THE GOVERNMENT MINUTE

IN RESPONSE TO

THE TWELFTH ANNUAL REPORT OF THE OMBUDSMAN

ISSUED IN JUNE 2000

Government Secretariat

8 November 2000

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Introduction

The Chief Secretary for Administration presented the Twelfth Annual Report of The Ombudsman to the Legislative Council at its sitting on 21 June 2000. The Administration undertook then to prepare a Government Minute in response to The Ombudsman's Annual 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 her 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 10 of the Annual Report respectively.

Part I
Investigated Cases

Agriculture and Fisheries Department (AFD)

Case No. 1999/1079 : Evading responsibility and delaying action on a tree which posed danger to passers-by.

3. The complainant wrote to District Office/Tai Po (DO/TP) in December 1998 requesting assistance to fell two dead trees in Tai Po. DO/TP referred the request to the then Agriculture and Fisheries Department (AFD) (now the Agriculture, Fisheries and Conservation Department (AFCD)). AFD assessed the trees as not posing any immediate danger and referred them to District Lands Office/Tai Po (DLO/TP) for routine maintenance in accordance with its understanding of Planning, Environment and Lands Bureau (PELB) Technical Circular No. 3/94. In April 1999, the complainant further complained that branches of the trees were found falling off. AFD reminded DLO/TP to take action as the trees were not posing immediate danger. DLO/TP, however, did not agree that action should rest with it.

4. According to the said PELB Technical Circular, AFD is the authority for trees felling on unleased government land but it is not responsible for maintenance of vegetation/trees thereon. Where warranted, DLOs may undertake trimming and other vegetation maintenance. In the context of this complaint, apparently AFD and Lands Department (Lands D) had different interpretations of "authority for tree felling" and "maintenance responsibility" as set out in the Technical Circular. The then PELB (now the Planning and Lands Bureau) admitted that there were grey areas in the Technical Circular and agreed to its review in consultation with departments concerned with a view to establishing a clearer delineation of the responsibility among them.

5. Nonetheless, PELB had directed Lands D to fell the two trees, and this was done on 7 September 1999.

6. The Ombudsman found that the complaint was substantiated. In response to The Ombudsman's recommendation in respect of this case, the following actions have been taken :

(a) an inter-departmental "Tree Preservation Working Group" convened by AFCD, comprising representatives of AFCD, Lands D, Architectural Services Department, Highways Department, Home Affairs Department, Housing Department, Leisure and Cultural Services Department, Planning Department and Territory Development Department, has reviewed and made recommendations regarding the division of responsibility on vegetation and tree maintenance; and

(b) Lands D has engaged a specialist term contractor to handle maintenance of trees and vegetation on unallocated and unleased government land not under AFCD, Leisure and Culture Services Department or Highways Department's management. Pending revision of the Technical Circular, AFCD will work closely with Lands D and to provide necessary advice and assistance in handling tree felling cases.

7. After the implementation of the above measures, there has been so far no further problem associated with tree felling/maintenance on unallocated government land.

Agriculture, Fisheries and Conservation Department (AFCD)

Case No. 1999/2668-1999/2686, 1999/2719-1999/2738, 1999/2773-1999/2787, 1999/2837-1999/2845 : Maladministration in detaining and destroying the complainants' pigs imprudently.

8. Swine farmers complained that AFCD arbitrarily detained and destroyed their pigs. Specifically they complained that:

(a) pigs died in slaughterhouse due to insufficient care;

(b) AFCD took revenge on complaining farmers by detaining and destroying their pigs; and

(c) AFCD did not reply to farmers' enquiries relating to β - agonists.

9. The Ombudsman found that complaints (a) and (b) were unsubstantiated while complaint (c) was partially substantiated.

10. AFCD has adopted the Ombudsman's recommendations and provided information on the entire Tattoo and Testing System, including the procedures for sending the pigs for testing, the rights and obligations of the farmers, information on reagents and penalties on the use of prohibited drugs, etc., to swine farmers as suggested. It met with farmer representatives on two occasions to discuss the Tattoo and Testing system. In addition, it invited livestock industry representatives to view the urine collection and testing procedures at Sheung Shui Slaughterhouse. Veterinary staff in the slaughterhouse and laboratory had answered questions raised by the representatives regarding the procedures.

Buildings Department (BD)

Case No. 1999/0494 : Maladministration in ordering the complainant's company to demolish certain building works in a commercial building and to reinstate the premises including a disabled toilet.

11. The complaint was triggered by a removal order, served under the "Operation Check Walk" programme in 1998, on unauthorized alteration to a toilet for the disabled in a premises with restaurant licence. The restaurant licence was issued in 1994. Although the plan accompanying the licence application showing among other works the alteration of the disabled toilet was referred to BD for comment in 1994, the irregularity was not mentioned in BD's reply to the licensing authority as BD's objective of offering advice on licensing referrals is confined to structural and means of escape matters.

12. In response to The Ombudsman's recommendations, BD had taken the following measures :

(a) a comprehensive review of the relevant sections of the booklet "A Guide to Application for Restaurant Licences" dealing with BD's requirements has been completed. Amongst the revisions, a new paragraph 50 has been introduced to draw an applicant's attention to the relevant provisions of the Disability Discrimination Ordinance (Cap. 487) and to forewarn that unauthorized removal or alteration of approved disabled facilities may be subject to enforcement and prosecution actions under the Buildings Ordinance (Cap. 123);

(b) with effect from 8 March 1999, any unauthorized removal or alteration of approved disabled facilities found in premises subject to restaurant licence applications will be mentioned in the standard reply memo to the Licencing Authority to draw the applicant's attention to possible enforcement and prosecution actions which may be contemplated by BD in future, in particular, under the "Operation Check Walk" Programme; and

(c) a letter of apology was sent to the complainant on 17 April 2000.

Case No. 1999/2878 : Delay in responding to the complainant's enquiries regarding whether the former owner of his flat had complied with the instruction of the department for removal of unauthorised building structures.

13. When the complainant signed the Provisional Agreement for Sale and Purchase with the former owner in December 1998 for a residential flat, the former owner told the complainant that BD had required that some unauthorized structures be removed. The former owner said that the prefabricated structure on the rooftop had been removed.

14. The complainant phoned BD several times between mid-January and early February 1999 enquiring whether a removal order against the unauthorised structures would be served. He also instructed his solicitor to write to BD on 9 February 1999. The BD case officer replied that he could not find the file. Nevertheless, he told the complainant that the unauthorized structures on the property had not been completely removed. In a written reply to the complainant's solicitor on 3 March 1999, BD confirmed that unauthorized structures were found on the property and that a warning letter and an advisory letter had been issued to the owner.

15. The complainant phoned the BD case officer again in early March 1999, and instructed his solicitor to write to BD on 12 March 1999 requesting BD to give a definite reply if a removal order would be served. A reply was sent to the complainant's solicitor on 12 June 1999 stating that the issue of a removal order would be recommended by BD. This was after the completion of property transaction. A removal order was served on the complainant (the new owner) on 24 August 1999.

16. The Ombudsman was of the opinion that there was definitely a delay in the reply given as BD had not given in time a clear and definite reply to the written inquiry from the complainant's solicitor.

17. BD considered that in its formal reply on 3 March 1999, it had given a clear warning and stated that a removal order might be served on the owner or occupier under section 24(1) of the Buildings Ordinance (Cap. 123). While BD would provide one-stop service with regard to general enquiries on the sale and purchase of premises, it could only remind the purchasers of their liabilities

if any removal order has been issued on the premises, but could not include anything that was likely to happen but had not yet happened (such as whether a removal order will be issued in the future). BD had specifically mentioned in its formal reply to the solicitor firm that they could make further enquiry to the BD case officer for details. Therefore, BD considered that the letter had provided sufficient information.

18. In response to The Ombudsman's recommendations, a letter of apology was sent to the complainant on 26 July 2000.

19. For consumer protection, BD advises enquirers (including property purchasers) whether any removal order has been served in respect of a property. However, there are practical difficulties in such case where an enquiry relates to whether any unauthorized building works (UBW) exist in a building (due to time required in making reference to original approved building plans and the conduct of site inspections) or whether and when BD will take enforcement action on the UBW at a point when a full investigation of the case has yet to be completed. This is particularly so when the enquirer may be bound by a tight timeframe to complete the property transaction.

20. In this current case, the BD case officer had consistently informed enquirers about the remaining UBW at the premises. As the complainant was aware of the existence of some UBW yet to be removed, he could have insisted the seller of the flat on removing such UBW if he was determined to proceed with the transaction even without a removal order. BD has been promulgating to building owners the importance of enlisting the professional advice of architects, engineers or surveyors in dealing with building repair, building maintenance, property transaction and related matters.

Companies Registry (CR)

Case No. 1998/3521 : Misleading the complainant regarding how companies could be struck off from the register of companies and requiring him to file Annual Returns even after he had applied for his company to be struck off.

21. The complainant lodged a complaint with The Ombudsman in December 1998 alleging that :

(a) a CR staff had misled him to believe that his company could be struck off if it did not file annual returns for three consecutive years; and

(b) CR required his company to submit annual returns even after he had applied for his company to be struck off under section 291 of the Companies Ordinance (Cap. 32) (the Ordinance).

22. After investigation, The Ombudsman concluded that the complaint was unsubstantiated. The Ombudsman considered that it was a misunderstanding on the part of the complainant. Section 291 of the Ordinance gave the Registrar of Companies (the Registrar) a discretionary power to strike off defunct companies but the complainant misinterpreted that the Registrar would certainly strike off his company. The Ombudsman also noted that when the complainant applied for his company to be struck off, he had noted the requirement, and had given his undertaking, to file annual returns until his company was struck off.

23. The Ombudsman observed that many people had been using section 291 as a free means to wind up a company. The number of section 291 applications had increased drastically over the past years but, as the Registrar had to accord priority to other more important activities and services such as incorporations, registration of documents and speedy provision of company information, processing of requests under section 291 was a low priority task. As a result, section 291 applicants had to wait a very long time before their applications could be processed. The Ombudsman considered this was not acceptable and made some recommendations.

24. CR shares The Ombudsman's view that section 291 should not be used as a free means for winding up a company and that it is desirable to clear the backlog applications made under section 291 as soon as possible. In fact, CR stopped accepting applications for striking off a defunct company under section 291 when the Companies (Amendment) Ordinance 1999 came into effect on 11 November 1999. Instead, solvent defunct companies can now make use of the new, simple and inexpensive de-registration procedures provided under the new section 291AA of the Ordinance.

25. Due to demand in other priority areas mentioned above, the Registrar cannot accord top priority to processing of section 291 applications which had been lodged before 11 November 1999. Nevertheless, CR has streamlined its operation and computerised some manual steps with a view to expediting the process. These measures have resulted in a noticeable improvement in the clearance of the backlog applications, with the number of applications processed each month increased by 60% (i.e. from about 720 cases to over 1 100 cases).

Customs and Excise Department (C & ED)

Case No. 1998/3536 : Abuse of power and humiliating the complainant when conducting a body search on him.

26. The complainant arrived in Hong Kong after taking a flight from Singapore in the afternoon of 28 November 1998. While undergoing a check at the Customs counter, he found that the Senior Customs Officer checking his baggage had a quarrel with him months ago as they bumped against each other while taking shelter from the rain outside a market in Tuen Mun, which ended in discord. The complainant claimed that the Senior Customs Officer read in detail some orders in his baggage while conducting a check on him. When the complainant asked the Senior Customs Officer why he had to read the above documents, the Senior Customs Officer immediately stopped checking his baggage and talked with another Chief Customs Officer in a low voice. Subsequently, the Chief Customs Officer closed the examination counter and said that the complainant was suspected to be possessing drugs. He and the Senior Customs Officer then took the complainant to the Customs Office for a detailed search. On the way to the Customs Office, the complainant told the Chief Customs Officer about his quarrel with the Senior Customs Officer mentioned above, but the Chief Customs Officer just ignored what he said and abused him in foul language.

27. When they arrived at a big room, both the Chief Customs Officer and the Senior Customs Officer pushed the complainant into a small room by force and ordered him to take off all his clothes to undergo a body search. The complainant was insulted in every possible way in the course of the search. After the search was completed, the complainant indicated that he would lodge a complaint regarding what had been done to him. He requested to know the name of the Chief Customs Officer and report the matter to the police, but his request was rejected. Their argument went on for a few minutes and then three police officers arrived at the scene. The complainant told the police officers what had happened and requested them to provide him with the name of the Chief Customs Officer. The police officers gave the complainant the name of the Chief Customs Officer and recorded the personal particulars and mobile phone number of the complainant. Then, with the consent of the Chief Customs Officer and accompanied by the police officers, the complainant left the Customs Office.

28. When the complainant arrived at the taxi stand of the airport, one of the police officers phoned him and requested to meet him and go back to the Customs Office mentioned above with him. When they arrived there, the Chief Customs Officer immediately indicated to the complainant that he would be charged with speaking foul language in the airport area.

29. As the complainant felt that he had been wronged in the above incident, he made a complaint to The Ombudsman on 2 December 1998.

30. Upon completion of the investigation, The Ombudsman considered that the accusation regarding the body search was hardly convincing, and hence, The Ombudsman considered the complaint unsubstantiated.

31. However, it was revealed in the incident that there were deficiencies in the way the officers of the C & ED handled the case, which caused dissatisfaction and misunderstanding of the complainant, and that some of the officers had not followed the working instructions in handling matters.

32. In line with The Ombudsman's recommendations, substantial steps had been taken by the C & ED, which include:

(a) the installation of video-recording equipment and closed circuit television in the search/interview room;

(b) the addition of two new sections to the Airport Command working manual providing that -

(i) officers should arrange the concerned person(s) to stay in the waiting area instead of the search/interview room pending arrival of officials from other government departments; and

(ii) officers should report to the Duty Inspector/Senior Inspector for making recommendations to other government department for formal charging of the concerned person; and

(c) officers were reminded to observe the requirement of making entries to officers' official notebooks and the attendance register of the examination counter.

Department of Health (DH)

Case No. 1999/1266 : Failing to inform the complainant promptly of the initial result of his daughter's specimen; failing to inform him before holding a press conference to announce the discovery of the new virus isolated from his daughter's specimen and providing inaccurate information when answering his complaint.

33. The complainant lodged a complaint against DH for :

(a) failing to inform him promptly of the initial result of his daughter's specimen;

(b) failing to inform him before holding a press conference to announce the discovery of the new virus isolated from his daughter's specimen; and

(c) providing inaccurate information when answering his complaint.

34. The complainant's daughter was admitted to United Christian Hospital (UCH) on 1 March 1999 due to persistent high fever. She was discharged on 8 March 1999. A new virus had been isolated from her daughter's specimen. A DH health team thus visited the complainant's home on 7 April 1999 for further investigation. The complainant subsequently learned from newspaper reports that the virus in question had been identified in mid-March 1999. He was dissatisfied that DH had not informed him immediately but waited until 7 April 1999, thus rendering him unable to take earlier precautions.

35. The Ombudsman investigated the case. The Ombudsman's conclusion was that the complaint points (a) and (b) were unsubstantiated, because of the fact that the initial result of the specimen was an ordinary type of virus. It was not until 7 April 1999 that DH received notifications from overseas laboratories which confirmed the viral isolate was a new subtype. On the same day, DH informed the complainant's family of this result and that a press conference would be held that evening. On the other hand, The Ombudsman considered that DH had made wrong assumption in replying to the complainant. In the reply dated 13 May 1999 to the complainant, DH had

assumed that the attending doctor of UCH had informed the complainant and/or his wife about the initial laboratory result, but this assumption could not be confirmed by UCH staff retrospectively because they could not recall any specific discussion about the result with the complainant and/or his wife. The Ombudsman, thus concluded that complaint point (c) was substantiated.

36. DH initially did not agree with the "substantiated" finding regarding complaint (c), as it was reasonable to assume, based on the usual medical practice, that the attending doctor would have informed the patient of the test results. After further consideration, The Ombudsman accepted that DH had made the assumption in good faith, but that assumption was wrong. Subsequently, DH accepted the recommendations of The Ombudsman and has implemented the following measures by March 2000 :

(a) to extend an apology to the complainant for providing inaccurate information when answering his enquiries in the letter dated 13 May 1999; and

(b) to remind DH staff to ascertain the facts before answering enquiries.

Case No. 1999/1817 : Impropriety in the assessment of the degree of disability of the complainant and failing to tell the complainant the reason for considering him ineligible for Normal Disability Allowance.

37. The complainant complained the attending doctor in North Kwai Chung Clinic of :

(a) impropriety in the assessment of the degree of disability of the complainant; and

(b) failing to tell him the reason why he was ineligible for the "Normal Disability Allowance".

38. The complainant had an injury during work in 1980. Three of his fingers were being cut. During 1996 to 1998, he had been obtaining "Normal Disability Allowance" from the Social Welfare Department as recommended by doctors after assessment of his disability. In April 1999, the complainant

attended the North Kwai Chung Clinic for assessment again. However, the doctor did not recommend him for Disability Allowance this time.

39. The Ombudsman investigated the case and opined that the attending doctor had assessed the complainant according to his condition and concluded that both points (a) and (b) were unsubstantiated. The discrepancy in the assessment results might be related to the previous doctors being too lenient.

40. DH accepted the findings and recommendations of The Ombudsman. To prevent similar cases from happening again, DH had completed a new guideline which had been issued to every Medical Officer (MO) of General Out-Patient Clinics with a view to reducing the grey area during assessment. DH would also explain to every newly recruited MO how to assess the degree of disability of applicants for "Normal Disability Allowance" and how to fill in the assessment form. The MOs-in-charge would provide guidance on how to conduct assessments and review whether their assessments were appropriate. They would not be allowed to handle cases on their own until they had familiarized themselves with such assessments. In addition, DH had recommended the Social Welfare Department to add a column in the assessment form and require doctors to set out reasons to justify their assessment results. The revised assessment form has been in use since April 2000.

Environmental Protection Department (EPD)

Case No. 1998/3081 : Delay in handling a complaint about noise generated from a pump room and failing to take prosecution action against Housing Department.

41. In November 1998, the complainant complained to The Ombudsman against the EPD for the following :

(a) EPD had delayed the handling of his complaint about the noise emitted from a pump room of a Home Ownership Scheme estate that was managed by Housing Department (HD), thus the noise problem could not be solved promptly; and

(b) EPD did not strictly enforce the Noise Control Ordinance (Cap. 400) and failed to take prosecution action against HD.

42. The case was about noise from a pump room of a Home Ownership Scheme estate that was managed by HD. On the one hand, under section 13 of the Noise Control Ordinance, a Noise Abatement Notice (NAN) may be served on the person in charge of any place other than domestic premises, public places or construction sites if the noise emission from that place exceeds the statutory noise limits. It is an offence if the Notice is not complied with after the specified date. On the other hand, EPD has internal guidelines on handling cases concerning premises owned or managed by the Government. According to the guidelines, EPD would inform the relevant government department and request it to implement appropriate noise reduction measures. Such liaison mechanism had already been established previously between EPD and HD to deal with this kind of noise complaints. Comparing to the legal procedures, such liaison had proved to be effective and efficient in solving problems in the past.

43. For this case, the complainant lodged the noise complaint to EPD in November 1997. EPD then informed HD immediately. Subsequently, HD carried out noise abatement work several times. In accordance with EPD's internal guidelines, noise measurements were taken by EPD each time after the abatement work. After each noise assessment, EPD informed HD the results

and requested HD to follow up and report the progress of the noise improvement work within a specified period.

44. The Ombudsman found that EPD acted in accordance to its internal guidelines and there was no evidence of maladministration or delay. It was concluded that the complaint points (a) and (b) above were unsubstantiated.

45. In response to The Ombudsman's recommendations, EPD had reviewed the procedures for handling noise complaints against premises owned by the Government or managed by a government department. A liaison meeting was held in May 1999 between HD and EPD to review the liaison mechanism between the two departments and to identify ways of settling noise complaints at an early stage.

46. It was agreed at the meeting that NAN would be issued by EPD if a noise complaint remained unsettled one month after the HD was being informed. Legal proceedings will be instituted when any requirement specified in the NAN is found not complied with. Such arrangement had been put into practice since July 1999. Both Housing Authority and HD were informed of the implementation in June 1999. To reflect the changes, relevant sections of EPD's Departmental Guidelines were revised in August 1999. The recommendation of The Ombudsman had been fully implemented.

47. Regarding the noise from the concerned pump room, EPD issued a NAN in July 1999 and the requirements of the NAN had been complied with.

Case No. 1999/2944 : Mishandling the illegal discharge of livestock waste into the watercourse by a pig's farm, resulting in environmental pollution.

48. A villager in Yuen Long complained in October 1999 to The Ombudsman against EPD and other departments for mishandling a farm's illegal discharge of livestock waste into the watercourse, causing environmental pollution.

49. The concerned farm was originally a small farm engaged in chicken rearing in the past. It ceased business and received an ex-gratia allowance in January 1995. Subsequently, it resumed rearing pigs and submitted an

application to the then Agricultural and Fisheries Department (now the Agricultural, Fisheries and Conversation Department) for a livestock keeping licence in April 1995. Being a small farm initially, the farm adopted pig-on-litter method to treat the pig waste with no liquid discharge produced. It started to expand in mid-1997 and in conjunction with the expansion it abandoned the pig-on-litter method and installed wastewater treatment facilities. On 16 January 1997, the Village Representative of the concerned village, together with some villagers, complained to District Office/Yuen Long (DO/YL) against the farm for the illegal discharges into the nearby stream, thereby creating serious health hazard for the villagers.

50. Their complaint had been referred to EPD and other departments for follow-up. EPD later confirmed that a pig farm near the concerned farm had discharged untreated livestock waste into the watercourse and took prosecution action against the farm. However, since the lodging of the said complaint, the complainant felt that the water pollution situation had not improved but had deteriorated.

51. The Ombudsman conducted a thorough investigation into the case and concluded that the complaint against EPD was unsubstantiated.

52. EPD expressed reservation on The Ombudsman's initial recommendations to conduct an environmental impact assessment (EIA) in the area concerned because the pollution problems (water and odour) in the area concerned were mainly due to the intermittent discharge of substandard effluent from the concerned farm while the state of the environment was generally good on normal days. The monitoring results indicated that the on-farm wastewater treatment plant should be capable of achieving the statutory effluent standards if operated properly. In such circumstances, conducting further assessment would unlikely yield any more environmental benefits. The purpose of an EIA is to pre-empt environmental problems associated with development projects, and is required only for major development projects which do not include farms of the size of the concerned farm. However, EPD had no problem with The Ombudsman's final recommendation to conduct environmental assessments if and when there were changes to environment arising from such factors as growing stock density of pigs or other livestock or changes in land use.

53. EPD staff have continued to keep the concerned farm and another pig's farm in the nearby area under close surveillance. Over the period from April to June 2000, EPD staff have conducted six daytime inspections and four night ambushes to the concerned farm (compared to the general practice of six inspections per farm per year). Also, EPD has in April 2000 held a meeting with the concerned farm operator to explore and formulate additional measures to minimize the pollution/nuisance problems prior to the forthcoming summer season. At the meeting, the farm operator agreed to strictly control the number of pigs reared, properly maintain and operate the on-farm wastewater treatment plant, install an additional tank to further upgrade the capacity of the treatment plant, and adopt proper housekeeping practices to minimize the odour nuisance.

54. EPD staff have also conducted three daytime inspections and four night ambushes to the other farm nearby in the same period. Guidance/advice on plant operation has been given to the farm operator during the inspections.

55. Over the period from April to June 2000, a total of nine complaints about discharge or odour caused by the two farms have been received. However, no illegal discharge from either farm has been detected during the inspections or ambushes. There has not been a substantial change to the stocking density of pigs or other types of livestock reared or in land use.

56. EPD will continue to keep both farms under close surveillance.

Food and Environmental Hygiene Department (FEHD)

Case No. 1999/2941 : Mishandling the illegal discharge of livestock waste into the watercourse by a pig's farm, resulting in environmental pollution.

57. The complainant lodged with The Ombudsman a complaint against the former Regional Services Department (RSD) (the functions in respect of this complaint have subsequently been taken over by the Food and Environmental Hygiene Department (FEHD)) and other departments for mishandling a pig's farm's illegal discharge of livestock waste into the watercourse, causing environmental pollution.

58. The complainant is a villager living in Yuen Long. On 16 January 1997, the Village Representative of the concerned village, together with some villagers, complained to District Office/Yuen Long (DO/YL) against the concerned pig's farm for illegally diverting pig waste into the upper course of the nearby stream, polluting the stream water thereby creating serious health hazard for the villagers. On 25 March 1997, the complainants received a reply from DO/YL and noted from it that their complaint had been referred to RSD and other departments. Environmental Protection Department (EPD) had responded to them and confirmed that the farm had discharged untreated livestock waste into the watercourse and that prosecution action had been undertaken. Since the lodging of the complaint, the complainant felt that the water pollution situation had not improved but had deteriorated.

59. Following the receipt of DO/YL's referral of the complaint, RSD carried out a clean-up on 28 February 1997. It had also undertaken regular clean-ups to remove any debris and vegetation found in the streams. In May 1999, RSD had followed up on the blackspot reports regarding the streamwater by inspecting the site and removing the floating debris. Since the pollution complaint of 16 January 1997, RSD had conducted 83 clean-up operations for the concerned river during the three-year period from February 1997 to January 2000. In addition, RSD had set up a special stream-cleaning task force to regularly clean up the streams in the concerned area. As revealed in site inspections conducted by the Office of The Ombudsman, the condition of the stream in question was fair and satisfactory. According to EPD's and Agriculture, Fisheries and Conversation Department's inspection records and

notes, the stream water had in general been improving ever since the complaint of 16 January 1997.

60. The Ombudsman concluded that the complaint against RSD and other departments was unsubstantiated. In respect of The Ombudsman's recommendations to FEHD, the Director of Food and Environmental Hygiene indicated that staff of FEHD would continue with regular clearance of the concerned stream.

Government Secretariat - Financial Services Bureau (FSB)

Case No. 1999/1372 (I) : Failing to properly process the complainant's request for information within the target response time frame in accordance with the provisions set out in the Code on Access to Information.

61. The complainant made a written request in November 1998 to FSB for a copy of the full report compiled by an investigator appointed by the Financial Secretary (FS). He was being advised in January 1999, amongst others, that due to legal and public interest considerations pertaining to the exercise of the discretionary power vested in FS under the Companies Ordinance (Cap. 32) in relation to the publication of the report or part thereof, a recommendation on the matter had yet to be finalized for submission to FS for a decision. FSB therefore advised that it was not yet in a position to inform the complainant of the outcome of his request. The complainant asked for progress again in March and May 1999. Knowing that a reply was not yet ready, he lodged a complaint with The Ombudsman.

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

(a) FSB apologized to the complainant in respect of the 6-day (or 4 working-day) delay on 12 November 1999;

(b) FSB undertook to ensure compliance with the Code on Access to Information (the Code) and to expedite actions in processing similar requests in the future. The relevant officers were alerted accordingly; and

(c) FSB requested the Home Affairs Bureau (HAB) to conduct a review on possible conflicting provisions of the Code and the Companies Ordinance as well as other legislation. Having obtained legal advice, HAB considered that there was no need to amend the Code, but they would amend the Guidelines for Departments on Interpretation and Application of the Code to make it clear that whenever there is any inconsistency between the Code and a statutory provision, the latter

should prevail. Moreover, if a request to release information is received before a decision has been made under the relevant legislation to make public the whole or part of such a document, the department should deal with the request having regard to the legal position there and then. That is to say, there is no need for the department to delay responding to the request until a decision has been taken under the relevant legislation.

Government Secretariat - Home Affairs Bureau (HAB)

Case No. 1999/1317(I) : Failing to properly process and entertain the complainant's request for information relating to the disposal of his company's hawker licences in accordance with the provisions set out in the Code on Access to Information.

63. The complainant submitted separate formal written access requests to both the Urban Services Department and the Government Secretariat (GS) on 8 February 1999 for information relating to a decision taken by the former Urban Council on matters concerning the disposal of some hawker licences previously issued to his company.

64. In response to his request, the HAB replied on behalf of GS in a letter dated 2 March 1999 that HAB was not in possession of the requested information and therefore was unable to produce it. The complainant was not satisfied because he considered that HAB should have taken further action to ensure that his request would be referred to appropriate department for further processing. He wrote to GS on 12 April 1999 to register his displeasure and lodged a complaint with The Ombudsman on 27 April 1999.

65. The Ombudsman noted that while it was unlikely that HAB should be held responsible for its failure to locate the information under request (which was of 17 years ago), there were some procedural faults and undue delays on its part in handling the complainant's access request and subsequent complaint letter. For these reasons, The Ombudsman considered that the complaint against HAB was partially substantiated.

66. HAB has implemented all the recommendations of The Ombudsman. Actions taken include the following :

(a) HAB has reviewed the administrative procedures for the Code on Access to Information (the Code). The procedures are considered to be comprehensive in that they provide the details on the procedures, steps and target response time for handling different situations. In addition, bring-up (BU) and monitoring mechanisms are also included. In the circumstances, it is considered that no major amendments to the

procedures are required but the BU and monitoring mechanisms should be strengthened to help compliance of the procedures by staff. In this connection, the following measures have been taken and incorporated into the administrative procedures where appropriate -

(i) the Access Clerk keeps a central register of all access to information cases and BU it to the Access to Information Officer (AIO) weekly;

(ii) the AIO inspects the central register to ensure the target response time is met and all necessary follow-up actions are taken;

(iii) the Access Clerk is advised to closely observe the BU requirements prescribed in the administrative procedures;

(iv) the AIO marks BU in the case file to ensure that replies are sent within target response time set by the Code and General Circular 8/97;

(v) if the case file is passed to a subject officer, the AIO will alert him/her in the minute of the case file that he/she has to respond by the required deadline, otherwise he/she will need to return the file to AIO for issue of an interim reply; and

(vi) the administrative procedures for the Code are re-circulated once every six months;

(b) General Circular 8/97 is re-circulated once every six months to remind staff to follow the procedures and time limit prescribed for the conduct of correspondence with the members of the public; and

(c) HAB sent a letter of apology to the complainant on 16 November 1999.

Home Affairs Department (HAD)

Case No. 1998/3791 : Failing to take up the responsibility of taking enforcement action against a reported illegal structure at a rear lane.

67. The Incorporated Owners (the IOs) of two buildings complained to the Office of The Ombudsman against the Home Affairs Department and other departments for failure to take up the responsibility of taking enforcement action against a reported illegal structure at a rear lane. The structure was erected prior to 1986, when a large-scale survey was conducted by Housing Department (HD) to take stock of the illegal structures on pavements and rear lanes prior to clearance. The structure was given a survey number and as confirmed by HD and Lands Department (Lands D), it would be "tolerated" and would only be cleared if it was "posing obvious hazard to life and property".

68. The Chairmen of the IOs lodged written complaints with District Office/Eastern (DO/E) and other departments in October 1998.

69. Meanwhile, DO/E was coordinating the efforts of the departments concerned with a view to resolving the matter and had kept the IOs informed of the progress. At a meeting held on 23 February 1999, HD and Lands D concluded that clearance action would not be taken as this was a tolerated structure. DO/E then explained to the IOs on 9 March 1999 why no clearance operation would be carried out. The IOs were dissatisfied that all the departments concerned had shirked the enforcement responsibility and none of them had agreed to pursue the matter any further, they therefore lodged a complaint with The Ombudsman. The Ombudsman found that the complaint against HAD was substantiated.

70. HAD accepted fully The Ombudsman's recommendation regarding the handling of complaints against tolerated structures, and a meeting was subsequently convened and attended by representatives from Lands D, HD and DO/E on 13 July 1999 with a view to formulating a set of procedures to handle such complaints. District Officers (DOs) who had experience in clearing rear lane illegal structures were also present at the meeting. A flow chart on dealing with similar complaints and draft standard replies for different

scenarios were prepared after the meeting. These were sent to relevant parties and those DOs who were not present at the meeting for comments. It took some time for Lands D and HD to agree on the definition of "tolerated structures". On 8 October 1999, HAD also drafted a set of procedures on handling complaints against tolerated structures on built-up government land for comments by all relevant parties. Once the action departments can agree on their respective roles, the handling procedures can start at any time. The Ombudsman was kept informed of the progress on 24 November 1999, 25 November 1999 and 14 June 2000.

71. HAD has made every effort in co-ordinating the actions of different government departments regarding this case. For future similar cases, the concerned District Office will deal with them on a case-by-case basis.

Case No. 1999/0215 : Impropriety and unfairness in handling the Village Representative Election of Pak Kok Kau Tsuen, Lamma Island.

72. A candidate of Pak Kok Kau Tsuen (PKKT)'s last Village Representative Election (VRE) complained that :

(a) the District Office/Islands (DO/Is) did not postpone the polling date to allow him more time for campaign activities;

(b) he was "unfairly" requested to spend his time and money to carry out necessary investigation on "doubtful voters" of PKKT's VRE;

(c) HAD did not acknowledge receipt of his complaint letter;

(d) there was delay on the part of DO/Is in providing PKKT villagers with a Village Environs Plan to facilitate their scrutinizing of the electoral roll;

(e) there was delay on the part of DO/Is in supplying him with the electoral roll; and

(f) DO/Is did not acknowledge receipt of his VRE nomination form.

73. The Ombudsman found allegations (a) and (c) substantiated but allegations (b), (d), (e) and (f) unsubstantiated.

74. In compliance with The Ombudsman's recommendations :

(a) the District Officer (Islands) had reminded his staff to adhere to the recommended timetable in the Model Rules of the Heung Yee Kuk in planning the next VRE of PKKT;

(b) the relevant subject file will also be brought up to the District Officer (Islands) in early 2002, just before the next VRE of PKKT, to remind the District Officer at the time of the abovementioned recommended timetable;

(c) The Ombudsman's recommendations were sent to the Working Group on Rural Elections chaired by a Home Affairs Bureau representative for consideration; and

(d) HAD Standing Circular No. 1/96 was amended to ensure that HAD staff would take all possible steps to confirm the addresses on incoming letters if they were incomplete before sending out the acknowledgements, and would keep the envelopes of returned mail for future reference.

Hong Kong Arts Development Council (HKADC)

Case No. 1999/2093, 1999/2521 : Failing to handle the complainant's complaint and application for subsidy properly; misleading the complainant and delay in processing his appeal.

75. The complainant lodged a complaint against HKADC on the following :

(a) the complainant has made a number of complaints to HKADC from 5 May 1999 to 21 July 1999 regarding HKADC's continued release of grants to another applicant. He also made the point that although that applicant's supported publication contained incorrect information, HKADC has not adequately followed up his complaint, and failed to give him a reply;

(b) the Secretary of the Literary Arts Committee of HKADC has provided incorrect information to the complainant, misled and caused unnecessary misunderstanding on the complainant's part;

(c) the Literary Arts Committee of HKADC has failed to process his grant application in a fair and proper manner. The complainant's application was rejected by the Committee without being vetted by the examiners; and

(d) the Artform Board of HKADC has delayed the processing of his appeal.

76. The Ombudsman found that points (a) and (b) were partially substantiated, point (c) was substantiated, while point (d) was unsubstantiated.

77. HKADC accepted The Ombudsman's recommendations at its Grants Committee meeting held on 24 June 2000. HKADC has already implemented the following follow-up actions :

(a) guidelines have been drawn up for staff for the handling of verbal and written enquiries and complaints; and

(b) appropriate revisions were made in July 2000 to the "Notes to Applicants" and "Literary Arts Committee Assessment Guidelines" in respect of the parts describing the adjudication procedures of project grants.

Hospital Authority (HA)

Case No. 1999/0848 : Refusing with bad attitude the request to provide immediate consultation to the complainant's mother.

78. The complainant's mother (the patient) attended the Accident & Emergency Department (AED) of an HA hospital on 14 and 16 February 1999 respectively due to abdominal pain. The patient was diagnosed to be suffering from cholecystitis on 16 February 1999 and was admitted to the hospital for further management. She passed away on 17 February 1999 despite treatment (including an operation).

79. According to the complainant, the patient suffered from shortness of breath while awaiting consultation on 16 February 1999. The complainant's sister requested one of the duty doctors, who was attending to another patient at the neighbouring cubicle, to treat the patient immediately. The complainant alleged that the doctor refused to assist and shouted, "Don't look over." As the patient's condition deteriorated, the complainant again requested the same doctor to treat the patient, but was again refused in a rude manner. The patient was subsequently attended to by another doctor. The complainant alleged that the attitude of the doctor they first approached was poor, and that the patient's death was due to the failure of the AED to provide appropriate treatment to the patient.

80. As part of the complaint involves clinical judgment which is outside the jurisdiction of The Ombudsman, The Ombudsman only looked into the complaint against the poor attitude of the doctor. After the investigation, The Ombudsman concluded that there was insufficient objective evidence to substantiate the complaint.

81. In examining the hospital's records of 16 February 1999 regarding the triaged Accident & Emergency (A&E) patients, registration and treatment time of the patients, and the number of on-duty doctors as well as their workload, The Ombudsman noticed that a few patients under the same triage category were not attended to in the order of their time of registration. Although HA had provided explanations on such anomalies which occurred very rarely, The Ombudsman opined that the current arrangement was not satisfactory as it

might give rise to a situation of "late-come, first served" for patients under the same triage category.

82. One of The Ombudsman's recommendations is to distribute numbered discs to patients awaiting consultation in AED and triaged under Categories 2B, 3 and 4 (renamed as Categories 3, 4 and 5 respectively with effect from 1 April 1999) according to their respective triage categories, so as to avoid the situation of "late-come, first served" for patients triaged under the same triage category. HA thinks that the introduction of numbered disc system carries with it the concept of treatment on a "first-come-first-served" basis. This is contrary to the spirit of the A&E triage system where clinical condition of a patient is the key factor in determining priority treatment. Category 3 (urgent) patients are patients suffering from a major condition with potential risk of deterioration. The conditions of these patients are potentially unstable, necessitating close monitoring and frequent re-triaging to ensure patients are given treatment priority according to severity of condition. Rigid consultation arrangement according to registration time is neither practicable nor appropriate.

83. HA agrees that the feasibility of the proposed numbered disc system can be tried out for patients triaged as category 4 (semi-urgent) and category 5 (non-urgent). That said, attending patients strictly according to registration time, without regard to clinical condition still remains HA's concern. Also, adoption of the numbered disc system may generate conflicts amongst patients and complaints against A&E staff in the event of re-triaging. HA has therefore decided to adopt a cautious approach in the matter. A pilot scheme has been implemented at the Queen Elizabeth Hospital since July 1999 whereby numbered discs are distributed to Categories 4 and 5 patients awaiting consultation in AED. The outcome of the pilot scheme is currently being reviewed, and HA will also consider the feasibility of extending the arrangement to other hospitals.

84. According to HA's existing triage guidelines, all health care staff at AED are required to constantly monitor patients' conditions and re-triage them when there is any change in their condition. All health care staff at AED have been adequately trained for this purpose. They possess the requisite competence to assess and monitor the changing condition of A&E patients awaiting medical attention, re-triaging them as and when appropriate. In the light of the recommendations of The Ombudsman, HA will strengthen its triage

guidelines to specify more clearly the respective roles of the health care staff at AED in the re-triage process.

85. HA is committed to providing patient-centred service to the community. HA has constantly reminded its staff to be polite, sensitive and understanding to the feelings of patients and their families. HA will continue to provide training for its health care staff, with a view to further enhancing their skills in dealing with patients and their families.

86. HA's existing guidelines on public complaint procedures require its staff to promptly and properly investigate all public complaints. Investigation of a complaint should normally be completed and a reply be issued within three months after receipt of the complaint. The final reply should contain all details necessary to satisfy the complainant that the complaint has been properly dealt with and that all aspects being complained about have been addressed. HA will conduct regular reviews with a view to further improving its public complaint system.

Housing Department (HD)

Case No. 1998/3082 : Delay in handling a complaint about noise generated from a pump room.

87. The complainant lodged a complaint in November 1997 with HD and Environmental Protection Department (EPD) about the excessive noise generated from the water pump room of a Home Ownership Scheme estate managed by HD.

88. HD has since carried out remedial works in the water pump room several times to reduce the noise level. Noise assessments were taken by EPD each time after the remedial work, and HD had followed up on the assessments results. HD received a Noise Abatement Notice (NAN) from EPD in July 1999. The requirements of the NAN had been complied with by HD.

89. While the building services engineers of the Department are equipped with adequate professional knowledge to conduct noise measurements and to resolve noise problems, HD will still consider The Ombudsman's recommendation to employ an acoustic consultant or contractor to carry out noise measurements with a view to expeditiously handling noise problem under special circumstances.

Case No. 1998/3580 : Delay in handling the complainant's application for rental deposit refund and poor staff attitude.

90. The complainant purchased a Tenant Purchase Scheme (TPS) flat on 30 June 1998, and was dissatisfied that she was invited to collect the refund of rental deposit on 30 November 1998, after a lapse of some five months. During the collection process for the refund, the complainant was dissatisfied with the attitude of the estate staff towards her father-in-law and her husband when requiring them to make statutory declaration on the loss of the original rental deposit receipt. The complainant claimed that when her family moved into the estate in December 1997, she had only been given a photocopy of the receipt and was told that the original receipt would be retained by the estate

office. The refund of rental deposit was finally completed on 2 December 1998.

91. The relatively long time taken in processing refund of rental deposit was mainly attributed to the large number of tenants joining the TPS. It has been a standing practice that estate office would issue the original rental deposit receipt to tenants, and retain the duplicate for record.

92. The Ombudsman concluded that the complaint was partially substantiated. In response to The Ombudsman's recommendation, the existing procedures on the refund of rental deposit have been reviewed. Moreover, Management Branch Instruction No. M43/99 on "Refund of Domestic Rental Deposit and Issuance of Original Official Receipt" was issued on 13 September 1999 for staff compliance.

Case No. 1998/3790 : Failing to take up the responsibility of taking enforcement action against a reported illegal structure at a rear lane.

93. The Incorporated Owners (IOs) of two buildings lodged complaints in October 1998 with the Housing Department and other departments against an illegal structure erected at a nearby rear lane on the grounds that the illegal structure was unhygienic, obstructing the pedestrian traffic, and being used for criminal activities. The IOs were dissatisfied that none of the concerned departments had agreed to take up the enforcement responsibility or to pursue the matter any further, and they therefore lodged a complaint with The Ombudsman.

94. The structure was erected prior to 1986, when a large-scale survey was conducted by HD to take stock of the illegal structures on pavements and rear lanes prior to clearance. The structure was given a survey number and was subject to clearance by being included in the Environmental Improvement Clearance Programme coordinated by Home Affairs Department and Lands Department (Lands D), and its clearance must be preceded by a formal Clearance Application. However, due to discontinuance of the "Back Lane Clearance Programme" in 1994 by Lands D owing to lack of resources, only structures in rear lanes that were "posing obvious hazard to life and property" would be dealt with.

95. The Ombudsman found that the complaint against HD was unsubstantiated, but has made some recommendations to the concerned departments. In response to The Ombudsman's recommendations, handling procedures for complaints against illegal structures are being formulated among all concerned departments.

Case No. 1999/0024 : Delay of some five months in notifying the complainant about the cancellation of his application for public housing and mishandling his letters.

96. The complainant (a public housing applicant under the Single Elderly Persons Priority Scheme) attended a vetting interview on 20 November 1997. His application was cancelled by HD on 5 March 1998 because he had exceeded the prescribed income limit. He complained that HD had deferred the cancellation date from 20 November 1997 to 5 March 1998 and thus deferred his earliest date to become eligible for review by some five months (since his application could be reviewed after one year). He also alleged that his two letters, handed personally to HD on 21 May 1998 and 9 September 1998 requesting for an interview and early reinstatement of his application, were mishandled by HD.

97. The application was cancelled in accordance with the relevant guidelines and procedures. Cancellation of application could not be approved until all the relevant information had been considered on 5 March 1998. HD has issued a letter of apology to the complainant on 28 January 1999 for not being able to locate the two letters he handed in.

98. In response to the complainant's request for reinstatement of 4 March 1999, HD has reinstated his application. The application had been scheduled for a review in September 1999 under the prevailing policy.

99. As regards The Ombudsman's recommendations, HD has implemented the following measures :

(a) after a revision, together with a redeployment of resources and the integration of computer networks, by HD in April 1998, the present procedures of processing the applications for Public Rental Housing

(PRH) for the elderly are entirely the same as those for the applications for PRH for the family category. The speed of processing the applications is now in compliance with the departmental Performance Standards;

(b) to avoid misunderstanding, guidelines on how the date of cancellation of an application is determined have already been included in the newly printed "Application Guide";

(c) the date on which a cancelled application will be reinstated and the date for an application to be assigned to the Reserve Waiting List have been specified in the "Notice of Cancellation of Applications", revised in September 1999; and

(d) the procedures for the receipt and filing of documents in the PRH Applications Section have been improved to prevent mishandling.

Case No. 1999/0048 : Repeatedly rejecting the complainant's application for Home Ownership Scheme (HOS) and poor staff attitude.

100. In submitting an HOS (green) application form to Tai Wo Estate Office on 5 December 1998 (Saturday), the complainant was dissatisfied with the reluctance on the part of the estate staff to accept his HOS application form because the officer responsible for his block was away attending a training course. While upon his insistence, his HOS application was later checked by another officer, he was dissatisfied that his application was still not accepted on grounds that his son (being a family member but was studying in Canada) had not signed on the application form.

101. The complainant then requested to see the Housing Manager (HM) in connection with his HOS application. He claimed that he had waited for some 20 minutes, and not until he had said he would lodge a complaint that he was told that the HM was on duty away from the office, and that he was asked to require his son (in Canada) to signify agreement to the HOS application by fax.

102. On 7 December 1998, the complainant submitted his HOS application together with the relevant fax document to the estate office. His application was accepted and passed to the Home Ownership Centre for further processing.

103. The Ombudsman found that the complaint was partially substantiated. In response to The Ombudsman's recommendations, HD has taken the following actions :

(a) guidance notes for each sales exercise have already provided estate staff with broad guidelines on the HOS application and certification procedures. Flexibility is allowed for estate staff to exercise their discretion on individual merits as the guidelines are not exhaustive; and

(b) estate staff are required to carry mobile phones while not in the estate offices and to inform counter-staff such as Customer Services Assistants of their leaving the offices for outdoor works.

Case No. 1999/0071 : Delay and maladministration in processing the complainant's application for addition of her family members into the tenancy.

104. The complainant (a registered tenant of two Public Rental Housing (PRH) flats) alleged that HD had delayed handling her application for the addition of her daughter-in-law and two grandsons to the tenancy.

105. In 1993, one of the complainant's son successfully purchased an Home Ownership Scheme (HOS) flat by "green" form. According to the prevailing housing policy, the complainant should surrender one of her PRH flats within two calendar months after taking over the HOS flat. The complainant signed an undertaking to that effect. Despite repeated actions taken by the estate office from 1993 to 1995, the complainant refused to surrender her flat. In 1995, the complainant submitted an application for addition of another son's wife and two grandsons to the tenancy. It is HD's view that since the complainant failed to fulfil her undertaking of surrendering one of her flats, her application for addition of household members is rendered unable to be processed.

106. HD issued a Notice-to-Quit to the complainant on 31 May 1999 and the tenancy agreement was terminated on 30 June 1999. The complainant lodged an appeal to the Appeal Panel and the hearing was arranged.

107. The Ombudsman found that the complaint was substantiated. In response to The Ombudsman's recommendations, procedures in handling applications for addition/deletion have been clearly stated in the Management Instruction Manual, and HD will continue to provide quality services in accordance with their performance pledge.

Case No. 1999/0578 : Mishandling the complainant's application for public housing under Civil Service Public Housing Quota.

108. The complainant applied for public housing under the 1997/98 Civil Service Public Housing Quota (CSPHQ). His application was accepted on 29 October 1998 but the complainant rejected the first offer. During the processing of the second housing offer for the complainant, he applied for public housing under the 1998/99 CSPHQ again in 1998. During the processing of his second CSPHQ application, HD found that the condition of stay of his wife was cancelled only on 7 June 1995 and he could not fulfil the eligibility criteria of the residence rule. Therefore, the second offer which had originally been arranged on 19 January 1999 was withheld. The complainant was dissatisfied that it was after he was allocated a flat when HD informed him about being not eligible for application of public housing because his wife had violated the residence rule.

109. The Ombudsman found that the complaint was partially substantiated. In response to The Ombudsman's recommendations, a "Guidebook for Processing Waiting List Applications" and "Guidelines on Vetting Procedures for Waiting List Unit" have been circulated regularly for staff compliance.

Case No. 1999/0933 : Delay in handling the complainant's application for rental deposit refund and poor staff attitude.

110. The complainant purchased a Tenant Purchase Scheme (TPS) flat in mid-September 1998, and was dissatisfied that he was invited to collect the

refund of rental deposit in April 1999 after a lapse of some seven months. In collecting the refund, the complainant was dissatisfied with the poor attitude of the estate staff towards his enquiry. The Ombudsman concluded that the complaint was partially substantiated.

111. The relatively long time taken in processing refund of rental deposit was mainly attributed to the large number of tenants joining the TPS.

112. In response to The Ombudsman's recommendations, the existing procedures on the refund of rental deposit have been reviewed. Management Branch Instruction No. M43/99 on "Refund of Domestic Rental Deposit and Issuance of Original Official Receipt" was issued on 13 September 1999 for staff compliance.

Case No. 1999/2829 - 1999/2836 : Mishandling the control and printing of ballot papers; failing to conduct a re-count of votes and delay in responding to complainants' enquiry.

113. The complainants were Tenant Purchase Scheme (TPS) owners. They complained against HD for mishandling the balloting arrangements for the formation of an Owners' Corporation (OC) at a meeting held on 23 August 1998. The complainants alleged that HD had failed to check the identities of owners, and as a result, some participants who were not owners had been issued ballot papers and given the right to vote. Since no serial numbers were printed on the ballot papers, the complainants suspected that counterfeit ballot papers were counted.

114. On completion of the counting procedures for the third stage of the election, an unsuccessful candidate (who was one of the complainants) requested for recounting of ballot papers. However, the estate staff did not make the recounting arrangement on the same day as requested. In this connection, the complainants sent two enquiry letters to HD on 19 and 25 September 1998, and was dissatisfied that HD did not give them a reply until 14 October 1998.

115. The application for registration of the OC with the Land Registry could not proceed until the resignation of one of the management committee

members who was not an owner within the definition of the Building Management Ordinance (Cap. 344) as at 23 August 1998 (when the abovementioned meeting on the formation of the OC was held).

116. The Ombudsman concluded that the complaint was partially substantiated. HD accepted all the recommendations of The Ombudsman, and instantly carried out measures to improve the arrangements for the formation of OCs for TPS flat owners, which included :

(a) standardizing the printing of ballot papers and affixing a chop on the ballot papers in order to avoid unauthorized duplication and forgery; and

(b) through the holding of staff meetings and experience sharing meetings as well as preparatory and concluding sessions before and after the OCs' general meetings, staff concerned were instructed on how to tackle any unexpected problem which might arise during OC formation meetings. Also, consideration would be given to arrange for re-counting all/part of the ballot papers immediately whenever deemed necessary.

Immigration Department (ImmD)

Case No. 1999/2364 : Delay in rectifying an incorrect limit of stay period.

117. The complainant is a Mainland resident born in Guangdong. Her husband and two children are Hong Kong permanent residents.

118. On 5 July 1996, the complainant entered Hong Kong on a Two-way Chinese Exit Permit (TWP) which bore a single-journey exit-entry endorsement allowing her to leave the Mainland via Shenzhen for the purpose of visiting Hong Kong between 2 July and 2 October 1996. Upon her arrival at the Lowu Control Point, she was permitted to enter and remain as a visitor in Hong Kong. However, the limit of stay was erroneously imposed by the concerned staff as 25 September 2003 instead of 25 September 1996.

119. Given the limit of stay was still valid, the complainant was advised to leave Hong Kong as soon as possible when she approached Chinese Visitors Office (CVO) of ImmD in September and October 1996 for extensions of stay. However, she did not leave afterwards.

120. On 10 July 1998, the complainant was intercepted by the police during an identity card check in the street and was then referred to the Removal Subdivision of ImmD.

121. Staff of the Removal Subdivision advised the complainant to leave Hong Kong as soon as possible and released her on the same day. On 21 November 1998, investigation officers visited the complainant and her husband to learn more about her family situation. She was again told that the limit of stay endorsed on her two-way permit was an error and that ImmD could apply to have her limit of stay curtailed under the provision of the Immigration Ordinance (Cap. 115) if she did not return to the Mainland as soon as possible.

122. As the complainant insisted that she would not leave Hong Kong, and after careful consideration of her case, ImmD found no special or compassionate grounds for her to remain in Hong Kong, the Director of Immigration (the Director), after seeking legal advice, recommended to the

Secretary for Security (the Secretary) to have the complainant's limit of stay curtailed. The complainant was being informed on 30 March 1999 that the Director had applied to the Secretary to have her limit of stay curtailed, and she might submit her representations within two weeks. The Secretary would consider her representations before any decision was made as to whether her limit of stay should be curtailed.

123. Having considered all the circumstances including the Director's recommendations and the complainant's representations, the Secretary decided to curtail the complainant's limit of stay to 22 June 1999, pursuant to section 11(6) of the Immigration Ordinance, by exercising the delegated authority of the Chief Executive. The complainant was notified accordingly in writing on 2 June 1999. On the same day, ImmD also wrote to the complainant to advise her to attend the Visitors Section of ImmD for the relevant formalities.

124. A label showing the curtailed limit of stay (up to 22 June 1999) was also affixed onto the complainant's TWP when she attended the Visitors Section on 21 June 1999. On the same day, the complainant applied to CVO to extend her stay so that she could seek legal aid for judicial review. Her application for extension of stay was refused and she was reminded to leave Hong Kong on or before 22 June 1999.

125. However, the complainant did not leave and overstayed. She was arrested by immigration officers on 7 July 1999 because of contravention of limit of stay. She was released on recognizance on 13 July 1999 to facilitate her attending the legal proceedings at High Court regarding her appeal against the refusal of her application for legal aid by the Director of Legal Aid. A removal order was made against her on 16 August 1999.

126. The complainant's appeal against the refusal of her application for legal aid by the Director of Legal Aid was rejected by the High Court on 30 July 1999. On 13 August 1999, the complainant filed to the Court a notice of application for leave to judicially review the curtailment of her limit of stay. She was not legally represented.

127. Meanwhile, the complainant lodged a complaint to The Ombudsman on the ground that ImmD had caused delay in rectifying the wrong limit of stay endorsed on her TWP. On 15 September 1999, The Ombudsman asked ImmD

for background information and relevant office procedures regarding the complainant's case. A reply was issued on 19 October 1999 to The Ombudsman providing all the necessary information. On 14 December 1999, The Ombudsman forwarded a draft of their investigation report to the Director for comments. In response, the Director gave his comments on 4 January 2000. On 31 January 2000, The Ombudsman confirmed that the complaint lodged by the complainant was substantiated and suggested a series of measures to be taken to prevent recurrence of similar mistakes.

128. On 24 September 1999, the Court of First Instance of the High Court granted leave to the complainant to apply for judicial review, with a substantive hearing fixed on 4 January 2000. As the complainant needed to seek legal assistance, hearing was adjourned. Eventually, the hearing was completed on 5 June 2000. The judgment was handed down on 13 July 2000. The complainant's application for judicial review was allowed. The Director is studying the judgment and implications of the present case to consider whether to appeal.

129. Regarding The Ombudsman's recommendations to implement a more comprehensive system to prevent imposing on arrival visitors a wrong limit of stay, it is an established system of ImmD that major control points, such as Lowu, Airport, and China Ferry Terminal, have maintained different counters for passengers holding different types of travel documents, which include the TWP visitors, for arrival clearance. All control points have entirely implemented appropriate spot checks on arrival passengers, with a view to ensuring that concerned officers have endorsed accurate limit of stay on the travel documents of arrival passengers. Besides, control points have issued internal notices to remind officers to be alert and careful during the course of duties. At the same time, supervisors at all control points will brief frontline officers periodically to enhance their alertness about their duties. ImmD had also considered conducting secondary inspection on each and every visitor or to significantly step up the spot checks. However, while there are huge volumes of arriving Hong Kong residents and visitors at the control points, the number of cases involving wrong limit of stay are relatively minimal. Given the stringent manpower resources and the expected inconvenience so caused to the visitors, after a careful balance of all relevant factors, ImmD considered that it was not appropriate to implement such a measure.

130. Besides, passenger flow fluctuates at different times, it is necessary to maintain flexible deployment to cope with the changing situations at control points. Therefore, it may not be practicable to follow strictly the recommendation of assigning designated officers to perform arrival clearance for TWP visitors only. However, appropriate spot checks are conducted to ensure that officers have imposed accurate limit of stay on arrival visitors.

131. In response to The Ombudsman's recommendations, Visa Control (C) Sectional Instruction No. 1/2000 had been issued by CVO on 8 March 2000 to give clear guidelines to its officers in case a visitor with incorrect limit of stay is encountered. The required procedures are: to conduct enquiry with the person concerned about the details upon his/her entry to Hong Kong and record them in writing, to enquire about his/her future plan and ask him/her to indicate in writing, to record in details his/her residential address and contact telephone number in Hong Kong, and to report the case immediately to the relevant Chief Immigration Officer and Assistant Principal Immigration Officer. This will facilitate actions to consider whether to proceed with an application for curtailment of the person's limit of stay. Visa Control (C) Sectional Instruction No. 1/2000, together with Visa Control (A) Divisional Instruction No. 2/99, will be re-circulated to all staff of CVO in every three months.

132. Before ImmD can make a decision regarding the curtailment of a person's limit of stay, considerable time is required to allow for investigation and consideration of the person's background and it also involves complicated legal issues. In order to expedite the processing, ImmD will consider speeding up the process through case meetings if similar cases arise in furture.

Case No. 1999/2850 : Poor manner of an officer in the handling of a case referred by an airline company concerning the cancellation of departure by a passenger.

133. At around 1:30 a.m. on 27 September 1999, a passenger, having completed immigration departure clearance and waited in the departure lounge for several hours for a delayed flight, finally decided to cancel his trip. The complainant, a staff of the concerned airline, was instructed to accompany the passenger to the immigration arrival hall for formalities.

134. When they arrived at the arrival hall, the passenger told the complainant that she might leave him on his own. A Chief Immigration Assistant (CIA), who was then on duty in the arrival hall, noted that the passenger presented at the immigration counters for arrival clearance unaccompanied. The passenger claimed that he had cancelled his trip, but did not have any proof at that point to support his claim. According to existing instructions of the Airport Division of ImmD, such passengers who cancel their departure are to be examined in detail by an Immigration Officer in order to ascertain whether he is a bona fide missed flight/cancelled trip departing passenger or whether he is involved in any forged travel document cases inside the airport restricted area. The CIA therefore needed to confirm with the airline staff, i.e. the complainant, the details of the flight delay. He then asked an Immigration Assistant to invite her back to the immigration counters. The complainant did as requested. As she was approaching the counter, the CIA came out and asked loudly why she did not accompany the passenger to the immigration counters for clearance. Despite the complainant's explanation that she was not familiar with the procedures, the CIA continued to brief her impolitely in the presence of the passenger and at one time pointed his finger at her. An Immigration Assistant subsequently led the complainant and the passenger to the Duty Officer's office for clearance formalities.

135. At around 2:00 a.m., the complainant, accompanied by two of her colleagues, went back to the arrival hall to ask for the CIA's name. The CIA directed them to go to the Duty Officer's office with him. At the Duty Officer's office, the complainant lodged her complaint against the CIA's manner with an Immigration Officer and requested the CIA's full name. The CIA and the complainant eventually agreed to exchange copies of each other's work permit. The complainant subsequently took the matter to The Ombudsman. The Ombudsman concluded that the complaint was substantiated.

136. ImmD agreed that the findings of The Ombudsman were objective and comprehensive. Following The Ombudsman's recommendations, ImmD sent the complainant a letter of apology on 13 April 2000. ImmD has also taken disciplinary action against the CIA for his misconduct.

137. As regards improvement on the communications with airline, the Airport Division of ImmD and airline representatives hold meetings regularly

to discuss and resolve matters and problems of common concern. To avoid similar incidents in future, ImmD had held meetings with airline representatives and the Chairman of the Airline Operators Committee to deliberate on matters relating to passengers cancelling their trip after immigration departure clearance. It was agreed at the meetings that airlines staff should present passengers who have cancelled their trip to ImmD's arrival Duty Officer's office for clearance formalities. The Chairman of the Airline Operations Committee has written to the airlines and handling agents on 1 June 2000 to announce the agreed procedures. ImmD has also issued an instruction on 7 June 2000 to remind its staff of the proper handling procedures for such cases. A progress report on the implementation of The Ombudsman's recommendations was submitted to The Ombudsman in June 2000 for her information.

138. ImmD has implemented all recommendations made by The Ombudsman. ImmD is committed to providing an efficient and courteous service to the public, including staff of the airlines, whilst maintaining an effective immigration control.

Lands Department (Lands D)

Case No. 1998/3035 : Delay and mishandling of the applications for change of trade and change of tenant in respect of a short term tenancy.

139. The complainant submitted five applications for change of trade and change of tenant to District Lands Office/North (DLO/N) between 24 April 1991 and 11 January 1996.

140. The first application was made on 24 April 1991. However it was lost or misplaced by DLO/N. Later, the complainant submitted the second application on 15 February 1993 for change of trade. However, DLO/N could not process the application because the proposed use would not be permitted under the relevant Outline Zoning Plan and the proposed grant of a new Short Term Tenancy (STT) for adjacent Government land could not be considered under the then prevailing policy.

141. The complainant made the third application for a change of tenant to his daughter on 26 April 1994. However, DLO/N discovered that the STT would be used for storage of miscellaneous items instead of factory operation. The application was again rejected.

142. On 31 August 1994, DLO/N received the fourth application for change of trade and change of tenant. However, DLO/N treated this letter as a complaint against favouritism to two other adjacent sites and did not process the application. On 11 January 1996, DLO/N received the fifth application for change of trade and change of tenant. Upon circulation of the application, District Planning Office of Shatin/North objected to the proposed use since this was not in line with the planning intention of the green belt zone and was not compatible with the surrounding area. In addition, a District Board (DB) Member also expressed concern regarding the environmental impact of the proposed use.

143. On 14 August 1997, DLO/N informed the applicant that the application was on the waiting list because of manpower shortage. On 2 September 1998, DLO/N notified the complainant of the concerns raised by the DB Member, and requested the complainant to resolve the objections before

the application could be further considered.

144. On 18 September 1998 and 8 December 1998, the complainant lodged complaints to DLO/N for the loss of his original application of 24 April 1991, delaying and mishandling of his subsequent applications, and giving preferential treatment to two other applications. In its response, DLO/N pointed out that the first application for change of trade was not made until 15 February 1993 and not 24 April 1991. DLO/N had also asked the complainant to apply to the Town Planning Board for approval before DLO/N could further process the application.

145. The Ombudsman considered that there was no evidence of mishandling by DLO/N in respect of the first application, no undue delay to process the complainant's second application, and DLO/N acted reasonably towards his third application. However, The Ombudsman concluded that DLO/N had mishandled the fourth application and had not kept the complainant informed. Concerning the last application in 1996, The Ombudsman considered that DLO/N had acted inappropriately and had not followed normal departmental procedures in dealing with the objection. She also considered that DLO/N should inform the complainant of the planning situation and the DB Member's comments at an earlier stage. She opined that DLO/N should improve the procedures in handling applications of a similar type in future.

146. In response to The Ombudsman's recommendations, DLO/N has taken the following actions :

(a) DLO/N is expeditiously processing the application and the STT has been executed;

(b) a letter of apology was issued to the complainant on 17 May 1999;

(c) a bring-up register has been put in place in every registry of DLO/N and movements of files are monitored closely by computers under the bar code file management system;

(d) staff of DLO/N have been reminded to handle applications for change of trade and change of tenant in accordance with the departmental

guidelines and procedures in order to ensure consistency. Office instructions are issued periodically in respect of this; and

(e) staff of DLO/N have been reminded of the need to comply with internal guidelines and procedures in handling complaints and objections, and office instructions are issued periodically on this.

Case No. 1998/3787 : Failing to take up the responsibility of taking enforcement action against a reported illegal structure at a rear lane.

147. The Incorporated Owners (IOs) of two buildings complained to Lands D and other departments in respect of an illegal structure on unleased Government land. The structure was erected prior to 1986, when a large-scale survey was conducted by Housing Department (HD) to take stock of the illegal structures on pavements and rear lanes prior to clearance. The structure was a temporary "tolerated" structure being given a survey number and was subject to clearance by being included in the Environmental Improvement Clearance Programme coordinated by Home Affairs Department (HAD) and Lands D.

148. District Lands Office/Hong Kong East (DLO/HKE) indicated that they were not responsible for the clearance. This was stemmed from the discontinuance of the "Back Lane Clearance Programme" in 1994. It was agreed by the then Planning, Environment and Lands Bureau (PELB) (now the Planning and Lands Bureau) that owing to the lack of resources, Buildings Department and Lands D would only deal with structures in rear lanes that were "posing obvious hazard to life and property".

149. During a co-ordinating meeting convened by District Office/Eastern (DO/E) in February 1999 involving all concerned departments, it was agreed that immediate demolition action would not be taken against structures which existed prior to 1986. A letter to this effect was sent to the complainants on 9 March 1999. The two IOs then complained to the Office of The Ombudsman against Lands D and other departments for failing to take up the responsibility of taking enforcement action against the illegal structure.

150. Lands D disputed The Ombudsman's initial conclusion that the case amounted to maladministration. It pointed out that The Ombudsman focused

on one letter from DLO/HKE dated 12 January 1999 to the complainant which, in essence, conveyed the Administration's position regarding "tolerated" structures in rear lanes. Lands D admitted that the letter could have provided a more detailed explanation of why DLO/HKE was not in a position to take action against the structure, but its decision should not amount to maladministration.

151. The Ombudsman nevertheless maintained that the complaint was substantiated.

152. Regarding The Ombudsman's recommendations, HAD has prepared general handling procedures for dealing with "tolerated" structures on Government land in built-up urban areas for consideration by Buildings Department, HD and Lands D. In the meantime, Lands D will deal with similar cases on a case-by-case basis.

Case No. 1999/0239 : Delay in processing an objection and proposed claims for compensation made in regard to a land resumption project.

153. The complainant received a letter from District Lands Office/Yuen Long (DLO/YL) advising that three lots would be resumed under the Roads (Works, Use and Compensation) Ordinance (Cap. 370) and reverted to the Government on 10 April 1997, and non-statutory compensation would be offered for the three lots. Upon receiving the notification letter, the complainant informed DLO/YL on 13 March 1997 that he would accept the compensation offer for two lots only but not the third one. DLO/YL sent a letter to the complainant on 8 May 1997 confirming the offer of compensation. The complainant returned the reply slip on 3 June 1997 and drew DLO/YL's attention to his previous letter of 13 March 1997.

154. On 30 July 1998 the complainant received a letter from DLO/YL informing him that his claim was rejected and advised him to submit a claim to the Transport Bureau (TB) if he did not accept the offer. The complainant submitted his claim to TB on 20 August 1998. DLO/YL wrote to the complainant on 18 December 1998 stating that the complainant letter of 13 March 1997 could not be regarded as a claim and he should apply to Lands Tribunal for a time extension to submit claims.

155. The Ombudsman considered that the complainant's reply slip of 3 June 1997 was a reiteration of their position to the compensation offer of the third lot. It was unreasonable for DLO/YL to leave the reply unattended for more than a year until July 1998 when, upon complainant's inquiry, DLO/YL reactivated action and subsequently rejected the request. On the other hand, DLO/YL's offer letter of 8 May 1997 clearly stipulated that the complainant had to serve a written claim to TB within one year from the date of resumption if he did not accept the offer. However, he failed to observe the time-limit and in the absence of a properly constituted claim, Lands D was unable to process the complainant's case.

156. The Ombudsman concluded that there had been delays in DLO/YL in handling and responding to the complainant's objection. The complainant, however, also failed to submit his claim in accordance with the statutory procedure. The complaint was therefore partially substantiated.

157. Lands D accepted The Ombudsman's recommendations and an internal circular memorandum was issued to all District Lands Offices on 28 July 1999, reminding them the need to attend to claimants' correspondence expeditiously, particularly if their statutory right of appeal could be effected.

Case No. 1999/0852 : Unreasonably withholding the release of ex-gratia payment in connection with the surrender and delivery of vacant possession of land held under a short-term tenancy.

158. An amusement park was operated on an assortment of land covered by short term tenancy (STT) and seven private agricultural lots. In connection with a redevelopment proposal, the owners of the amusement park agreed to surrender the STT to the Government in exchange for ex-gratia allowance (EGA). District Lands Office/Kwai Tsing (DLO/KT) held a meeting with all parties concerned on 13 December 1996 to discuss the general responsibilities of the concerned parties and procedures/arrangements for the removal/clearance of the park without mentioning the timing of release of the EGA. Upon clearance, the site was handed back to DLO/KT on 31 March 1998.

159. The complainant, i.e. the owner of the seven private agricultural lots and also the owner of the amusement park, negotiated with the Lands D for the surrender of lots in exchange for the re-grant of a piece of land south of the park between 1995 and 1998. Resumption of the private agricultural lots in question was approved by the Executive Council (ExCo) on 30 June 1998. The surrender and re-grant was completed in July 1998.

160. Under normal circumstances, EGA would be paid before or immediately after the evacuation of the operators from the clearance site. Owing to the sheer amount of the concerned EGA, Lands D had to revisit the existing basis of calculation and the eligibility of the proposed payee. Comments from Finance Bureau, the then Planning, Environment and Lands Bureau (now the Planning and Lands Bureau) and Department of Justice were sought.

161. The Ombudsman considered that the complainant's eligibility for EGA was unrelated to whether the resumption of adjourning private lots was authorized by ExCo. She was satisfied that Lands D had taken prudent actions to ensure that the EGA was properly administered, but the timing of such action was too late.

162. In response to The Ombudsman's recommendation, an internal circular memorandum was issued to all District Lands Offices on 24 September 1999 reminding them of the need to conduct checks on the eligibility of the clearees at the early stages of the clearance exercise and to effect payment of EGA as soon as practicable.

Case No. 1999/0903 : Mishandling of the complainant's application for Short Term Tenancy on government land adjoining to his house for erection of a fence.

163. The complainant applied to District Lands Office/Tai Po (DLO/TP) on 15 December 1992 for a short term tenancy (STT) for the erection of a fence around his house for security reasons but was rejected because he was not the registered owner. Besides, the subject site, which fell within a village type development zone, was considered capable of separate alienation for the grant

of a small house. The complainant subsequently applied to DLO/TP on 24 August 1993, 10 March 1994 and 11 April 1994 for STT of a reduced site.

164. DLO/TP conducted initial on-site investigations and discovered that the complainant had erected an unauthorized wall around his property without approval and thus rejected the complainant's request. The complainant was being asked to remove the unauthorised building works (UBW) and reinstate the area to its original condition, otherwise enforcement action would be initiated against him.

165. The complainant continued to apply for permission and appointed an authorised person (AP) to act on his behalf to certify the structural safety of the UBW. There were exchanges of correspondence between the complainant's AP, DLO/TP, Geotechnical Engineering Office (GEO) and Buildings Department (BD) as to the structural safety of the UBW between April 1994 and November 1997.

166. Prior to the granting of a STT to the complainant, DLO/TP received a written complaint from a local resident in respect of an UBW erected by the complainant. DLO/TP conducted a site inspection on 8 July 1998. Another similar complaint was received by DLO/TP on 9 July 1998.

167. DLO/TP then conducted further investigations on site and eventually sent a rejection letter to the complainant. DLO/TP issued another letter to the complainant on 14 September 1998 setting out the reasons for rejecting the application. The complainant then alleged that the work was carried out on the advice of DLO/TP and BD staff. BD later confirmed that they would not comment on any retrospective submission for site formation works.

168. The Ombudsman, after considering all the facts, concluded that the complainant's action constituted UBW. DLO/TP had acted reasonably to give the complainant a chance to regularize the UBW with a STT rather than taking immediate enforcement action. The STT might have been approved but for objections from the complainant's neighbours.

169. The Ombudsman's recommendations have been included in the department's Lands Instructions Manual. A copy of the instructions has been

sent to The Ombudsman. DLO/TP has reminded his staff the need to follow the instructions at all times.

Case No. 1999/2261 : Mishandling an application for the Certificate of Compliance for a small house and unreasonably imposing a penalty premium for extension of the Building Covenant period.

170. On 13 February 1995, District Lands Office/North (DLO/N) approved a private treaty grant for the complainant to erect a small house on Government land. Upon completion, the complainant requested DLO/N on 6 May 1996 to carry out final inspection in order to determine whether or not a Certificate of Compliance (C of C) could be issued, but no response from DLO/N was received. He sent a reminder to DLO/N on 6 May 1998. DLO/N informed him on 19 May 1998 of the irregularities detected by Architectural Services Department (ArchSD) in respect of the drainage plan of his small house. The complainant subsequently rectified the irregularities and reported the same to DLO/N on 15 July 1998.

171. A subsequent inspection conducted by DLO/N revealed three breaches of the conditions of the land grant. On 23 November 1998, the complainant was requested to apply for toleration or to remedy the situation. The complainant elected to apply for toleration and paid a penalty premium on 3 December 1998. He, however, received a letter from DLO/N on 2 July 1999 asking him to pay a penalty premium for the extension of the Building Convenant (BC) period for two years until 12 February 2000 since the C of C had not been issued on or before expiry of the BC on 12 February 1998. The complainant paid the penalty premium on 15 July 1999, but complained about the way DLO/N handled his case.

172. The Ombudsman concluded that DLO/N had been extremely slow in processing the case and failed to keep the complainant informed about the action he should take to remedy the irregularities. The Ombudsman also considered that the extension of the BC period could have been avoided if DLO/N had promptly relayed to the complainant ArchSD's advice on the irregularities in the drainage plan and inspected the building works on his small house. She considered that it was unreasonable for DLO/N to require the complainant to pay a penalty premium for the extension for the BC period and

bear the consequential financial loss. She considered that the penalty premium should have been waived.

173. In response to The Ombudsman's recommendations, Lands D has adopted the following measures :

(a) a letter of apology was issued on 31 January 2000;

(b) the penalty premium was refunded in February 2000; and

(c) DLO/N issued an internal Administrative Circular to remind all staff to ensure that there is no outstanding action on their part before a case is stayed, and the need to inform the applicant if the result of an application is not available within a reasonable time or his case cannot be proceeded with and the reason therefor.

Case No. 1999/2383 : Evading responsibility and delaying action on a tree which posed danger to passers-by.

174. In December 1998, the complainant wrote to District Office/Tai Po (DO/TP) requesting the removal of a dead tree. DO/TP referred the case to the then Agriculture and Fisheries Department (AFD) (now the Agricultural, Fisheries and Conversation Department (AFCD)) for action. Having confirmed that the subject tree posed no immediate danger to the residents, AFD referred the case to District Lands Office/Tai Po (DLO/TP) to fell the tree. DLO/TP, however, maintained that AFD should undertake the felling responsibilities. The case was held in deadlock. The complainant lodged a complaint with The Ombudsman in April 1999.

175. The Ombudsman referred the case to AFD for follow-up action. AFD wrote to the complainant in May 1999 maintaining that the case fell under the ambit of DLO/TP. Having no expertise to deal with the matter, DLO/TP requested AFD to render assistance on the matter. There were exchanges of correspondence between the two departments and the tree left unattended. The Ombudsman undertook to investigate into the case in August 1999.

176. The Ombudsman also looked into the technical circular on the subject, and concluded that the complaint against AFD and Lands D was substantiated.

177. The tree was finally being felled by the landscaping term contractor of the Task Force (Black Spots) Section of Lands D. A review on the technical circular is being carried out.

178. Lands D is a member of the inter-departmental "Working Group on Tree Preservation" established under the auspices of AFCD to consider, among other things, the demarcation of responsibilities for tree maintenance and felling. The Working Group has submitted to the Environment and Food Bureau a report with a recommendation, inter alia, to review the existing Planning and Lands Bureau Technical Circular on the same subject in order to remove any possible grey areas in tree maintenance. The Environment and Food Bureau, Planning and Lands Bureau, and Works Bureau are considering this matter.

179. In the meantime, to improve its response to tree maintenance and felling requests, Lands D has employed a specialist term contractor to carry out the work.

Case No. 1999/2920 : Refusing the complainant's request for amending the recorded area of his land lot and delay in handling the request.

180. The complainant had been arguing with Government since 1991 that, in his opinion, the area of his lot substantially exceeded its area registered in the Land Registry. He therefore requested District Lands Office/Yuen Long (DLO/YL) through his solicitor to rectify the discrepancy. DLO/YL consulted District Survey Office/Yuen Long on the issue. It was eventually concluded by Government that the larger area claimed by the applicant consisted of two fields, but Government rent had only ever been paid in respect of one of the fields. As the second field had never been granted as a lot and should be Government land according to record, so the burden of proof rested with the applicant to prove his claim. DLO/YL also requested Registrar General (RG) to provide the lot history in order to ascertain the claim of the complainant. However, RG advised that in the light of the absence of any substantial evidence, it could not conclude that the actual area of the land lot should be

larger than as recorded in the Block Crown Lease and the Field Area Statement.

181. In October 1992, DLO/YL confirmed that the amount of Government rent collected matched with the registered area, and therefore considered that the complainant's claim was not justified. The complainant, through his solicitor, wrote to DLO/YL disputing the registration and asserting adverse possession of the "additional portion" of the lot under the Limitation Ordinance (Cap. 347). He also offered to pay the amount of Government Rent which would have been payable for the extra area.

182. On the advice of the Legal Advisory and Conveyancing Office/Yuen Long, DLO/YL rejected the claim of adverse possession. The complainant continued to argue that he and his predecessors had been in possession of the land for more than 60 years, but he failed to provide any substantial evidence to support his claim for adverse possession. Since the complainant did not contact DLO/YL for more than three years until he wrote to DLO/YL on 6 July 1997 and 11 September 1997, his claim was rejected on 19 August 1997 and 14 October 1997 respectively on the ground of absence of substantial proof.

183. The lot was resumed under Roads (Works, Use and Compensation) Ordinance (Cap. 370) in November 1998. Upon the offer of compensation being made, the complainant reiterated the previous arguments in respect of his ownership claims.

184. The Ombudsman considered that DLO/YL had taken reasonable steps in handling the complainant's request upon receipt and there had been no delay, and that DLO/YL was unable to proceed further with the complainant's request without any substantive evidence.

185. The Ombudsman's recommendations that the Lands D should give interim replies to applicants at appropriate intervals if the outcome of their applications was not available within a reasonable time has been implemented since 29 March 2000.

Case No. 1999/2942 : Mishandling the illegal discharge for livestock waste into the watercourse by a pig's farm, resulting in environmental pollution.

186. On 16 January 1997, some villagers complained to the District Office/Yuen Long (DO/YL) against a pig's farm for illegally diverting pig waste into a nearby stream, creating a serious health hazard for the villagers. DO/YL referred the complaint to District Lands Office/Yuen Long (DLO/YL) and other departments for follow-up. Environmental Protection Department (EPD) later responded and confirmed that a pig farm near the concerned farm had discharged untreated livestock waste into the watercourse and that prosecution action had been undertaken.

187. Since the complainant felt that the water pollution situation had not improved but deteriorated, she complained to The Ombudsman against Lands D and other departments in October 1999 for mishandling the above complaint.

188. DLO/YL is responsible for issuing and re-issuing the Letter of Approval (L of A) to recognize farm structures on private agricultural land. Due to resource constraints, a low priority is accorded to the processing of L of A applications. In this case, no L of A had been issued for the farm structures concerned. During a site visit conducted on 19 October 1999, DLO/YL discovered that there were two additional structures, i.e. a porch and a two-storey structure, which were not covered by the concerned farm's Livestock Keeping Licence.

189. The Ombudsman acknowledged that functionally Lands D did not have a direct role to play in tackling pollution or maintaining environmental hygiene. The Ombudsman noted that previously there was a District Working Group on Watercourse Maintenance and Management (DWG) but because of the re-distribution of responsibilities, this DWG had been dormant over the years. The Yuen Long District Management Committee Ad-hoc Working Group had taken over many of the functions of DWG in relation to flood mitigation/prevention and that a Working Group under the DO/YL had taken over the responsibilities for the prevention of stream course pollution.

190. The Ombudsman considered that the complaint against Lands D was unsubstantiated. However, The Ombudsman recommended Lands D to

follow up the department's inspection findings regarding the additional structures yet to be licensed.

191. In response, DLO/YL has issued a L of A in respect of the concerned farm and has regularized the porch by including it in the L of A. DLO/YL decided not to regularize the two-storey structure and has referred the case to Housing Department for demolition.

Case No. 1999/3473 : Delay in processing the complainant's application for rectification of registered area of his land lot.

192. The complainant has an agricultural lot with a registered area of 364.1m^2 in the Block Crown Lease (now called Block Government Lease (BGL)). The complainant divided this lot into a smaller lot and a larger lot by a Deed Poll on 2 April 1997. It was later found that the surveyed areas of the two divided lots totalled 547.3m^2, i.e. larger than the registered area of 364.1m^2.

193. The complainant intended to sell the smaller lot and entered into a Sale and Purchase Agreement for that purpose. However, he had to withhold the transaction because of the abovementioned discrepancy regarding the area of the lots. On 3 October 1997, the complainant applied to District Lands Office/Yuen Long (DLO/YL) for rectification of the discrepancy, indicating that the complainant had entered into a Sale and Purchase Agreement and completion of the transaction was withheld due to the discrepancy.

194. DLO/YL sent three interim replies between November 1997 and March 1998 to the complainant's solicitors. In the first interim reply on 3 November 1997, the complainant was informed that DLO/YL was still seeking advice from the Legal Advisory and Conveyancing Office/Yuen Long (LACO/YL). The second interim reply of 6 January 1998 informed the complainant that the matter was "still being proceeded".

195. Between November 1997 and March 1998, DLO/YL sought advice from the District Survey Office/Yuen Long (DSO/YL) as to the acceptability of the area as stated in the Deed Poll and the associated plans. DSO/YL advised DLO/YL on 4 December 1997 that those associated plans were acceptable and

that the smaller lot and part of the larger lot fell within the resumption limit of a redevelopment project but did not specifically comment on the rectification issue.

196. On 5 May 1998, DLO/YL informed the complainant's solicitors that due to heavy workload, manpower problems and the low priority accorded to such cases, the application could not be processed for the time being but would be reviewed in due course. A similar reply was also given to a member of the then Yuen Long Provisional District Board on 22 May 1998 who inquired on behalf of the complainant. DLO/YL decided on 8 July 1998 to review the case in six months' time but the complainant was not informed of this until he approached DLO/YL on 23 November 1998 to inquire about the progress.

197. The complainant lodged a complaint with The Ombudsman on 26 November 1998. On 4 January 1999, DLO/YL wrote to the complainant's solicitor advising the complainant to prepare a draft Deed of Rectification and plan for approval by DLO/YL and arrange for the execution and registration of the approved Deed of Rectification upon payment of the appropriate administrative fee. The complainant's solicitor submitted a draft Deed of Rectification together with a copy of the Deed Poll to DLO/YL on 25 January 1999. The complainant made inquiries on 11 February 1999 and 13 February 1999. DLO/YL replied to the complainant's solicitor on 15 February 1999 that DLO/YL would seek legal advice from LACO/YL and consult DSO/YL and revert to him in six weeks' time. On 20 February 1999, the complainant lodged a written complaint with DLO/YL. DLO/YL replied on 16 March 1999 informing the complainant of the progress.

198. On 24 March 1999, LACO/YL advised DLO/YL that if DLO/YL was satisfied that there was a discrepancy, Government should not refuse the rectification. On 26 March 1999, DSO/YL advised DLO/YL that Government should ascertain the cause and extent of the alleged discrepancy before deciding whether a rectification agreement with the lessee was necessary. DLO/YL informed the complainant's solicitor accordingly on 1 April 1999.

199. The Ombudsman initially considered that the complaint was substantiated for the following reasons :

(a) the statement in the first interim reply of 3 November 1997 was inaccurate and legal advice should have been sought earlier;

(b) the complainant's solicitor had told DLO/YL earlier that a property transaction was dependent on resolution of the problem, therefore, DLO/YL should have realized that the complainant attached great importance to early completion of the transaction;

(c) DLO/YL should have notified the complainant earlier when it decided on 8 July 1998 to review the case in six months' time;

(d) the delay in the processing of the complainant's application might have been acceptable if the complainant had been informed about the reasons behind in the first instance. The Ombudsman considered that DLO/YL had misled the complainant;

(e) the staff of DLO/YL would find it difficult to handle the case, which was rather complicated in nature, in the absence of departmental guidelines; and

(f) when LACO/YL and DSO/YL responded in March 1999, it was already 17 months after the complainant submitted his application.

200. Following a meeting with The Ombudsman and Lands D staff, further information was supplied to The Ombudsman which indicated that :

(a) upon division of a registered land lot, the lot owner should employ a qualified land surveyor to prepare a plan showing the surveyed area of the lot or sub-divisions of the lot and register the divided lots and the land boundary plan with the Land Registry by a Deed Poll;

(b) the qualified land surveyor employed could resolve any discrepancy by approaching Lands D for clarification before registering the land boundary plan with Land Registry. However, this is not a requirement of the Code of Practice issued under the Land Survey Ordinance (Cap. 473);

(c) it was established by DLO/YL in June 1998 that the land resumption

would not affect any application for a Deed of Rectification. DLO/YL's letter of 2 June 1998 to the complainant's solicitor mentioned that the Geographical Section was handling the application;

(d) DLO/YL had used the expression "in due course" for the period for reviewing the case even though there would be no guarantee that the case could be processed thereafter. However, Lands D agreed to consider to indicate a time frame in future; and

(e) from October 1997 to May 1998, the case was being processed to ascertain whether or not rectification could proceed.

201. The Ombudsman reviewed the matter and considered that :

(a) it was highly unsatisfactory that DLO/YL failed to provide the information on the land resumption and the related file until The Ombudsman's draft Investigation Report was discussed on 18 May 1999. She considered it not an isolated incident as similar default had occurred before and stressed that all relevant information should be provided to The Ombudsman when investigating a complaint;

(b) The Ombudsman noted that shortly after the application for rectification, a road work project involving resumption of the complainant's lot was gazetted on 25 October 1997. The complainant and his son raised an objection to the resumption of their lots on 12 December 1997. The objection was handled by Territory Development Department (TDD) and a project team of DLO/YL. Before the complainant and his son withdrew their objection on 8 May 1998, discussion with the project section of DLO/YL and TDD had taken place on the rectification at the same time as the land resumption issue. The discussions took place between February and June 1998;

(c) The Ombudsman noted that at a meeting on 13 February 1998, the representative of DLO/YL project team urged the complainant to follow up a matter with the Geographical Section of DLO/YL;

(d) The Ombudsman noted that not until the Deed of Rectification was completed which modified the registered area of the lot, DLO/YL

adopted the original registered area of the lot for the calculation of compensation for the resumption. The Ombudsman felt that this indicated that the land resumption issue did not affect the processing of the application for the rectification;

(e) The Ombudsman considered that though it was claimed that there had been liaison between the relevant sections of DLO/YL, the project team and geographical land team concerned had not liaised with each other on the matter even after the land resumption issue was resolved, and there was no evidence to indicate that the letter of 2 June 1998 had been referred to the Geographical Section;

(f) The Ombudsman did not accept that DLO/YL had processed the case between October 1997 to May 1998 because of the indications in the first two interim replies of 3 November 1997 and 6 January 1998. Secondly, files indicated that the case officer had on 18 March 1998 requested DSO/YL to prepare a modification plan for the Deed of Rectification which was related to the rectification itself. Thirdly, if the process had been divided into steps, Lands D should have advised her when comments were first given on the complaint. The Ombudsman considered that for DLO/YL to take seven months to ascertain whether or not to proceed was unacceptable; and

(g) as a mitigating factor, it was clearly indicated in the information provided by Lands D that the complainant was aware of the area discrepancy when negotiating with TDD and DLO/YL on the land resumption issue between February and June 1998.

202. On the basis of the above, The Ombudsman changed her conclusion from substantiated to partially substantiated.

203. In response to The Ombudsman's recommendations, Lands D has implemented the following measures :

(a) a letter of apology was issued to the complainant on 5 July 1999; and

(b) departmental guidelines were issued on 19 November 1999 for Lands D staff on processing applications for rectification of the registered

area in private lots arising from the private property transactions, and on advising the applicant on how to proceed with the rectification, including the seeking of professional assistance.

204. Regarding The Ombudsman's recommendation to expedite the processing of the complainant's application for rectification of the registered area of his land lot concerned, as the survey report revealed that the discrepancy arises from a prolonged occupation of neighbouring private land, the rectification can only be implemented subject to the complainant's resolution of the discrepancy with the neighbouring land owners.

Legal Aid Department (LAD)

Case No. 1999/2405 : Delay in handling an application for legal assistance and inaction on the part of Legal Aid Department in following up the complainant's appeal against refusal of rendering legal assistance.

205. The complainant applied for legal aid to defend a High Court Action in which the plaintiff sued the complainant and her husband jointly in respect of the outstanding price of goods sold and delivered. Her application was refused by LAD on 30 October 1997 due to lack of merits and her failure to furnish the documents required for processing her application. She then lodged an appeal against LAD's decision on 12 November 1997. The appeal was heard and adjourned by the Registrar of the High Court on 7 January 1998 for further investigation.

206. The appeal hearing was restored on 16 December 1998 during which the complainant submitted written grounds of appeal and alleged that the concerned cheques had been paid by her husband. The appeal was further adjourned to allow reasons to be provided by LAD in reply to the complainant's submission and her allegations.

207. Subsequent to the adjournment, LAD waited for the complainant to supply further documents and proof in support of her grounds of appeal. No written request was issued by LAD to the complainant.

208. However, the complainant misunderstood the Court's decision and wrongly believed that her appeal was allowed and that LAD was ordered by Court to grant legal aid to her. She therefore waited for LAD's arrangement of legal representation for her without taking any further action.

209. Eventually, the appeal was restored and dismissed on 22 October 1999.

210. The complainant then complained about the delay in restoring the appeal.

211. LAD responded that a request for restoration of an appeal hearing could be lodged by the appellant, the respondent or the Court. However, the

complainant had not made such request. Moreover, the professional officer in charge of the case had to handle some 500 cases during the year.

212. The Ombudsman concluded that as the complainant had the misunderstanding that legal aid would be granted to her, she would not possibly realize the need to provide LAD with the documents required or to request restoration of the appeal hearing. If LAD had contacted the complainant for follow-up actions subsequent to the adjournment, the misunderstanding and the delay in restoring the appeal hearing could have been avoided. Therefore, The Ombudsman concluded that the complaint was substantiated.

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

(a) a letter of apology was sent to the complainant on 18 April 2000; and

(b) a departmental circular providing guidelines to staff in restoring appeals against refusal of legal aid was issued on 15 October 1999 and would be re-circulated periodically.

Rating and Valuation Department (RVD)

Case No. 1999/0675 : Delay in sending out Demand for Rates and/or Government Rent (Inclusive of Surcharges) to the complainant.

214. The complainant received in the afternoon of 9 March 1999 from RVD a "Demand for Rates and/or Government Rent (Inclusive of Surcharges)" ("demand with surcharges") with a date of issue of 23 February 1999 printed thereon, and found that he would not be able to pay up before the deadline, i.e. within 14 days from the date of issue (by 9 March 1999). The complainant therefore lodged a complaint to the Office of The Ombudsman on 10 March 1999.

215. Under the provisions of the Rating Ordinance and the Government Rent (Assessment and Collection) Ordinance, the quarterly Rates and Government Rent must be paid within the first month of each quarter, and late payment would require payment of surcharges at 5%. As the complainant did not pay the Rates and Government Rent for the January to March quarter 1999 within the time limit, i.e. on or before 31 January 1999, he had to pay the 5% surcharges. As a result, RVD had to issue a "demand with surcharges" to the complainant.

216. The concerned "demand with surcharges" was printed by the Post Office on behalf of RVD on 20 February 1999. In printing the whole batch of "demands with surcharges", some printed demands contained incorrect data due to some data errors in RVD's original computer tapes. Therefore, RVD had to ask the Post Office to temporarily withhold the processing of the whole batch of "demands with surcharges".

217. Since there were only 48 000 copies of blank "demands with surcharges" in the stock, RVD could not arrange to reprint the whole batch (about 100 000 copies) of "demands with surcharges" to update the date of despatch. In order not to delay the time of despatch and slow down the procedure in recovering the payment in arrears, RVD decided not to manually update the date of despatch (i.e. 23 February 1999) of those "demands with surcharges" with correct data and let the Post Office mail them out on 27 and 28 February 1999. RVD had nevertheless made an internal arrangement, to

postpone the time in taking recovery actions to compensate the time lost for making payment by payers.

218. The Ombudsman was of the view that the statement on the back of a "demand with surcharges", i.e. "Unless you pay the amount demanded within 14 days, legal action may be instituted against you by the Department", constituted a rather serious warning because according to general perception, legal action might cause serious consequences. If payers could not pay up before the time limit, they might feel uncomfortable, because of the above-mentioned warning message, and worry that RVD would take legal action against them. Therefore, RVD had the responsibility to allow enough time for payers to pay up the amount in arrears. In this incident, RVD delayed the posting of the printed "demand with surcharges" due to some erroneous data. As the problem was caused by RVD rather than the complainant, RVD therefore should correct the date of despatch of the "demand with surcharges" for the complainant. Though subsequently RVD had made an internal arrangement and postponed the time in taking recovery of payments in arrears, the complainant was unaware of this. To the complainant, his time for settling the payment in arrears had indeed been reduced. Therefore, The Ombudsman found that the complaint was substantiated.

219. In response to The Ombudsman's recommendations to RVD, the Commissioner of Rating and Valuation has:

(a) issued internal guidelines on 25 April 2000 to ensure that if in future there were any reasons to delay the mailing out of the printed "demands with surcharges", RVD would, depending on the circumstances, consider adopting the following measures –

(i) to reprint all "demands with surcharges" with a new date of despatch printed thereon;

(ii) to manually correct the date of despatch;

(iii) to print pamphlets to be attached to "demands with surcharges" for mailing out together in order to correct the date of despatch and to inform payers that the deadline for payment would be postponed correspondingly; or

(iv) to stamp the correct date and a message that payment deadline would be postponed, on the back of the envelope, to inform payers;

(b) increased the stock of blank "demands with surcharges" to an amount adequate for a whole quarter's stand-by use; and

(c) sent a letter of apology to the complainant on 25 April 2000.

Case No. 1999/1438 : Handling improperly the complainant's telephone enquiry about cheque payment for rates and rent and misleading the complainant to make double payment.

220. On 19 April 1999, the complainant mailed a cheque to pay the April quarter Rates of 1999. On 28 April 1999, he discovered that the cheque was not cashed, and he telephoned RVD's telephone hotline and enquired about the position of the matter. After checking the records, RVD's staff indicated that the Treasury had not received the concerned cheque. As the time limit for payment would soon be due, the complainant therefore appeared in person at the Treasury to apply for a replacement demand notice for payment of Rates, and paid cash immediately once more to settle the quarterly Rates.

221. On 5 May 1999, the complainant discovered that the Treasury had already cashed the cheque (which he mailed on 19 April 1999) on 3 May 1999. He therefore telephoned RVD's hotline again for enquiry. RVD's staff refuted that the double payment was due to the complainant not having made enquiry to the Treasury on whether the concerned cheque had been received. The concerned staff also emphasized that the refund procedure was complicated and time-consuming, and persuaded the complainant to use the amount overpaid to set off the Rates payable for the following quarter, but did not explain clearly the procedure in refunding the amount overpaid.

222. The complaint raised three points of complaint:

(a) on 28 April 1999, RVD did not properly handle the complainant's enquiry concerning payment of Rates by cheque and misled him to make double payment;

(b) on 5 May 1999, when the complainant telephoned RVD for enquiry, RVD's staff used the excuse that the double payment was caused by the complainant not making an enquiry with the Treasury on whether the cheque had been received; and

(c) RVD staff only emphasized that refund procedure was complicated and time-consuming and did not explain in detail the procedure of applying for refund of the amount overpaid. Instead, the complainant was being persuaded to set off the amount overpaid against the Rates payable in the following quarter.

223. Rates and Government Rent must be paid within the first month of each quarter. RVD would, near the beginning of the first month in the quarter, issue demand notes for Rates and Government Rent and subsequently process the concerned accounts.

224. The complainant paid the concerned quarter's Rates by sending a crossed cheque to the Director of Accounting Services by post. Generally, the Treasury would, upon receipt of the cheque by post, arrange to date-stamp the demand on the same day and to store the payment data in a computer tape for return to RVD on the following day. Upon receipt of the computer tape, RVD would in the night of the same day update the computer account's payment data. In accordance with this procedure, on the third day from the Treasury's receipt of the cheque, RVD's staff could check the payment data from the computer system.

225. As a very large number of members of the public paid Rates and Government Rent by sending cheques by post, the above procedure would take a longer time to complete during busy periods. Due to that reason, the payment data concerning the complainant was only uploaded to RVD's computer system in the night of 4 May 1999. When the complainant made the enquiry to RVD on 28 April 1999, RVD's staff could only reply according to the computer's record which did not have the concerned payment details.

226. The Ombudsman held the view that RVD's staff replied to the complainant's enquiry in accordance with the data appearing in the computer system, and did not purposely demand the complainant to pay Rates twice; it was possible that there was misunderstanding in the communication between

the two parties. Moreover, as the concerned telephone enquiry was made on a one-to-one basis, in the absence of adequate information and independent third party evidence, The Ombudsman held that the complainant's first point of complaint was not substantiated.

227. Members of the public could telephone RVD to enquire about matters listed on the demand note for Rates and Government Rent. The concerned telephone hotline number was printed on the back page of the demand note. Staff in RVD who attended to telephone hotlines mainly belonged to the department's Accounting and Billing Division, but in the due month for collecting Rates and Government Rent, RVD had to redeploy staff from other Divisions to attend to telephone calls and assist in answering enquires made by members of the public. All staff who attended to telephone enquires were trained in order to understand the operations of the Accounting and Billing Division, and they also had basic understanding of Treasury's collection procedure.

228. Since the redeployed staff had inadequate practical experience, RVD had instructed them that when attending to more complex enquiries, they should seek assistance from the deputy officer-in-charge of the telephone service pool. At the same time, RVD had prepared "Questions & Answers" for general enquiries on account matters for reference of these staff. The Office of The Ombudsman had perused this document which contained standard questions and answers, and noted that one point was in respect of the arrangement to deal with amounts of money overpaid that, besides explaining the setting off arrangement of the concerned amount of money for the following quarter or future Rates and Government Rent, a refund could be made if so demanded by a member of the public. In raising such a demand, a member of the public would only be required to provide the file number and the formal receipt. In addition, RVD had a standing practice of circulating to staff the documentary data on the enquiry section and on the telephone enquiry service.

229. In respect of the procedure in cashing cheques, the management staff of the Accounting and Billing Division had also given verbal instructions to staff attending to telephone calls to facilitate their reply to enquiries from members of the public. The explanation that had to be made by RVD staff included the following points :

(a) to point out that the Treasury was responsible for collecting payment for Rates and/or Government Rent. According to RVD's understanding, in a payment due month, a rather large number of cheques would be received and the Treasury would need more time to process;

(b) as it took time for the Treasury to properly process collection data and to store the data in a computer tape before sending the tape to RVD, RVD's computer system might not be able to show the up-to-date payment data; and

(c) if a member of the public enquired about the way to deal with a cheque that was sent by post but not cashed, staff attending to the telephone enquiry, upon the enquirer's request, could provide other alternative measures for the enquirer's consideration. For example, an instruction could be sent to the bank to stop the cashing of the cheque, and then make a separate payment.

230. As the complainant did not know the name(s) of the concerned staff who attended to the complainant's telephone enquiries on 28 April 1999 and 5 May 1999, The Ombudsman could not get a written statement from the concerned staff. However, judging from the information provided by the complainant, the staff who attended to the telephone enquiry did not give explanations as described above, and did not explain to the complainant clearly that a demand for refund of the amount overpaid could be made, in accordance with the standard "Questions & Answers" document. The concerned staff only gave an unclear answer and shifted the responsibility to the complainant. The Ombudsman therefore held that the complainant's second point of complaint was substantiated.

231. In addition, although RVD had given verbal instructions to staff attending to telephone enquiries, The Ombudsman held the view that this arrangement should be further improved.

232. In this case, the applicant's refund application belonged to the "Overpaid Rates and/or Government Rent" category. RVD had two alternatives to process the case. The first alternative was to allow the registered payer (as recorded in RVD's computer account) to apply in writing,

together with the concerned original copy of receipt, for refund of the money overpaid. However, due to the large number of such applications, generally it would take two to three months to complete the processing before the Treasury could mail a cheque for the concerned refund to the registered payer. The second alternative was to use the money overpaid to set off the Rates and/or Government Rent due in the following quarter. If the registered payer did not give special instructions, RVD would automatically arrange to use the money overpaid to set off the account in the following quarter.

233. The current policy of RVD was to encourage payers to use the money overpaid to set off the Rates and Government Rent due for the following quarter. Unless payers requested for a refund by cheque, or when there would be no Rates and/or Government Rent payable in the following quarter, RVD would use the money overpaid to set off the Rates and/or Government Rent for the following quarter. This "setting off" practice would avoid the procedure of requiring payers to apply and to return the original copies of the concerned receipts, and could also enable payers to avoid paying the following quarter's Rates and/or Government Rent whilst the application for refund was still being processed. According to RVD's past experience, generally speaking, registered payers would accept this more convenient alternative.

234. As described above, the RVD staff concerned did not explain in detail the refund procedure to the complainant. As a result, the complainant could not know that he could request for refund of the money overpaid. Therefore, The Ombudsman held that the third complaint was substantiated.

235. RVD accepted the recommendations made by The Ombudsman and promised to take appropriate actions to implement those recommendations. In this connection, the Commissioner of Rating and Valuation had already taken the following actions :

(a) a letter of apology was sent to the complainant on 16 May 2000;

(b) RVD had incorporated, in writing, the "Answers on the Procedure in cashing cheques" into the "Questions and Answers for General Enquiries on Account Matters". RVD would periodically review and improve the contents of these "Questions and Answers" to achieve the purpose of giving ample instructions to staff; and

(c) RVD organized two seminars, on 13 and 14 June 2000, for about 80 staff of the Accounting and Billing Division to brief them on the organization and functions of the other Divisions in RVD, to increase staff's knowledge on these functions and operations, so as to enable staff to provide clear and correct explanations to members of the public. An Assistant Commissioner of RVD also participated in the seminars. He repeatedly emphasized the spirit of public service that civil servants must bear in mind (i.e., customer-oriented and politeness to customers), and reminded staff the matters that required attention while answering public enquiries. The Staff Development Section of RVD would organize similar seminars at regular intervals each year to enhance the training for staff. In addition, the officer in charge of the Telephone Pool held a meeting, at the end of June 2000, with the staff who handled telephone hotline enquiries and discussed the arrangement in answering the hotlines, in order to improve communication and to listen to staff's views on the routine operations with a view to improving the telephone hotline service. RVD plans to hold similar meetings each quarter in order to reinforce communication between staff.

Regional Services Department (RSD)

Case No. 1999/0514: Unreasonably asking the complainant to surrender his cooked food stall in a market and adopting a double standard, allowing other lessees to secretly transfer their market stalls to other people for business operations.

236. In August 1994, a licensee of a fixed pitch stall in an old cooked food hawker bazaar, accompanied by his relative (the complainant), took part in a restricted auction to bid for the tenancy of a cooked food stall at a market managed by the former RSD (the functions in respect of this complaint have subsequently been taken over by the Food and Environmental Hygiene Department). The RSD staff issuing "admission tickets" to eligible bidders on that day, without verifying the identity of the complainant, took him as the eligible bidder (i.e. the licensee whom the complainant accompanied). So the complainant was allowed to fill in his name and identity card number on the "admission ticket". As a result, the complainant succeeded in bidding for the tenancy of the cooked food stall and RSD, representing the then Regional Council, eventually signed a 3-year tenancy agreement with him.

237. In October 1997, Independent Commission Against Corruption conducted an investigation into a complaint about a stall holder of the market becoming the tenant of a stall through unlawful means, discovered that the complainant was not an eligible bidder of the cooked food stall in question. Since the complainant had acquired the right of operation of the cooked food stall by illegal means, after consulting its legal adviser, RSD decided not to renew the tenancy with him on the ground that he was not an eligible bidder on the day of auction. On 23 November 1998, RSD sent him a letter to convey the decision and asked him to surrender the stall to RSD in three months.

238. In March 1999, the complainant lodged a complaint to The Ombudsman against RSD for unreasonably asking him to surrender his cooked food stall in a market and adopting a double standard, allowing other lessees to secretly transfer their market stalls to other people for business operations.

239. The Ombudsman noted that RSD had inspected the 28 cooked food stalls in the market and all of them were found to be operated by the lessees

themselves or their employees or authorized agents. She considered that the complaint point about secret transfer of market stalls by lessees to other people for business operation was unsubstantiated.

240. However, as RSD staff had, out of negligence, allowed the complainant to fill in his own particulars on the admission ticket for the auction and made a mistake in signing the stall tenancy agreement with the complainant, The Ombudsman concluded that the complaint was partially substantiated.

241. RSD accepted and implemented The Ombudsman's recommendations as follows :

(a) RSD issued a letter of apology to the complainant on 6 September 1999 to apologize for the negligence of its staff as they had misled him into thinking that he had lawfully acquired the tenancy of the cooked food stall in the market; and

(b) RSD issued written instructions on 15 November 1999 to the staff concerned asking them to strictly observe the operational order for the administration of restricted auctions.

Social Welfare Department (SWD)

Case No. 1999/0667 : Unreasonable procedures in the review of the Disability Allowance payable to the complainant's aged mother and unfriendly manner of the caseworker.

242. The complainant lodged a complaint against SWD on behalf of his mother about :

(a) the unreasonable procedures in the review of his mother's eligibility for Disability Allowance (DA); and

(b) the unfriendly attitude of SWD staff.

243. The complainant's mother, aged over 80, started receiving Old Age Allowance (OAA) since 9 October 1987. In 1997, she was certified by an ENT (ear, nose and throat) Surgeon in Sai Ying Pun Jockey Club Polyclinic to be suffering from hearing impairment and was assessed to be eligible for DA for two years (from 23 April 1997 to 22 April 1999). In the notification letter sent to her in 1997, SWD did not mention what the arrangement would be after expiry of the two-year validity period.

244. The case was reviewed by SWD in March 1999, about 40 days before expiry of the DA validity period of the complainant's mother. During an interview conducted by SWD staff on 3 March 1999, the complainant's mother was being informed of the need for her to undergo another medical assessment to determine her continued eligibility for DA. As there were usually long waiting lists for appointments at specialist clinics, sometimes it would take a few months before a medical assessment could be arranged. SWD staff hence suggested to the complainant's mother that they could arrange for her to receive OAA in the interim to avoid disruption of payment. She was assured that retrospective adjustments in payment could be made if she was found eligible for DA after the medical assessment.

245. On 5 March 1999, the complainant contacted the responsible staff and queried the necessity for his mother to attend another medical assessment. He said that due to her old age, there was little possibility for his mother to recover

from her hearing impairment. He considered the review system bureaucratic. He further complained that the staff was unfriendly as the staff declined to ask the ENT Surgeon to accord a permanent disability status to his mother.

246. Investigation revealed that :

(a) the case had been brought up for review in accordance with the procedures for normal cases, i.e. 40 days before expiry of the validity period. However, according to the Social Security Manual of Procedures (SSMP), DA cases requiring medical re-assessment should be brought up for review six months before expiry to allow for the time required to arrange medical assessment;

(b) the caseworker had in fact arranged for the complainant's mother to attend a medical assessment on 7 April 1999. Unfortunately, the notification letter from the clinic was misplaced by the general registry of SWD and another medical appointment had to be arranged as a result; and

(c) as for the complainant's request that the staff should ask the ENT Surgeon on his behalf to accord a permanent disability status to his mother, the request was considered inappropriate as medical assessment should rely on professional judgement of medical doctors.

247. SWD had subsequently scheduled another medical appointment for the complainant's mother on 10 May 1999. She was certified to be profoundly deaf on a permanent basis and her DA payment was reinstated. On the other hand, a review on the workflow of the general registry of SWD was conducted and a Work Improvement Team was formed to identify possible further improvements to the work process to avoid similar mistakes.

248. Overall, The Ombudsman concluded that the complaint was partially substantiated.

249. Pursuant to The Ombudsman's recommendations, the Director of Social Welfare :

(a) issued a letter of apology to the complainant's mother on 22 September 1999;

(b) has introduced a standard notification letter, which will be followed by oral explanation if necessary, to be sent to DA recipients who are not medically certified to be permanently disabled to inform them of the need for medical re-assessment after the expiry of the validity period of the current medical assessment form; and

(c) agrees that in special circumstances, SWD staff will assist aged and disabled clients by recording their reasonable requests in the covering memoranda when they issue medical assessment forms to Medical Officers/Medical Social Workers for the arrangement of medical assessments.

Case No. 1999/1373(I) : Failing to follow the provisions of the Code on Access to Information (the Code) and also the spirit of the Code as stated in its opening preamble, in respect of the complainant's request for information relating to complaints about Residential Care Homes for the Elderly (RCHEs) and the names of the RCHEs receiving the most complaints since 1 January 1998.

250. The complainant made an application under the Code to request for information on the names of the RCHEs which received the most complaints since January 1998. He also requested for records of all the complaints against RCHEs received by the Social Welfare Department (SWD), including detailed description of each complaint and the names of the RCHEs but excluding the name of the complainants against the RCHEs.

251. SWD had sought legal advice from the Department of Justice who took the view that both the detailed description of complaints and the names of RCHEs were third party information as defined under the Code. These types of information were usually provided to SWD by third parties such as the home residents and their relatives. Arising from the professional code of ethics of social workers as well as the performance pledge of the Department, SWD owed them a duty of confidence on the information provided by them. Hence, SWD considered that it would not be in the public interest to disclose such

information, and the request for information was declined for the reason set out in paragraph 2.14(a) of the Code. The rationale for refusal had been explained to the complainant and he was also assured that all complaints concerning RCHEs would be thoroughly investigated and appropriate follow-up actions would be taken. Although the request was declined, aggregated data on complaints received by SWD including the number of substantiated cases had been provided to the complainant.

252. The complainant later filed to SWD a request to review the decision on his application for information. In this review request, the complainant had, to some extent, modified his previous stance — he indicated that he would agree to receive the description on the complaints even if the names of RCHEs could not be provided. His review request had been thoroughly examined by the senior management of SWD. They had carefully considered the views of the complainant as set out in his review request, public interest associated with any disclosure and the possible harm to public interest that could result from disclosure, and decided that the original decision should be upheld for the reason that SWD owed a duty of confidence to those persons who complained against the RCHEs.

253. Furthermore, SWD had obtained legal advice which suggested that providing a summary of the description for substantiated complaints after stripping off the names and other identifying particulars of RCHEs would not breach the duty of confidence. Therefore, in view of the wish of the complainant as expressed in his review request, a summary of all the complaints received from January 1998 which were substantiated or partially substantiated had been compiled for him. The summary sets out the issues being complained about, as well as the investigation and follow-up actions taken on each complaint.

254. The complainant was dissatisfied with the decision regarding his review request and he complained to The Ombudsman. Having considered all the available information, The Ombudsman accepted that SWD had valid reasons for withholding disclosure and considered that SWD had followed the provisions and spirit of the Code, the Guidelines on the Code and the legal advice it had obtained regarding the application. However, SWD had exceeded the 21-day deadline as stipulated in paragraph 1.25.3 of the Guidelines in notifying the complainant of the outcome of his application for

internal review. The Ombudsman noted that neither the Code nor the Guidelines had stipulated whether the time limit for handling requests for information should also apply to requests for review. The Ombudsman also noted that SWD could not make a decision within 21 days due to the need to seek further legal advice. Furthermore, the Home Affairs Bureau had advised that this was a valid justification for departments to extend the deadline. The Ombudsman therefore considered that the non-compliance of the Guidelines regarding the extension of the deadline for reply to the review request was unsubstantiated. The Ombudsman had concluded that all the points of complaint were unsubstantiated.

255. Notwithstanding the finding by The Ombudsman that all the points of the complaint were unsubstantiated, The Ombudsman recommended that the Home Affairs Bureau should consider reviewing the timeframes under the Code on Access to Information and the Guidelines adopted by government bureaux/departments in processing requests for review.

256. Regarding The Ombudsman's recommendation, the Home Affairs Bureau had already promulgated relevant amendments to the Code on Access to Information and the Guidelines setting out that the target response time for handling requests for information should also apply to requests for review.

Case No. 1999/2803 : Delay in processing the complainant's application for Comprehensive Social Security Allowance (CSSA) and for making things difficult for him in the course of processing his application.

257. The complainant complained that he had been asked to visit the office of SWD for five times between 26 August 1999 and 30 September 1999 with regard to his application for CSSA, but after the visits, the SWD staff still could not confirm whether his application was successful. He was dissatisfied that he had been requested by SWD staff to bring along different kinds of documentary proof at each interview. He claimed that he requested the staff concerned to state clearly all the documents required for processing his application, but his request was rejected.

258. Furthermore, the complainant was dissatisfied that his mother, who lived in Tsz Wan Shan, had been asked to visit the SWD office in Cheung Sha

Wan on 21 September 1999 to assist in the investigation of his application for CSSA. In addition, the complainant was being informed by the staff concerned that CSSA payment could be made to him on 26 September 1999, but the payment was not released until 14 October 1999.

259. Investigation revealed that processing of the complainant's application for CSSA could not be completed speedily because he failed to produce the required supporting documents despite requests made by SWD's staff. Also, the interview with the complainant's mother was part of normal investigation procedures to clarify their financial relationship and was considered necessary.

260. Overall, The Ombudsman concluded that the complaint was partially substantiated.

261. Pursuant to The Ombudsman's recommendations, the Director of Social Welfare issued guidelines to all social security field units on 17 April 2000 to implement the following improvement measurements :

(a) at intake level, a list of general documents required for processing the CSSA application should be given to the applicant, to facilitate him/her to prepare the necessary documents in advance;

(b) to provide the CSSA applicants, in the appointment letter for interview, with a list of all the documents required for processing the CSSA application;

(c) during interview, if additional documents are found to be required, another list of special documents should be provided to the customer according to individual needs; and

(d) staff should enhance communication with customers by clearly explaining the application procedures and time for processing the application.

Transport Department (TD)

Case No. 1999/0689 : Delay in processing an application for direct issue of a Hong Kong driving licence.

262. An applicant complained against TD for the delay in handling his application for direct endorsement of a Hong Kong driving licence. He was also dissatisfied with TD for not making contact with him, informing him of the time required or estimating when the application results would be available after he had submitted the application. The Ombudsman concluded that the complaint was partially substantiated.

263. TD accepted The Ombudsman's recommendations and had put them into practice accordingly.

264. In future, if there are cases that are more complicated and may take more time for processing than usual, TD will issue letters to the concerned applicants to inform them that their cases are being processed and, whenever possible, the expected time needed.

265. At present, the processing time required for applications for direct issue of a Hong Kong driving licence from driving licence holders of all scheduled countries in the Fourth Schedule of the Road Traffic (Driving Licences) Regulations (Cap. 374) is five working days.

Case No. 1999/0964 - 1999/0966 : Failing to monitor/supervise the operation of the Hongkong & Yaumati Ferry Co Ltd sufficiently during the course of preparation for and commissioning of the new Cheung Chau - Central licensed ferry services which commenced operations on 1 April 1999.

266. The complainants were aggrieved by the operational problems on the first day of operation of the new Cheung Chau - Central licensed ferry service, and the unsatisfactory ferry service provided by the Hongkong & Yaumati Ferry Co Ltd (HYF). Among other things, they were unhappy about the ferry schedules, the types of vessels used, amount of fares charged, safety standards and the apparent lack of contingency plans on the day of the changeover.

They alleged that these problems reflected TD's inadequate preparation work and its inability to monitor the performance of HYF.

267. On 2 November 1999, the Commissioner for Transport approved HYF's application to transfer its passenger ferry service licences to New World First Ferry Services Limited (NWFF). NWFF took over HYF's operation with effect from 15 January 2000. The changeover in operations was smooth.

268. The Ombudsman concluded that the complaint was partially substantiated. The follow-up actions taken by TD in response to The Ombudsman's recommendations are summarized below :

(a) Convening regular meetings among ferry operator, residents and TD

A system has been put in place to enhance communication among the new operator NWFF, residents and TD through regular passenger liaison group meetings, in addition to meetings of the Islands District Council and its Traffic and Transport Committee (TTC).

(b) Improving passenger service environment

NWFF has committed itself to a programme to improve its ferry vessels, pier facilities, communication and passenger information facilities, and to procure four new vessels by early 2001. Progress of these improvement measures is on schedule. TD will continue to monitor progress.

(c) Testing and contingency planning for the automatic ticketing system

Regular testing is being conducted by NWFF. In addition, a regular reporting system has been put in place for NWFF to report breakdowns of the ticketing system. A contingency plan, incorporating the deployment of portable Octopus machines, has also been developed to cope with sudden breakdown of the automatic ticketing system.

(d) Reviewing passenger demand and aspirations

Both TD and NWFF have conducted passenger opinion surveys to gauge passengers' views on existing services, including service levels, fares and vessels. In June 2000, TD consulted TTC of the Islands District Council on the survey findings. Members generally welcomed

the surveys. Concerns expressed related mainly to the validity period of NWFF's holiday return tickets, the level of holiday fares and deluxe class fares, and non-adherence to scheduled journey time. TD has also consulted the relevant Area Committees in July/August 2000. Suggestions regarding service changes will be discussed at TTC and passenger liaison group meetings.

Case No. 1999/0967 - 1999/0972, 1999/0989, 1999/2052 : Failing to monitor/supervise the operation of the Hongkong & Yaumati Ferry Co Ltd sufficiently during the course of preparation for and commissioning of the new Mui Wo - Central and Peng Chau - Central licensed ferry services which commenced operations on 1 April 1999.

269. The complainants were aggrieved by the operational problems on the first day of operation of the new Mui Wo - Central and Peng Chau - Central licensed ferry services, and the unsatisfactory ferry services provided by the Hongkong & Yaumati Ferry Co Ltd (HYF). Among other things, they were unhappy about the ferry schedules, the types of vessels used, amount of fares charged, safety standards and the apparent lack of contingency plans on the day of the changeover. They alleged that these problems reflected TD's inadequate preparation work and its inability to monitor the performance of HYF.

270. On 2 November 1999, the Commissioner for Transport approved HYF's application to transfer its passenger ferry service licences to New World First Ferry Services Limited (NWFF). NWFF took over HYF's operation with effect from 15 January 2000. The changeover in operations was smooth.

271. The Ombudsman concluded that the complaint was substantiated. The follow-up actions taken by TD in response to The Ombudsman's recommendations are summarized below :

(a) <u>Convening regular meetings among ferry operator, residents and TD</u>
A system has been put in place to enhance communication among the new operator NWFF, residents and TD through regular passenger liaison group meetings, in addition to meetings of the Islands District Council and its Traffic and Transport Committee (TTC).

(b) Improving passenger service environment

NWFF has committed itself to a programme to improve its ferry vessels, pier facilities, communication and passenger information facilities, and to procure four new vessels by early 2001. Progress of these improvement measures is on schedule. TD will continue to monitor progress.

(c) Testing and contingency planning for the automatic ticketing system

Regular testing is being conducted by NWFF. In addition, a regular reporting system has been put in place for NWFF to report breakdowns of the ticketing system. A contingency plan, incorporating the deployment of portable Octopus machines, has also been developed to cope with sudden breakdown of the automatic ticketing system.

(d) Reviewing passenger demand and aspirations

Both TD and NWFF have conducted passenger opinion surveys to gauge passengers' views on existing services, including service levels, fares and vessels. In June 2000, TD consulted TTC of the Islands District Council on the survey findings. Members generally welcomed the surveys. Concerns expressed related mainly to the validity period of NWFF's holiday return tickets, the level of holiday fares and deluxe class fares, and non-adherence to scheduled journey time. TD has also consulted the relevant Area Committees in July/August 2000. Suggestions regarding service changes will be discussed at TTC and passenger liaison group meetings.

Urban Services Department (USD)

Case No. 1999/1316(I) : Failing to properly process and entertain the complainant's request for information relating to the disposal of his company's hawker licences in accordance with the provisions set out in the Code on Access to Information.

272. Since 1981, the complainant corresponded with USD (the functions in respect of this complaint have subsequently been taken over the Food and Environmental Hygiene Department) and the then Home Affairs Branch (now the Home Afairs Bureau) over the cancellation of Itinerant Hawker Licences (IHLs) held by his company. This eventually led to legal proceedings taken by his company against the former Urban Council (UC) in the High Court in 1995.

273. On 8 February 1999, the complainant, on behalf of his company, submitted a request to USD under the Code on Access to Information (the Code) for information relating to a decision taken by UC concerning the disposal of some IHLs previously issued to his company. USD replied to the complainant on 30 March 1999. The complainant considered the reply unsatisfactory because USD refused to release all the information requested. The complainant wrote to USD again on 12 April 1999 for further clarification. USD replied to the complainant on 20 April 1999, providing him with photocopies of documents that could be released and stating the reasons why USD was unable to release the other information he requested. Feeling aggrieved, the complainant lodged a complaint on 27 April 1999 with The Ombudsman against USD for not having properly processed and entertained his request for information in accordance with the provisions set out in the Code.

274. Having examined the case, The Ombudsman considered that the complaint against USD was partially substantiated.

275. USD accepted and implemented The Ombudsman's recommendations. Details are as follows:

(a) On 8 November 1999, USD re-circulated Administrative Circular No.

17/95 on "Code on Access to Information" dated 30 September 1995 and General Circular 6/97 dated 6 October 1997, reminding its staff of the proper procedures for processing requests for access to Provisional Urban Council (PUC) documents. USD had arranged for the circulars to be re-circulated to staff at quarterly intervals; and

(b) after seeking consent from PUC, USD issued a letter of apology to the complainant on 18 November 1999, providing him with copies of the letter dated 16 February 1982 to his company from the then Secretary for Home Affairs and UC Committee Paper MST/29/93 (with paragraph 8 thereof containing legal advice expunged).

Case No. 1999/1321 : Impropriety in handling a case of alleged unlicensed hawking.

276. During a hawker raiding operation conducted by the former USD (the functions in respect of this complaint have subsequently been taken over by the Food and Environmental Hygiene Department) on 17 January 1999 at a hawker blackspot in Kowloon, the complainant was arrested for unlicensed hawking (of eggs). In the course of the arrest, the arresting officer read the usual "caution statement" informing the complainant of her right to remain silent. However, the complainant claimed on the spot that she was only buying the foodstuff. On the basis of circumstantial evidence, her denial was not accepted and she was being taken to a police station for charging formalities. At the police station, the arresting officer explained the contents of the Departmental Seizure Form to the complainant. She then signed on it, certifying that she was the owner in possession of the goods stated therein. Based on the report of the arresting officer, the Police then charged the complainant for unlicensed hawking and obstruction in public place. She was released on police bail and later pleaded not guilty at a court hearing on 21 January 1999. The case was adjourned to 31 March 1999.

277. On 21 January 1999, the complainant's son held a press conference and made strong accusations against USD for exerting pressure on the complainant to make her admit to unlicensed hawking. In view of the publicity in the media and public denial of illegal hawking made by the complainant and her son that went on for about three weeks, USD sought legal

advice. Department of Justice (D of J) subsequently decided to formally offer no evidence against the complainant at the court hearing on 31 March 1999. The court accepted the submission of the prosecution and ordered confiscation of the exhibits. The court also refused defence counsel's request for award of costs.

278. In all the publicity surrounding the case, USD officers were condemned in very strong language by both the media and the complainant. With the agreement of D of J, USD held a press conference on 1 April 1999 to highlight the evidence of the case leading to the complainant's arrest, the submission of the case to D of J for legal advice, and D of J's ultimate decision to offer no evidence in court.

279. On 27 April 1999, the complainant lodged a complaint with The Ombudsman against USD for impropriety in handling her case of alleged unlicensed hawking. The complaint consists of four points :

(a) the arresting officers blatantly ignored her pleading on the spot that she was not hawking, and threatened/persuaded her into admitting hawking so that she could be released on bail;

(b) she was being misled into signing on a paper, the contents of which not having been fully explained to her, admitting that she was, in reality, the owner of the seized exhibits;

(c) senior USD officers responsible for her case had never contacted her to verify the facts of the incident despite her repeated pleas of innocence. The Department merely relied on its staff's one-sided story in handling the case; and

(d) remarks made by a senior USD officer at a press conference that there was sufficient evidence to charge her for unlicensed hawking was irresponsible and unnecessarily high-profile.

280. Concerning complaint point (a), The Ombudsman noted the emotional state of the complainant at the time of arrest and that there appeared to be no strong grounds for USD staff to pressurize the complainant into admitting unlicensed hawking on the spot as alleged. She therefore considered that this

complaint point was unsubstantiated.

281. As regards complaint point (b), The Ombudsman noted that the arresting officer had apparently followed the prosecution procedures stipulated by USD and there was no need or incentive for USD staff to mislead the complainant into signing the Seizure Form. Therefore, The Ombudsman found this complaint point unsubstantiated.

282. On complaint point (c), The Ombudsman noted that USD was not in a position to request for a statement from the complainant because once charged, she had the legal right to remain silent, and that the complainant might well choose not to respond to approaches from USD for further information relating to her charge. However, in the light of her repeated and high-profile claims of innocence, The Ombudsman would consider USD had discharged its responsibility if it had taken steps to verify the complainant's claims. Furthermore, The Ombudsman was of the view that the senior USD officer in charge of the investigation should have required other raiding team members witnessing the arrest to submit written statements. The Ombudsman therefore concluded that this complaint point was substantiated.

283. On complaint point (d), The Ombudsman noted that throughout the incident, the stance of the complainant and that of USD were polarized. While the complainant proclaimed her innocence in public and pursued a media campaign to clear her name, USD officials were equally convinced that they had enough evidence against the complainant to justify a charge of unlicensed hawking. In considering the case, The Ombudsman took the view that the court would be the appropriate forum to decide on any charges of unlicensed hawking against the complainant. However, once the Government decided to drop the charges against the complainant, the matter should have been allowed to rest. Subsequent action by USD to convene a press conference to present its evidence against the complainant was highly unusual and inappropriate, and unfair to the accused person. Thus, The Ombudsman considered that this complaint point was substantiated.

284. USD accepted and implemented The Ombudsman's recommendations as follows :

(a) a letter of apology was issued by the Director of Urban Services to the

complainant on 30 September 1999 concerning her complaint points (c) and (d);

(b) the improvement measures recommended by the Markets and Street Traders Select Committee (MSTSC) at its meeting on 19 May 1999 as mentioned below has been fully implemented -

(i) issue of notice informing the arrested person of his/her right to complain;

(ii) immediate attendance to complaint and problematic cases by senior officers if disputes arise;

(iii) extension of police bail;

(iv) request for adjournment of cases upon receipt of fresh evidence; and

(v) referral of plead-not-guilty cases to the Senior Superintendent (SS) of the District concerned. Depending on the complexity of the case, the SS will then either instruct the Departmental Prosecution Section to proceed with the case or will refer the case to the Departmental Legal Unit for advice; and

(c) the recommendation made by the MSTSC at its meeting on 19 May 1999 mentioned above that officers should work in pairs to effect arrest was also implemented. A review was subsequently conducted in the light of operational experience. The review findings were reported to the MSTSC which decided to modify the "two-officer" requirement. The MSTSC considered and accepted that so long as there was clear and sufficient evidence, an officer working on his own should not be inhibited from taking enforcement action. To achieve maximum operational efficiency, flexibility in staff deployment is required. Where officers are working in a squad or in teams of two, these arrangements should continue as far as practicable. USD implemented the revised arrangements with effect from 27 September 1999.

Water Supplies Department (WSD)

Case No. 1999/0466 : Approving, without a good reason, the application for separate metered water supply to the roof-top premises.

285. The complainant was worried that in the event of a fire breaking out, the passage for fire escape would be blocked by an illegal structure on the roof of the building she was living in. She complained that WSD's approval of installing separate metered water supply to this roof top structure would encourage the erection of such illegal structures. The Ombudsman noted that WSD had included a standard statement in the letter approving the water supply application to remind the applicant to seek the prior consent of the agent/owner/occupier and/or the property management office for obtaining a supply from the existing communal water supply system. However, The Ombudsman considered that WSD had not followed up the reminder statement in the approval letter to ensure that the applicant had obtained the consent of the third party before effecting a water supply. WSD replied that the concerned statement was intended to remind the applicant of his obligation and was not a condition to the approval. WSD explained that under the Waterworks Ordinance (Cap. 102), WSD could not refuse an application for water supply because of an objection from a third party, and that WSD would have to approve the application if it was technically feasible, irrespective of the legal status of the premises concerned. Furthermore, WSD had indicated in the approval letter to the applicant that the approval would not confer any implications on the legal/structural status of the concerned premises. However, The Ombudsman still considered that the complaint was partially substantiated.

286. WSD has reviewed the procedures of processing applications for water supply as recommended by The Ombudsman.

287. WSD subsequently revised the standard statement in the approval letter in consultation with Department of Justice (D of J). Since then, this revised statement has been adopted in WSD's approval letter for handling similar cases of water supply application.

288. However, it was considered not practicable to change the WSD practice because :

(a) D of J had re-affirmed its previous advice given in 1988 that WSD could only refuse an application for water supply basing on requirements of the Waterworks Ordinance, and that it would be inappropriate to make the consent of a third party, which is not a requirement of the Waterworks Ordinance, a condition to the approval;

(b) D of J opined that informing the agent/owners/occupiers and/or property management office of the application without the prior consent of the applicant might contravene the Personal Data (Privacy) Ordinance (Cap. 486). The onus of obtaining the consent of any third party that might have an interest in the matter had to rest with the applicant; and

(c) it would not be appropriate for WSD to be involved in the negotiation between private parties, i.e. the applicant and the agent/owners/occupiers and/or property management office, for an agreement to have a separate connection branched off from a communal inside service .

Case No. 1999/1402 : Failing to counter-check the inputted data and as a result the name of the recipient on the cheque was wrong; and delay in re-issuing the cheque to reimburse the deposit to the complainant.

289. The complainant complained against WSD for :

(a) failure to counter-check the inputted data, resulting in an error in the name of the recipient of a refund cheque issued to the complainant; and

(b) delay in re-issuing the cheque to reimburse the deposit to her.

290. The complainant applied for a change of consumership and a refund of the water deposit paid formerly by her deceased husband. When she received the refund cheque in mid-March 1999, she found that her name on the cheque was erroneously typed, making it not possible for her to cash the refund cheque. The complainant's son made a call to WSD on 19 March 1999 and requested for re-issue of the cheque. After looking into the case, a WSD officer

contacted the complainant's son admitting the mistake in the refund cheque while requesting him to send the cheque back for WSD's follow-up action to re-issue a new cheque.

291. As no response was received from WSD, the complainant's son contacted WSD again on 13 April 1999 to ask for the latest position. An officer told him that his case was being followed-up. Since the complainant's son still did not receive the cheque or letter of apology in early May 1999, the complainant lodged a complaint with The Ombudsman.

292. As regards point (a) of the complaint, The Ombudsman was of the view that WSD had set out proper procedures on refund of water deposit and the complaint was caused only because of an individual staff's negligence. However, The Ombudsman opined that WSD should still be responsible for the mistake made and this point of the complaint was therefore considered substantiated.

293. Regarding point (b) of the complaint, The Ombudsman commented that instead of waiting for the cheque to be sent back by the complainant's son, WSD should have taken the initiative to contact the complainant's son to check the situation when no returned cheque had been received from him after three weeks' time. The Ombudsman opined that this complaint could have been avoided if WSD had taken action earlier to issue a new cheque. As such, The Ombudsman considered this point of the complaint as partially substantiated.

294. WSD accepted The Ombudsman's investigation results and recommendation. A written apology was sent to the complainant.

Part II
Direct Investigation Cases

Education Department (ED)

Registration and Inspection of Kindergartens

295. The Ombudsman has conducted a direct investigation into the registration and inspection of kindergartens, and has made a number of recommendations.

296. Overall, ED welcomed and accepted The Ombudsman's recommendations in the investigation report. ED takes a serious view of malpractices among kindergartens. Measures have been adopted to step up monitoring. ED will continue to strengthen enforcement action against any breach of statutory requirements. Details of the follow-up actions and new measures are as follows.

Registration of kindergartens

297. The registration process of kindergartens and tutorial schools has been reviewed by a consultancy commissioned by the Government's Business and Services Promotion Unit. The final report of the study, with concrete proposals for improving the registration system, was completed and released in April 2000. ED and the relevant government departments have agreed with most of the recommendations. The Legislative Council Panel on Education was briefed. ED has been liaising with the government departments concerned to follow up on the agreed proposals.

298. On monitoring the progress of school registration, the Registration Section of ED has assumed a central coordinating role and is liaising closely with relevant departments. Applicants with slow progress in complying with building or fire services requirement will be given two months' time to report the progress of the work and confirm whether they still intend to pursue their applications. ED will assume that they will not proceed to apply for registration of their proposed schools if no reply is received. A revised

application guideline incorporating the relevant parts of the proposals of the consultancy study has been prepared and put in force as from 15 August 2000 to streamline the registration process. Under the new arrangement, the processing time for issuing a certificate of provisional registration to the school can be shortened from 25 to 10 working days when all required information and documents are received and in order.

Inspection of kindergartens

299. Having regard to the experience in monitoring kindergartens in the last school year, we have revised the internal Guideline on Prevention of Mal-practices in Kindergartens. New monitoring measures and criteria for follow-up actions have been included.

300. Two circulars on collection of school fees and other charges were issued on 19 April 2000. Kindergarten operators, amongst other things, are required to :

(a) inform parents of the voluntary nature of the services;

(b) include the breakdown of the cost and quantity of the items to facilitate parents to make their choice;

(c) include the essential items in the school fees; and

(d) state clearly the refund policy for cases of withdrawal from schools.

301. The two circulars have also been uploaded onto the ED homepage for general consumption by the public.

302. Officers of the Regional Education Office (REO) (formerly known as District Education Officer) of ED will continue with the existing practice of checking documents relating to fees and charges. They have been particularly reminded to carry out extensive perusal of such documents in respect of those kindergartens which have previous records of over-charging of fees.

303. Officers of the REO have also been asked to conduct checks before the commencement of the school year on kindergartens with records of admitting

under-aged pupils. They will continue the monitoring during regular inspections. Enhancing parents' awareness of the admission age to nursery class could be another effective preventive measure. In this regard, ED issued a circular in April 2000 on Collection of Fees, Admission of Pupils and Provision of Information to require kindergartens to state clearly, in the school leaflet or admission application form for parents' reference, the minimum admission age of nursery class.

304. In addition to the 770-odd headcount visits to kindergartens at the commencement of the 1999/2000 school year, about 700 inspections were conducted in the course of the school year. Kindergartens with records of malpractice had been accorded higher priority in the inspection schedule. Kindergartens were also requested to submit their enrolment situation on a monthly basis.

305. No unregistered kindergarten was found in the 1999/2000 school year. Of the substantiated cases of over-enrolment found in the 1999 headcount exercise, warnings were issued to the supervisors demanding rectification. Close monitoring was exercised throughout the year over these kindergartens. Many of them rectified the situation in the early part of the school year. All of the seven kindergartens still found to have excess pupils by the end of the 1999/2000 school year had undertaken in writing not to admit any excess pupils in the new school year.

306. ED will continue its efforts in monitoring, and a headcount exercise will be conducted at the beginning of the 2000/01 school year for kindergartens with over-enrolment in the 1999/2000 school year.

Enforcement actions on kindergartens

307. To safeguard against the operation of unregistered kindergartens, ED will ask to look at the advertising materials or materials relating to student admission of the applicants upon receipt of their registration applications so that they can be forewarned/reminded not to contravene the relevant provisions of the Education Ordinance (Cap. 279).

308. To increase the efficiency and effectiveness of enforcement efforts, a Central Compliance Team (CCT) was set up within ED in May 2000 to

centralize prosecution inspections. One case of over-enrolment has been referred by the CCT to the Police for further investigation/action.

309. A series of measures are also being taken to streamline and standardise prosecution action against schools which have breached the law. An Operation Manual for Prosecution Visits has been devised for the use of CCT members. The procedural Guide on Handling Suspected Unregistered Schools has also been revised to speed up prosecution procedures. Before the setting up of the CCT, two visits, namely, fact-finding and confirmatory visits, were first carried out by ED officers before referring the established cases to the Police for follow-up actions relating to prosecution. Under the revised procedure, fact-finding visits will be carried out by the CCT to be followed by prosecution visits to collect evidence for prosecution action.

310. Legislative amendments were introduced in May 2000 to substantially increase the levels of fines for contravening various provisions in the Education Ordinance and Education Regulations. The amendments were passed by the Legislative Council on 31 May 2000. The fine for over-enrolment was increased from $5,000 to $250,000 with effect from 2 June 2000.

311. ED will also collaborate with the Consumer Council to name kindergartens with serious malpractices.

<u>More publicity of information on kindergartens</u>

312. The kindergarten profiles for the 1999/2000 school year were published in January 2000. They are available in District Education Offices, District Offices, Maternal and Child Health Centers, and the ED homepage. Basic information includes the school registration number, address of registered school premises, total permitted accommodation and approved fees of the kindergarten. The kindergarten profiles for the 2000/01 school year will be published; information on the collection of miscellaneous fees will be included.

313. To further increase the transparency of kindergartens, ED has, in the above-mentioned circular on Collection of Fees, Admission of Pupils and Provision of Information, required kindergartens to provide basic information about the school, miscellaneous fees to be collected, and the estimated number of vacancies in their school leaflet or application admission form.

314. ED has also put the list of "Dos and Don'ts for Kindergartens" onto the ED homepage. The updated lists of registered and provisionally registered kindergartens and kindergartens in the process of registration will continue to be publicized on a monthly basis.

Others

315. The Ombudsman also recommended to require kindergartens to provide the particulars of all new nursery class pupils. Having considered the large number of new nursery pupils every year (about 45 000 to 50 000), ED believes that limiting the checking to kindergartens with previous records of admitting under-aged students is a more effective preventive measure and has included the requirement in the revised Guideline on Prevention of Malpractices in Kindergartens.

316. To help kindergartens identify their strengths and weaknesses and to make improvement accordingly, ED has developed "Performance Indicators for Kindergartens" as a self-evaluation tool by kindergartens as from the 2000/01 school year. ED will organise seminars and workshops to acquaint kindergartens with this assessment tool. The leadership, planning and administration of the school management are areas for evaluation under the domain of Management and Organization of the Performance Indicators.

317. In addition, ED is actively considering other ways and means, including tailor-made training, to enhance the professional competence of kindergarten principals in the area of school management. A workshop on registration and management was held in August 2000 for kindergarten operators. Similar workshops will continue to be conducted regularly to brief kindergarten operators on regulatory requirements and guidelines relevant to the operation of a kindergarten.

318. In sum, ED will continue to provide professional support for kindergartens to improve their management and increase the transparency of their operation. These improvement measures, coupled with the on-going enforcement efforts, should help minimize the occurrence of malpractices in kindergartens and improve the quality of kindergarten education.

Fire Services Department (FSD), Transport Department (TD) and Marine Department (MD)

The Regulatory Mechanism for the Import/Export, Storage and Transportation of Used Motor Vehicles/Cycles and Related Spare Parts

319. The Ombudsman has conducted a direct investigation into the regulatory mechanism for the import/export, storage and transportation of used motor vehicles/cycles and related spare parts, and made some recommendations.

320. The Security Bureau (SB), Transport Bureau (TB), FSD, MD and TD have been working closely together and have agreed on package proposals, including the legislative approach, to enhance the safe transportation of used motorcycles/vehicles and related spare parts in containers.

321. SB and FSD have critically reviewed the legislative intent and the control framework under the Dangerous Goods Ordinance (DGO) (Cap. 295) and came to the view that this would not be the appropriate legislation to seek to control the loading and conveyance of used motorcycles/vehicles and related spare parts.

322. As explained in the Government's submission to The Ombudsman, fuel is classified as dangerous goods under the DGO but limited quantity of fuel (e.g. below 20 litres for petrol) is exempted from the statutory control. The exemption arrangement is in line with international practices which are established to ensure the safe conveyance and storage of bulk quantity of classified dangerous goods. If the exemption clause were removed, not only used motorcycles and spare parts containing residual fuel would be brought under comprehensive controls of the DGO, all vehicle owners/drivers, spare parts dealers and even household users in possession of limited quantity of fuel could also be caught and implicated. Indeed, in an attempt to research into overseas experience, none of the overseas authorities that have responded indicate that they are controlling or will seek to control the transportation of motorcycles and vehicles under their dangerous goods legislation.

323. Notwithstanding the above difficulties, in the context of a recent review of the Fire Services Ordinance (FSO) (Cap. 95) to ensure effective enforcement against identified fire hazards, FSD suggested the possibility of defining the improper loading and conveyance of used motorcycles and related spare parts in enclosed containers as a fire hazard. In defining this particular type of fire hazard, reference may be made to the safety guidelines promulgated by the Commissioner for Transport in the Code of Practice for the Loading of Vehicles (Code of Practice) under the Road Traffic Ordinance (Cap. 374). In this way, FSD will be able to take a proactive role in the inspection and enforcement work, and help enhance the safe transportation of used motorcycles and related spare parts in containers.

324. SB and FSD are examining details of the proposal with the Department of Justice. Subject to legal advice, SB will incorporate it into a bill to amend the FSO for introduction in the 2000/01 legislative session.

325. The Government has also considered the proposal to extend the marine control framework under the Merchant Shipping (Safety) (Carriage of Cargoes) Regulation (Cap. 369) and the Merchant Shipping (Safety) (Dangerous Goods and Marine Pollutants) Regulation (Cap. 413) for controlling conveyance of used motorcycles and parts on land. Unlike the control framework at sea which seeks primarily to ensure the safe conveyance of dangerous goods on board vessels, the control framework of dangerous goods on land is much more complex. In addition to conveyance, it also controls other inter-related processes including the manufacture, packaging and labeling, storage and use of identified dangerous goods. In conclusion, the Government considers that amending the FSO to enable direct enforcement against improper loading and conveyance of used motorcycles/vehicles or related spare parts in containers, which may be defined as a fire hazard, should present a practical and effective arrangement.

326. TD is currently reviewing the Code of Practice and expects to complete the exercise in October 2000. It will consult the trucking industry in November 2000, and gazette the updated Code of Practice and issue amendments sheets (as attachments to the current version) to the industry in December 2000. TD also plans to review the Code of Practice with relevant departments, including FSD and MD, in June every year to update the safety measures, if necessary. The trucking industry will be consulted accordingly.

Moreover, TD will re-circulate the relevant safety guidelines in the Code of Practice to the trade every year and liaise with concerned departments to arrange publicity campaigns to remind the trade of the safety measures.

327. FSD has stepped up regular visits to vehicle scrap yards to publicize the relevant safety measures. FSD will undertake three rounds of publicity visits to vehicle scarp yards before end 2001. As part of the first round of publicity visits, FSD has conducted 126 publicity visits to target locations during the first half of 2000.

328. MD will continue to closely monitor the situation at sea regarding the conveyance of fuelled motorcycles and spare parts and keep the safety measures contained in the Marine Department Notices under vigilant review. Moreover, it will continue with its efforts to publicise safety messages and re-issue relevant Marine Department Notices to the shipping industry every year.

329. In the regular liaison meetings and specific briefing sessions with trade unions and associations, FSD, TD and MD will disseminate the safety messages and encourage trade unions and associations to provide training and briefing programmes to their members. The departments will also seek to provide information and assistance to them in the conduct of such programmes. A first round of briefing sessions with the trade unions and associations will be held before end 2000.

330. SB will co-ordinate the continuous efforts of bureaux and departments concerned, in particular in introducing required legislative amendments to the FSO.

Housing Department (HD)

Provision and Management of Private Medical and Dental Clinic Services in Public Housing Estates

331. The Ombudsman has conducted a direct investigation into the provision and management of private medical and dental clinic services in public housing estates, and has made a number of recommendations for consideration by HD.

Provision of estate clinics

332. HD agrees that clear definition and guidelines are necessary for a consistent approach on the provision and management of estate clinics, and HD is prepared to review current arrangements and include a section on monitoring of evidence of demand in the guidelines.

333. Market conditions are the best determinant of service provision. Clinics, like other commercial operators in public and private sectors, will modify their mode of operation, including the service hours, in response to the demand of the market. Hence, HD is of the view that it is more appropriate to leave the service hours to the tenant-doctor/dentist, subject to compliance with other terms of the tenancy agreement.

334. As endorsed by the Commercial Properties Committee (CPC) of the Housing Authority (HA), HD will review the open tender arrangements for the letting/reletting of new or vacant clinic premises after the implementation of the new letting policy for two years.

335. Past procedures required Estate Doctors' Association (EDA) and Estate Dentists Group (EDG) to nominate tenants. With the introduction of an open tender system, the processing time for letting and reletting of clinics will be much shortened. As HD is managing HA commercial premises on full commercial principles, HD is very concerned with the rental loss due to delay in letting. HD will closely monitor the vacancy period of its clinics and will expedite the letting process as far as possible.

Management of estate clinics

336. The requirement for the doctor's personal attendance in the clinic was debated at the special meeting of CPC on 21 December 1999, and it was concluded that it was inappropriate and impracticable to impose such requirements.

337. Regarding the monitoring of the compliance of tenancy conditions by the estate clinics, like other tenants of HA, tenants of estate clinics are required to comply with terms of tenancy agreement signed upon letting of the premises. The front-line management staff of HD will monitor their compliance with such terms, in accordance with prevailing instructions on enforcement of tenancy conditions.

338. HD will consolidate relevant information relating to allocation and management of estate clinics to facilitate internal reference by staff.

Rentals of estate clinics let out through nomination

339. On The Ombudsman's recommendation to review, on a regular basis, the rentals of estate clinics previously let out through nomination with a view to achieving market values for such premises, HD has confirmed that it is already the prevailing policy for tenancies of clinics be renewed every three years at market rent.

Group practice and polyclinic

340. The Ombudsman has also recommended HD to further study the advantage and feasibility of group practice and polyclinic in estate clinic services and take the necessary promoting action. While noting the problems inherent in the concept, HD is prepared to consider the feasibility of group practice through tendering.