon take up the role of fixing dates for the hearing of appeals for legal aid applicants. It is then up to the applicant to serve LAD with the notice of appeal pursuant to Section 26 of the Legal Aid Ordinance.

Official Receiver's Office

Case No. 1998/2348: Unreasonably accepting an undervalued transfer of a joint tenant property; negligently not sending the complainant's solicitors the "Notice to Creditors"; and failing to respond to the solicitors' letters.

342. The Official Receiver (OR) was trustee in bankruptcy of a person (the bankrupt) who was adjudged bankrupt on 23 August 1991. The complainant was a creditor of the bankrupt. At the request of complainant's solicitors, OR investigated the transfer dated 20 September 1988 by the bankrupt to her husband her share in a jointly owned property for $300,000. Enquiries into this transfer were made. The complainant's solicitors gave professional valuations of the property to the OR of $1,250,000 on a vacant possession basis. Solicitors for the bankrupt's husband also provided the OR with a professional valuation estimating the vacant possession value to be $840,000. The OR further noted that the property was subject to a mortgage of $140,000 in September 1988. Both valuations were made, about three years after the date of transfer, only by comparison with properties of surrounding areas and subject to, among other things, the nature of the property. No one except the bankrupt and her husband could give an accurate account of the nature of the property at that time – a fact which should have affected its price. The OR had to judge whether the sum of $300,000 paid by the husband to the wife for her half-share was fair. Taking into account the discrepancies in the valuations, the fact that the bankrupt's husband claimed to have made all mortgage repayments and that the payment was made to achieve a matrimonial separation agreement, the OR concluded that (a) $300,000 as a settlement was relatively fair and (b) he had little evidence to sustain a claim against the bankrupt's husband for any undervalue. On 19 May 1992, OR wrote to the complainant's solicitors and informed that he did not intend taking any action on the property and was satisfied with the documents submitted by the bankrupt's husband. The Ombudsman concluded that on the whole, OR was playing his role properly in judging whether the sum of $300,000 was fair, although there might be room for improvement by explaining in detail to the complainant.

343. On the complaint that the "Notice To Creditors Of Intention To Apply For Release" was not sent to the complainant's solicitors, The Ombudsman noted OR's standard practice to send the notice to registered creditors at their last known addresses but not to their solicitors to save time and expenses. He noted that OR had sent the notice to the address of the complainant's office but could not reach the complainant because the complainant had moved his office. The Ombudsman considered the complaint point partially substantiated because OR should have copied to the complainant's solicitors in the special

circumstances of the case and that the failure on the complainant's part to inform OR that he had moved his office also contributed to his not receiving the notice.

344. The Ombudsman considered the complaint point substantiated that OR failed to respond to several letters issued by the complainant's solicitors in 1994, 1995 and 1997.

345. A letter of apology was sent to the complainant on 8 March 1999.

346. A written warning was issued against the case officer for not responding to letters from the complainant's solicitors which might have gone astray.

Case No.: 1998/2572: Mishandling a bankruptcy case, thus jeopardizing the complainant's interests to recover the outstanding debt owed to him.

347. The Official Receiver (OR) was trustee in bankruptcy of a person (the bankrupt) against whom a receiving order was made on 8 November 1995. Upon the request of the case officer for the bankrupt to attend an interview, the bankrupt instructed a representative of his solicitors to attend the meeting on 17 November 1995 and stated his intention to stay all the proceedings. The representative obtained two sets of the statement of affairs but the case officer did not chase the representative for the submission of the statement of affairs nor had he pressed the representative regarding the stay of proceedings. The OR applied and the court adjudged the debtor bankrupt on 23 January 1996. The case officer should have pressed the bankrupt for the submission of the statement of affairs and details about his income and expenses.

348. Upon receipt of the letter dated 26 July 1996 of the complainant, and based on the information supplied by the complainant, the case officer wrote to the bankrupt's employer on 31 July 1996 to make enquiries. He did not press for a reply and it was on 30 December 1996 that the bankrupt's employer replied to confirm that the bankrupt was in their employ for $30,000 a month but that he had resigned "effective 31 December 1996".

349. The case officer should have knowledge of the vehicle in the name of the bankrupt in September 1995. He might have been misled by the bankrupt's alleged intention to stay the proceedings and did not take any action about it. He wrote to the bankrupt, the Commissioner for Transport and visited various addresses of the bankrupt. On 11 November 1996, the bankrupt alleged to the case officer that the vehicle was sold in October 1994 for $1,800 but could not recall further details about the buyer.

350. In view of the inadequacy of the case officer the case was reallocated to the case officer's supervisor for further processing. The complainant withdrew his complaint to The Ombudsman.

351. After extensive investigations and unsuccessful attempts to locate the bankrupt, and knowing the bankrupt's unemployment after December 1996 (hence the remote chance of any further asset realisation) and lack of movement record in and out of Hong Kong, the case officer's supervisor decided to close the case without applying for a warrant of arrest.

352. The complainant was unsatisfied and complained to The Ombudsman again.

353. The case officer's supervisor eventually agreed to apply for a warrant of arrest and on 12 May 1998 drafted an application for approval by a legal officer. She also made a further arrival departure check for the bankrupt.

354. As the lawyer advised that further attempts should be made to locate the bankrupt at the last known addresses, the case officer's supervisor made another round of attempts again to locate the bankrupt and finally succeeded in locating him. The case officer's supervisor interviewed the bankrupt on 3 and 19 June 1998 and the bankrupt submitted the long outstanding statement of affairs and disclosed that he had used part of his earnings before December 1996 to pay his income tax. As the tax should have no preference to other creditors, the Commissioner of Inland Revenue refunded a total of $48,929.29 to the estate. As the bankrupt remained unemployed, no other realisation could be made.

355. The Ombudsman noted that the case officer's supervisor's initiation of her proceedings to apply for the warrant of arrest, though belated, had made the bankrupt submit the statement of affairs, and realised $48,929.29. The Ombudsman therefore concluded that the case officer's supervisor's decision to close the case was made prematurely and that the complainant had been let down twice by the case officer and his supervisor. The Ombudsman considered the complaint substantiated.

356. A letter of apology was sent to the complainant on 12 February 1999. Having regard to the fact that if the case officer had been diligent to chase the bankrupt's employer for a reply and thus able to obtain some contribution from the bankrupt to his estate before the bankrupt's resignation, the OR agreed to waive his fee in the case for the benefit of the creditors.

357. The staff have been advised to apply for warrants of arrest when the development of the cases so requires.

358. The supervision on the case officer was tightened up by a comprehensive check of his files and he was given guidance on the proceedings of his cases. As there is a system for case officers to submit their files to supervisors for decision at various stages of the proceedings, supervisors have the opportunity to note the performance of subordinates. It is accepted that the monitoring system can improve further by stepping up the frequency of checking the work of case officers.

Planning Department (Plan D)

Case No. 1998/0298: Providing misleading information to the complainant in a Town Planning Application.

359. The complainant on behalf of a church lodged a complaint against the Plan D for provision of misleading and inconsistent information regarding the status of three historical buildings, viz. the Vicarage, the Caretaker's Quarters and the Amah's Quarters of the church, proposed to be demolished under the Planning Application No. A/K1/101.

360. The complaint was received via The Ombudsman on 5 March 1998.

361. The church is an area zoned "Government/Institution/Community" on the approved Tsim Sha Tsui Outline Zoning Plan No. S/K1/11. It is occupied by a single storey church sanctuary, a two-storey Vicarage, a single-storey Caretaker's Quarters, a single-storey Amah's Quarters, and a seven-storey Christian Centre.

362. Upon receipt of the planning application for redevelopment of the church (Application No. A/K1/101) on 28 November 1996, the Plan D had consulted a number of relevant departments including the Antiquities and Monuments Office (AMO). Being the authority on the conservation value of historical building, the AMO gave its comments on the subject application. The information given together with a map delineating the boundary of the church and the AMO's previous comments on a similar application (No. A/K1/75) had led the Plan D to interpret the whole church compound as having Grade II historical status.

363. On this basis, the Grade II historical status of these buildings had been mentioned in the paper of the Metro Planning Committee (MPC) of the Town Planning Board (TPB) and had been explicitly spelt out as one of the five reasons for rejecting the application. However, it should be stressed that the application was rejected not solely on the ground of heritage preservation. It was also rejected on the other major reasons such as landscaping/tree preservation and traffic impact considerations.

364. After the MPC of the TPB had rejected the application, the complainant applied for a review under Section 17 of the Town Planning Ordinance (S.17 Review). In preparing the S.17 Review, the Plan D clarified the status of the three buildings in question with the AMO. During the review hearing, the Plan D had explicitly informed the TPB members that the Old Vicarage, the Caretaker's Quarters and the Amah's Quarters were not yet

graded by the Antiquities Advisory Board (AAB). The TPB members were therefore well aware of the status of the three subject buildings when they decided not to approve the application upon the S.17 Review.

365. The Ombudsman noted that all pieces of information given by the AMO might have led the Plan D to interpret the whole church compound as having Grade II historical status. Nevertheless, The Ombudsman considered that despite the Plan D's efforts to seek clarification with the AMO on the historical status of the subject buildings through exchange of correspondences and telephone conversations, the fact remains that the Plan D still had a wrong perception on the historical status of the subject building and the wrong information was presented in the MPC paper. The Ombudsman concluded that whilst they would not speculate whether the TPB had actually been misled by the information given by the Plan D, or whether its decision on the matter would be altered if the accurate historical status had been mentioned instead, the information provided by the Plan D in the MPC paper was not factually correct. Hence, The Ombudsman concluded that the complaint against the Plan D was substantiated.

366. On 17 September 1998, the Plan D issued a letter to the complainant expressing the Department's apology over the unpleasant incident so happened.

367. Also, a memorandum was issued on 22 September 1998 to all section heads within the Plan D requesting them to remind their staff to handle all future redevelopment applications which involved historical buildings with due care and diligence.

368. The Plan D/AMO co-ordinating meeting was held on 30 September 1998 to review the existing arrangements between the two offices in processing redevelopment proposals/planning applications involving buildings of historical significance and to discuss the ways to further strengthen the co-ordination. The meeting agreed to a number of follow-up actions to further strengthen the co-ordination arrangement. These include :

(a) the Plan D would seek the AMO's comments on redevelopment proposals involving buildings built before 1960;

(b) to facilitate the establishment of a comprehensive record of monuments, historical buildings and archaeological sites in the Plan D, the AMO would provide the Plan D with the full lists of the relevant information including site plans and explanatory notes (background materials about the buildings or sites contained in the papers submitted to AAB or its Historical Buildings and Structures Sub-committee and Archaeological Sub-committee). Future updated information would

also be provided to the Plan D for updating similar to the current arrangement (one copy to D of Plan and the other to individual District Planning Offices); and

(c) in case there were doubts on the information provided by the AMO, the Plan D should clarify with relevant officers of the AMO. For planning applications, the relevant papers might be forwarded to the AMO for comments when considered necessary by the district planning offices of Plan D or the AMO be invited to attend the relevant meetings whenever necessary.

369. Regarding point (b), the AMO has forwarded to the Plan D a comprehensive record including site plans and explanatory notes of historical buildings and archaeological sites. The AMO will also provide further background explanatory notes and updated information to the Plan D subsequently.

370. A memorandum was issued on 19 January 1999 to all sections within the Plan D informing all professional staff of those arrangements agreed in the Plan D/AMO co-ordinating meeting dated 30 September 1998 concerning the ways to further strengthen the co-ordination between the AMO and the Plan D.

371. The Ombudsman informed the Plan D on 8 April 1999 that they had noted the Plan D had already implemented their recommendations for the subject complaint. It was not considered necessary for the Plan D to provide the Office of The Ombudsman with further progress reports.

Rating and Valuation Department (RVD)

Case No. 1998/2537 : Delay in sending the complainant the demand note for Rates and Government Rent; not printing issue date on the demand note; not having post chop on the envelope of the demand note; and not printing complaint hotline number on the demand note.

372. The Office of The Ombudsman conducted an investigation into the procedures followed by the RVD in preparing the necessary computer tapes, delivering them to Hongkong Post for printing and sending the quarterly Demand for Rates and Government Rent (demand notes) out by ordinary mail. RVD produced solid proof to show that the relevant demand note was delivered by Hongkong Post by ordinary mail between 22 and 23 June 1998 without experiencing any delay. In July of the same year, RVD followed its departmental procedures in announcing through the media that the demand notes for that quarter had been sent out and, among other details released, the due date for payment. RVD later imposed a surcharge on the complainant for late payment according to the relevant law.

373. RVD explained that, given the enormous quantity of demand notes (totaling over 1.6 million) and the long period of one month within which to pay, the issue date had not been printed on the demand notes because preparing in advance computer tapes that took into account the actual date on which the demand notes would subsequently be sent out by Hongkong Post presented difficulties of coordination in terms of technical and time arrangements.

374. The envelope of the demand note in question was not postmarked because RVD had engaged the e-Post service of Hongkong Post in the light of the bulk of demand notes to be delivered. According to the current procedures adopted by Hongkong Post, items mailed using the above service are not postmarked.

375. No complaint hotline number was printed on the demand note because RVD had not set up a hotline for handling complaints. There was, however, a number for automated telephone enquiries on the back of the demand note. Procedures laid down by RVD and the functions offered by the automated telephone system during the later stages of a call enable the enquiring caller to be connected to the staff of the Department and make oral complaints. In a nutshell, there was no maladministration on the part of the RVD.

376. RVD informed the Office of The Ombudsman on 24 May 1999 that the exercise to revise the demand note had been completed and the end product would be put into use in October of the same year. Ways and means available

for making suggestions, comments and complaints as well as contact telephone numbers of customer service officers will be clearly listed out in the last paragraph printed on the back of the new demand note.

Regional Services Department (RSD)

Case No. 1998/0312: Failing to resolve the complainant's water seepage problem and delay in identifying the cause of the problem.

377. The complainant lodged a complaint against RSD, Buildings Department (BD) and Water Supplies Department (WSD) for failing to resolve the water seepage problem at his premises and for delay in identifying the cause of the problem. RSD records revealed that RSD first received the complainant's complaint about water seepage at his toilet ceiling through referral from District Officer (Tai Po) (DO(TP)) on 23 July 1996. The complainant also lodged a similar complaint with the departmental hotline on 18 September 1997. Since receipt of DO(TP)'s referral, repeated visits and a series of colour water tests had been carried out on the floors above his premises with a view to identifying the source of seepage.

378. During the investigation, RSD referred the complaint on 10 October 1996 and 28 October 1997 to WSD and on 12 January 1998 to BD for parallel action. WSD's findings were that there was no apparent leakage on the water supply inside service of the flat under complaint. BD replied that there was no immediate structural danger to the complainant's flat and that it would follow up on the suspected unauthorized alteration in the flat under complaint. Based on the positive result of the test conducted on 9 March 1998, BD advised the owner of the flat to carry out the necessary repair work to eliminate the nuisance.

379. The Director of Buildings (DB) has been taking the lead to engage a consultant to study and research on all technological matters relating to water seepage investigation and to produce a study report with technical guidelines and recommendations on testing methods for use by the relevant departments. DB is currently in the process of preparing the programme and schedule of works for the consultancy and invitation documents.

380. RSD is contributing to the study and further improvement will be made where appropriate.

381. Regarding The Ombudsman's recommendation to consider completing all tests within three months from receipt of the complaints, RSD's view is that tests in connection with water seepage can normally be completed within three months as suggested. However, there are at times factors beyond the Department's control that preclude confirmation of the causes of seepage within three months, e.g. the cooperation of the occupiers/owners for access to the unit under complaint or need for further testing. In fact, under the revised

inter-departmental procedure for handling water seepage complaints, RSD will refer all complaints to WSD or BD for follow-up actions within three months from the date of receipt of the complaint, whether the cause can be ascertained or not.

382. The Department has considered revising the existing performance pledge on seepage complaints to include "RSD will initially investigate all seepage complaints and will refer these complaints (if the case is not due to defective drain pipes or the case is still under investigation) to the Water Supplies Department or the Buildings Department for parallel investigation not later than three months from the date of receipt of the complaints". However, it is now not necessary as this arrangement has been agreed among all interested departments and is operating smoothly. Besides, seepage complaints are only one type of sanitary complaints and there is no need to single it out as a separate item in the departmental performance pledge.

383. Regarding The Ombudsman's recommendation to explore making one department to coordinate consolidated replies to the complaints, views of departments concerned, i.e. RSD, USD, BD and WSD are that the implementation of the recommendation, for the time being, is not appropriate. RSD's views are as follows :

(a) BD, WSD and RSD/USD have individual legal powers to handle water seepage cases under different legislation and use different technical methods to test for the seepage. The departments themselves are most conversant with the legislation, test methods and investigation details within their respective purview. It would, therefore, be more appropriate for each department to reply to the complainant and to explain its action where necessary and the constraints/difficulties, if any;

(b) a consolidated reply to the complainant needs to be cleared with the other two departments to ensure accuracy of the information. This would inevitably entail extra time and possible delay in replying; and

(c) under a revised system effective from 1 April 1998, a complainant is kept informed of the specific departments handling the complaint and the departmental officers whom he/she may contact. Meanwhile, the relevant departments will keep one another informed of developments.

Case No. 1998/2273: Failing to offer the complainant the necessary assistance and refusing to supply the name and post title of the staff concerned.

384. The complainant went to the Reference Library of Sha Tin Central Library on 12 April 1998 at about 2:00 p.m., hoping to search for information. She asked for assistance of the two female staff at the counter. However, they appeared to be bothered and did not offer any assistance, nor gave her any direction on how to search for the information required. When the complainant requested to obtain their names and post titles, one of the staff had covered up her name badge, which had been turned over, with her hand and refused to provide such information for the reason of "privacy". Upon repeated requests the complainant, the staff only revealed her last name and post title. The complainant was discontented with her attitude and thus lodged a complaint with the Office of The Ombudsman.

385. The recommendations of The Ombudsman and the improvement measures of the RSD have all been implemented :

(a) the RSD had sent a letter, through the Office of The Ombudsman, to apologize to the complainant for the unpleasant experience;

(b) staff on duty at all service counters have nameplates so that readers know their names;

(c) the Department has revised procedures for handling and investigating complaints against library services. The circular on these procedures has been circulated to all library staff for strict compliance. This circular will be re-circulated quarterly;

(d) the format of library staff badge has been redesigned and put to use in July 1998, to display clearly the name and post title of the staff on both sides of the badge. All staff have also been reminded to wear it properly and to provide information on their names and post titles to readers upon request;

(e) Readers' Advisory Desks have been set up at all central and district libraries since September 1998, with Assistant Librarians on duty, to provide assistance, answer enquiries and handle complaints of readers. Notices have also been posted prominently in libraries to inform readers of the enquiry services;

(f) the format of the logsheets for reference enquiry service has been standardized and redesigned for recording the details of date, time,

subject, name of serving officer and the assistance provided for each enquiry received; and

(g) supervision and patrol of the Children's Library has been strengthened and the order in the library closely monitored so as to provide a good environment for readers. Sha Tin Central Library organized an exhibition on "Proper Use of the Children's Library" in September 1998 to guide children and their parents on use of the library facilities. The exhibition aimed to remind children and parents of the importance to keep quiet and not to cause disturbance to other readers.

Case No. 1998/1400: Failing to admit that the complainants' names were erroneously deleted from the registers for a Professional Functional Constituency of the Legislative Council and the Professional Subsector of the Election Committee.

386. The complainants, a married couple in the medical profession and registered electors in the Legislative Council (LegCo) "Hong Kong Island" geographical constituency (GC), were invited to register in the Medical Functional Constituency (FC) and the Medical Subsector during the voter registration drive for the 1998 LegCo election. According to regulations provided for the purpose of voter registration, the REO issued a written notification to each of them in early December 1997, proposing to register them in the said FC and Subsector. They were advised that they would be registered unless they disagreed by indicating so in the "Reply Section" of the notification and returning it to reach the REO on or before 16 January 1998.

387. On 21 January 1998, the REO received the notifications returned by the complainants dated 19 January 1998. They wrote in the "Reply Section" of the notifications requesting the REO to update their address. The returned notifications were duly signed but the pre-printed clause indicating disagreement to registration was not crossed out. The REO staff regarded their replies as a refusal to register in the Medical FC and the Medical Subsector in addition to a request for updating their address in the GC voter register. Their names were therefore not included in the Medical FC and the Subsector registers. However, since the part of their replies concerning the FC and Subsector registrations was past the deadline of 16 January 1998 they should have been disregarded. The REO staff should have included their particulars in the Medical FC and the Medical Subsector registers.

388. On 2 April 1998 when the complainants turned up at the polling station to cast their votes for the Subsector election, they were not allowed to vote because their names did not appear on the register of voters. They subsequently sent a letter dated 16 April 1998 to the REO, complaining that they had not been able to vote at the Subsector election and asked for remedial action.

389. On receipt of the complaint, the REO further examined the case and came to a conclusion that their names should be included in the registers. The REO took immediate action to reinstate their names in the final registers for the Medical FC and the Medical Subsector so that they would be eligible to vote at the LegCo election held on 24 May 1998 for the Medical FC. At the same time,

a reply dated 22 April 1998 was sent to the complainants. However, the complainants considered that the REO in its reply did not admit to having made a mistake but instead had implicitly laid the fault on them. They therefore lodged a complaint with The Ombudsman against the REO. Upon completing their investigation, The Ombudsman concludes that the complaint is substantiated.

390. The Ombudsman completed his investigation in November 1998 and produced an Investigation Report on 13 November 1998. The Ombudsman recommended that an apology letter be issued to the complainants. Accordingly, an apology letter dated 23 November 1998 and personally signed by the Chief Electoral Officer was issued to the complainants.

391. At the same time, all REO staff were reminded of the importance in complying with the working procedures and guidelines, and that they must apologise to their clients for any mistakes they have made in their work affecting the clients.

Case No. 1998/2608: Issuing unofficial guidelines, which were materially at variance with the official guidelines, to the returning officers of the Legislative Council general election.

392. In the first Legislative Council (LegCo) election, the complainant contested with two other candidates in the Regional Council Functional Constituency (FC) election held on 24 May 1998. The complainant was declared elected. His victory was subsequently challenged by an election petition lodged by one of the other two candidates.

393. The Court ruled that no one was duly elected in the election for the Regional Council FC. Therefore, a by-election was held on 29 October 1998. The three candidates were the same as those in the May election. In this by-election, the complainant was elected to LegCo.

394. During the trial of the election petition, it was revealed that there was an inconsistency between the internal guidelines issued to the Returning Officers by the REO and the Guidelines issued by the Electoral Affairs Commission (EAC) in respect of the determination of questionable ballot papers in the six "special FCs" (including the Regional Council FC). Three questionable ballot papers which should have been rejected, were accepted by the Returning Officer for the Regional Council FC, resulting in the victory of the complainant. The decision to accept these three papers was made in accordance with the internal guidelines.

395. Subsequent to the Court's ruling, the complainant lodged a complaint with The Ombudsman against the REO in relation to this matter. In the course of their investigation, The Ombudsman found that the Department of Justice (D of J) was a party to the REO in relation to the preparation and collation of the unofficial guidelines. As a result, The Ombudsman decided that the scope of their investigation should also be extended to cover the D of J.

396. Upon completing the investigation, The Ombudsman concluded that the complaint was substantiated, and recommended that an apology letter be sent to the complainant. Accordingly, an apology letter dated 15 March 1999 and personally signed by the Chief Electoral Officer was sent to the complainant. A separate apology letter of the same date, personally signed by the Secretary for Justice, was also sent to the complainant.

397. Before The Ombudsman started their investigation, the REO had conducted a review on the matter, and recommended to the EAC the implementation of a series of improvement measures to prevent recurrence of similar incidents in future. The EAC has accepted the REO's recommendations. The recommendations were incorporated by The Ombudsman into his own recommendations.

398. With the advice of D of J, the REO had amended the internal guidelines for the Returning Officer for use at the by-election for the Regional Council FC held on 29 October 1998 to ensure that they were entirely consistent with the relevant statutory provisions.

399. The REO and D of J are now taking the necessary follow-up actions to implement the improvement measures for future elections, including the first District Councils election and the second LegCo election to be held in November 1999 and September 2000 respectively.

Social Welfare Department (SWD)

Case No. 1998/0860: Delay in submitting the social investigation report about the family of the complainant to the Family Court.

400. It was a case of family dispute on child custody. The case was referred by the District Court to the SWD on 10 July 1995 for a social investigation report on the matter of child access. The court instructed a report be required as soon as possible with no fixed bring-up date. The case was assigned to and taken up by a caseworker at Social Work Officer rank of the Child Custody Services Unit (New Territories Team), Social Welfare Department.

401. The social investigation report had not been submitted to court until 15 April 1997 as the caseworker had only contacted the parties concerned from 29 July 1996 onwards for the investigation. The time taken for the social investigation report to reach the court was more than twenty months (from 10 July 1995 to 15 April 1997). A court order was made by the Family Court on 26 February 1998 to grant the custodial right of the child, as recommended by the caseworker, to the petitioner (mother) while access to the respondent (father) was allowed.

402. Taking that the loss of the custody of the child was due to the delay of the caseworker in submitting the report to court, the father (the complainant) lodged a complaint to The Ombudsman who referred the case to the SWD on 27 May 1998 for investigation.

403. After investigation, The Ombudsman concluded that the delay had no bearing on the court's decision. However the fact that it took more than twenty months for the caseworker to complete the social investigation report was an unnecessary delay although there was compassionate ground that the caseworker concerned had been under great stress and trauma because of a prolonged family tragedy that occurred in 1995.

404. An apology letter was sent to the complainant on 27 October 1998 by the Department.

405. A verbal warning for the misconduct of delaying submission of the report was given to the caseworker.

406. Continuous review of the monitoring guidelines and administrative system on case handling has been carried out by the Department. In fact, a

tighter monitoring system has also been introduced and implemented with effect from April 1997 in the Child Custody Services unit (New Territories Team) which includes the following :

(a) a case register for all referrals from court was set up;

(b) a computer system was set up to ensure effective monitoring of the cases handled; and

(c) clear written guidelines have been issued and distributed to all staff so that they know the submission of social investigation reports to court should be within eight weeks even though there is no bring-up date set by the court.

407. Since the strengthening of the monitoring system in April 1997, there has been no delay in submitting court report by the Child Custody Services Unit (New Territories Team).

408. SWD admitted and regretted that there was unnecessary delay in the submission of the social investigation report to court in this case by the concerned caseworker. However, the delay was only an isolated incident, the emergence of which was mainly due to the family tragedy of the concerned staff.

Case No. 1998/0899: Unreasonably suspending the payment of Disability Allowance to the complainant.

409. The complainant started to receive Normal Old Age Allowance (NOAA) on 1 September 1995. The case was handled by the Sai Kung Social Security Field Unit (the Field Unit). At the recommendation of a medical officer of Kwong Wah Hospital, the complainant was granted Normal Disability Allowance (NDA) for one year commencing on 15 November 1996. The complainant was certified to have suffered from 100% loss of earning capacity on the ground of Chronic Obstructive Airway Disease (COAD).

410. In January 1997, the Field Unit received another medical assessment form from the Wong Tai Sin Hospital certifying that the complainant was suffering from 100% disability due to COAD for a period of up to two years (counting from 22 November 1996). The Field Unit thus extended the complainant's entitlement for NDA by one year from 31 October 1997 to 31 October 1998 accordingly.

411. In January 1998, the Field Unit received from a medical social worker of Pamela Youde Polyclinic a referral for application for Comprehensive Social Security Assistance (CSSA). A medical assessment form was enclosed which certified that the complainant was suffering from 50% disability due to blindness in the right eye. Mistaking this medical assessment form as another update, the Field Unit suspended payment of NDA to the complainant with effect from 1 February 1998 as NDA would only be made available to people suffering from 100% disability. In the meantime, the complainant withdrew his application for CSSA.

412. In mid-March 1998, in response to an enquiry from the complainant's son, the supervisor of the Field Unit immediately clarified with the medical officer concerned. It was then discovered that the medical assessment certifying 50% disability in the right eye of the complainant was not meant to supersede the previous one certifying a 100% disability due to COAD which qualified the complainant for NDA. The complainant's entitlement of NDA was reinstated on 21 April 1998 together with payment due during the suspended period.

413. The complainant had already submitted the case to The Ombudsman then and a referral from The Ombudsman was received by the SWD on 17 April 1998.

414. In response to The Ombudsman's recommendations, SWD has taken the following actions :

(a) the relevant guidelines in the Social Security Manual of Procedures have been revised to alert field unit staff in the handling of similar cases in future;

(b) based on records available, the Sai Kung Field Unit has carried out a review on a total of 91 closed and 1 105 active Disability Allowance cases. The review was completed in November 1998. No incorrect assessment or incorrect cessation of payment was detected in any of the cases covered; and

(c) the case in question has been discussed with all Field Unit supervisors to ensure that all processing staff understand the appropriate handling procedures for similar cases. All Field Units were requested to review the relevant cases to ensure that no wrongful cessation of payment was made. No incorrect assessment or incorrect cessation of payment was detected. The Administration is satisfied that all feasible steps have been taken to prevent recurrence of similar incidents.

415. The Director of Social Welfare has accepted all recommendations to prevent wrongful cessation of NDA and to take remedial action as necessary.

Case No. 1998/0545: Delay in handling the complainant's application for review and not taking action to process her application for financial assistance.

416. The complainant was not satisfied that her appeal under the Local Student Finance Scheme (LSFS), which was submitted in September 1996, had not been completed until October 1997. Because of this, her application for 1997/98 had also been held up. She was also not satisfied that her request for advance payment to assist her in settling the tuition fee payment for the 1997/98 academic year was rejected. The Ombudsman found the complaint substantiated.

417. A formal letter of apology was issued to the complainant on 10 September 1998. Moreover, the SFAA has revised the procedural guidelines on the handling of application for review which have been promulgated among the processing staff with a review to strengthening the review mechanism. Furthermore, through the enhanced computer system, bi-weekly progress reports are being produced which has served as an effective means of monitoring by the senior management.

418. The Ombudsman's recommendation to reconsider the desirability of ceasing the advance payment arrangements in 1998/99 academic year was not accepted. A new scheme, namely the Non-means Tested Loan Scheme (NLS), has been introduced in 1998/99 to assist students in meeting their tuition fees payments. This scheme allows LSFS applicants to obtain early and/or additional financial assistance to pay their tuition fees. Results under the NLS are provided within three weeks of receipt of applications. For LSFS applicants whose results are announced after their NLS loans are provided, there are arrangements whereby the NLS loan amount can be adjusted to take account of the total assistance provided under the LSFS. Given the availability of the NLS, there does not appear to be a need to reinstate the former advance payment practice which provided assistance to meet 50% of the tuition fee payable. The Ombudsman has accepted this explanation and agreed that the former advance payment practice need not be reinstated.

Case No. 1998/0766: Failing to duly notify the complainant of the outcome of his application for financial assistance.

419. The complainant was not satisfied that it had taken 11 months for him to be notified of the results of his application for the 1997/98 academic year for

financial assistance under the Local Student Finance Scheme from the SFAA. The Ombudsman found the complaint substantiated.

420. A formal letter of apology was issued to the complainant on 24 September 1998.

421. Through the enhanced computer system, the SFAA is now able to print reports on outstanding cases being handled by each processing officer on a regular basis. These reports will be examined by the supervisors to ensure that applications which have been held up are identified for immediate action. Moreover, the SFAA has reminded all Investigation Officers of the need to ensure that applications would be processed and brought up for follow-up action within the specified time frame and that clarifications of information/requests for additional information should be made in writing after failing to contact the applicants by telephone calls. To avoid any future delay arising from the retrieval of old records from the Tuen Mun Record Centre, the SFAA has revised and implemented a new set of procedural guidelines.

Case No. 1998/3191: Delay in processing the complainant's application for grant and loan.

422. The complainant was not satisfied that the SFAA has taken more than five months to process his application under the Local Student Finance Scheme for the 1998/99 academic year. He was also not satisfied that the SFAA had not sped up the processing of his application even though he has made several enquiries in October/November 1998. The Ombudsman found the complaint substantiated.

423. The working procedures for the 1999/2000 application exercise have been streamlined. Processing officers will notify the Payment Unit for follow-up action on applicants who are pursuing special courses once this is known.

424. Starting from the 1999/2000 application exercise, SFAA will allow two weeks' time for the relevant institution to give a reply. SFAA will also make clear to the institution that failure to do so will result in delay of payment to the applicant.

425. The computer programmes have been enhanced to enable application results to be issued more readily.

426. It is stipulated in the guidance notes for 1999/2000 application exercise that where additional information has to be sought, the processing time may take longer.

427. Formal guidelines on handling enquiry and dealing with special case have been issued to staff. Briefings have been arranged to enable the staff to have a better understanding on the information provided in the computer system, particularly those related to issue of notification of results.

428. A formal letter of apology was issued to the complainant on 17 May 1999.

Transport Department (TD)

Case No. 1998/2320: Giving unreasonable instruction; making malicious allegation against the complainant; trying to stop the complainant from making a complaint; and not communicating with him to confirm the details of an interview.

429. On 25 May 1998, the complainant attended the light goods vehicle driving test at Tin Kwong Road Driving Test Centre. The complainant alleged that the Driving Examiner conducting the test, after noticing that he was a policeman, had given him improper instructions during the vision test and driving test. On completion of the test, and knowing that he had failed the driving test, he wanted to lodge a complaint to the Driving Test Centre Supervisor. The complainant alleged that the Driving Examiner intended repeatedly to stop him from lodging the complaint. The complainant also complained that the Driving Examiner had alleged him of offering advantage to him in exchange for passing the test. Lastly, the complainant was dissatisfied with TD for not notifying him the interview time by letter as agreed.

430. After investigation, The Ombudsman considered that, only the complaint against the Driving Examiner for trying to stop the complainant from lodging a complaint could be partially substantiated.

431. TD accepted in full all the four recommendations from The Ombudsman. They were fully implemented in May 1999.

Case No. 1998/3021: Mishandling the complaint against Route No. 9 of the China Motor Bus and failing to send acknowledgement letters to the complainant.

432. The complainant was one of the passengers regularly taking the 6:30 a.m. trip (sometimes the 6:45 a.m. trip) of the China Motor Bus (CMB) Route No.9. He claimed that from May 1995, the bus of the 6:30 a.m. trip did not show up from time to time, and the situation got worse in 1996. He reported the problem through the Shek O Residents Association Limited to TD many times. However, TD did nothing to rectify the irregularity immediately but allowed it carrying on unchecked for a year. TD did not attempt to investigate the complaint but simply accepted the CMB's explanation without reservation. Although the complainant pointed out to TD that CMB was dishonest in handling this complaint, TD did not take any penalty action against the CMB.

433. The complainant also alleged that TD did not send him any acknowledgements to his letters concerning the complaint. TD's replies were made two to three months only after his repeated requests.

434. After investigation, The Ombudsman was of the view that complaint point against mishandling of the missing trips was not substantiated but the complaint point about failure to send acknowledgement letters was substantiated.

435. In response to the two recommendations of The Ombudsman :

(a) TD has revised and updated the TD Departmental Instructions (DIs) on complaint handling procedures and guidelines in order to provide clearer guidance to officers. The revision incorporates the requirements on sending acknowledgement and interim replies to incoming correspondences mentioned in the General Circular No. 8/97 as well as guidelines on handling repeated complaints. The aforesaid DIs are re-circulated to staff once every three months to ensure that staff of TD are fully acquainted with and strictly follow the complaint handling procedures; and

(b) a letter of apology had been sent to the complainant on 25 March 1999.

436. The two recommendations have been fully implemented and The Ombudsman informed TD on 15 July 1999 that the case had been closed.

Urban Services Department (USD)

Case No 1998/0108, 1998/0592 – 1998/0616 : Reneging on the promise to resettle the complainants' fresh fish stalls back to a newly re-developed market.

437. 32 fish stall lessees including the complainants used to operate business in the old Sai Ying Pun Market (SYPM). Owing to the redevelopment of the old SYPM, they had to be temporarily relocated to the nearby Centre Street Market (CSM) on 1 March 1993.

438. The complainants claimed that the USD had sent the Sai Ying Poon Market Fresh Merchants' Association (Association) a letter on 9 October 1992 which confirmed that all the 34 fish stalls (taken up by 32 stall lessees) relocated to the CSM would be resited back to the re-developed SYPM to continue their business therein upon completion of the works. However, they were subsequently annoyed to learn from the USD that due to the site constraints of the re-developed SYPM there would only be 22 standard fish stalls. Hence, it could not accommodate all the 34 original fish stalls.

439. On 7 October 1996 the USD issued a letter to the Association to inform the latter of the resettlement arrangements which had been approved by the then Urban Council, viz. the fish stall lessees of the CSM could either form groups for bidding or to apply for bidding individually for the 22 fish stalls to be provided in the re-developed SYPM; for those who fail to secure a fish stall, they may participate in the restricted auctions for any remaining market stalls in the re-developed SYPM or vacant stalls in other Provisional Urban Council (PUC) markets in the Hong Kong Region. The complainants considered that the resettlement arrangements unfair and unreasonable. They stressed that the USD should allocate each of them a single fish stall in the re-developed SYPM.

440. Though USD made no promise to resite all the fish stall lessees back to the re-developed SYPM on a one-for-one basis, it is most unfortunate that its letter of 9 October 1992 could be so interpreted as to imply that all the 32 fish stall lessees in CSM were promised a resite in the re-developed SYPM. The Ombudsman therefore found the complaint substantiated. USD on the advice of the Principal Legal Officer/PUC, accepted The Ombudsman's recommendations.

441. The USD had implemented The Ombudsman's recommendations. The Markets and Street Traders Select Committee of the PUC decided on 22 July 1998 to convert the proposed 22 fish stalls in the re-developed SYPM into 33 smaller stalls with a view to reprovisioning all fish stalls concerned on a one-

for-one basis. On 28 July 1998 the USD sent letters to the complainants informing them of this arrangement. In a restricted auction held on 26 April 1999, a total of 32 out of 33 fish stalls in the re-developed SYPM were successfully bid by the fish stall lessees concerned. The new market has been commissioned in August 1999. The case is now concluded as The Ombudsman's recommendation has been fully implemented.

Case No. 1998/0737 : Unfairly restricting the use of the changing room in a park for hirers only.

442. The complainant, who is an evening jogger, had been using the changing facilities in Chai Wan Park for sometime. For the period between January and February 1998, he observed that notice to the effect that "The changing room was provided for use by venue hirers only. Non-hirers are requested not to use the facility. Any inconvenience caused is regretted." was displayed in the changing rooms. As the door in the changing room was not locked, he disregarded the notice and continued to use the changing facility as usual. However, on the evening of 17 March 1998, he found the door in the changing room locked. He went to the park office and complained to the venue-in-charge. At that material time, the venue-in-charge was not aware that the door of the changing room had been accidentally locked up by the cleansing worker after the cleansing operation. As the complainant could not obtain an acceptable reason for not allowing non-hirers to use the changing room and as he was under the impression that the changing room was deliberately locked up by venue staff, he made a complaint to The Ombudsman. The Ombudsman found the complaint substantiated.

443. As a matter of fact, the changing room facilities are provided for use by both hirers of the venue or other venue users. The circumstances leading to the display of the notice were that venue staff had received complaints of abusive use of the changing room in that there had been people washing clothes inside the changing room. As it caused nuisance and affected the normal use of the room, hence venue staff displayed the notice in the changing rooms in an attempt to discourage people from misusing the changing room.

444. The Department had accepted the recommendations of The Ombudsman and apologized to the complainant. All District Amenities Officers and Park Managers were briefed of The Ombudsman's recommendations at a special meeting held in October 1998. The recommendations were implemented with effect from 1 December 1998. Staff were reminded again to adhere to the recommendations in January and May 1999.

Case No. 1998/1788: Poor and irresponsible attitude of a staff member in handling the complainant's purchase of ticket.

445. At 6:45 p.m. on 5 July 1998, the complainant approached the Box Office of the Hong Kong Cultural Centre (HKCC) to purchase a ticket for a performance to be held at 7:30 p.m. that day at the Grand Theatre. However, it was found that the magnetic strip of the credit card tendered by the complainant was not functioning. The responsible Box Office Assistant (BOA) thus referred the case to the Duty Manager (DM). The DM tried to contact the Card Centre several times but was in vain. The complainant then contacted a staff of the Card Centre's merchant bank and was informed that it was possible to process a purchase even the magnetic strip was not functioning. It was the bad communication between the DM and bank staff that had caused the problem. Even though the DM had offered the complainant to attend the performance first and then settle the ticketing matter during the intermission, the complainant declined the offer. Finally, all procedures were cleared with the bank at 7:40 p.m. for the transaction but the complainant decided not to purchase the ticket as she thought that the performance had already started.

446. The complainant alleged that the DM was chewing gum while talking to her as well as talking over the phone with the Card Centre. She was unhappy with the DM's attitude and thought that the communication with the Card Centre could have been more effective if she was not chewing gum. The complainant first lodged her complaint to the Consumer Council which then referred the case to the HKCC on 24 July 1998. Having investigated the case, a written reply was issued to the Consumer Council on 29 July 1998 confirming that the complaint was substantiated. The HKCC also requested the Consumer Council to convey their apology to the complainant in that respect. The complainant also approached The Ombudsman for investigation into the case and demanded a formal apology from the HKCC regarding the working attitude of the DM. The case was referred to USD on 28 July 1998 and a further investigation was conducted to review the case more thoroughly. The management of the HKCC critically reviewed the case and all staff concerned (including the DM, the above-mentioned BOA and other two BOAs on duty at that time) were asked to give further statements on the case. It was re-confirmed that the complaint was substantiated and a written apology was sent to the complainant via The Ombudsman.

447. According to the recommendations made by The Ombudsman, the following measures have been / will be taken to ensure that all DM and BOA are fully versed with the necessary knowledge and skills for the carrying out of the box office duties :

(a) Measures to strengthen the performance of BOA

(i) An updated "HKCC Box Office Operation Manual" was given to each BOA for their reference. The manual contained the information in customer services related to box office, general and special operation guidelines of box office, and, conduct and discipline of BOA;

(ii) special guidelines and ticketing arrangements instructed by the supervisors of the box office and the Ticketing Office will be circulated from time to time for BOA's information and will also be posted up in the box office whenever necessary for BOA's special attention and easy reference;

(iii) regular meeting with BOA will be held bi-monthly to refresh special ticketing arrangements and update the information of coming events which will be put on sale through URBTIX outlets; and

(iv) a briefing session conducted by the relevant officer(s) on each working day's morning to remind BOA about special ticketing matters and sales conditions for the performances of the day will be continued. Also, information and suggestions can be exchanged between BOA and the box office in-charge during the briefing session.

(b) Measures to enhance the understanding of DMs to box office operations

(i) A briefing session to all Assistant Managers (AMs) who will be the DMs on roster and the Manager of the House Management Sub-section to refresh the knowledge about box office operations and special ticketing arrangements has been conducted on 6 January 1999 in which general introduction of box office and special ticketing matters have been discussed at the meeting. A copy of the "Notes of Duty Manager's duties related to Box Office" containing general and special ticketing guidelines was distributed to each of them in attendance for reference;

(ii) an introductory session will be arranged to each new AM in future to ensure their familiarity and understanding of the box office operations when performing DM duties;

(iii) an internal circular with new special box office arrangement will continue to be distributed to all DMs for information to ensure their updating of new policy;

(iv) all staff have been reminded to be courteous and be mindful of their manners in serving customers; and

(v) meetings with all duty managers will be arranged whenever necessary.

Water Supplies Department (WSD)

Case No. 1998/0154 : Unfairly handling the complainant's application for the use of the covered top of a service reservoir as a shooting range.

448. The complainant representing the Hong Kong Shooters Confederation (HKSC) submitted an application to WSD on 22 May 1997 to use the covered top of the Fung Wong service reservoir (S/R) for shooting practice. His application was turned down by WSD in June 1997 on the grounds that the S/R was not considered suitable for use as a firing range and that HKSC was neither a governing body of shooting sports nor an affiliated member of such a governing body. WSD's policy on the sub-allocation of S/R roofs for recreational and sports uses is that the facilities provided by the applicant must be open to the public or to schools and institutions. Moreover, the applicant who is responsible for managing the recreational facilities must be a government organization. Only under exceptional circumstances will permission be granted to a private organization for using a S/R roof for sports activities and in this connection, a major consideration is that the organization must either be the recognized governing body for the sports concerned or failing that, be an affiliated member of such a governing body, with the support of the culture and sports authority (formerly the Secretary for Broadcasting, Culture and Sport).

449. Since June 1997, the complainant had repeatedly requested WSD to reconsider his case. He alleged WSD of being unfair to his application, when compared to other similar cases approved by WSD, quoting the existing firing ranges at two other S/R's as precedent cases in which WSD had approved the application from two private organizations, namely the Hong Kong Rifle Association and RHKR The Volunteers Association Limited (successor of the former Royal Hong Kong Regiment (the Volunteers)) on consideration of exceptional circumstances. WSD responded to the repeated requests, explaining its policy and the exceptional circumstances of the two quoted cases while pointing out that HKSC had so far not demonstrated that it had met the requirements for approval.

450. The Ombudsman accepted that HKSC was purely a private organization and its application did not meet the requirement of WSD's relevant policies, and that WSD had not acted inappropriately in rejecting HKSC's application. The Ombudsman also considered that WSD had appropriately given approval to the two quoted private organizations for using the S/R roofs as firing ranges as the organizations met WSD's policy requirements at the time of their applications. However, The Ombudsman considered that it was not fair for WSD to "automatically" extend the approval

for the former Royal Hong Kong Regiment (the Volunteers) to its successor, the RHKR The Volunteers Association Limited because the latter, although being a registered charity, was only a private organization and not the governing body of shooting sports nor an affiliated member to such a body. The Ombudsman opined that WSD should have reviewed the status of the RHKR The Volunteers Association Limited and determined whether the short term license authorising its use of a S/R roof should be continued and that WSD should not have considered it as different in status from HKSC. In view that WSD had not conducted such a review, The Ombudsman concluded that the complaint was partially substantiated.

451. Guidelines have been reviewed and issued so that the up-to-date status of existing users will be re-examined upon the expiry of their short term tenancies/licenses before further extension is granted. In particular, the up-to-date status of RHKR The Volunteers Association Limited had been re-examined, and it was confirmed to be in compliance with WSD's requirements under the current policy.

Case No. 1998/0314 : Failing to resolve the complainant's water seepage problem and delay in identifying the cause of the problem.

452. The complainant lodged a complaint regarding water seepage at the ceiling of his flat on 23 July 1996 to the District Officer/Tai Po who requested Regional Services Department (RSD) for action. RSD could not identify the cause of the problem and referred the case on 10 October 1996 to WSD to follow up. WSD went through the water consumption record of the upper flat, conducted a site inspection and carried out a flow check in accordance with the laid down procedures. There was no evidence to show that the water pipes of the upper flat were defective. The investigation results had been sent to the complainant, the resident of the upper flat and RSD. The complainant lodged another complaint directly to RSD on 18 September 1997 regarding the water seepage problem. RSD could not identify the cause and referred the case again to WSD for further checking. WSD repeated the investigation and arrived at the same finding as before and conveyed the results to all the parties concerned. In March 1998, RSD, Buildings Department (BD) and WSD conducted a joint investigation. Subsequently, RSD conducted more tests and identified the cause of the seepage was due to leakage in the floor slab of the bathroom of the upper floor. The owner of the upper floor was then notified by BD to take remedial action. However the complainant was not satisfied with the actions of the three departments and lodged a complaint with The Ombudsman.

453. After investigation, The Ombudsman concluded that the part of the complaint against WSD was unsubstantiated as WSD had taken promptly

actions according to laid down procedures.

454. Following up the recommendations by The Ombudsman, WSD has reviewed and modified the procedures in handling seepage complaints and set new performance standards for investigation of such complaints. WSD has also taken part in the interdepartmental review co-ordinated by BD, which concluded that appointing one department to co-ordinate a final reply was not advisable because each department has its own area of expertise and technical knowledge. Each department has also to follow its own procedures and policies to deal with matters in accordance with the duties and delegation under the relevant regulations. Besides, a co-ordinated reply may require unnecessary rounds of communications and delay the reply. It is therefore more appropriate for each department to reply on its own.

Case No. 1998/0404 : Overcharging water charges despite complaints lodged by the complainant and cutting off the water supply after having persuaded the complainant to pay a deposit sum.

455. The complainant was the owner of a premises which he had rented out to tenants. In April 1997, he received a water bill of $1,178 for the premises covering the period from 3 July 1996 to 28 February 1997. He raised disputes on the charges, claiming that the tenant who was the registered consumer of the water account serving the premises had, since April 1996, moved out and the premises had been left vacant since then. To lodge his disputes on the water bill, the complainant applied to take up consumership of the water account on the advice of WSD staff and he paid the deposit fee. Subsequently two further bills in the name of the previous registered consumer were received by the complainant.

456. Meanwhile, the inside service of the subject premises had been found to be corroded and in need of rectification. A letter had been sent in April 1997 to the service address in the name of the previous registered consumer, urging for the necessary rectification work to be done. In July 1997 on account that the corroded inside service had not yet been rectified despite reminders issued by WSD, the water supply to the premises was disconnected. The complainant felt aggrieved and complained to The Ombudsman.

457. Upon investigation, The Ombudsman found that the complainant was not aware that by law, he did not have the responsibility to settle the outstanding water charges of the previous registered consumer. The Ombudsman opined that WSD had not explained clearly to the complainant his responsibilities and liabilities as an occupier and registered consumer of a water account, thereby causing him confusion upon receiving the demand notes

issued in the name of the previous registered consumer. The complaint against WSD for over-charging water charges despite complaints lodged by the complainant was therefore considered as partially substantiated.

458. On the disconnection of the water supply to the subject premises, The Ombudsman observed that WSD had issued the letter requiring rectification of corroded inside service in the name of the previous registered consumer instead of to the complainant, even after he had taken up consumership of the water account. The Ombudsman therefore considered complaint against WSD for cutting-off the water supply after having persuaded him to pay the deposit sum also partially substantiated.

459. In response to The Ombudsman's recommendations, WSD had sent a letter to the complainant in September 1998 explaining clearly that he was not liable for the former registered consumer's outstanding water charges. Moreover, as soon as practicable after the complainant has rectified the corroded inside service, WSD will reconnect the water supply.

Case No. 1998/2168 : Conducting perfunctory inspections two months after the receipt of a complaint about high water charges and failing to give the complainant a prompt reply in respect of his enquiry.

460. In response to a complaint dated 28 May 1998 on high water charges, WSD staff found no visible seepage on inspection on 14 July 1998 but discovered that the complainant had made an unauthorized extension of his fresh water supply system to the flushing cistern of his premises. However, the complainant's water meter located on the ground floor could not be accessed and inspected. The complainant urged the WSD staff to inspect other premises in the same building, alleging that all tenants in the building had made similar unauthorized extensions to their flushing cisterns. This was not immediately done by the WSD staff. Subsequent to this inspection, WSD issued to the complainant two letters, one requesting him to disconnect the unauthorized extension and one informing him that the reason for the high water consumption was due to the unauthorized extension of his fresh water system to the flushing cistern. The complainant telephoned WSD on 29 July 1998 to seek clarification and request for further inspection. The complainant said WSD promised to call him back but this was not done at the time the complaint was made.

461. The Ombudsman considered the complaint against WSD for conducting perfunctory inspections two months after complainant had lodged a complaint about high water charges was partially substantiated, as there was no record to show that WSD staff had noted down in his inspection report the

information provided by the complainant for follow up and the subsequent letter on reasons for high water consumption, which had been issued without inspecting the water meter, did not mention whether or not WSD would further attempt to inspect the water meter. The Ombudsman found that complaint against WSD for failing to give the complainant a prompt reply in respect of his enquiry was also partially substantiated as there was no record which showed that WSD had responded to the complainant's call before issuing a letter to him proposing a date for a second inspection.

462. A letter of apology with reasons for the high water consumption was sent to the complainant on 17 May 1999.

Part II
Direct Investigation Cases

Department of Health (DH)

Dispensary Service of the DH

463. The Ombudsman has conducted a direct investigation on the dispensary service of the DH and made some recommendations.

464. The DH accepts the conclusions and recommendations of The Ombudsman. All of the recommendations have been implemented. These include: drawing up the Good Dispensing Practice Manual and implementing it in all dispensaries of the Department; reviewing the staffing requirements (including the need for pharmacists) and staff posting policy of the dispensaries; improving the documentation requirements of all operations directly or indirectly related to drug dispensing; implementing a medication incident reporting and data collection system with a view to service improvement; and improving channels of communication between the dispensaries and headquarters.

Issues Pertaining to Imported Pharmaceutical Products

465. The Ombudsman has conducted a direct investigation on issues pertaining to imported pharmaceutical products and made some recommendations.

466. The DH has accepted the conclusions of The Ombudsman and has agreed to implement all the recommendations contained in the investigation report. Communication channels have been established or strengthened with overseas health authorities and local institutions. The existing guidelines distributed to the trade on the registration and importation of pharmaceutical products have been updated. These have been up-loaded onto the Department's web-site as an additional means for accessing them. The Chinese Medicine Ordinance, which provides the legal framework to regulate traditional Chinese medicines, has been passed in the Legislative Council. A review on radioactive substances for medicinal use has been completed and has concluded that these substances should be regulated as pharmaceutical products when the existing law on pharmaceutical products is revamped. The latter is in progress. The Pharmaceutical Products Recall Guidelines have also been updated.

Education Department (ED)

Registration of Tutorial Schools

The Study

467. The Ombudsman has conducted a direct investigation on the registration of tutorial schools and made some recommendations.

Setting up a prosecution team

468. A Joint Police/ED working group has been set up to review the current practices in handling suspected unregistered schools (including unregistered tutorial schools (UTS)) and to examine the possibility of ED centralising its investigation capability to deal with unregistered schools. Depending on the recommendation of the Working Group and the availability of resources, the setting up of a prosecution team will be considered in the context of the review of the organisation of ED.

Regular patrols and programme of visits

469. ED has, in general, accepted the recommendations. However, ED's primary responsibility is on formal education. Unless additional resources are available, it would be difficult and not cost effective to carry out regular patrols and visits as recommended by the Office of The Ombudsman.

Display of certificates

470. ED issued an Administrative Circular No. 38/98 on Display of Certificates on 11 November 1998 to remind schools to display certificates of school registration and fees certificates in school premises. ED will continue to issue the circular on a yearly basis. District Education Officers will ensure that schools comply with such requirements as specified in the Education Ordinance during their visits to private schools.

Increase in fine

471. ED will pursue the proposal for revising the Education Ordinance, increasing the level of fines will be one of the items to be considered, together with other legislative amendments being considered in the context of implementing school-based management.

Working Group

472. An inter-departmental working group, comprising representatives from ED, Fire Services Department (FSD), Buildings Department (BD) and Housing Department (HD) has been set up to seek ways to streamline the procedures on registration of schools. It was agreed that, in order to reduce the lead time, applicants for school registration would submit their applications for fire and building safety certificates to the BD and FSD direct instead of routing through ED. As an ongoing exercise, the working group will continue to explore ways to streamline the procedures.

473. Separately, the Business and Services Promotion Unit of the Financial Secretary's Office will appoint a consultancy firm shortly to help ED review the registration procedures for kindergartens and tutorial schools.

Publicity Programme

474. Consumers are in the best position to decide whether they are getting value for money, and to vote with their feet if tutorial schools do not deliver results. ED will continue to put out regular publicity (e.g. press release) to advise parents and students on how to identify registered tutorial schools and to issue regular press release to remind students to check whether the schools they wish to enroll in are registered under the Education Ordinance.

475. A comprehensive school list for the 1998/99 school year has been made available in District Education Offices and ED's home page. In addition, a supplementary list of schools provisionally registered recently has also been included. The two lists are updated monthly.

Report on Progress

476. The Ombudsman asked ED to report progress on the implementation of the recommendations. On 27 July 1999, ED advised The Ombudsman of follow-up actions it had taken.

Government Secretariat (GS) and Airport Authority (AA)

Investigation into the Commissioning and Operation of the New Airport at Chek Lap Kok (CLK)

477. The Ombudsman has conducted a direct investigation into the commissioning and operation of the new airport at CLK and made some recommendations.

Government Secretariat

478. The Administration has studied The Ombudsman's Report carefully and considered in particular what improvements could be made in the light of the recommendations set out in the Report. Our follow-up actions in respect of the recommendations concerning the Administration are set out in the following paragraphs.

479. To enable future major public projects to benefit from these recommendations, the Administration has prepared a set of Guidelines based on the relevant recommendations and observations in The Ombudsman's Report as well as the reports of the Commission of Inquiry and the Select Committee of the Legislative Council.

480. The Guidelines are meant to be applied with common sense and flexibility to suit the circumstances of individual projects. They cover all stages of a project from the selection of delivery agent to operations. In addition, they contain special features such as project auditing, risk assessment and contingency planning. The Guidelines have been promulgated to the concerned policy bureaux and works departments as internal administrative guidelines in late October 1999.

481. At present, there are three Government Members on the Airport Authority (AA) Board, namely the Secretary for Economic Services, the Secretary for the Treasury and the Director of Civil Aviation. The Government Members on the Board will continue to work with the non-Government Members as a team in maintaining effective communication with the AA management and the Government and also ensuring the efficient operation of the airport.

482. The AA is a statutory body set up under the Airport Authority Ordinance to provide, operate, develop and maintain the airport and conduct its business according to prudent commercial principles. On such matters that are within the AA's responsibility, the Authority should function independently,

free from intervention from the Administration. This is also in line with the views expressed during the airport inquiries that there should be proper delineation of power and responsibility between the Administration and the AA over the development and operation of the airport.

483. Under the Airport Authority Ordinance, the affairs of the Authority shall be under the care and management of a board. The three Government Members on the AA Board work closely with the non-Government Members in helping the Board to carry out this function. The Ordinance also provides for the provision of information by AA to the Government, such as the submission of its business plans and estimates to the Financial Secretary. This enables the Government to keep track of the work of AA. Moreover, the Civil Aviation Department, being the authority to issue the aerodrome licence to AA, monitors the operation of the airport to ensure that the relevant safety and security standards are complied with.

484. As pointed out in The Ombudsman's Report, the experience gained from the opening of the new airport is helpful to the Administration in its undertaking future public projects which involve the participation and contributions from various organizations and which require the oversight, steer and co-ordination at high level. The Administration has studied the Report carefully and followed up on all the relevant recommendations. It is encouraging to note that, through the hard work of the AA and its business partners, the new airport is now operating at high service standards, and has received many favourable comments from airport users.

Airport Authority

485. The AA has accepted all the recommendations of The Ombudsman and some of them have already been adopted as a policy. For example, to be alert and be ready to meet the challenge of change, to manage public expectations, to develop a positive complaints culture. Implementation of many of the recommendations will be maintained on an on-going basis.

486. However, the AA must emphasise that in cases involving business partners, AA could act only in accordance with the provisions in the relevant agreements if applicable although every attempt will be made to encourage respective business partners to strive towards the same target, e.g. in the monitoring of their performance and in the setting up of performance pledges. To achieve this, good will and rapport among the airport community is important and it is certainly the AA's objective to work towards that end.

487. The Third Customer Survey carried out at the airport in end May 1999 indicated that the AA has continued to maintain a high level of service

standards at the airport, as evident from the rate of users who described themselves as satisfied with the overall services and facilities (91.4%) or very satisfied (33.7%). The AA will examine areas where there is a lesser satisfaction rate and look for improvements. It will keep up its efforts and momentum in maintaining the highest level of service standards at the airport, its obligation to operate the airport on a prudent commercial basis notwithstanding.

Housing Department (HD)

Recovery of Public Rental Flats under the Home Ownership Scheme (HOS), the Private Sector Participation Scheme (PSPS) and the Home Purchase Loan Scheme (HPLS) by the HD

488. The Ombudsman has conducted a direct investigation into the recovery of public rental flats under HOS, PSPS and HPLS by the HD and made some recommendations.

489. The HD has enhanced its computer system since June 1998 to produce nine separate computer reports for staff of various levels to monitor the flat recovery position. As a result, all the outstanding cases identified in the exercise have been resolved with relevant flats recovered for re-allocation. A dedicated officer has been assigned to assist the senior management to monitor the overall progress.

490. The HD will review the overall effectiveness of the information management system in monitoring the timely recovery of rental flats on a yearly basis.

491. The HD has conducted a comprehensive review on the flat recovery issue. Measures to enhance the existing flat recovery system have been endorsed for implementation on 14 January 1999 by the Rental Housing Committee of the Hong Kong Housing Authority (HKHA). These enhanced measures are listed as follows :

(a) Time frame for Recovery of Public Rental Housing Flats

The Department has decided to extend the maximum time frame for flat recovery from two months to three months. Thereafter, any application for further extension of stay will not normally be considered. Exceptional cases on strong compassionate grounds will have to be considered by the Regional Chief Manager/Management on individual merits. In order to build in an effective deterrent in the system to discourage abuses, this maximum stay of three months has to be granted conditionally, as detailed in (b) below.

(b) Deterrent Measures Against Defaulters

(i) For "Green Form" applicants of HOS Phase 20B and thereafter or "Green Form" applicants of HPLS/Secondary Market Scheme (SMS) on or after 1 February 1999, the following

measures are adopted :

(A) the tenants concerned are required to tender self Notice-to-Quit (NTQ) at the time of taking-over their HOS/PSPS flats, or effecting the assignment in the case of HPLS/SMS, to terminate their tenancy and surrender their public rental housing flats to the HKHA within one calendar month; and

(B) for any extended stay after the expiry of the NTQ, the occupiers are charged occupation fee equivalent to three months' net rent plus rates or market rent (if they are market rent payers at the time of the termination of the tenancy), whichever is the higher.

(ii) For successful "Green Form" applicants prior to HOS Phase 20B or successful "Green Form" applicants of HPLS/SMS before 1 February 1999, the following measures are adopted :

(A) the tenants concerned will be informed of the requirement to tender NTQ at the time of taking over their HOS/PSPS flats, or effecting the assignment in the case of HPLS/SMS, to terminate their tenancies and surrender the public rental housing flats to the HKHA within two calendar months; and

(B) for any extended stay after the expiry of the NTQ, the occupiers are charged occupation fee equivalent to market rent (if they are market rent payers at the time of termination of the tenancy) or three times the net rent plus rates, whichever is the higher.

(c) Staff accountability

Housing Managers have been made fully aware of their accountability for any delays which are attributable to either their negligence or failure to follow the rule; and their having no discretionary authority to grant extension of stay in dealing with flat recovery cases.

492. The management staff have been instructed to implement the enhanced measures through instruction circulars. To publicise the enhanced measures, the Department has also arranged for press release and disseminated the message to tenants through Estate Management Advisory Committee meetings and newsletters.

Trade Department (Trade D)

Handling of Trade Documents by Trade D

493. The Ombudsman has conducted a direct investigation on the handling of trade documents by the Trade D and made some recommendations.

494. Trade D has accepted in full The Ombudsman's recommendations and has taken immediate actions for the implementation of the recommendations. The actions taken by the Trade D include the following :

(a) the Trade D has completed a comprehensive internal review on the departmental guidelines on handling of classified documents soon after The Ombudsman's investigation, and promulgated the results to all staff in the Department. The review report has been cleared with the appropriate authorities, including the Government Security Officer, the Privacy Commissioner for Personal Data, and the Government Records Service Director. Measures recommended in the internal review, which are largely in line with those in The Ombudsman's report, have already been put into practice;

(b) a handbook has been compiled incorporating all relevant circulars and guidelines on handling classified documents for easy reference of staff. The handbook, which is supplemented by a circular on office security, has been promulgated widely to all staff in the Department through normal circulation and the Local Area Network. It will be reviewed and updated on a regular basis;

(c) monitoring mechanisms and control measures have been put in place to ensure that the safekeeping, disposal, and retention of classified documents are in line with the guidelines. Regular security inspection of the office and surprise checks will be conducted to ensure that security documents are handled properly;

(d) to increase staff awareness and to enhance communication in security matters, briefings have been conducted to advise staff of the proper ways in handling classified documents. The Government Records Service Director has been invited to the briefings. Arrangement has been made for staff to attend seminars hosted by the Office of the Privacy Commissioner for Personal Data. Further, security of document has been made a standing agenda item in regular Office Manager meetings; and

(e) the Departmental Secretary has been designated as the Departmental Security Officer. His role has been clearly spelt out in the handbook. Branches are required to report to the Departmental Security Officer regularly the work and progress in handling classified documents.

Urban Services Department (USD), Regional Services Department (RSD), Buildings Department (BD), Fire Services Department (FSD), and Environmental Protection Department (EPD)

Restaurant Licensing System

495. The Ombudsman has conducted a direct investigation into the restaurant licensing system and has made some recommendations.

BD

496. The BD has reviewed its building safety requirements and procedures and revised guidelines drawn up. The trade has been consulted through the Restaurant and Liquor Licensing Meeting and other forums. When finalized, the revised guidelines will be incorporated into a revised edition of "A Guide to Application for Restaurant Licenses" which will be issued by USD/RSD.

497. The BD believes that the processing time will be shortened as a result of the adoption of the revised guidelines.

498. The Ombudsman's recommendation to review BD's present performance pledges, and to identify areas where processing time for the various steps in the workflow might be further shortened is acceptable and action is in hand on its implementation. BD agrees that there is scope for taking a proactive approach to the category of cases which require vetting by BD. These cases comprise only about 7% of all applications but are often regarded by applicants as the most difficult to resolve. BD has recently introduced a new procedure whereby its staff will of their own volition offer advice to applicants if their first application has indicated potential difficulties in complying with building safety requirements.

499. BD recognizes the importance of an effective monitoring mechanism : its 3-tier system was drawn up on this basis. BD further agrees that there is scope for fine-tuning the system particularly for problematic cases. An improved monitoring mechanism has recently been introduced as follows :

(a) for cases where "Letters of Requirements" have been refused due to BD's requirements, BD staff will keep track of the progress of applications in every two months so that suitable advice could be offered to applicants;

(b) BD will regularly review USD's/RSD's list of long standing cases which have been issued with "Letter of Requirements". If there are

cases involving BD's requirements, BD will approach the applicants with a view to facilitating, as far as possible, compliance with building safety requirements; and

(c) for outstanding cases due to non-compliance with requirements other than BD's own, USD, RSD, FSD and BD have agreed to apply, for the second time, the Application Vetting Panel (AVP) procedures which are normally used for new applications. All departments concerned believe that this will greatly help applicants to resolve difficult cases.

500. The Ombudsman's recommendation for the BD to conduct regular staff reviews of their licensing offices and prosecution offices with regard to the current/expected case loads, BD's performance pledges and the need to provide an efficient licensing service to the restaurant trade is acceptable and being implemented.

501. The staff resources are under review from time to time with regard to the current/expected workloads to formulate the performance pledges. Redeployment of staff to the Licensing Unit of BD has been made in September 1998 to cope with the increasing workloads.

EPD

502. Following the investigation, USD is now revising their guidebook – "A Guide to Application for Restaurant Licenses". EPD is providing input to USD to ensure essential environmental requirements are set out clearly in the guidebook.

FSD

503. FSD and other concerned departments are assisting the licensing authority to review and improve the restaurant licensing system by contributing to a dedicated consultancy on this study steered by USD.

504. In the meantime, FSD is participating in regular licensing seminars jointly organised with licensing authorities to explain in detail the requirements to the attendees/applicants.

505. Technical guidelines to Authorized Persons (APs)/Registered Structural Engineers (RSEs) are currently available through Code of Practices and FSD Circular Letters. These materials are constantly updated and revised according to changing circumstances and enquiries arising from the trade.

506. Additionally, regular liaison meetings are held with APs and registered Fire Service Installation contractors to discuss issues of common interests in the restaurant licensing system.

507. FSD has revised the present performance pledge for follow-up inspections from 14 to seven days upon notification of full compliance of fire safety requirements by an applicant.

508. FSD's experience has shown that the time taken by an applicant to meet the requirements of the authorities is not necessarily proportional to the complexity of an application. Rather it depends on the applicants' sincerity and efforts to meet the licensing requirement. Besides, each application has its own nature of "complexity" which may be difficult to be generalized and categorized. As an alternative to The Ombudsman's recommendation to consider internally categorising the applications according to the level of complexity, FSD has proposed to USD/RSD and departments concerned to invite applicants to attend a second interview after the first Application Vetting Panel (AVP) if they cannot meet all the licensing requirement within four to five months. The purpose of this second interview is to assist the applicants to overcome difficulties that they may have encountered in meeting the licensing requirements.

509. FSD has commenced an exercise to revise all FSD's relevant correspondences and letters of requirements to make them more user-friendly. It is expected that the revision can be completed in late 1999

510. FSD has been conducting regular reviews of FSD's staff resources and, where considered necessary, re-deployed staff to respective units in order to alleviate their heavy workload. FSD will continue to conduct regular staff reviews as the situation warrants

RSD/USD

511. The Provisional Regional Council (Pro RC)/RSD and the Provisional Urban Council (PUC)/USD welcome The Ombudsman's interest and recommendations. Over the years, RSD/USD have been working closely with relevant departments to speed up the issuing of restaurant licences and at the same time to stamp out unlicensed restaurants and food businesses in the Pro RC/PUC areas.

512. All the 20 recommendations made by The Ombudsman are relevant to USD while 19 are relevant to RSD.

Shortening the processing time for licence applications

513. To shorten the processing time for restaurant licence applications, RSD/USD have tried out the issue of the Letter of Requirements (LR) for full licence applications on the date of the application passing the Application Vetting Panel's scrutiny and availability of the BD and FSD requirements. As for provisional licence applications, such arrangement has now been adopted on a permanent basis. The pledged time to issue LR for provisional licences by RSD/USD has been reduced by one week, i.e. from six weeks to five weeks.

514. If no report of compliance is received from the applicant three months after the issue of the LR, licensing staff will check progress on compliance and write to the applicant with the findings of the inspection listing out also the requirements outstanding. Progress checks will continue to be made every three months to chase up the applicant to comply with requirements. RSD/USD have also started to invite applicants whose requirements have remained unmet for a long time to attend a second application vetting meeting with representatives of BD, FSD and RSD/USD. The purpose is to ascertain any difficulty applicants may have and to advise, where appropriate, on ways to speed up the compliance of the outstanding requirements.

515. In March 1999, the two Municipal Councils have formed a Working Group on the Proposed Setting Up of a Centralized Licensing Unit. The Working Group has so far met four times. Meanwhile, RSD/USD have standardized application forms and set up counters for receiving licence/permit applications in any licensing/district office of RSD and USD.

516. It is proposed in The Ombudsman's Report that RSD/USD should consider coordinating the final inspection by all parties concerned to check and confirm compliance of fire safety, ventilation, building and health requirements on the same occasion as far as practicable. The proposal was tried out in April 1999 but with little success since licensing requirements stipulated by respective departments are not inter-related and in nearly all cases, the applicants did not comply with all the requirements at one go as stipulated by various departments.

517. In practice, it is impossible to arrange joint "final" inspection by all parties concerned. Such a proposal might even lengthen the processing time and use up more staff time.

518. Given that respective departments have their own pledge for processing times, the proposal is not workable and thus not supported.

519. RSD/USD have reservations on the recommendation of treating applications as "abandoned" when the licensing requirements are not complied with within six months after issue of the LR. The applicant is at liberty to submit a fresh application in respect of the same premises and there is no way RSD/USD can stop him from doing so. Processing of fresh applications could lead to even more workload for all departments involved.

Providing more support to applicants/APs/contractors

520. RSD will emphasize user-friendliness in the quarterly seminars for prospective food business operators. Since June 1996, these seminars have been further enhanced with speakers from FSD/BD joining RSD officers to explain licensing steps and requirements. USD has organized similar seminars since July 1999.

521. A help desk has been set up in RSD/USD Licensing Offices since May 1999 with a senior health inspectorate officer on stand-by duty ready to assist applicants.

522. Leaflets and booklets on licensing procedures and licensing requirements are available free of charge at Licensing Offices. Relevant information is also available in the RSD/USD homepages on the Internet.

523. Both RSD and USD are revising the text of various guidebooks on applications for food business licences (including restaurant licences) to be more customer-friendly. In addition, the reminder from RSD/USD to applicants on the progress of their applications has been revised to advise them of possible consequences of operating unlicensed restaurant business.

Maintaining consistent licensing policies/procedures

524. Working under the Joint PUC/ProRC Food Safety Committee, USD and RSD have resolved differences in policies and procedures pertaining to restaurant licensing and prosecution against unlicensed food premises and basically aim at adopting uniform licensing and prosecution procedures.

More publicity and consultation on the Restaurant Licensing System

525. An additional new licensing condition was introduced for all food business licences by RSD/USD in March 1999 and July 1998 respectively requiring the licensee to display a prescribed notice at a conspicuous place near the main entrance of the licensed premises to indicate to patrons that the premises have been licensed.

526. Starting from November 1999, RSD/USD will implement an open categorization scheme whereby an appropriate notice will be awarded to restaurants and food factories (supplying lunch boxes to schools) attaining excellent hygiene standards.

527. RSD/USD will continue the dialogue with the restaurateurs and APs/RSEs for improvement to the restaurant licensing policy, procedures and practices.

Stepping up enforcement against unlicensed restaurants

528. To deter unlicensed food business operation, RSD/USD will take out prosecutions or summary arrest actions against the operator upon discovery of any unlicensed food premises. RSD/USD will apply for Prohibition Order immediately upon first conviction of the offence of operating unlicensed food premises. If the Prohibition Order is breached, summons will be taken out against the proprietor for breach of the Prohibition Order and a Closure Order will be sought immediately upon conviction of the offence. RSD is extending the scope of summary arrest action against unlicensed restaurants operators. USD, given resources constraint, will primarily target at unlicensed food premises where hygiene conditions are of concern.

529. Prohibition and Closure Orders are targeted against premises, not operators. As such, the transfer of ownership of an unlicensed restaurant will not affect the institution of enforcement actions. Legislative amendments are in hand to empower the Directors of RSD/USD to close unlicensed food premises without recourse to Court. After legislative amendments, RSD/USD would be able to close promptly unlicensed restaurants which are unlicensable and pose public health risk.

530. The maximum penalty for operating an unlicensed restaurant is a fine at Level 5 of $50,000 plus imprisonment for six months and a daily fine of $900 whereas the maximum penalty for breach of Court Order is a fine at Level 6 of $100,000 plus imprisonment for 12 months and a daily fine of $1,750. The existing level of fine is considered sufficient and will be kept under regular review to maintain the deterrent effect. However, the amount of fine imposed in each case is for the Court to determine. In the past three years, the average fine is about $6,000 in the New Territories and $15,000 in the urban areas and are well below the maximum penalty.

531. Licensing staff will maintain close liaison with district staff for early enforcement action against unlicensed restaurants the application of which has been rejected or the compliance of the licensing requirements has long been outstanding, or the provisional licence has lapsed.

532. USD has since June 1999 dispensed with the points system in determining the priority for obtaining a Closure Order, and will apply for a Closure Order upon conviction of a breach of Prohibition Order.

Reviewing manpower

533. RSD/USD will review manpower requirements regularly.

Improving the monitoring mechanism

534. From experience, problems are related more to building and fire services requirements. The idea of grouping applications according to their level of complexity for closer monitoring of more complicated cases as recommended in The Ombudsman's Report has been examined. RSD/USD have concluded that the criteria for determining "complexity" requires more in-depth study in terms of categorization criteria, level of monitoring for respective categories and its implications on our manpower and resources. Apart from the actual question of the effectiveness of such proposal, the grouping of applications according to their level of complexity would make the present licensing system even more complicated. RSD/USD are now consulting BD and FSD on how this recommendation can be implemented. In general, requirements of USD/RSD pertaining to restaurant licensing are simple and straightforward and normally do not pose any major problem to the applicants.

535. In the interim, the Business and Services Promotion Unit of the Financial Secretary's Office has funded an independent consultancy study on the existing restaurant licensing system of the two Municipal Councils, under the steer of the Provisional Urban Council. The study has been completed and its draft report does not favour the setting up of a Centralized Licensing Unit.