

THE GOVERNMENT MINUTE

IN RESPONSE TO

THE FOURTEENTH ANNUAL REPORT OF

THE OMBUDSMAN

ISSUED IN JUNE 2002

Government Secretariat

13 November 2002

CONTENTS

Pages

Introduction

Part I – Investigated Cases

Architectural Services Department	2
Buildings Department	6
Correctional Services Department	8
Customs and Excise Department	11
Department of Health	13
Education Department	17
Fire Services Department	19
Food and Environmental Hygiene Department	21
Government Property Agency	34
Government Secretariat – Education and Manpower Bureau	36
Government Secretariat – Environment and Food Bureau	38
Government Supplies Department	39
Home Affairs Department	43
Hong Kong Police Force	55
Hong Kong Sports Development Board	57
Hospital Authority	59
Housing Department	68
Kowloon-Canton Railway Corporation	72
Lands Department	74
Leisure and Cultural Services Department	77
Official Receiver’s Office	83
Post Office	86
Printing Department	89
Rating and Valuation Department	91
Registration and Electoral Office	93
Social Welfare Department	95
Student Financial Assistance Agency	99
Television and Entertainment Licensing Authority	102
Transport Department	104
Treasury	106
Water Supplies Department	107

Part II – Direct Investigation Cases

The Mechanism for Enforcing the Prohibition of Smoking in No Smoking Areas and Public Transport Carriers	110
Administration of Public Examinations	115
Management of Construction Projects by the Housing Authority and the Housing Department	119
Procedures for Handling Travellers Suspected of Using False or Suspect Travel Documents	125

**THE GOVERNMENT MINUTE IN RESPONSE TO
THE FOURTEENTH ANNUAL REPORT OF
THE OMBUDSMAN
ISSUED IN JUNE 2002**

Introduction

The Chief Secretary for Administration presented the Fourteenth Annual Report of The Ombudsman to the Legislative Council at its sitting on 3 July 2002. The Administration undertook 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 are those contained in Annexes 6 and 10 of the Annual Report respectively.

Part I
Investigated Cases

Architectural Services Department (Arch SD)

Case No. 2000/3015 : Refusing to take up the responsibility of constructing a ramp at the entrance of a resite village.

3. The residents of a resite village had raised with the Home Affairs Department (HAD) in 1995, 1997 and 1999 the provision of a ramp at the entrance of the village. In accordance with the relevant Works Bureau Technical Circulars (WBTCs), HAD referred the requests to Arch SD. The latter carried out several site inspections. After Arch SD had inspected the site on 1 December 1999, it discussed with Lands D and replied to HAD on 7 December 1999 that works could not be carried out as the footpath in question had not been handed over to Arch SD for maintenance. HAD then requested Arch SD to re-consider and Lands D to assist in sorting out the land allocation on 21 December 1999. On 3 January 2000, Arch SD asked HAD by phone about progress of the land allocation but the issue remained unresolved.

4. In September 2000, a resident filed a complaint to The Ombudsman that HAD had not properly liaised with Arch SD and Lands D, and that Arch SD and Lands D refused to undertake the construction works.

5. After investigation, The Ombudsman considered that :

- (a) HAD had to a certain degree followed up the complainant's request, but had not properly performed the District Officer's liaison duties;
- (b) HAD had handled the case improperly as it had allowed Arch SD and Lands D not to take any necessary actions;
- (c) Lands D was not the works department to carry out the construction of the ramp; and
- (d) Arch SD had not properly handled the case as it had not liaised with Lands D to resolve the land allocation issue after receipt of two

HAD's memoranda in December 1999 and Arch SD had not explained to HAD and Lands D the reasons for not carrying out the construction works.

6. The Ombudsman concluded that the complaint was substantiated against Arch SD, partially substantiated against HAD and unsubstantiated against Lands D.

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

- (a) Arch SD completed the improvement works regarding the repaving of footpath and constructing a new ramp in October 2001 and February 2002 respectively. Both HAD and Lands D were informed of the completion;
- (b) Lands D has taken necessary action to ensure the compliance of the instructions stipulated in WBTC No. 16/97;
- (c) HAD has advised the complainant of the latest position of the matter; and
- (d) Environment, Transport and Works Bureau is reviewing WBTC No. 16/97 to clarify –
 - (i) whether land allocation is required for various types of maintenance works;
 - (ii) the types of works which fall within the scope of resite village maintenance works; and
 - (iii) Lands D's co-ordination duties in connection with management and maintenance of resite villages.

Case No. 2001/1588 : Failing to monitor the repair works of a restaurant.

8. The complainant was the operator of a restaurant at a Leisure and

Cultural Services Department (LCSD) Swimming Pool Complex. He complained that throughout the licence period from 1 July 1998 to 31 October 2001, water leaked from the ceiling of the restaurant, rendering him unable to conduct his business properly. As a result, he had suffered loss in his business. The licence contract was terminated prematurely on 12 May 2001 at the request of the complainant.

9. The repair works were originally included in the 1998/99 planned maintenance programme of Arch SD. However, for various decantation problems and other reasons, the works only commenced on site in March 1999 but were suspended in mid-April 1999 by the contractor without notification to Arch SD. Despite repeated requests from LCSD, the repair works were only resumed in August 1999 and completed in September 1999. However, the leakage problem was not resolved and a complete re-roofing exercise was arranged for the 2000/01 winter overhaul period. The works were executed on site in March 2001 but because the cement sand screeding was laid in the wrong direction, the re-roofing works were only completed in December 2001.

10. The complainant lodged a complaint on 30 June 2001 with The Ombudsman against LCSD and Arch SD for failing to provide him with a properly maintained premises to operate his business.

11. After investigation, The Ombudsman concluded that the complaint was partially substantiated against LCSD and substantiated against Arch SD.

12. The complainant submitted to LCSD a claim for compensation on 13 July 2001. On the advice of the Department of Justice (DoJ), LCSD has requested the complainant to submit more information. To date, the complainant has yet to provide the information.

13. Arch SD and LCSD accepted all the recommendations of The Ombudsman and have taken the following actions :

(a) Arch SD will provide, prior to the annual maintenance programme of swimming pools, details to LCSD and would arrange at least two joint site inspections and review meetings per month during the construction period;

(b) Arch SD has appointed a designated Senior Property Services

Manager as liaison officer for each client department;

- (c) Arch SD has issued internal guidelines to all officers concerned reminding them to improve liaison with client departments and to tighten the control of contractors according to the Contractors Management Handbook;
- (d) LCSD staff have been reminded to adopt a compassionate approach in considering the complainant's claim for compensation. Upon receipt of the supporting information, LCSD will forward the claim to DoJ for consideration;
- (e) LCSD staff have been instructed to be proactive in following up with Arch SD on maintenance works. LCSD will communicate closely with Arch SD and arrange liaison meetings between officers of a sufficiently high level to monitor the progress of the works to minimize delay; and
- (f) LCSD has also reminded staff to keep records of all meetings with complainants.

Buildings Department (BD)

Case No. 2000/2289 : Lack of response to the complainant's complaint.

14. Arising from the falling of loose concrete from the external walls of the subject building, BD served a repair order on the owner of the external walls in September 1998. However, the person concerned did not carry out the order upon its expiry. As there were doubts over the ownership of the external walls, BD had to seek clarification on the ownership before instructing its term contractor to carry out the repair works concerned. Clarification of the ownership issue was considered necessary to safeguard the use of public funds and to avoid bad debt.

15. In May 2000, BD undertook some emergency repairs and erected a bamboo scaffolding with catch fans to protect the public from falling mosaic tiles from the external walls. While the bamboo scaffolding remained for months, a burglary occurred using this scaffolding as a means of access into a flat. The Owners' Corporation (OC) and the property management company enquired with BD whose responsibility it would be to repair the external walls and when the bamboo scaffolding would be removed, but BD did not respond clearly and promptly. The OC therefore lodged a complaint with The Ombudsman in September 2000 against BD.

16. After investigation, The Ombudsman agreed that while BD had the responsibility to safeguard the use of public fund and avoid bad debt, it should also take heed of the OC's and occupants' worries about the condition of the external walls and the security of the building, expedite the repair works and remove the bamboo scaffolding as early as possible. In conclusion, The Ombudsman considered that the complaint was partially substantiated.

17. BD accepted all the recommendations of The Ombudsman and has taken follow-up actions as below :

- (a) before the commencement of repair works, BD had liaised with the property management company and consulted the Crime Prevention Bureau of the Hong Kong Police Force on crime prevention measures;

- (b) after meeting with the OC in April 2001, BD had arranged for its contractor to commence repair works of the external walls in May 2001. All the works were subsequently completed in March 2002; and
- (c) BD will review the issue of recovering cost of repair works from owners of the external walls.

Correctional Services Department (CSD)

Case No. 2000/0738 : Failing to provide the complainant with necessary medical aids.

18. The complainant required the use of urine bags for urination because of kidney problems. He met the expenses for urine bags by the Comprehensive Social Security Assistance (CSSA) Allowance of the Social Welfare Department (SWD) he received.

19. When he was admitted into Lai Chi Kok Reception Centre in January 1999, he used his own urine bags deposited by his relatives from time to time. On occasion, however, he also used the urine bags provided by CSD. In September 1999, he was transferred to Stanley Prison to serve his sentence. In December 1999, he learned that SWD had suspended his CSSA Allowance in view of his imprisonment and that CSD did not provide him with urine bags of the type he himself purchased. He then lodged a complaint with The Ombudsman in April 2000 against CSD for failing to provide the type of urine bags he had purchased before.

20. After investigation, The Ombudsman was satisfied that although the urine bags provided by CSD were not similar to those purchased by the complainant, they could also meet the complainant's need. The case was therefore found unsubstantiated. Nevertheless, The Ombudsman considered that there were deficiencies in handling medical aids in CSD institutions. The Ombudsman therefore recommended that CSD should consider reviewing and drawing up guidelines on :

- (a) arranging the supply of medical aids;
- (b) issuing medical aids, including those purchased by prisoners, to prisoners;
- (c) handling medical aids purchased by prisoners;
- (d) receiving medical aids from prisoners' relatives and friends;

- (e) controlling system on medical aids to ensure sufficient inventory records;
- (f) continuing to provide the complainant with better urine bags; and
- (g) making detailed and clear entries in records for future reference so as to avoid different understanding and interpretation.

21. In response, CSD has drawn up guidelines in relation to all the above recommendations.

Case No. 2001/1304 : Failing to carry out the attachment of income order properly.

22. The complainant is a member of CSD staff. According to the attachment of income order (attachment order) issued by the court, CSD should deduct \$9,000 from the complainant's monthly salary as maintenance fee to his ex-wife. The sum comprised two components: \$6,000 being the monthly maintenance fee to the complainant's ex-wife as previously ordered by court and \$3,000 for payment in arrears. In May 2000, CSD forwarded the attachment order to the Treasury, with a request for the salary deduction. However, in the absence of a copy of the maintenance order, the Treasury only deducted \$3,000 each month from the complainant's salary from June to September 2000. Thus, the payment was \$24,000 short of the actual amount.

23. Subsequently, the Legal Aid Department (LAD), acting on behalf of the complainant's ex-wife, discussed with CSD and settled for the outstanding amount to be recovered by 24 instalments. On receiving CSD's notification and a copy of the maintenance order, the Treasury changed the monthly deduction amount to \$10,000 starting from October 2000. However, the complainant was not informed of the arrangement. In May 2001, the complainant questioned the Treasury and CSD on the amount of deduction which was in excess of the \$9,000 stipulated by the court. Despite the departments' explanations for the circumstances and reasons for the arrangement, he refused to accept the explanations and subsequently complained to The Ombudsman in May 2001 against the Treasury, CSD and LAD for not acting in accordance with the attachment order.

24. The attachment order had laid down clearly the amount and detail of deduction, and the effective period of the order. The Ombudsman considered that the Treasury should have acted on the attachment order without having to require a copy of the maintenance order. Besides, it could also have sought advice from the Department of Justice (DoJ) or clarification from the complainant, which would avoid the shortfall in deduction for the first four months. The Ombudsman considered that the complaint against the Treasury was partially substantiated.

25. On the other hand, CSD had not taken the initiative to check whether the deduction was correct. After LAD had pointed out the mistake, CSD did not consult the complainant. Thus, The Ombudsman considered that the complaint against CSD was partially substantiated. The complaint against LAD was unsubstantiated.

26. CSD and the Treasury accepted the recommendation of The Ombudsman that they should seek legal advice from DoJ where necessary. In addition, the Treasury has reviewed and revised the procedures on execution of attachment orders as follows :

- (a) designating an officer at a specified level (an Accounting Officer I) to go through the attachment orders;
- (b) seeking clarifications and advice from relevant departments and DoJ in case of doubts regarding the court orders received; and
- (c) issuing a notification to relevant departments with the detailed deduction schedules to ensure that all deductions are made in accordance with the court orders.

Customs and Excise Department (C&ED)

Case No. 2000/2827 : Unreasonably treating the complainant in the course of conducting check of her belongings and failing to seek consent of the complainant before videotaping the baggage-checking process.

27. On 12 October 2000, when the complainant returned to Hong Kong from Shenzhen via Lowu Control Point, she was stopped by Customs officers for baggage examination. She alleged that, in the course of baggage examination, one of the Customs officers scolded her when she cautioned them to take heed when unpacking a box containing a porcelain doll. She also felt aggrieved by the Customs officers' lengthy cross-examination in detail about some medicine in her baggage. She consequently had a heated dispute with them.

28. At that juncture, she noticed that a Customs officer was holding up a video camera and started filming the whole incident. She was of the opinion that the Customs officer had abused his power by videotaping her without her consent. She therefore lodged a complaint with C&ED.

29. The investigation by C&ED revealed that the complaint was unsubstantiated. From the videotape, it was obvious that the Customs officers had been courteous, patient and self-controlled. The porcelain doll was eventually checked using an X-ray machine with the consent of the complainant. There was no findings that the Customs officers had unreasonably treated the complainant.

30. As regards the videotaping process, C&ED had sought advice from the Department of Justice. It advised that no consent was required if videotaping of people undergoing customs clearance at control points was for security purpose and that the persons who were videotaped were unidentified. However, the advice recommended that public notices should be displayed at control points to inform people proceeding thereto of the videotaping and its purposes. However, videotaping without consent could be justified when there was an overriding public interest to do so. Hence, videotaping could be carried out without the consent of a person when it was performed for preventing crime, controlling the flow of people, gathering evidence on a

person obstructing a Customs officer in the execution of duties, and resisting arrests. Since the complainant was uncooperative and ranting throughout the whole period, the Customs officers videotaped the whole incident to gather evidence against the complainant for possible obstruction of a Customs officer in the execution of his duties.

31. The complainant was not satisfied with the investigation result by C&ED and therefore lodged the same complaint with The Ombudsman on 8 November 2000.

32. Upon completion of the investigation, The Ombudsman shared the view of C&ED that the accusation on unreasonable treatment could not be substantiated. However, The Ombudsman disagreed that the complainant would obstruct the Customs officers in the execution of duties. Therefore, prior consent from the complainant was required before videotaping her. Furthermore, there was no relevant notice at Lowu Control Point to inform people proceeding thereto of the possibility of being videotaped and the purpose of such videotaping. Thus, the complaint of failing to seek consent of the complainant before videotaping the baggage-checking process was substantiated. On the whole, the complaint was partially substantiated.

33. In line with The Ombudsman's recommendations, actions had been taken by C&ED as follows :

- (a) an apology was sent to the complainant for the videotaping without her consent on 22 October 2001;
- (b) a review of the existing procedure on videotaping and displaying public notices at control points as well as on access to information by the person(s) being videotaped was made. Standing Procedure No. 19. 2A "Audio and Video Recording" has been promulgated to govern the relevant procedures; and
- (c) relevant notices were displayed at various control points to inform the public of the possibility of being videotaped and the purpose of such videotaping.

Department of Health (DH)

Case No. 2000/2247 : Not giving response to a complaint and disclosing information about a complaint to the staff of the complaine organisation.

34. The complainant phoned to the Client Relations Unit (CRU) complaining the attending doctor in a General Out-patient Clinic (the clinic) on 10 August 2000. The staff answering the phone promised him that Head of CRU would give him a reply within ten days. He made similar written complaints to DH on 15 August 2000, 16 August 2000 and 5 September 2000. When he attended the clinic for follow-up on 23 August 2000, he felt that many clinic staff knew that he had complained against the doctor. When he left the clinic, one clinic staff approached him and asked him whether he had complained against the doctor.

35. The complainant complained to The Ombudsman on 5 September 2000 that :

- (a) DH had not replied to his complaint within ten days as promised; and
- (b) DH disclosed his personal information of his complaint to clinic staff.

36. Head of CRU attempted but failed to contact the complainant on 22 August 2000, which was the tenth working day after receiving his verbal complaint. In the morning of 23 August 2000, Head of CRU successfully phoned the complainant to inform him of the progress of investigation and to invite him to attend the clinic for follow-up that day. The Ombudsman opined that Head of CRU should give an interim reply to the complainant within ten days and should not wait till the tenth working day to do so. His act resulted in an overdue reply.

37. The Ombudsman agreed that some of the clinic staff needed to know the complaint in order to facilitate the investigation. However, information on the complaint had somehow been leaked to other ranks of staff who should not know the complaint. Loopholes were identified in the process of transmitting confidential messages between involved parties. DH's guidelines for protection of personal data privacy were not complied with.

38. After investigation, The Ombudsman concluded that complaint point (a) was partially substantiated and point (b) substantiated. On the whole, the complaint was partially substantiated.

39. DH accepted and implemented all the recommendations of The Ombudsman as follows :

- (a) an apology in writing has been sent to the complainant on 24 September 2001 for not properly handling information relating to his complaint;
- (b) staff have been instructed to follow the “Need to Know” principle strictly in the release of information on complaints; and
- (c) DH has reviewed the measures to ensure confidentiality in handling complaints and the revised DH Standing Circular on Departmental Complaint Procedures was issued in January 2002.

Case No. 2000/2479 : Giving Measles, Mumps & Rubella vaccine inoculation to a student exceeding the required level.

40. On 15 September 2000, the wife of the complainant, signed the Consent Form giving permission for their son, a Primary One student, to receive Measles, Mumps and Rubella (MMR) immunization and returned it to the school. This notwithstanding, the complainant decided not to allow his son to take the vaccination when he learnt from his son’s immunization record that MMR vaccine was recommended for one-year-old child only. His wife subsequently signed the Refusal Form and returned it to the school on 16 September 2000.

41. On 18 September 2000, DH’s inoculator phoned the complainant to explain that a two-dose MMR course was required for children. Without the immunization record at hand, the complainant agreed to his son having the second vaccination on condition that the inoculator would check his son’s immunization record prior to the injection.

42. On 25 September 2000, the day of vaccination, the complainant's son did not bring his immunization record card back to school. The inoculator injected him with the MMR vaccine without making further enquiries. The complainant later found out that it was actually the third MMR vaccination for his son. He felt aggrieved by the inoculator's action and was also worried about the possible side effects of the extra dose of vaccine. He thus lodged his complaint with The Ombudsman on 29 September 2000.

43. After investigation, The Ombudsman concluded that DH staff erred in administering a third MMR vaccine to the complainant's son, but this mistake had been partly caused by the complainant. On the whole, the complaint was partially substantiated.

44. DH accepted and implemented all the recommendations of The Ombudsman as follows:

- (a) DH has reviewed the logistical arrangements of the School Immunization Campaign, and considered that the practice of requiring parents to submit their children's immunization record cards for checking and updating is important and should be maintained;
- (b) starting from June 2002, letters will be sent to schools soliciting their help to deliver the letters to parents of students who are eligible for immunization. In the letter to parents, the importance of getting all immunization record cards ready for immunization of their children is stressed;
- (c) DH confirmed that it has all along adhered to the policy that immunization would be postponed when the proportion of immunization record cards collected is less than 50% of the total number of students receiving immunization in any participating school; and
- (d) a new Consent Form has been designed so that parents can confirm in writing that immunization record cards are not available but agree to let their children receive immunization. The new form would be put on trial in schools in Kowloon Region in the 2002/03 academic year. Consideration would then be given to extending the new form to other

regions in the light of experience gained.

Education Department (ED)

Case No. 2000/2297 : Improper handling of a leave application from the complainant's daughter and the complainant's complaint over the matter.

45. A primary school rejected the application by the complainant's wife of 3 July 2000 for permission for her daughter, a Primary Two student, to take three days' leave to join the family for a trip. The school further indicated to the parents that absence from school without permission would be recorded as truancy in her school report. The complainant went ahead with their travel plan against the school's advice, and the school later took action as advised.

46. The complainant lodged formal complaints with ED over the case on 19 July and 11 September 2000. He was not satisfied with ED's reply of 12 September 2000 and complained to The Ombudsman on 20 September 2000. Three more complaints were lodged thereafter with both ED and The Ombudsman against ED officers who were handling his complaint as well as against the headmaster of the school. The complainant alleged that :

- (a) ED had improperly handled the application for leave;
- (b) ED had failed to address his major concern in its reply and provided incorrect information to a newspaper;
- (c) the headmaster had delayed in replying to his letter of 6 November 2000;
- (d) the headmaster had failed to reply to his letter in English; and
- (e) the headmaster was unreasonable in turning down his request for a meeting.

47. After investigation, The Ombudsman concluded that complaint points (b), (c) and (d) were substantiated, point (e) partially substantiated and point (a) unsubstantiated. On the whole, the complaint was concluded as partially substantiated.

48. Pursuant to The Ombudsman's recommendations, ED has taken follow-up actions as below :

- (a) remind staff of the need to address major points of contention when dealing with complaints and to adhere to facts in responding to enquiries including those from the press;
- (b) remind staff of the need to be more customer-focused and to accede to reasonable requests within the framework of their duties; the headmaster of the school had also been advised to be more customer-focused in his service to the parents as a headmaster and be always ready to meet with parents when they approached him to discuss school matters;
- (c) remind staff of the need to observe the guidelines in General Circular 8/97 on timely handling of official correspondence and on the requirement for replies to be in the same official language as the incoming correspondence; and
- (d) an English translation of the reply letter has been sent to the complainant.

49. In addition, The Ombudsman also recommended that ED should avoid any situations where conflict of interests could arise. For instance, two officers who were involved in the case should have refrained from participating in the School Management Committee meeting to discuss the matter or alternatively, a complainant should have been invited to attend to present his case for a fair and balanced hearing. ED responded to The Ombudsman that one officer was actually present at the meeting to give background information without participating in subsequent deliberation of the case, but added that they would be mindful of similar situations in future so as to avoid any conflict of interest.

Fire Services Department (FSD)

Case No. 2001/1499 : Delay in arrival of ambulance; improper way of trolleying the patient and negligence of staff.

50. At 0340 hours on 27 April 2001, a man called FSD for ambulance service through the '999' Police Control, indicating that he had shortness of breath. The address was given but there was no mention of whether it was at the front or rear block.

51. An ambulance set off from Peng Chau Fire Station and arrived at the street level of the reported address at 0347 hours but the patient could not be located. At 0348 hours, FSD received a second call enquiring about the whereabouts of the ambulance. The caller pointed out that the correct address should be at the rear block. At 0350 hours, the ambulance crew attended to the patient. The ambulance then conveyed the patient to Peng Chau Clinic. At 0402 hours, the ambulance arrived at the clinic and awaited further instructions.

52. At the request of the nurse on duty at the clinic, the crew of the ambulance started transporting the patient at 0437 hours to the helipad located in the hilltop football ground for airlift to a hospital on Hong Kong Island. At that juncture, the patient was still conscious. Upon arrival at Tung Wan at 0444 hours, the patient, escorted by a nurse, was removed from the ambulance for onward conveyance on a stretcher trolley to the helipad. Shortly afterwards, the patient had cardiac arrest. The ambulance supervisor and the nurse immediately applied Cardiac Pulmonary Resuscitation (CPR) to the patient while the driver went back to the ambulance to fetch the defibrillator. The driver returned within a minute with the defibrillator. However, the defibrillator was found not in working order. The ambulance supervisor and the nurse continued with CPR while conveying the patient all the way uphill, until the patient was handed over to the helicopter crew. In certain parts of the journey, the patient was moved with head pointing downwards. CPR was interrupted momentarily when the crews were climbing the stairs.

53. Following the incident, the patient's daughter lodged a complaint with The Ombudsman in May 2001 against FSD about the following :

- (a) late arrival of FSD ambulance at the scene;
- (b) whilst conveying the patient to the helipad, the ambulance crew forgot to bring the defibrillator with them and that caused delay; and
- (c) FSD ambulance crew transported the patient uphill to the helipad in a trolley stretcher with his head pointing downwards, resulting in his having breathing difficulty.

54. After investigation, The Ombudsman concluded that complaint point (a) was unsubstantiated, point (b) partially substantiated and point (c) unsubstantiated. On the whole, the complaint was partially substantiated.

55. While FSD disagrees with The Ombudsman's conclusion in respect of complaint point (b), she accepted all the recommendations of The Ombudsman. In response to The Ombudsman's recommendation that ambulance crew should be reminded to maintain sharp responsiveness to emergency by bringing along all necessary life supporting equipment, FSD has reminded all staff concerned to strictly comply with the Ambulance Command Standing Order (the Order), which states that ambulance crew should ensure that necessary life supporting equipment are taken to scene of incident for treatment of patients.

56. In addition, according to Section 3.3 para. 3.1 of the Order, ambulance crew must check all ambulance aid equipment, including defibrillator against the appropriate checklists following change of shifts. Para. 4.1 of the same section also states that all equipment (including defibrillator) should undergo regular tests as detailed in the relevant orders and instructions. FSD has reminded all staff concerned to strictly comply with the Order.

57. Instructions had also been issued to the staff of Fire Services Communication Centre that upon receiving emergency calls originated from Peng Chau, they should clearly confirm the location of the patient, especially for premises with front or rear blocks so as to enable ambulance crew to reach the patient the soonest possible.

Food and Environmental Hygiene Department (FEHD)

Case No. 2000/2107 : Detaining the complainant without thorough investigation; and intercepting and detaining her by force.

58. The complainant claimed that she was a full-time worker employed by a kindergarten in Yuen Long. On 21 August 2000, she was instructed by her supervisor to order some fruits from a fruit shop near the kindergarten. When she was on her way back to the kindergarten, she saw a male hawker from whom she had bought some fruits the day before, and that she had not yet paid for it. Therefore she approached him to tender her payment by giving him a one-hundred dollar note and the male hawker handed her the change.

59. While she was counting the change, a hawker control officer caught her as a fruit hawker. The action officer asserted seeing her receiving money from a customer. She explained to the officer several times but to no avail. During the period, the officer got hold of her arm and other team members surrounded her.

60. She requested the hawker control staff to go to the kindergarten with her to prove her identity. Despite that the kindergarten could be reached in one to two minutes' walk, her request was refused. At that time a female passerby, who knew the complainant, came up to support the complainant's claim that she worked in a kindergarten and was not a hawker. The hawker control staff finally took the complainant on board a FEHD vehicle for further investigation. At last, the female passerby came back with a teacher of the kindergarten to testify that the complainant was an employee of her kindergarten. The complainant was then released.

61. The complainant subsequently lodged a complaint with The Ombudsman against the misuse of power by the hawker control staff in October 2000 as well as unfair and impolite treatment which include the following :

- (a) detaining her without investigation;
- (b) ignoring her explanation and insisting to pull her on board a vehicle of

FEHD; and

(c) FEHD staff grasping her arm rudely and embarrassing her.

62. After investigation, The Ombudsman concluded that complaint points (a) and (b) were partially substantiated, while complaint point (c) unsubstantiated. The Ombudsman considered that this complaint arose from misunderstanding. On the whole, the complaint was partially substantiated.

63. FEHD has accepted The Ombudsman's recommendations by reviewing the training programme for frontline staff and strengthening the training on the techniques in collecting evidence in a compulsory training course organized for all frontline staff as from late 2001.

Case No. 2000/2924 : Unreasonably allowing someone not known to the complainant to exhume his wife's remains.

64. The complainant claimed that he buried his wife, Madam A, in a cemetery in 1985. When he visited her grave in October 2000, he found her remains stolen. The cemetery office told him that his wife's remains had been removed for re-burial a few months earlier by a Mr. B, claiming to be her son-in-law. The complainant maintained that he did not know Mr. B. He was aggrieved that the cemetery office did not notify him of Mr. B's application to exhume his wife's remains. He therefore lodged a complaint with The Ombudsman in November 2000.

65. FEHD explained that in May 2000, Mr. B applied to exhume the remains of Madam A. After checking the documents submitted and the statutory declaration Mr. B produced as proof of his relationship with Madam A, FEHD issued an exhumation permit. Later, one of Madam A's daughters arranged to exhume the remains.

66. Upon enquiry from The Ombudsman, FEHD contacted one of Madam A's daughters and received a letter jointly signed by Madam A's five daughters stating that Mr. B was the live-in fiancé of Madam A's fourth daughter. They all agreed to let Mr. B act on their behalf and arrange for the exhumation of their mother's remains. Later, Madam A's fourth daughter wrote to point out

that the complainant had been informed of the intended application but he had not responded.

67. According to FEHD's Operational Manual for Dead Disposal Service (the Manual), any application for exhumation of human remains had to be accompanied by a letter signed by a close relation or a representative of the deceased. If the letter could not be produced, the applicant had to make a declaration giving the reasons for the application. Under normal practice, applications from parents, brothers and sisters, spouse and children of the deceased would be approved. FEHD maintained that Mr. B's application had been processed in accordance with statutory provisions and departmental guidelines. The complaint probably arose out of dispute among family members.

68. Exhumation of human remains is governed by Section 118(3) of the Public Health and Municipal Services Ordinance (the Ordinance). The Ordinance specifies that the next of kin, the legal representative of the deceased or the authorized agent of either of them may apply for exhumation of the remains. Only in their absence that someone who has a proper interest in the disposal of the remains may apply for the exhumation permit.

69. The Ombudsman noted that while the term "next of kin" was used in the Ordinance, the Manual referred to "close relation". Neither the Ordinance nor the Manual defined these terms. FEHD was asked to provide the definition of "next of kin" and the reason for using the term "close relation" instead. Legal advice obtained by the Department was that it should be construed as "nearest blood relation" or "closest living relative", based on interpretation of case precedents and explanation in dictionaries. As in-laws did not have any blood relations with the deceased, they were not next of kin.

70. The Ombudsman also noted that Mr. B was neither the legal representative nor the next of kin. In accordance with the Manual, FEHD should have asked him to produce authorization from a close relation or a legal representative of Madam A. However, when Mr. B submitted the application, he had not yet been duly authorized by Madam A's next of kin and he could not prove his relationship with the deceased. Furthermore, FEHD had not asked him to support his application with any explanation.

71. The Ombudsman concluded that the complaint was substantiated and that there were fundamental problems in FEHD's procedures. If the deceased had a legal representative as well as several persons claiming to be the next of kin, there was no means to determine which one had priority for exhuming the remains. In the absence of a priority setting, it might be necessary for the applicant to obtain the consent of everyone who had the right to exhume the remains.

72. FEHD has implemented The Ombudsman's recommendations as follows :

- (a) FEHD apologized to the complainant in writing on 26 May 2001;
- (b) FEHD has reviewed the relevant Ordinance as well as the procedures for approving applications for exhumation. The Department has reservations on the need to draw up a hierarchy of closeness of relatives of a deceased and the requirement of an applicant to obtain the consent of all the relatives who have the right of exhumation. This is because the mandatory establishment of priority for the "next of kin" will not only cause difficulty in implementation but will also create inconvenience to the applicant. This view has been accepted by The Ombudsman. However, while reviewing the procedures in the application for exhumation, FEHD will stress the importance of complying with the Ordinance on one hand and be considerate in handling the application for exhumation by the "next of kin" on the other. FEHD has revised its procedures and the Manual and defined the term "next of kin" on 21 June 2001; and
- (c) if the person who applied for burial of the deceased is different from the applicant for exhumation, FEHD staff will inform, in accordance with their record, the original permittee of the situation as far as possible. The application would only be entertained upon the acknowledgement of the permittee. In case where the original permittee could not be contacted, FEHD would deal with it according to the revised Manual.

Case No. 2001/0364 : Selective enforcement and unfair treatment by Food and Environmental Hygiene Department in singling out the complainant for trading outside permitted area.

73. The complainant successfully bid a temporary hawker stall in the Lunar New Year Fair held in January 2001 at Yuen Long. On 23 January 2001, she was found selling balloons in the common passageway outside her stall. Members of the duty squad of the Hawker Control Team (HCT) came to investigate and check her temporary hawker licence and identity information. She felt aggrieved and complained that she was singled out for investigation as there were other people trading in the passageway. The complainant also alleged that a senior officer of HCT answered her and shouted at her in a rude manner. When she said she would lodge a complaint against the senior officer and asked for his staff number, the subject officer took excuses to leave the spot.

74. After the HCT members took down her particulars, the complainant requested them to give the staff number of the senior officer concerned but they said that they did not know whom she referred to. She then recorded the staff numbers of three HCT members. Afterwards, the complainant lodged a complaint with The Ombudsman against the HCT members in January 2001 for :

- (a) unfair enforcement;
- (b) rude manner; and
- (c) improper handling.

75. After investigation, The Ombudsman concluded that in accordance with the licensing conditions of the temporary hawker licence, the holder should always carry with her the licence for inspection by public officers on duty upon request. Thus, the request for inspection of the licence made by the HCT members was reasonable. The complainant should cooperate and heed the advice. Furthermore, as the complainant was not trading within her stall and also not carrying her licence, she actually breached the licensing condition. The HCT members had the right to prosecute her.

76. For complaint point (a), due to the lack of sufficient evidence and discrepancies on the information provided by the complainant and FEHD, The Ombudsman could hardly comment whether the enforcement action of the HCT members was unfair. For complaint point (b), The Ombudsman considered that there was no witnesses from independent third party. For complaint point (c), The Ombudsman observed that the HCT members said that they did not know whom the complainant referred to, when asked by the complainant to provide the staff number of the senior officer who was carrying out duties with them. She considered that the way the HCT members handled the matter was questionable. In conclusion, The Ombudsman could only judge the case by circumstantial and indirect evidence and considered that the complaint was partially substantiated.

77. Moreover, FEHD had made two minor errors in the information provided to The Ombudsman. Corrigenda were made afterwards.

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

- (a) management staff concerned were instructed on 2 November 2001 to carefully vet the information provided by their staff in order to ensure accuracy;
- (b) a reminder was issued on 23 November 2001 asking the district management to remind their frontline staff to properly discharge their assigned duties and maintain team spirit. Staff were advised to inform other team members whenever they needed to leave the team for a while. Frontline staff have also been instructed to inform the licensee clearly which kind of document they would inspect during routine inspection of hawker licences and pay attention to their speaking tone and manner; and
- (c) FEHD has completed the review on the inspection arrangements for fixed hawker pitches including temporary hawker stalls and issued new instructions on 16 January 2002 to frontline staff.

Case No. 2001/1390 : Failing to inform the complainant as scheduled the result of the disciplinary proceedings against him.

79. The complainant complained against FEHD for failing to inform him as scheduled by the end of February 2000 the result of the disciplinary proceedings against him.

80. The complainant worked in the former Regional Services Department (RSD) before he was posted to FEHD on 1 January 2000. He was found guilty in the disciplinary hearings conducted by the former RSD in October and November 1999 under the Public Service (Administration) Order for various serious acts of misconduct. After the disciplinary hearings, the former RSD issued a letter to him on 16 December 1999, informing him of the result of the disciplinary hearings, and advising him that he would be informed of the punishment in about 10 weeks.

81. The complainant was posted to FEHD upon reorganization of municipal services on 1 January 2000. The Leisure and Cultural Services Department (LCSD) passed the files of the complainant's disciplinary case to FEHD on 18 January 2000. However, the letter of 16 December 1999 was not in the relevant case file, the complainant's receipt of the letter in question was kept though. In handing over the case to FEHD, LCSD had not highlighted to FEHD the 10-week timeframe for replying to the complainant. The case officer of the Discipline Section of FEHD did not take note of the receipt and did not trace the missing letter.

82. In the light of the serious nature of the alleged acts of misconduct and the possible contravention of the Prevention of Bribery Ordinance, FEHD referred the complainant's case to the Independent Commission Against Corruption (ICAC) for investigation after seeking legal advice and consulting Civil Service Bureau (CSB) on 25 April 2000.

83. Upon the introduction of the Voluntary Retirement (VR) Scheme, the complainant applied for voluntary retirement on 13 July 2000. As he was involved in the above mentioned disciplinary case, FEHD withheld his VR application pending completion of his disciplinary case according to the laid down procedure. The complainant was informed accordingly on 12 December 2000. As the complainant was the subject of ICAC investigation,

the Department could not disclose to him the progress of the case and the complainant was dissatisfied with the progress. On 15 May 2001, he lodged a complaint with The Ombudsman against FEHD for failing to inform him the result of the disciplinary proceedings against him as scheduled by the end of February 2000.

84. After investigation, The Ombudsman concluded that the complaint was substantiated. If FEHD had taken note of the complainant's receipt of the former RSD's letter of 16 December 1999 and traced the letter, FEHD would have come to know about the 10-week timeframe, and would have been able to inform the complainant of the position of his case before expiry of the 10-week timeframe which would alleviate his anxiety and stress in waiting for the Department's reply.

85. FEHD has accepted and implemented The Ombudsman's recommendations as follows :

- (a) FEHD informed the Secretariat on Civil Service Discipline (the Secretariat) of the complainant's special situation and requested the Secretariat to take prompt action to consult the Public Service Commission on the level of punishment. Having taken into account the advice of the Public Service Commission, FEHD has imposed the appropriate punishment on the complainant. The complainant's application for voluntary retirement under the VR Scheme was also approved on 21 May 2002, and he left the service on 17 June 2002; and
- (b) FEHD has reviewed the procedures in handling disciplinary cases including the case bring up system and delivery of notification letters to the accused officers. FEHD would continue to follow the established procedures laid down in the "Procedural Manual on Discipline" issued by CSB in handling disciplinary cases. In order to streamline the procedures in handling disciplinary cases, FEHD would conduct internal reviews from time to time. To speed up the processing of the cases, the senior management would also hold regular internal disciplinary meetings with subject officers of the Discipline Section to deliberate on the form of disciplinary actions and the necessary follow-up actions.

FEHD has also reminded all the case officers involved in the handling of discipline cases to ensure that cases are brought up on schedule for monitoring purpose. Whenever the case officer is on leave, the cases being handled by him would be brought up as scheduled to his supervisor or any responsible officer who has taken up his duties for necessary follow-up action.

Regarding the delivery of notification letters to the accused officers, the Department has instructed all case officers to deliver the notifications to the officers within five working days under normal circumstances in order to keep the concerned officers informed of the progress of their disciplinary cases.

Case No. 2001/2297 : Failing to take action against an unlicensed restaurant; instituting unjust prosecution action against the complainant for violation of license conditions for his restaurant; and faulty procedures which caused delay in issuing summons to the complainant.

86. The complainant claimed that he took over Restaurant A, occupying two shop spaces (Shops A and B), in August 2000. In December 2000, he was prosecuted by FEHD for operating Restaurant A without a licence. The complainant questioned how Restaurant A could be in operation without a licence for more than 10 years and how it could continue to operate after he had returned it to the landlord on 25 December 2000. He complained to FEHD and was told that the unlicensed restaurant was prosecuted every month and that its operator had started applying for a general restaurant licence in April 2001. On 27 July 2001, the complainant received a court summons stating that he had altered the layout of Restaurant A on or before 29 September 2000 without prior approval by FEHD. He suspected that his prosecution by FEHD was prompted by his repeated complaints against Restaurant A for illegal operation. Moreover, he considered FEHD's handling of the illegal operation of Restaurant A improper and questioned why he was not prosecuted during his period of operation but was summonsed 10 months after the irregularity was found.

87. The complainant then lodged a complaint with The Ombudsman in

August 2001 against FEHD about the following :

- (a) improper handling of Shops A and B for illegal operation of Restaurant A;
- (b) after the complainant returned Restaurant A to the original landlord, he lodged complaints with FEHD against the continual operation of Restaurant A without a licence. Because of the many complaints he had made, FEHD prosecuted him for the irregularity found during his period of operation; and
- (c) faulty procedure leading to the court summons being received by the complainant almost 10 months after the irregularity (illegal alteration of the layout of Restaurant A) was found.

88. After investigation, The Ombudsman considered that complaint points (a) and (b) were unsubstantiated. For complaint point (c), The Ombudsman noted that FEHD requested the court on 15 December 2000 to issue a summons and the summons was issued on 16 December 2000. However, after failed attempts by the court to deliver the summons to the complainant at Restaurant A, FEHD had to inquire with the Immigration Department about the latest registered address of the complainant before it could send the summons to the residential address of the complainant in July 2001. The Ombudsman opined that because the complainant ceased operating Restaurant A on 25 December 2000, FEHD and the court were unable to serve the summons to this address, the summons was therefore only received by the complainant many months after the irregularity. However, The Ombudsman was of the view that FEHD should instruct its staff to ask for the correspondence addresses and telephone numbers of the applicant and former licensee when dealing with an application for transfer of licence, no matter whether there was an outstanding summons to be served on the former restaurant licensee. Therefore, The Ombudsman concluded that complaint point (c) was substantiated. On the whole, the complaint was partially substantiated.

89. In response to the recommendations of The Ombudsman, FEHD took the following actions :

- (a) FEHD designed a form named “Application for the Transfer of Food

Licence/Permit” in January 2002, which required applicants to provide adequate contact information, and instructed all District Environmental Hygiene Offices to use it on a trial basis starting from 14 January 2002. After a review on the effectiveness of the new form on 21 May 2002, all District Environmental Hygiene Offices and officers concerned were instructed to formally use the new form, and the operation manual were accordingly updated; and

- (b) FEHD issued clear guidelines on 22 February 2002 to its officers concerned, reminding them of the points to note when inspecting unlicensed food premises, which included heightening their alertness when they inspected premises suspected or complained of being used as an unlicensed food establishment, as well as carrying out inspection at different times and collecting adequate evidence for the prosecution of offenders. Meanwhile, all officers responsible for monitoring work were instructed to monitor the inspections as well as their results, carried out by their subordinates, so that all operators of illegal food business would be punished by law.

Case No. 2001/3207-3229, 2001/3231-3271 : Reneging a promise to build a market.

90. The complainants lodged a complaint with The Ombudsman in January 2001 against the Government (the then Planning and Lands Bureau (PLB), the then Environment and Food Bureau (EFB) and FEHD) for reneging on a promise made to the then Provisional Urban Council (PUC) to build a market at the site of the former Hollywood Road Police Married Staff Quarters (the site).

91. In May 1998, the then Secretary for Planning, Environment and Lands (SPEL) wrote to the Chairman of the then PUC to offer the site for reprovisioning the Central Market, stating that it was the only suitable location in Central and urged the Council to accept the proposal. In June 1999, the then PUC passed a motion “agreeing to Government’s proposal to build a market at the site as soon as possible and upon completion, eligible Central Market stall tenants would have priority moving into the new market”. However, after the dissolution of the then PUC, the Government cancelled the

new market project, thus jeopardizing the livelihood of the stall tenants.

92. According to the complainants, the Government had explained that the cancellation was the result of re-evaluation in the light of a report from the Director of Audit issued in October 1997 commenting that there should be a full review on the need for new markets, particularly their viability. The Government's re-evaluation in May 2000 concluded that the site would not be suitable for the proposed market.

93. The complainants disagreed with the findings and questioned the basis for the then SPEL's "suggestion" letter, issued in May 1998, despite the Audit Report in 1997. They also pointed out that the then Urban Services Department (USD) had on many previous occasions indicated to them that the site was suitable, but this was now refuted by FEHD.

94. Based on the investigation result and information from the then PLB, the then EFB and FEHD, The Ombudsman observed that :

- (a) regarding the letter by the then SPEL in May 1998 to the then PUC, the legal advice is that there should be no legal recourse for the stall tenants arising from the Government's decision not to proceed with the construction of the new market. However, it had always been the practice for the then PUC to re-provision stall tenants of an existing market and the Central Market stall tenants would certainly expect similar treatment;
- (b) the "suggestion" to build a new market was made to and had been accepted by the then PUC after a series of open meetings. The message would have been circulated among the stall tenants who would expect the Government to honour its "offer" and the then PUC to proceed with the project; and
- (c) the then EFB and FEHD cited the 1997 Audit Report and other reasons in support of its decision not to build the new market. As the "offer", or "suggestion", of the site was made in May 1998, seven months after publication of the Audit Report, the Government of the time could have addressed those issues and should not have made efforts to persuade the then PUC to accept the site.

95. The Ombudsman considered that legal considerations apart, the Government had a moral obligation towards the stall tenants. Also, the Government at that time was committed to the reprovisioning project, leaving the then PUC to refine the formal agreement and to negotiate the details. Therefore, the Government as a whole was responsible for raising the stall tenants' legitimate expectation unduly.

96. Nevertheless, The Ombudsman recognized that the Government was caught in special circumstances :

- (a) the re-organization of the municipal services and dissolution of the then UC/PUC; and
- (b) the steady change in shopping habits of the community.

97. Hence the complaint against the then PLB, the then EFB and FEHD was partially substantiated.

98. In response to The Ombudsman's recommendations, follow-up actions have been taken as follows:

- (a) Finance Committee at its meeting on 12 April 2002 had given its approval to fund the proposed ex-gratia payment package. FEHD is proceeding with the reprovisioning arrangements for the stall tenants. Ex-gratia payment is being paid out to stall tenants who have already delivered vacant possession of the market stalls to FEHD. In July and August 2002, FEHD had arranged restricted auctions of vacant market stalls in FEHD markets and balloting of converted stalls in the Western Wholesale Food Market for interested stall tenants to bid or ballot for a stall; and
- (b) FEHD agrees to conduct surveys to assess the demand for market facilities before embarking on new market project in future as this is in fact the course of action being taken.

Government Property Agency (GPA)

Case No. 2000/2550 : Delay in replying the complainant's enquiry and unfair treatment in handling his rental application.

99. In April 2000, the complainant wrote to GPA proposing to lease some space in the former Kai Tak Passenger Terminal Building. On receipt of the complainant's letter, a GPA staff contacted the complainant on the phone. According to the complainant's oral description and the sketch attached to his letter, the GPA staff believed that the target space was a switch room and public corridor which therefore could not be leased out. The complainant was so advised on the phone but a written reply was not subsequently issued to him. In July 2000, the complainant again wrote to GPA proposing to lease the same space. The GPA staff confirmed on the telephone as well as in writing that the space in question was not for lease.

100. In August 2000, the complainant discovered that the area which he had proposed to lease from GPA was being fitted out for use. He therefore wrote to GPA in early September 2000 asking for an explanation. GPA then reviewed the matter and identified the area concerned to be a shop space which had been leased out in March 2000, well before the complainant made his first enquiry. GPA therefore advised the complainant of the position in writing but did not provide detailed explanation to address the complainant's concern. The complainant felt aggrieved and complained to The Ombudsman in October 2000 against GPA for not properly handling his enquiries and requests.

101. Following investigation, The Ombudsman accepted that since the premises concerned had already been leased out before the complainant's enquiries, there was no impropriety on the part of GPA in not entertaining the request. However, The Ombudsman considered it improper for the GPA staff concerned not to reply in writing to the complainant's written enquiry in April 2000. Furthermore, the lack of comprehensive explanation to the complainant in GPA's reply in September 2000 was unsatisfactory. The complaint was considered partially substantiated.

102. GPA accepted all The Ombudsman's recommendations. Follow-up actions are as follows :

- (a) a letter of apology was sent to the complainant;
- (b) information was provided to the complainant on the space available for letting in the former Kai Tak Passenger Terminal Building; and
- (c) General Circular No. 8/97 on “Office Procedures: Correspondence” would be arranged for circulation to staff every three months as a reminder of proper procedures and approach in handling correspondence with the public.

Government Secretariat – Education and Manpower Bureau (EMB)

Case No. 2001/3315 : Failing to respond to complainant's letter despite repeated reminders.

103. The principal of a private language school in Hong Kong (the complainant) approached EMB on 15 August 2001 for advice. He talked to an officer of the Bureau who requested him to submit his views in writing. The complainant sent the officer a letter on the same day requesting a meeting. He then heard nothing from EMB for nearly a month. The first reminder was hence sent by the complainant to EMB on 13 September 2001 and the second reminder on 18 October 2001.

104. The complainant only received a letter dated 6 November 2001 from the officer informing him that an Education Department official would meet him to discuss his concerns. He then lodged a complaint with The Ombudsman against EMB in November 2001. After investigation, The Ombudsman considered that the complaint was substantiated. In response to The Ombudsman's recommendation, EMB has taken the following actions :

- (a) it has been made a practice that a copy of General Circular No. 8/97 "Office Procedures: Correspondence" will be issued to all new officers joining the Bureau to ensure that they are aware of the 10-day rule requirement. Reminders on the need to follow the rule in answering incoming correspondence are also issued to all officers in the Bureau at half-yearly intervals;
- (b) after reviewing the filing system in EMB, it is considered that a properly operated record and bring up (BU) system will help to avoid recurrence of similar incidents. All incoming correspondences are now date-stamped, properly recorded in appropriate register and put on relevant file (with action tag where appropriate) before passing to the subject officer for follow-up action. The register contains information including the date of issue of correspondence; reference; sender; subject title; date of receipt; movements of the subject file; and BU date if a reply is expected or follow-up action is required. Concerned officers have been briefed of the need to maintain a proper

record and implement fully the BU system; and

- (c) all correspondences are centrally received and opened by staff of the General Registry. The correspondences are properly date-chopped and recorded before passing to subject officers.

Government Secretariat – Environment and Food Bureau

Case No. 2001/0257-0279, 2001/0281-0282, 2001/0284-0322 : Reneging on a promise to build a market at the site of the former Hollywood Road Police Married Staff Quarters.

105. Please refer to Case No. 2001/3207-3229, 2001/3231-3271 under the Food and Environmental Hygiene Department.

Government Supplies Department (GSD)

Case No. 2000/1432 : Premature award of contract for supply of medical oxygen and containers.

106. The complainant's company (Company A) took part in a tender exercise for the supply of medical oxygen and vacuum insulated evaporator tanks to a hospital. The closing date for submission of bids was 27 August 1999 and that for proof 27 February 2000.

107. GSD was the administrator of the tender exercise. As user, the Hospital Authority (HA) was responsible for specifying the technical requirements and standards, advising on tenderers' compliance with the specifications, evaluating and recommending the acceptance of tender. An inter-departmental working group, comprising GSD, HA and other government departments, was set up for the tender exercise. The group decided to adopt Good Manufacturing Practice (GMP) standards for quality assurance. As proof of compliance with GMP standards, tenderers had to produce a certificate or an audit report issued by any of the five authorities designated by HA, including the State Drug Administration (SDA) in the Mainland and Department of Health (DH) in Hong Kong.

108. When evaluating Company A's tender proposals, HA noted that the quality assurance certificate submitted by Company A was issued by a provincial authority and not the national authority (i.e. SDA). HA hence contacted Company A for clarification. Company A argued that the power of approving and licensing the manufacture of medical oxygen in the Mainland, where its factory was based, had been delegated to the provincial level. However, when approached by HA, SDA confirmed that itself was the authority for controlling and certifying the quality of medical oxygen manufactured in the Mainland.

109. Company A had also approached DH but found out that DH would only conduct GMP audit for medical oxygen manufactured in Hong Kong. On 25 January 2000, Company A wrote to GSD advising that SDA had refused its request for a GMP audit, reiterating that certificates issued by the provincial authority were adequate proof of GMP compliance, and reminding GSD that

the deadline for submission of the documentary proof of compliance should be 27 February 2000. The letter was personally delivered by the complainant to GSD and GSD had provided a verbal response to the complainant on the spot, but had failed to respond to the company's letter in writing.

110. As there was an urgent need for the award of the contract in order to tie in with the construction progress of one of the three hospitals, and GSD did not expect that Company A would be able to obtain the required GMP certificate before 27 February 2000, GSD awarded on 16 February 2000 the contract to supply medical oxygen and its container to the concerned hospital to another company which had complied with all the tender requirements.

111. Company A submitted documentary proof of compliance on 25 February 2000 but the document submitted still failed to prove that the company had complied with or attained GMP standards. The complainant lodged a complaint with The Ombudsman in June 2000 against GSD and HA for premature award of the tender for the supply of medical oxygen and its containers for one of the three hospitals.

112. GSD and HA both explained that there was a need to deliver the oxygen containers two months prior to the commissioning of the concerned hospital. Although the documentary proof submitted by Company A on 25 February 2000 had failed to prove that the company had indeed complied with GMP standards, The Ombudsman was of the view that the fact remained that the deadline for submission of documentary proof was 27 February 2000 and tender had been awarded to another company on 16 February 2000. Since GSD had not replied to the letter of the complainant's company dated 25 January 2000, GSD had an obligation to honour the deadline for submission of documentary proof of compliance by 27 February 2000. The Ombudsman therefore found that the complaint against GSD and HA was substantiated.

113. In response to The Ombudsman's recommendation, GSD has sent a letter of apology to Company A for not replying to its letter of 25 January 2000 and not adhering to the deadline of 27 February 2000. It would also, in conjunction with HA, adopt a pragmatic and realistic approach in setting deadlines for future tender exercises. The GMP certification requirement is an appropriate and prudent requirement for ensuring patient's health and safety. In line with the practices in overseas countries, HA would only accept GMP

certification by national-level regulation authorities.

114. With respect to The Ombudsman's recommendation that the current arrangements for quality assurance for medical oxygen should be reviewed, HA would, in accordance with its established policy, regularly review the quality requirements and assurance of pharmaceuticals, including medical oxygen, in order to keep pace with advances in pharmaceutical science and changes in international standards. In fact, HA has recently updated the list of recognized health authorities to ensure that pharmaceuticals supplied to HA comply with the new internationally recognized standards. In addition, HA would continue to be vigilant to ensure the provision of accurate and updated information, including designated regulatory authorities for issue of GMP certificates or audit reports where appropriate, in all future tender specifications.

Case No. 2001/2805 : Failing to supply tender documents.

115. The complainant lodged a complaint against GSD for failing to supply tender documents to the complainant's company (Company A), a GSD supplier under the purchasing group for the supply of uninterruptible power supply (UPS) system. As a result, Company A missed the chance of bidding for the tender.

116. The tender in question was to procure a UPS system for the Terminal Doppler Weather Radar (TDWR) to the Hong Kong Observatory (HKO) for use at the airport. The tender notice was published in the Government Gazette, local newspapers and GSD homepage on 20 July 2001 and re-published in the Government Gazette on 27 July 2001. At the same time, GSD notified consulates and overseas trade commissions of the tender by letters. The tender documents were obtainable from GSD office and two specified District Offices of the Home Affairs Department. Interested parties could also download and submit tender documents 24-hours a day through the Internet if they were subscribers of the Electronic Tendering System. The tender closing time was 9:00 a.m. on 30 August 2001.

117. Before tendering, GSD learnt from HKO that the required UPS system should be compatible with TDWR to transform uninterruptedly the normal three-phase 50Hz AC and 220/380VAC to three-phase 60Hz AC and

120/208VAC for supply to the radar system. The UPS system used by most computer systems could not possibly meet such requirements. GSD staff believed that suppliers under the purchasing group for the supply of UPS system, including Company A, could not provide such system and thus had not sent them the tender documents. Instead, the tender documents were sent to suppliers of the purchasing group for the supply of heavy duty accumulators.

118. On the evening of 28 August 2001, the complainant noticed this tender on the Internet. Since Company A had not received any tender document of the said tender, it telephoned GSD on the morning of 29 August 2001 seeking details of the tender. GSD faxed the concerned tender documents to Company A at 11:04 a.m. on the same day. As the tender closed at 9:00 a.m. on 30 August 2001, Company A did not have sufficient time to prepare the necessary documents. Under such circumstances, it could not participate in this tendering exercise and the complainant lodged a complaint with The Ombudsman in September 2001.

119. The Ombudsman considered that, apart from facilitating interested suppliers to bid through open tendering, GSD should have mailed the tender documents to suppliers under the two concerned purchasing groups to inform them of the tender. Certain steps of the procedure had inadvertently been missed out. The complaint against GSD was substantiated.

120. GSD accepted The Ombudsman's recommendations and took follow-up actions as below :

- (a) an apology was sent to Company A for not sending them the tender documents at the beginning of the tendering exercise; and
- (b) internal guidelines were issued to the staff concerned reminding them to send tender documents to all suppliers under the purchasing groups with exactly the same description as the tendered items at the beginning of the tendering exercise if it was decided that the concerned suppliers on the supplier list was invited to bid. GSD also undertook to review the descriptions of the codes of purchasing groups to give a clearer representation on the application and characteristics of the concerned items to avoid recurrence of similar cases.

Home Affairs Department (HAD)

Case No. 2000/1832 : Failing to handle properly the complainant's application for exemption from rates; delaying the response to his appeal and failing to take proper action to publicise the rates exemption policy to affected persons.

121. The complainant lodged his application for rates exemption in 1995. However, HAD did not write to him until June 1998, rejecting his application for rates exemption on the grounds that the house exceeded the permitted height due to a covered structure on its rooftop. He demolished the rooftop structure on 8 September 1998. As a result, HAD granted him rates exemption as from 8 September 1998 (the day when the structure was demolished) and within the period from 1 August 1994 (the day when rates was first demanded) to 26 March 1995 (the day when a structure was found on the roof). The complainant opined that the decision of HAD in not granting him rates exemption from 27 March 1995 to 7 September 1998 was unreasonable. Besides, he opined that HAD had not processed his application expeditiously and failed to publicise the rates exemption policy to the residents affected in the village. He therefore lodged a complaint with The Ombudsman in July 2000.

122. After investigation, The Ombudsman concluded that it was lawful and reasonable for HAD not to grant rates exemption to the complainant during the period when a rooftop structure was found on the subject property. Moreover, the rates exemption policy had been widely publicised and leaflets attached to application forms had been given out to the residents in the village concerned. The complaint in this aspect was therefore not substantiated.

123. The Ombudsman also pointed out that the staff responsible for processing this case had not issued an interim reply within ten days after receiving the complainant's letter, which was not in accordance with the procedures set out in the General Circular No. 8/97. Besides, the staff had overlooked the complainant's letter and follow-up action was delayed for several months. The complaint in this regard was thus substantiated. On the whole, the complaint against HAD was partially substantiated.

124. During investigation, The Ombudsman made reference to two similar complaint cases and found that the sizes of the stairhood structures on the rooftop of all three houses in question had exceeded the permitted limit. HAD did not request the applicants in these two cases to declare that their houses were free of illegal structures or extensions. Rates exemption was granted leniently to these two cases although the sizes of their stairhoods did exceed the permitted limit. The Ombudsman considered the handling of these cases inappropriate.

125. The Ombudsman advised HAD to review the complainant's case together with the above two cases of similar nature for future reference. This was to ensure that when approving future applications for rates exemption, the same criteria would be applied to issues such as building height, conditions of approval, and declaration to be made by applicants on their properties for being free from illegal structures or extensions.

126. Follow-up actions taken by HAD are set out below :

- (a) HAD has completed the review of the said three cases. It was found that two applicants submitted their applications on 22 March 1995 and 8 May 1996 respectively when the forms used did not contain the section "Declaration". It was because the application forms containing this section were not in use until implementation of the streamlined procedures in 1997. The third applicant (i.e. the complainant) had submitted his application twice, on 9 April 1995 and 2 July 1998. As the latter application was submitted on the new form adopted in 1997, he had completed the section "Declaration" accordingly;
- (b) in processing applications submitted in the old forms, staff of HAD would first check the details provided by the applicants. If the staff were satisfied with the initial checking, they would ask the applicants to fill in the new form to ensure that declarations were made. As for the above two applicants who submitted the old application forms, the fault lied with the staff who failed to ask the applicants to fill in the new forms. HAD had warned the staff concerned and advised them to check the forms more carefully to avoid future negligence;

- (c) as for the stairhood sizes, all three cases exceeded the permitted limit but only one was turned down. The reason was that the staff vetting the applications only noted that one of the houses comprised four storeys. As a result, the two houses with three storeys were granted rates exemption. Following a review of the cases, HAD found out that the latter two houses had stairhoods which exceeded the permitted size. After seeking legal advice, it was decided to withdraw the exemption granted in respect of these two houses; and
- (d) HAD vets all applications with the same criteria. Village houses in application for rates exemption have to meet the statutory building specifications and should not contain any illegal structures or extensions. When processing the applications, HAD would follow the established policy and ensure that the building specifications laid down in the Buildings Ordinance (Application to the New Territories) Ordinance have been observed. All staff concerned have been reminded to pay special attention to the above statutory requirements when examining applications.

Case No. 2000/2114 : Failing to properly monitor the re-election process of the Executive Committee of a Mutual Aid Committee.

127. The complainant was the third term Chairman of a Mutual Aid Committee (MAC). His term of office ended on 18 August 2000. On 15 August 2000, a Liaison Officer (LO) from the relevant District Office (DO) attended the general meeting of flat representatives for re-election of the new Executive Committee (ExCom). The LO briefed the meeting that an ExCom could firstly be formed by an odd number of flat representatives who were interested to serve the 'kaifongs', and flat representatives at the meeting could elect the Chairman, Vice-Chairman, Secretary, Treasurer and Auditor from the ExCom. The LO then sought the views of the flat representatives on the number of ExCom members required. Since there was no response, the complainant proposed that the ExCom should consist of seven members. There being no objection, the LO then enquired if any flat representatives were interested in serving as ExCom members. Again there being no response, the complainant agreed to be an ExCom member.

128. At that moment, the third term Vice-Chairman of the MAC raised objection and proposed that individual office-bearers should be elected by the flat representatives. After a show of hands, the meeting adopted the proposal put forward by the Vice-Chairman and an ExCom was thus elected. However, the complainant later discovered that two ExCom members came from the same flat. According to the election rules of the MAC, there should not be two ExCom members coming from one residential unit. He therefore lodged a complaint with The Ombudsman in August 2000 that DO had failed to :

- (a) properly monitor the re-election process; and
- (b) nullify the membership list of the ExCom and re-elect all members of the ExCom.

129. After investigation, The Ombudsman took the view that the election process proposed by the LO was not in compliance with the procedures set out in the MAC Model Rules (Model Rules). Moreover, The Ombudsman opined that if DO staff had verified the identity of the attendants prior to the commencement of the meeting, he could have taken immediate action to confirm their eligibility to vote and be nominated, and rejected the one ineligible to run in the election. Therefore, complaint point (a) was substantiated. On the other hand, The Ombudsman took note of the Model Rules which clearly stated that the action and decision of the MAC were still valid, and remained effective without any setback, even when there were flat representatives or ExCom members found ineligible in the election process. Therefore, it was reasonable for DO to reject the complainant's request for re-election of all members of the ExCom. Therefore, complaint point (b) was unsubstantiated. On the whole, the complaint was partially substantiated.

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

- (a) HAD had tightened up on the monitoring procedures, including the issue of labels printed with "Flat Representative" and counter-checking with a Control List to avoid recurrence of similar incident. It was also required that the address of the nominee should be included in the nomination process to facilitate verification by DO staff;

- (b) HAD had briefed the staff responsible for the MAC election exercises on the improvement measures, stressing the need to take extra care in the election process to ensure that the election procedures were in order; and
- (c) after implementation for six months, the improvement measures were reviewed and found to work well. Indeed, over 83 MACs held re-elections according to the improved procedures during the period from August 2001 to June 2002 and these re-elections were smoothly conducted without any problem or difficulty. In coming elections, HAD would continue to brief MACs on the improved election procedures.

Case No. 2000/2402 : Failing to follow up properly the proposal of constructing a ramp at the entrance of a resite village.

131. Please refer to Case No. 2000/3015 under the Architectural Services Department.

Case No. 2000/2530 : Improper handling of request for minor environmental beautification project and objection to construction of a village office raised by Mutual Aid Committee.

132. A Mutual Aid Committee (MAC) in Tuen Mun proposed to the District Office (DO) of HAD to carry out minor beautification works in the open space in front of their buildings, which was zoned for “village type development”. Also, a similar request had been received three years ago from a former Village Representative of a nearby village. DO consulted the departments concerned in March 1999 and informed the MAC in May 1999 that their proposal was approved on the understanding that simple landscaping works which would be in line with the use designated on the relevant Outline Zoning Plan would be carried out. When asked, DO staff had also told the MAC that DO would not support application from the indigenous villagers to build a village office on the same site. However in October 1999, DO wrote to the MAC saying that the District Lands Office (DLO) of Lands Department

(Lands D) did not support the beautification works and the reply in May 1999 was only a preliminary suggestion. On the other hand, DLO approved the application for a village office on the site. Aggrieved by the decision, the MAC lodged a complaint with The Ombudsman in October 2000 against HAD and Lands D for improper handling of the case.

133. After investigation, The Ombudsman concluded that the complaint against Lands D was substantiated and that against HAD partially substantiated.

134. In response to The Ombudsman's recommendations, the following actions has been taken by the relevant bureau and departments :

- (a) HAD had reminded staff to strengthen coordination and communication with Lands D and other departments so as to process similar applications more expeditiously and efficiently;
- (b) DO had successfully assisted the MAC and village representatives to resolve the matter on the exact location for the village office project;
- (c) Lands D had expressed disagreement to The Ombudsman's conclusion that the complaint against Lands D was substantiated. Nevertheless, Lands D had taken necessary actions to resolve the dispute between the MAC and village representatives. A written agreement on the exact location for the village office had been signed by the MAC and village representatives in August 2002; and
- (d) following The Ombudsman's recommendation that it should be considered carefully if it is necessary to review the indigenous village policy, the Housing, Planning and Lands Bureau is reviewing the small house policy relating to indigenous villages. HAD is also reviewing rural elections and related matters with other relevant bureaux and departments.

Case No. 2000/3150 : Improper handling of application for land succession.

135. The complainant wrote to HAD on 20 November 1997 to apply for the succession of his father's land located in the New Territories. The

complainant went to the District Office in person in March 1998 and performed the declaration procedure required by the application. Since the complainant is a resident in the Mainland and his father passed away in the Mainland, HAD wrote to the complainant on 2 June 1999 and requested him to provide supplementary documentations so that it could process his application further. The complainant wrote back to HAD on 3 August 1999 explaining that he had difficulties in providing the documents under request and asked HAD to proceed with his application with the documents he had already submitted. HAD sought legal advice on the complainant's request and wrote to him on 19 October 1999, requesting him to pass the documents to the Ministry of Foreign Affairs of the People's Republic of China for certification. The complainant was dissatisfied by this request and lodged a complaint with The Ombudsman on 4 November 1999.

136. The Ombudsman transferred the case to HAD after obtaining the complainant's consent. HAD wrote to the complainant on 14 January 2000 and informed him of the procedures and time required for applying for a succession. The complainant was also informed that HAD might consider approving his application, notwithstanding the requirements laid down by the procedural guidelines. The Ombudsman considered that HAD had taken the appropriate actions to handle the complaint and decided not to follow up this case.

137. HAD wrote to the complainant on 15 March and 29 March 2000, requesting him to provide copies of documents certified by the municipal office, and to post notices on both the Mainland's and Hong Kong's newspapers with regard to his application for succession. HAD wrote again to the complainant on 25 September 2000, requesting him to provide original documents certified by the local Notary Office and returning the copies of documents previously submitted. The complainant was dissatisfied with HAD's repetitive requests for documents and lodged a complaint with The Ombudsman on 3 December 2000.

138. After investigation, The Ombudsman considered that the complaint was substantiated.

139. HAD has taken the following actions in response to the recommendations of The Ombudsman :

- (a) a letter of apology was issued on 31 January 2002 by the North District Office to the complainant;
- (b) documentary research has been conducted by HAD to formulate the procedural guidelines for application for succession of estate from Mainland/overseas residents and to draw up a list of documents to be produced by the applicants; and
- (c) HAD will seek legal advice on how to verify documents submitted by Mainland/overseas applicants.

Case No. 2001/0463 : Maladministration in construction of an access road from Sham Wat to Sham Shek Tsuen in Lantau.

140. The complainant was not satisfied with the way HAD, Highways Department (HyD), Agriculture, Fisheries and Conservation Department (AFCD), Environmental Protection Department (EPD) and Lands Department (Lands D) administered a rural improvement project involving the construction of an access road from Sham Wat to Sham Shek Tsuen in Lantau. She lodged a complaint with The Ombudsman in February 2001 as follows :

- (a) HAD constructed the access road without adequate justification, broke up the project into smaller ones against the rules, failed to anticipate and prevent environmental damages arising from the project, failed to monitor the project properly and failed to respond to the complainant's enquiries;
- (b) HyD failed to prevent environmental damages from the works, failed to supervise and monitor the project properly, and did not take action against the contractor despite repeated abuse of contractual conditions;
- (c) AFCD failed to anticipate and protect the ecological value of the area affected by the project by accepting an inadequate environmental review;

- (d) EPD failed to prevent environmental impacts by not requiring a detailed Environmental Impact Assessment for the project; and
- (e) Lands D failed to take action against persistent illegal occupation of Government land.

141. After investigation, The Ombudsman concluded that the complaints against HyD, AFCD, EPD and Lands D were all unsubstantiated. For the complaint against HAD, The Ombudsman found no evidence of maladministration in justifying the project but considered it undesirable for HAD to rely only on the population information supplied by the village representatives as they had obvious vested interest at stake. She also found no evidence that HAD had planned to extend the access road further by breaking up the project. Before implementation, HAD had also ensured that HyD had sought the advice and comments from relevant departments to minimize any adverse environmental and ecological impact. Moreover, The Ombudsman noted that HAD was not responsible for the supervision and monitoring of the project. She was however disappointed at the lax attitude of some HAD staff towards public enquiries. Therefore, the complaint against HAD was partially substantiated.

142. HAD accepted and implemented all the recommendations of The Ombudsman as follows :

- (a) HAD had reviewed the guidelines to staff on answering public enquiries and complaints as set out in HAD Standing Circular No. 16/2000 and General Circular No. 8/97. The guidelines in these circulars were considered adequate;
- (b) Heads of Divisions and District Officers had been asked to re-circulate these circulars to staff at quarterly intervals and to ensure that their staff comply with the provisions in the circulars; and
- (c) HAD had also alerted its officers to avoid relying on, and critically assess, information given by parties with vested interest in determining whether projects were justified.

Case No. 2001/1274 : Improper handling of objection to construction of refuse collection centre and ambulance station.

143. The complainant is an Owners' Corporation of an estate. The Management Office of the estate (which represented the Owners' Corporation) sent HAD an objection letter in December 1999 regarding a plan to construct a refuse collection center and an ambulance station.

144. The complainant lodged a complaint with The Ombudsman in May 2001 against HAD for :

- (a) failing to properly handle the objection of the estate's residents raised by the Management Office in December 1999; and
- (b) failing to inform the complainant about the progress and results of the above plan.

145. HAD explained that upon receipt of the objection letter from the Management Office, it had forwarded the letter to the then Regional Services Department (RSD) for their reference. HAD believed that RSD would take appropriate action to follow up the matter upon receipt of the referral. However, the Food and Environmental Hygiene Department (FEHD), which replaced RSD starting from 1 January 2000, only regarded the objection letter referred by HAD as reference materials, and therefore had not contacted the complainant for follow-up action. HAD agreed that it would be more appropriate for its staff to use the word 'to follow up' instead of 'for reference' in its referral memo to RSD, and RSD should be reminded that follow-up action was required. HAD also admitted that its staff had not referred the objection raised by the Management Office to other related departments.

146. After investigation, The Ombudsman concluded that both complaint points (a) and (b) were substantiated.

147. In addition, The Ombudsman observed that the notes of meeting of the Food and Environmental Hygiene Committee of the related District Council had not recorded the question raised by a District Council Member relating to the objection raised by the residents to the construction of the refuse collection centre and ambulance station, nor the response from the representative of

FEHD. HAD replied that according to the normal practice of the District Council Secretariat, the notes of meeting would not be recorded in verbatim form. Only the discussion items and the decisions made would be recorded. Participants of the meeting, however, could propose amendments to the notes of meeting to ensure accuracy of the content.

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

- (a) HAD had reminded its staff to pay attention to the "General Circular No. 8/97 : Office Procedures : Correspondence", "HAD Standing Circular No. 9/2000 : Investigation Undertaken by The Ombudsman" and "HAD Standing Circular No. 16/2000 : Complaint by Members of the Public". These circulars would be circulated to all staff every three months; and
- (b) HAD agreed to issue guidelines to remind its staff to record clearly in the draft notes of the meetings of the District Councils and their committees for consideration by the participants any reference to the discussion papers, and the responses of the participants towards the papers, and to keep a copy of the draft for future reference.

Case No. 2001/1431 : Contradiction between verbal and written replies and delay in replying to the complainant's written request.

149. The complainant is one of the four managers of a Tso in Sai Kung. On 28 September 2000, Sai Kung District Office (SKDO) cancelled the appointments of two managers of the Tso due to the fact that some of the documents supporting the election of the Tso's managers were forged. The complainant and some members of the Tso had a meeting with an SKDO staff on 12 October 2000 to discuss the cancellation. At the meeting, members of the Tso requested the SKDO staff to advise on the validity of the documents signed by the above two managers before 28 September 2000. The SKDO staff considered that the documents signed by the two managers before 28 September 2000 were valid.

150. The complainant and the representative of the Tso wrote to SKDO on 3 January and 12 February 2001 requesting the office to confirm in writing the

validity of the documents signed by the two dismissed managers before 28 September 2000. On receipt of the letters, SKDO issued two interim replies to the complainant and sought legal advice from the Department of Justice (DoJ) on 21 February 2001 and DoJ replied to SKDO in March 2001 that the two managers mentioned above should consult their own legal advisor on the validity of the documents. Based on DoJ's advice, SKDO replied to the complainant on 7 March 2001.

151. The complainant considered that SKDO's written reply was not in line with its verbal reply and that SKDO had delayed the reply. Therefore he lodged a complaint with The Ombudsman on 17 May 2001.

152. After investigation, The Ombudsman found the complaint partially substantiated. In response to The Ombudsman's recommendation, SKDO issued a letter of explanation on the contradiction between SKDO's verbal and written replies on 10 April 2002 to the complainant.

153. The Director of Home Affairs issued a further explanatory letter to the complainant and submitted a report on progress to The Ombudsman on 23 August 2002. The Ombudsman agreed that HAD had fully implemented the recommendations.

Hong Kong Police Force (HKPF)

Case No. 2000/1972(I) : Improperly declining under the Code on Access to Information, the complainant's request for the reasons for verdict of an internal disciplinary proceeding.

154. A woman police constable had lodged a sexual harassment complaint to the Equal Opportunities Commission (EOC) arising from an incident which was also the subject of the disciplinary proceedings against another officer (the defaulter). The defaulter was found not guilty of the disciplinary offence after the proceedings. EOC made a request to the HKPF for the reasons for the verdict of the defaulter case but was rejected. On behalf of the woman constable, EOC complained in August 2000 to The Ombudsman against HKPF for improperly declining under the Code on Access to Information (the Code) her request for the reasons for verdict of internal disciplinary proceedings.

155. The Ombudsman concluded that the complaint was substantiated, and recommended that :

- (a) the HKPF (and EOC) should consider providing training to the relevant subject officers and equipping them with the knowledge and skills to handle access to information requests; to evaluate the implications and impact of a data access request under the Personal Data (Privacy) Ordinance (PD(P)O), in particular on a similar request under the Code; and
- (b) HKPF should consider cultivating a positive attitude among the relevant subject officers in their handling of information requests under the Code in the future.

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

- (a) Support Wing of HKPF have conducted half-yearly seminars to Formation Data Administrators and Access to Information Officers at district and regional level to disseminate knowledge and experience in handling matters and requests relating to the PD(P)O and the Code;

and

- (b) contents of Data Privacy and Access to Information website have been enhanced. Content of the complaint was abridged and uploaded onto the HKPF's Intranet as positive e-learning material.

Hong Kong Sports Development Board (HKSDB)

Case No. 2000/2717 : Delaying reply to a sports club about its application to join the Community Sports Clubs Project; rejecting the application without reasonable explanation; and ignoring a complaint that a sports association had exaggerated the number of participants in its activities.

157. The complainant wrote to HKSDB on 23 October 1998 to express his sports club's interest in joining the "Community Sports Club Project" (CSC Project) subvented by HKSDB. HKSDB, when consulting the relevant National Sports Association (NSA) on the complainant's application, had not set the deadline for the NSA to respond. This resulted in delay in HKSDB's reply to the complainant. The complainant lodged a complaint with The Ombudsman on 24 October 2000 complaining against HKSDB on the following :

- (a) belated reply to his application;
- (b) rejection of his application without giving reasonable explanation; and
- (c) ignoring his complaint that the NSA had exaggerated the number of participants in its activities.

158. After investigation, The Ombudsman considered that complaint point (a) was substantiated because even though HKSDB had already verbally replied to the complainant and in letters afterwards, HKSDB had not set a reasonable deadline for the NSA to respond to the inquiry resulting in a belated reply to the application. For complaint points (b) and (c), The Ombudsman considered that the complaint was partially substantiated because the reasons provided by HKSDB for rejecting the application was contradictory. However, The Ombudsman was unable to come to a conclusive view on complaint point (c) in the absence of sufficient evidence. On the whole, The Ombudsman concluded that the complaint was partially substantiated.

159. HKSDB had accepted all the recommendations of The Ombudsman and follow-up actions are as below :

- (a) improved internal guidelines on managing paper work took effect from 1 April 2001. For instance, HKSDB staff are required to handle NSAs' funding applications and respond to all written correspondences within a stipulated timeframe; these guidelines have been strictly followed by staff concerned;
- (b) in response to The Ombudsman's recommendation that a comprehensive review on the application criteria and procedures of the CSC Project should be made, discussions were held between HKSDB and the Leisure and Cultural Services Department (LCSD) on the demarcation of responsibilities of the two bodies, following the re-organization of the administrative structure of municipal services and the establishment of LCSD. On 1 April 2001, the CSC Project was transferred to LCSD, which has subsequently revised the application criteria and procedures of the Project. Recommendations of The Ombudsman on the CSC Project were also forwarded by HKSDB to LCSD on 9 July 2001 for the latter's reference; and
- (c) a review on the existing monitoring system of subvented programmes had been conducted. On 1 April 2001, enhanced guidelines were put in place to monitor NSAs' performances, including more frequent inspections of subvented activities, as well as improving communication with NSAs on the audit arrangements for financial reports for subvented activities. Ongoing and continuous efforts to enhance the monitoring system of subvented activities would be made.

Hospital Authority (HA)

Case No. 2000/1433 : Premature award of contract for supply of medical oxygen and containers.

160. Please refer to Case No. 2000/1432 under the Government Supplies Department.

Case No. 2000/2321 : Maladministration in respect of the Accident & Emergency Department of a hospital which include failing to fully utilise the expensive equipment; less working hours for Senior Doctors as compared with the standard set by the Hospital Authority; insufficient direct attention given to patients by the Chief of Service, Consultant and Senior Doctors; and engaging in private activities during working hours by the Chief of Service, Consultant and Senior Doctors.

161. The complainant lodged a complaint with The Ombudsman against the Accident & Emergency Department (AED) of a HA hospital on 15 September 2000 on the following four areas :

- (a) failure to fully utilise five expensive medical equipment procured on or after 1998, thus wasting public monies;
- (b) working hours of Senior Medical Officers (SMOs) were less than the standard stipulated by HA;
- (c) direct attendances of patients by Chief of Service (COS), Consultant (CONS) and Senior Medical Officers (SMOs) were rare; and
- (d) COS, CONS and SMOs carried out non-work related duties during office hours.

Underutilization of certain expensive medical equipment

162. The concerned AED had purchased an ultrasound machine, a gastrointestinal fibrescope and a tracheal intubation fibrescope in 1996 during

its planning and commissioning stage. The complainant alleged that they were rarely used as most of the doctors in the concerned AED had not been trained properly for using the above three equipment.

163. Prior to 1999, only COS and CONS had acquired the knowledge and skill to operate the ultrasound machine in the concerned AED. In view of limited number of trained staff, ultrasound service was provided for emergency cases only. By October 2000, a total of five doctors in the concerned AED had attended the training course, thus enabling the full utilization of the ultrasound machine.

164. To ensure quality patient care and enhance professional accountability, the gastrointestinal fibroscope has to be operated by surgeons or trained doctors in AED. Since commencement of service, the concerned AED had not been able to provide the service as none of the AED doctors had been trained to use the medical equipment due to staffing constraint. Patients requiring such service had to be referred to the surgical ward of the hospital for necessary treatment. In view of limited usage of the medical equipment, the gastrointestinal fibroscope was subsequently transferred to the Hospital's Central Endoscopy Unit in November 2000.

165. For the tracheal intubation fibroscope, its utilization is not high but it is an essential piece of life saving medical equipment for the AED. The usage of this equipment is relatively simple and no special training is required for doctors to use this equipment.

Working hours of SMOs

166. The complainant alleged that SMOs in the concerned AED had, on average, taken eight to nine days off per month, which exceeded HA's standard of six days off per month for its staff. HA explained that depending on the operational need of various clinical specialties, doctors are required to work on shift and undertake on-call duty. During the period of September 1999 to August 2000, SMOs working in the concerned AED had on average taken seven to eight days off per month, slightly more than the standard of six days off per month, since SMOs working in AED were required to work on shift every day, including public holidays. Each SMO was therefore granted on average 1.5 days off per month to compensate their work time on public

holidays. Besides, SMOs were also required to carry out other duties during their days off or holidays, including attending clinical meetings, conducting clinical training, or providing expert opinion in court, etc.

Direct attendances of patients by COS, CONS and SMOs were rare

167. The complainant alleged that COS and CONS of the concerned AED only attended an average of 10 to 20 patients per month although HA has required a COS to spend at least 70% of his time on clinical work. In addition, SMOs of the concerned AED spent most of their time in their office and rarely attended to patients directly.

168. In respect of the complaint, HA explained that COS and CONS of the concerned AED are required to attend to patients of the Follow-up Clinic every day except public holidays. In addition, COS and CONS had to attend to the patients under the care of SMOs in the event SMOs encountered difficulties. HA has set the target clinical workload for COS and CONS at 75% and 90% of their total workload respectively, and COS and CONS in question were in fact able to meet the targets.

169. During the period September 1999 to August 2000, the average number of patients attended by SMOs in the concerned AED was about 20 to 30 patients per day. SMOs were also required to perform many other clinical duties, including acting as the team leader in the Resuscitation Room, performing ward rounds in the Observation Ward, screening all hospital admissions and discharges of Triage Category I to III patients, etc.

COS, CONS, and SMOs carried out non-work related activities during office hours

170. The complainant alleged that COS, CONS and SMOs spent most of their time during office hours carrying out non-work related activities, such as surfing the Internet, trading stocks or playing computer games. In addition, some SMOs watched horse racing and placed bets during office hours.

171. HA's Group Internal Audit conducted an audit review on the Internet activities of the senior clinical staff in the concerned AED in December 2000 with a view to tracking the past Internet access patterns of the clinical staff.

The audit review did not reveal that the computer terminals in the concerned AED had been used for entertainment purposes during the audit period.

172. After investigation, The Ombudsman concluded that complaint point (a) was partially substantiated, and other points were unsubstantiated. On the whole, the complaint was partially substantiated.

173. HA has accepted all The Ombudsman's recommendations as follows:

- (a) in accordance with HA's prevailing procedures for tender of equipment supply, tenderers are required to provide operational training to users of the equipment to enable the users to use the equipment safely, effectively and properly. HA will include in their regular newsletter "Risk Management Release" a reminder to all unit heads of hospitals on the need to strengthen operational training for frontline staff in order to enhance the safe and effective use of medical equipment. HA will also continue to assess the training needs on the use of different medical equipment in the light of the change and advance in medical technology to ensure that appropriate training will be provided to the staff concerned;
- (b) in addition to attending structured training courses, the mode of apprenticeship is an essential and necessary part of medical training at the hospital. The usage of medical equipment by junior clinical staff under the supervision of senior clinicians is a normal and acceptable practice. HA will ensure that junior doctors without the required skills would only under the supervision of trained clinicians use medical equipment that requires special skills to operate; and
- (c) HA has already proposed to include an audit on the proper use of Internet services in its internal audit plan in 2002/03.

Case No. 2000/2500 : Failing to follow up properly on the complainant's complaint against a dispenser taking outside job.

174. A complainant wrote to a HA hospital on 27 July 2000 to complain about a dispenser undertaking outside job during sick leave. Upon receipt of

the complaint, a Senior Hospital Administrator (SHA) of the hospital's Human Resources (HR) Department telephoned the complainant to acknowledge the receipt of the complaint. SHA had contacted the complainant several times by phone in the following few weeks to follow up on the complaint. The complainant had also been informed that as the case involved personal data of the dispenser, the hospital would not disclose the investigation results nor the disciplinary measures taken in the absence of consent of the concerned staff.

175. On 2 September 2000, the complainant called the complaint hotline of the HA Head Office (HAHO) and requested to meet with a Public Complaint Management Officer (PCMO). He however refused to disclose details of his complaint before the meeting. A meeting was arranged on 20 September 2000 and during the meeting, the complainant indicated that he was dissatisfied with the hospital's verbal reply and that the dispenser had not been disciplined. Having established that the complaint was a staff management case, PCMO explained to the complainant that the Complaint Management Section of HAHO mainly handled complaints relating to services provided by public hospitals and their staff. Since the case in question related to staff management matters, it would be referred to the HR Department of the concerned hospital or the HR Section of HAHO for follow-up. At the complainant's request, the telephone numbers of the HAHO HR Section were given to the complainant. The complainant subsequently contacted an HR Manager of the HAHO and was informed that his complaint was being handled by the hospital's HR Department.

176. On 3 October 2000, SHA of the hospital issued a written reply to the complainant, informing him that the case was being followed up by the Hospital. However, the hospital could not disclose the investigation findings in the absence of consent of the concerned staff. Dissatisfied with the hospital's reply, the complainant wrote to the Chief Executive (CE) of HA on 13 October 2000 complaining that the hospital had failed to handle his complaint properly. Since the complainant has not provided his correspondence address in his complaint letter, an Executive Manager of HA telephoned the complainant on 28 October 2000 to inform him that the hospital was investigating his complaint about the dispenser but the investigation results could not be disclosed to him in the absence of consent of the concerned staff.

177. On 4 October 2000, the complainant lodged a complaint with The Ombudsman against HA for failing to advise him on the investigation results pertaining to his complaint against the dispenser taking outside job.

178. The Ombudsman noted that according to the HAHO General Administration Circular No. 10/97 on public complaints procedures, a written acknowledgement should be issued on the receipt of a written complaint and if the investigation could not be completed within one month from the receipt of the complaint, an interim reply should be issued to advise the complainant on the estimated time required to complete the investigation. The Ombudsman considered that SHA of the hospital had failed to follow the procedures set out in the HAHO Circular as he had only verbally kept the complainant posted of the development. Since the first written reply to the complainant was issued about two months after the complainant lodged the complaint, The Ombudsman considered that the complaint was partially substantiated.

179. Regarding HA's refusal to disclose the investigation results to the complainant, The Ombudsman considered that it was appropriate for HA not to disclose such information as personal data was involved and it should not be disclosed to a third party in the absence of consent of the concerned staff.

180. In response to The Ombudsman's recommendations, the following actions were taken:

- (a) HA had, through workshops and regular meetings with staff responsible for complaint handling, reminded them the importance of keeping complainants informed through acknowledgement letters and interim replies. They were also reminded to adhere to the procedures as stipulated in HAHO General Administration Circular No. 10/97 when handling complaints; and
- (b) HA is also reviewing the contents of General Administration Circular No. 10/97.

Case No. 2001/0726 : Improper handling of the complainant's request for copies of his sister's medical records and refusing to provide him with the names of the medical staff responsible for her treatment.

181. The complainant's sister received medical treatment from two hospitals of HA during 1999 and 2000. The complainant subsequently wrote to the hospitals concerned to request for copies of his sister's medical records. A hospital staff contacted the complainant in March 2001, informing him that the required records were ready for collection and suggested the complainant to collect the records, weighing some 3.8 kg, in person. The complainant insisted that the required records should be delivered to him by registered mail. Since the maximum weight limit for registered mail is 2 kg, the concerned staff arranged for the records to be sent to the complainant in three separate parcels via registered mail on 16 March 2001. All three registered parcels were sealed in accordance with HA's established standards in mailing medical records.

182. The Post Office (PO) delivered the three registered parcels to the complainant on 19 March 2001. The complainant noticed that the seals of the three parcels did not bear the stamps of HA or PO. Also, the cellulose tape for sealing one of the parcels had loosened. He suspected that the parcels had been opened. The complainant therefore refused to accept the parcels and requested the postman to take the parcels and accompany him to a police station. The concerned hospital was contacted at the police station and was asked to send a staff to inspect the parcels. An HA staff arrived at the police station shortly and found that the cellulose tape sealing one of the parcels had slightly loosened. He inspected the medical records contained in the parcel in question and found that the contents contained therein were intact. However, the complainant still refused to accept the parcels and asked the HA staff to return the three parcels to the hospital. Since it was PO's established procedures that undelivered registered mail should be returned to the sender by PO, the HA staff left the task to PO.

183. The complainant also wrote to the Public Complaints Committee (PCC) and the Chief Executive of HA on 23 January and 8 April 2001 respectively to complain about the mismanagement of his sister in the two hospitals. On both occasions, the complainant requested HA to provide the names of the doctors and nurses who provided treatment to his sister during her

hospitalisation. On 29 June 2001, PCC advised the complainant about their investigation findings and on that occasion provided the name of the concerned medical staff of one of the hospitals. As for the names of the healthcare professionals providing care to the complainant's sister in the other hospital, PCC advised the complainant to provide the hospital with further information to enable the hospital to identify the staff involved. As the complainant had not responded to PCC's request for further information, HA wrote to the complainant on 10 October 2001 to urge him to contact the hospital directly to follow up the case. As at todate, the complainant had not contacted the hospital concerned.

184. The complainant in March 2001 lodged a complaint with The Ombudsman against HA on the following :

- (a) HA had tried to mislead the complainant by telling him that the copies of the medical records he requested were too heavy and could not be delivered by registered mail;
- (b) HA had not properly sealed the three parcels sent by registered mail;
- (c) HA had refused to take back one registered parcel which had been opened, and two registered parcels which the complainant suspected to have been opened, from the police station and PO;
- (d) HA had failed to carefully inspect the medical records in the registered parcel as to whether they had been replaced, amended or damaged; and
- (e) HA had refused to provide the complainant with the names of the doctors and nurses who had provided treatment to his sister during her hospitalisation.

185. Following investigation, The Ombudsman considered that complaint points (a), (c) and (d) were unsubstantiated. For complaint point (b), The Ombudsman noted that HA had sealed the three registered parcels in accordance with HA's established standards in mailing medical records. The Ombudsman believed that the cellulose tape sealing the registered parcel had only slightly loosened. However, The Ombudsman was of the view that given

the sheer weight of the parcel, it would not be adequate to seal the parcel using half-inch wide cellulose tape. As such, the point was considered partially substantiated.

186. As regards complaint point (e), The Ombudsman considered that HA should not wait until PCC had made a ruling on the complaint case before providing the names of the concerned staff to the complainant. That said, The Ombudsman noted that HA had only delayed, but not refused, to provide the names to the complainant. The Ombudsman therefore found this part of the complaint partially substantiated. On the whole, the complaint was partially substantiated.

187. HA accepted the recommendations of The Ombudsman that it should handle the complainant's request for information separately, and should not await the completion of the investigation before releasing such information. In addition, in sending out a large number of medical records of considerable weight, HA will, as far as possible, properly pack the copies in a solid container and seal the parcel firmly with cellulose tapes.

Housing Department (HD)

Case No. 2000/2138 : Threatening staff upon implementation of the Voluntary Departure Scheme; misleading staff that no ceiling would be set on the number of units to be outsourced; and adopting double standards in favour of “shareholding staff” in allowing them to apply for reinstatement.

188. One HD staff lodged a complaint with The Ombudsman in September 2000 against HD management for :

- (a) conveying what he regarded as threatening messages to staff in the course of introducing the Voluntary Departure Scheme (VDS) that -
 - (i) for those who opted to remain in HD, they would not have any promotion prospect; and
 - (ii) they had to take up unconditionally any additional duties left behind by officers departing under the VDS.
- (b) misleading interested staff to form companies under the Management Buy-out (MBO) option during the MBO briefings and seminars before July 2000 into believing that HD would not have a quota in outsourcing Estate Management and Maintenance (EMM) service contracts through the MBO Option. The subsequent change in the MBO rules in July 2000 thwarted their plans in securing MBO contracts and led to their financial loss; and
- (c) applying double standards in allowing only MBO shareholders to revoke their option of departure but not MBO employees, after it altered the rules of the MBO.

189. After investigation, The Ombudsman concluded that complaint point (a) was unsubstantiated, points (b) and (c) partially substantiated. On the whole, the complaint was partially substantiated.

190. In response to The Ombudsman’s recommendations, HD has taken the following actions :

- (a) HD has already determined and promulgated the limit on the units to be transferred under the MBO option in the future roll-out of the Greater Private Sector Involvement in HA's estate management and maintenance services (PSI) Phase II programme in July 2001. Up to 1/3 of the total units to be outsourced in Phase II of PSI programme has been set aside for the MBO option; and
- (b) HD will, subject to two conditions being met, sympathetically consider any request for reinstatement from those officers who had confirmed acceptance of the voluntary departure arrangements in or before July 2000. Firstly, the staff should prove that the MBO companies they would have joined were not established because of the imposition of a ceiling on the number of outsourced units. Secondly, they should refund to HD the compensation they had received upon voluntary departure, together with interest earned.

Case No. 2000/2974, 2001/0199-0231 : Failing to arrange open tender for the removal of decoration debris in a new estate; and allowing the cleansing contractor to collect debris removal charges from tenants.

191. Members of the Concerned Group for an estate and some residents of the estate were not satisfied with HD for not arranging an open tender for the removal of decoration debris and disagreed with the requirement of paying debris removal charges before carrying out decoration works. They also considered the debris removal charge too high. Surveys had been carried out by the Concerned Group to support the request for a lower rate of debris removal charges. Although meetings had been conducted in October and November 2000 by HD to explain to the Concerned Group, the Group still felt aggrieved and lodged a complaint with The Ombudsman in November 2000 as follows :

- (a) HD did not arrange an open tender for the removal of decoration debris; and
- (b) HD required them to pay debris removal charge before carrying out decoration works.

192. After investigation, The Ombudsman concluded that complaint point (a) was partially substantiated and point (b) unsubstantiated. On the whole, the complaint was partially substantiated.

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

- (a) a new mechanism on setting debris removal charges has been introduced in newly completed estates; and
- (b) for the tenders, HD has to provide a Schedule of Costs for individual items including debris removal charges. Tenderers are allowed to insert an overall Tendered Percentage Adjustment on the Schedule of Costs. HD scores each item when vetting the tenders. The same tendering conditions apply to all tenderers, therefore allowing open and fair competition to ensure a competitive and reasonable debris removal charges for tenants.

Case No. 2001/2080 : Unreasonably requiring the complainant to divorce his separated wife as a condition of allowing him to register for interim housing.

194. The complainant was affected by the enforcement action on illegal rooftop structure. Bed space in a transit centre was arranged for the complainant on homeless grounds on 26 March 2001. On 9 July 2001, one-person interim housing flat was offered to the complainant. During the in-take, the staff of the interim housing office discovered that the information on the complainant's marital status provided in the General Waiting List, which is required for all incoming interim housing household, was different from that provided in the application for interim housing. In the former application, the complainant stated that he was separated from his spouse, whereas in the latter application, he put down "married". The complainant was therefore requested to provide relevant documents or make a declaration on his marital status to the effect that he would divorce in order to rectify the application discrepancies before his intake could be further processed. The complainant refused to comply with the request and lodged a complaint with The Ombudsman on 14

July 2001.

195. After investigation, The Ombudsman considered that HD did not indicate to the complainant that he “was only required to make a declaration of the actual circumstances”. Instead, HD requested the complainant to produce relevant documents to prove that he had separated/divorced with his spouse before he could be registered. On the other hand, the complainant had not been fully co-operative in explaining his personal views and difficulties to HD. Therefore, The Ombudsman considered that the complaint was partially substantiated.

196. HD accepted and implemented all the recommendations of The Ombudsman as follows :

- (a) HD has reviewed the eligibility of the complainant for interim housing and offered him an interim housing unit again. Intake procedures were completed on 7 March 2002; and
- (b) HD has formulated guidelines in the light of the experience gained from this case and distributed the guidelines to front line staff to follow.

Kowloon-Canton Railway Corporation (KCRC)

Case No. 2000/2834 : Failing to follow the ticket-checking procedure properly.

197. The complainant, a passenger on a KCRC train, lodged a complaint with The Ombudsman in June 2000 against KCRC for accusing him of riding the East Rail at Lo Wu Station by using an Octopus Card which had no entry record of the station before conducting a thorough investigation. He instituted civil proceedings in the court to claim against KCRC, but his claim was dismissed by the court and he was ordered to pay court costs.

198. After investigation, The Ombudsman concluded that the complaint was substantiated since the Octopus Card used by the complainant was found to have a record of an entry code of the Lo Wu Station and there was no evidence showing that the entry code was deliberately added at other stations after examination at Lo Wu Station.

199. In response to The Ombudsman's recommendation, KCRC has taken the following actions :

- (a) KCRC wrote to the complainant on 26 October 2001 to apologise for the inconvenience caused to him by this incident;
- (b) as regards the recommendation to compensate the complainant for the actual losses he had suffered, KCRC had decided not to recover from the complainant the court costs incurred in the district court's dismissal of his accusation and claim against KCRC; and
- (c) East Rail had revised the relevant procedural guidelines in April 2000. The new guideline requires the staff to print the record shown on the ticket verification device and file the printout in the Ticket Code/Octopus Reading Report for prosecution purpose. This has been incorporated into one of KCRC's ISO standards and full compliance is required from staff serving all East Rail stations, Customer Support Unit and Ticket Inspection Unit. In order to reinforce their understanding on KCRC By-law and the prosecution

procedure, 21 refresher courses for frontline staff had been arranged by the Training Section of the East Rail Operations Department since January 2001. KCRC would provide these courses on regular basis to familiarize and update staff's knowledge on the new prosecution procedure.

Lands Department (Lands D)

Case No. 2000/2403 : Refusing to take up the responsibility of constructing a ramp at the entrance of a resite village.

200. Please refer to Case No. 2000/3015 under the Architectural Services Department.

Case No. 2000/2529 : Improper handling of request for minor environmental beautification project and objection to construction of a village office raised by Mutual Aid Committee.

201. Please refer to Case No. 2000/2530 under the Home Affairs Department.

Case No. 2001/0122 : Failing to inform the Town Planning Board of the unauthorised operation of the concrete batching plant when the Board was considering the planning of the residential development; and failing to take action against the operation of the concrete batching plant.

202. The complainant, who lives next to a lot, lodged a complaint with The Ombudsman against Lands D in January 2001 for :

- (a) failing to inform the Town Planning Board of the unauthorised operation of the concrete batching plant when the Board was considering the planning of the residential development; and
- (b) allowing the lot to be used for a concrete batching plant, contrary to the lease conditions governing the lot granted in 1972.

203. Lands D was aware of the breach of the lease conditions in 1992 and had written to the lot owner at that time demanding the breach of lease conditions be rectified. However, the lot owner maintained that the use of the lot for concrete batching plant was not in breach of the user condition of the lease and therefore the breach was not rectified. Because of the low priority

given to lease enforcement and land control by Lands D, she did not take lease enforcement action until some time in late 2000.

204. After investigation, The Ombudsman concluded that as the Town Planning Board did not have any power to take lease enforcement action, Lands D should not be blamed for failing to inform the Board of the unauthorised operation of the concrete batching plant when the Board was considering the planning of the residential development. Hence, complaint point (a) was unsubstantiated. On the other hand, giving priority to other more important issues should not preclude Lands D from taking action in this case. The lack of action of Lands D on the breach of lease conditions since 1992 would undermine the Government's credibility in the eyes of the public. Therefore, complaint point (b) was substantiated. On the whole, the complaint was partially substantiated.

205. In response to The Ombudsman's recommendations, Lands D has taken the following actions :

- (a) Lands D has commenced action to re-enter the lot due to the failure of the lot owner to rectify the breach of the lease conditions;
- (b) Lands D has provided a written explanation to the complainant and will continue to provide him a written progress update at regular intervals until the case is completed; and
- (c) Lands D will consider a review of lease enforcement priorities taking into account the existing manpower constraints.

Case No. 2001/3012(I) : Mishandling request for information.

206. The complainant read a press release issued on 20 September 2001 by the Independent Commission Against Corruption (ICAC) that two Senior Land Executives (SLEs) of Lands D were involved in a case of conspiracy to accept advantages. The SLEs were named in the press release and one of them was handling the complainant's small house application.

207. The complainant then applied to Lands D for access to information

on :

- (a) whether the SLEs named were currently on duty; and
- (b) whether his small house application would continue to be handled by the SLE named in the ICAC press release.

208. District Lands Office/Tai Po informed the complainant of the name of the new case officer for his application, without disclosing further information. The complainant was dissatisfied with the reply and lodged a complaint with The Ombudsman in October 2001.

209. After investigation, The Ombudsman concluded that Lands D had responded positively to the complainant's second question, but failed to handle his first question properly in accordance with the Code on Access to Information (the Code) and this amounted to maladministration. On the whole, the complaint was partially substantiated.

210. Lands D had accepted and implemented all the recommendations of The Ombudsman as follows :

- (a) the information sought in the complainant's first question had been provided to the complainant;
- (b) a letter of apology had been issued to the complainant;
- (c) briefing on the Code had been conducted for staff concerned to ensure that they had a proper understanding of the provisions and the underlying principles of the Code; and
- (d) internal guidelines had been revised to give clearer guidelines on the implementation of the provisions of the Code.

Leisure and Cultural Services Department (LCSD)

Case No. 2001/0611 : Failing to take proper action to stop swimming clubs offering swimming classes at the public swimming area, thus causing obstruction to other swimmers.

211. The complainant alleged that he had lodged a complaint with LCSD in 2000 against swimming associations organizing swimming classes at a public swimming pool. LCSD replied that according to the Public Swimming Pools Regulation (the Regulation), no person within the precincts of a swimming pool, except with the permission of the Department, should engage in commercial activities including swimming lessons. If any swimming association was found conducting swimming lessons in a pool without permission, verbal warning would first be served. If the lessons continued despite the verbal warning, the persons would be removed from the swimming pool.

212. The complainant went to the same swimming pool in 2001 and found that the situation had not improved at all. While three lanes of the main pool had been hired out, the remaining areas of the main pool and the whole training pool were used by swimming associations for private coaching. However, the lifeguards at the pool did not take any action against the private coaching activities. The complainant considered that the swimming associations conducting private coaching activities in unreserved areas of the swimming pool had caused obstruction and inconvenience to other swimmers. Therefore, he lodged a complaint with The Ombudsman in March 2001.

213. After investigation, The Ombudsman considered that LCSD had not taken adequate measures to stop the private coaching activities in unreserved swimming areas from causing obstruction to other swimmers. The complaint was therefore substantiated.

214. In response to the recommendations of The Ombudsman, LCSD has taken the following actions :

- (a) guidelines on handling non-compliance with the Regulation have been issued to instruct the management of swimming pools to hold

meetings with regular users (i.e. hirers, swimming clubs and organizations) before the commencement of the swimming season. Regular users are reminded of the importance to abide by the Regulation, and are also clearly informed that LCSD may prosecute or remove offenders in accordance with the above Regulation;

- (b) posters publicising the activities that are not in compliance with the Regulation and the consequences of non-compliance have been put on display in all public swimming pools since 28 June 2002;
- (c) guidelines have been issued to staff of swimming pools on ways of enhancing communication. For example, if members of swimming organizations that have not hired any swimming lanes for conducting swimming lessons are found entering the swimming pool, the staff at the turnstiles should immediately inform the office and the pool staff, asking them to monitor closely if these persons' activities in the pool will cause nuisance to other swimmers;
- (d) guidelines have been issued to staff of all ranks, stating in detail the procedures for handling non-compliance with the Regulation and the actions to be taken when such cases are found. For example, verbal warning should be given immediately to the party concerned if his/her activities are found to have caused nuisance to other swimmers. Those who ignore these warnings are liable to prosecution in accordance with the Regulation;
- (e) guidelines have been issued to inform staff of the different circumstances under which Section 4(c) or Section 5 of the Regulation may be invoked for the prosecution of the offender(s). For example, Section 4 can be invoked if any act of a swimmer is likely to endanger, obstruct, cause inconvenience or annoy others. Section 5 can be invoked to prohibit any improper promotional activity in the precincts of the swimming pool; and
- (f) during its meeting with the Hong Kong Amateur Swimming Association (HKASA) in May 2002, LCSD again advised HKASA's affiliates to make use of those swimming pools with relatively low utilization. LCSD's lobbying efforts to enlist their co-operation will

continue.

215. In addition to the above, starting from 15 May 2002, LCSD has designated lap swimming lanes in public swimming pools for swimmers to swim in the same direction, thus reducing their chance of bumping into one another. Since its implementation, the arrangement has been generally accepted by the public. Moreover, LCSD formed a working group on 29 May 2002 comprising three veteran lecturers from two universities. The terms of reference of the working group include reviewing the priority of national sport associations in the booking of public swimming pools; finding out ways to improve the allocation of lanes in peak hours and to regulate the proper use of swimming pools more effectively; as well as balancing the needs of the public and those of the swimming organizations in the use of public swimming pools.

Case No. 2001/0857 : Unreasonable decision of rejecting applications for hire of facilities at an indoor game hall.

216. Over the past years, the complainants (a group of social dance enthusiasts) had successfully booked a dance room in one of LCSD's indoor games halls for practising social dance. However, in early 2001, their applications were rejected by LCSD as "the facility had already been hired out". The complainants subsequently learnt that the dance room had been allocated to a dance organization which had priority use of dance rooms under the booking system in force. However, according to the observations of the complainants, the organization concerned did not properly utilize the facility. They were therefore dissatisfied with LCSD for allowing the organization concerned to abuse the system, resulting in a waste of public resources. Thus, they lodged a complaint with The Ombudsman in April 2001.

217. After investigation, The Ombudsman concluded that there were loopholes in the existing booking policy and procedures of LCSD and LCSD had not monitored the use of facilities effectively. The complaint was therefore substantiated.

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

- (a) the booking policy has been reviewed and revised in consultation with the Department of Justice (DoJ), Independent Commission Against Corruption (ICAC), Education Department and relevant national sports associations. The new booking policy has been implemented since 1 April 2002. It has laid down clear conditions of use and required the hirers to fill in a standard application form stating clearly the details of booking, including the purpose of use, the expected number of participants, fees to be charged, etc. to ensure that the facilities booked are not misused;
- (b) LCSD is now consulting ICAC and DoJ on the inclusion of new penalty provisions into the booking policy. The proposed provisions include the forfeiture of the priority status of the relevant organizations in booking venues. Meanwhile, LCSD will formulate clear guidelines for venue staff so that they can enforce the provisions more effectively. The new provisions are expected to be in force by the end of 2002;
- (c) priority users concerned have been informed of the revised booking procedure and the requirement to provide detailed information of their bookings on a standard application form. Wide publicity will be conducted and notice will be given to the parties concerned before the new penalty clauses come into effect by the end of 2002;
- (d) venue staff have been instructed to tighten up the supervision and inspection of venues to ensure that facilities booked are properly used. For instance, more frequent inspections should be carried out to check whether the use of the venue by the hirer tallies with the information provided in the application form. If a hirer or an organization violates the conditions of use, venue staff will take appropriate actions to ensure that the use of facilities is not abused;
- (e) LCSD issued a letter on 6 May 2002 to the dance organization concerned to draw its attention to the new booking policy and conditions of use, including the minimum number of users to ensure that the booked facilities are utilized fully and properly; and
- (f) venue staff have been instructed to monitor closely the use of facilities

by the dance organization concerned.

219. In addition to the above, LCSD conducted a further review in June 2002 on the priority booking status of the three dance organizations. It was concluded that the dance organization mentioned in the complaint was not a non-profit making organization and had made little contribution to the promotion of dance. Its priority over other bona-fide associations in booking venues was therefore forfeited with effect from 1 September 2002.

Case No. 2001/1587 : Failing to monitor repair works of a restaurant.

220. Please refer to Case No. 2001/1588 under the Architectural Services Department.

Case No. 2001/2535 : Delay in giving the complainant a reply on whether he was entitled to long service payment and leave pay.

221. The complainant worked as a part-time camp counsellor at a LCSD Holiday Camp from August 1990 to February 2001. After leaving the job, he wrote to LCSD on 3 March 2001 and 17 June 2001 to enquire whether he would be granted long-service payment, annual leave pay and statutory holiday pay. LCSD gave him an interim reply on 13 March 2001, but failed to provide him with a further response. The complainant considered that LCSD had delayed processing his request and lodged a complaint with The Ombudsman in August 2001.

222. After investigation, The Ombudsman considered that the complaint was substantiated. In order to work out precisely what benefits were due to the complainant, LCSD had conducted a thorough check of his employment records and ascertained his actual working hours each week over a period of more than 10 years. This had caused a delay in replying to the complainant. On 8 October 2001, LCSD has given the complainant a substantive reply advising him that he would be granted annual leave pay and statutory holiday pay in line with the provisions of the Employment Ordinance.

223. In response to The Ombudman's recommendations, LCSD has taken

the following actions :

- (a) to improve the recording and tracking of weekly working hours of its part-time staff by developing a computerised record system which will enable officers in different districts and venues to input, verify and retrieve working hours of part-time staff. With this system (which is expected to be completed in 2003), LCSD will be able to determine whether the conditions of a “continuous employment” are met by part-time staff quickly and accurately. The benefits accrued to them in accordance with the Employment Ordinance can thus be worked out, and LCSD will thus be able to respond to claims for such benefits more speedily; and
- (b) the Leisure Services Branch of LCSD has put in place a mechanism to monitor the processing of similar cases to ensure that claimants are kept informed of the position of their claims on a regular basis.

Official Receiver's Office (ORO)

Case No. 2000/2694 : Delay in dealing with the disposition of a property vested in Official Receiver's Office as trustee and continued handling matters related to his assets as trustee even after the discharge of the bankruptcy order.

224. The complainant was declared bankrupt on 17 January 1992 and was discharged from bankruptcy on 1 April 1999. At the time of the complainant's discharge, ORO was still not able to dispose of the complainant's $\frac{1}{2}$ share of interest in a Home Ownership Scheme property (the Property) which had been vested in the Official Receiver (OR) as the trustee in bankruptcy since the complainant became bankrupt. The Property was purchased by the complainant and his father as joint tenants in November 1988. The complainant's father died in May 1999 and his share of interest in the Property was succeeded by the complainant's divorced wife under the deceased's will.

225. The complainant lodged a complaint with The Ombudsman against ORO in October 2000 as follows :

- (a) delay in the disposition of the $\frac{1}{2}$ share of the Property vested in him had prevented the complainant from successfully applying for Single Persons Home Ownership Scheme Flat and Home Purchase Scheme Loan; and
- (b) OR should not continue to handle the administration of the complainant's property as trustee after the discharge of the complainant from bankruptcy.

226. ORO explained that the Property, being a Home Ownership Scheme property and subject to a 5-year alienation restriction and an existing mortgage, was of limited value. The Property was also practically very difficult to be disposed of because OR had only $\frac{1}{2}$ share of the interest in it. ORO therefore concentrated its efforts more on attending to the realisation of the other more valuable assets of the complainant. ORO considered that complaint point (a) was unfounded because the complainant's original interest in the Property had already been transferred to OR on bankruptcy and he no longer owned any

interest in the Property. Regarding complaint point (b), ORO pointed out that under section 32(2) of the Bankruptcy Ordinance, discharge from bankruptcy had no effect on the functions of the trustee and the operation of the provisions of the Ordinance for the purposes of carrying out those functions.

227. After investigation, The Ombudsman concluded that complaint point (a) was partially substantiated because there was a prolonged period during which ORO had not taken or attempted to take follow up actions to deal with the Property. Complaint point (b) was unsubstantiated. On the whole, the complaint was partially substantiated.

228. In response to The Ombudsman's recommendations, ORO has written to the complainant's divorced wife asking if she is interested in taking up OR's ½ share interest in the Property. No response has been received from her so far and ORO would continue to pursue the matter. ORO has also written to the mortgagee of the Property for details of the outstanding mortgage loan in respect of the Property and is now seeking further information from the mortgagee on certain aspects of the loan. If ORO considers it necessary for legal action to be taken to resolve the matter later, she would consult the creditors to ascertain their wishes on how OR's ½ share interest in the Property should best be disposed of.

Case No. 2000/3031 : Acting on mistake of law and lack of consideration.

229. The complaint was against ORO in its implementation of the provisions of the Bankruptcy Ordinance relating to discharge from bankruptcy.

230. The court declared the complainant bankrupt in January 1989. Under the prevailing law, no limit was set on the duration of bankruptcy and a bankrupt wishing to be discharged from bankruptcy had to apply to court for an order for discharge. The law was subsequently amended and as from 1 April 1998 a bankrupt could be discharged after four years or up to a maximum of eight years.

231. The complainant considered that he was entitled to immediate discharge when the amendments came into operation. ORO however considered that the complainant's case was governed by the transitional

provision whereby he could only be discharged 12 months later. The matter was eventually brought before the courts for direction on a number of issues. However, the question as to when the complainant was entitled to be discharged was never decided by the courts. The complainant was issued with a certificate of discharge from bankruptcy in April 1999.

232. The complainant lodged a complaint with The Ombudsman in December 1998 that in the handling of his case, ORO had misinterpreted the relevant provisions of the Bankruptcy Ordinance, thereby delaying his discharge from bankruptcy for 12 months.

233. After investigation, The Ombudsman concluded that :

- (a) there was no evidence that ORO had acted on a mistake of law in the handling of the complainant's application for discharge from bankruptcy;
- (b) in respect of the application to the court for direction, ORO had not given sufficient consideration to the complainant's interests;
- (c) in objecting to the complainant's application for early hearing of the appeal, ORO had not acted reasonably; and
- (d) on other administrative aspects of the complainant's case, ORO has not acted improperly.

234. The Ombudsman considered that the complaint against ORO was partially substantiated. Pursuant to The Ombudsman's recommendations, ORO sent a written apology to the complainant and agreed that more consideration would be given to the interests of its clients in future cases.

Post Office (PO)

Case No. 2001/0725 : Failing to handle three post items properly; failing to provide the complainant with the names and numbers of the Post Office staff concerned; unwilling to accompany him to a police station to report the alleged damage or deliberate opening of three post items; failing to arrange senior management of the Post Office to interview him; delay in delivering another two post items to him; and providing false information to him in its reply in response to his complaint.

235. Three registered mail items were posted by a hospital on 16 March 2001 to the complainant. As the complainant's shop could be closed during the delivery hours, the delivery postman contacted the complainant on that day for arranging delivery of the items on the following working day. This was meant to ensure that the complainant would be available to receive the items. The complainant agreed to the arrangement.

236. On the following working day, another delivery postman was assigned to deliver the items to the complainant, and he had shown his staff card to the complainant upon arrival. The complainant suspected that the post items had been opened by others and refused to accept them or acknowledge on the delivery receipt. Therefore, the delivery postman took the items back to the delivery office and reported the situation to his postal inspector. To understand the reasons of the refusal, the postal inspector visited the complainant in person on the same day with the items and had provided the complainant his name card. The complainant said that no stamping of official chop of the hospital concerned or PO was found on the envelope seals. He suspected that they had been opened by others and refused to accept them. He then requested the postal inspector to accompany him to the police station for reporting the alleged opening of the mails. Under the general practice of PO, if the recipient refused to accept the mail items, such items would be returned to the sender. Therefore, the postal inspector did not immediately agree to go with the complainant, but he finally did so in order to provide good customer service.

237. The duty officer of the police station recorded the details of the case, and the hospital had sent a representative to the police station to inspect the

items for any loss of content. The hospital representative then certified that there was no loss of content but the complainant still refused to take the items.

238. The postal inspector then brought the items back to the delivery office. The complainant went along with him and requested to see his supervisor who had already signed off. The complainant then requested to see a more senior officer who happened to be engaged in other commitments and was not available to see him. According to PO practice, undeliverable mail items would be returned to the sender on the next working day. However, as the complainant demanded immediate return of the items to the sender, the postal inspector therefore wrote "REFUSED" on the items and assigned a postman to deliver them to the hospital on the same day.

239. The Hospital Authority later posted a registered mail to the complainant on 12 April 2001 with a postage label dated 11 April 2001. As it was Easter holiday from 13 to 16 April, the item was delivered to the complainant on 17 April. The complainant then complained to PO about late delivery. PO sent a written reply to the complainant on 1 June 2001. In order to enhance the communication with the complainant and avoid further misunderstanding, such reply was not sent as an ordinary mail. The reply was delivered by a postal inspector in person to the complainant on 5 June 2001. It was stated in the reply that the complainant's shop was sometimes closed for business. The complainant considered this as false information as he interpreted the letter as meaning that his shop had ceased business.

240. In the light of the above, the complainant lodged three complaints with The Ombudsman on 20 March, 20 April and 5 June 2001 against PO on the following:

- (a) failing to handle properly three registered mail items posted by a hospital on 16 March 2001. The alleged improper handling included delivery delay and failure to stamp with official chop on the sealing tapes of the items. One of the items was opened before delivery and the remaining were suspected to be opened as well;
- (b) refusing to provide the names and numbers of the staff concerned;
- (c) the staff being unwilling to accompany the complainant to report the

alleged opening of the items to the police;

- (d) refusing to arrange an interview for the complainant with the supervisor of the delivery office and other senior management;
- (e) delaying the delivery of a registered mail with a datestamp of 11 April; and
- (f) delaying the delivery of a letter dated 1 June and that the reply was with false information.

241. After investigation, The Ombudsman concluded that complaint point (a) was partially substantiated when PO staff had forgotten to impress the official chop on the sealing tapes of the items. The remaining allegations were not substantiated. On the whole, the complaint was partially substantiated.

242. In response to The Ombudsman's recommendation that PO should remind its staff regularly of the proper procedures in handling registered mail, in accordance with the laid down procedures, PO had issued a memorandum to all postmasters on 12 March 2002 reminding the staff of the proper procedures in the processing of registered mail. Briefing sessions were also conducted to remind the staff of the relevant procedures. Supervisory checks were being conducted as part of the postal operations control procedures.

Printing Department (PD)

Case No. 2000/3110 : Refusing to change the format of a gazette notice, resulting in the complainant having to pay a higher fee and trying to shift responsibility in its reply to his enquiry.

243. The complainant applied to PD for publishing a notice of trade mark registration in the Gazette. On receipt of PD's proof, he felt that the format should be changed so as to reduce the size of the notice and reduce the fee payable. PD staff turned down his request on grounds that the format was specified by the Intellectual Property Department (IPD). As the format had been in use for over 40 years, it could not be changed at will.

244. Upon further enquiry with IPD, the complainant discovered that IPD had not specified any format for the notices. He therefore complained to The Ombudsman in December 2000 that PD had not only refused his request but also shifted the responsibility to IPD.

245. In response to The Ombudsman, PD explained that for trade mark registration, applicants were required to publish a notice in the Gazette to draw the attention of other trade mark owners to the trade mark under application so that objection might be raised, if necessary. Therefore, the notice had to be printed in a clear format to enable readers to check whether the trade mark concerned was in contravention with their intellectual property. PD had refused the complainant's request because the change could cause confusion to the readers and compromise the legitimate interests of other trader mark owners. PD nevertheless admitted that the PD staff concerned had a misconception and therefore wrongly referred the enquiry to IPD.

246. The Ombudsman accepted that it was reasonable for PD to refuse the complainant's request. However, The Ombudsman considered that the PD staff concerned should have sought clarification before referring the complainant's enquiry to IPD. The Ombudsman also considered it unsatisfactory for the PD staff concerned to only address the question of cost but did not explain the demerits of the request in his reply to the complainant. The complaint was considered partially substantiated.

247. PD accepted The Ombudsman's recommendation and has sent the complainant a letter of apology. In addition, to clarify misconceptions, PD has briefed the relevant staff on the rationale for adopting a standard format for trade mark notices. PD has also improved its mechanism and procedures for handling enquiries by introducing a dedicated hotline and e-mail address manned by designated officers.

Rating and Valuation Department (RVD)

Case No. 2001/0017 : Delay in assessing the Government rent payable for a sold property.

248. The complainant sold his flat on 27 January 1999. In the subject transaction, the complainant's solicitors (the solicitors) had retained a sum of \$7,000 as security money for ~~rates~~Government rent.

249. The complainant through his solicitors wrote to RVD on 29 December 1998 requesting a demand for rates in respect of the subject property since 20 December 1993. As the property was exempted from assessment to rates under section 36 (1)(c) of the Rating Ordinance, staff of RVD had accorded low priority to the request but overlooked to give a reply to the solicitors.

250. In response to the solicitors' further enquiries on 24 May 1999 about the progress of the Government rent assessment, RVD replied on 14 June 1999 advising that the property was not liable to rates but ~~it~~ would be subject to Government rent. RVD also informed the solicitors that they would notify the owner or occupier direct when the assessment was completed.

251. The solicitors wrote again to RVD on 27 October 1999 and 20 May 2000 enquiring the progress of the Government rent assessment. RVD replied respectively on 10 November 1999 and 1 June 2000 advising that the assessment work had not yet commenced. However, RVD reiterated that the relevant owners/occupiers would be informed direct once the assessment work was completed.

252. As there were over 600 villages in the New Territories subject to Government rent assessment with effect from 28 June 1997, RVD had to prioritise assessment work taking into account the location of the properties and the results of the consultation with the village representatives. As a result, RVD was unable to advise the solicitors the exact date when the assessment for the subject property would be completed.

253. RVD completed the assessment for the subject property in March 2001 and issued the demand for Government rent to the complainant on 30

March 2001.

254. In respect of the delay in assessing the Government rent in this case, the complainant lodged a complaint against RVD with The Ombudsman in January 2001. The Ombudsman considered that RVD had omitted in replying to the solicitors' enquiries on 29 December 1998. RVD had also failed to reply to the Solicitors' letter dated 24 May 1999 within 10-days ~~rule~~ as stipulated in the departmental instructions.

255. The Ombudsman concluded that the complaint was partially substantiated. RVD accepted and implemented The Ombudsman recommendations as follows :

(a) in respect of the delay in replying to the solicitors' letter of 29 December 1998, a letter of apology was sent by RVD to the complainant on 29 June 2001; and

~~(b)~~ RVD staff has been reminded to give a reply to incoming correspondence within 10 days as stipulated in the departmental instructions.

~~(c)~~ ~~(b)~~ RVD has also revised the reply to enquiries on Government rent assessment by including a brief explanation on the progress and an estimated completion date.

Registration and Electoral Office (REO)

Case No. 2001/1567 : Failing to update the electoral register despite his repeated complaints, resulting in misdirection of its correspondence to the complainant's residential address.

256. The complainant alleged that on several occasions in the past six to seven years, he had returned to REO the electoral mails which were addressed to the former residents of his address. He complained to The Ombudsman in July 2002 that REO did not take any follow-up action to update the relevant electoral records and did not entertain his telephone request to update the relevant electoral records.

257. After investigation, The Ombudsman concluded that the complaint was unsubstantiated. REO has accepted and implemented all the recommendations of The Ombudsman as follows :

- (a) within the confines of the legislation, handle flexibly telephone requests from the public to update the former residents electoral records;
- (b) include appropriate messages on the envelopes to the registered electors with a view to reminding new residents to return the mail to REO when the registered electors no longer live at their registered residential addresses;
- (c) initiate inquiries in the light of information gathered from returned electoral mails apart from returned poll cards;
- (d) make inquiries as soon as possible for the remaining registered electors whose addresses were found incorrect during the 2000 household visit exercise;
- (e) where there are reasons to believe that the principal residential addresses of the registered electors are incorrect, add markings against such registrations in REO's computer system before the publication of the next final register so that REO can avoid sending mails or

publicity leaflets (except for those items required by law) to these registered electors;

- (f) review the existing electoral timetable and procedures in conjunction with bureaux and departments concerned to see if the voter registration campaign, measures on returning mails and the arrangements for making inquiries can tie in with one another, or whether there is any room for improvement;
- (g) strengthen publicity appealing to those electors who have moved to a new residential address to report to REO their residential address; and
- (h) step up civic education to urge electors to treasure their voting rights.

Social Welfare Department (SWD)

Case No. 2001/0921 : Disrespectful to complainant's late father by addressing him inappropriately in the Notification of Suspension of Higher Old Age Allowance.

258. Mr. A, the late father of the complainant received Higher Old Age Allowance (HOAA) with effect from 1 September 1988. Through a regular data matching exercise conducted between SWD and the Immigration Department, Mr. A was found to have passed away on 11 March 2001. Mr. A's HOAA was hence stopped by SWD from 1 April 2001 onwards and a "Notification of Suspension of Higher Old Age Allowance" generated automatically by the Computerised Social Security System was issued to the recipient.

259. The complainant received the notification letter addressed to her late father on 3 April 2001. As she considered that the word "you" used in the notification letter was inappropriate and disrespectful to her late father, she lodged a complaint with The Ombudsman on 9 April 2001.

260. Following investigation, The Ombudsman considered the complaint substantiated.

261. In response to the complaint, SWD has already amended the notification letter to deceased HOAA recipients. In the revised notification letter generated automatically by the computer with effect from 1 June 2001, the addressee is changed to the deceased recipient's family member/relative and the word "you" for addressing the deceased recipient is changed to "applicant". Similar amendment has also been made to the notification letters issued to deceased recipients of Comprehensive Social Security Assistance and Disability Allowance. In addition, SWD has updated the internal guidelines for staff's reference.

262. SWD has accepted and implemented The Ombudsman's recommendation by issuing a letter of apology to the complainant on 29 August 2001.

Case No. 2001/1254 : Delay the processing of an application to resume Comprehensive Social Security Assistance payment; and impropriety of its staff in offering money to the complainant in private to exchange for the withdrawal of an application for burial grant and closing an application for resumption of Comprehensive Social Security Assistance.

263. Mr. A, the late father of the complainant, had been staying in an aged home and received Comprehensive Social Security Assistance (CSSA) with effect from 12 July 1999. In a computer data matching exercise between SWD and the Land Registry in March 2000, Mr. A was found to be the registered owner of a public housing unit under the Housing Authority (HA). As the total value of Mr. A's assets, including that of the property, might have exceeded the permissible limit and therefore affected his eligibility for CSSA, payment was suspended as from 12 April 2000, pending further investigation.

264. During an interview on 15 May 2000, the responsible caseworker learned from the complainant that the said property was actually paid for and owned by him although his father was the registered owner on paper. The caseworker passed the case to her supervising officer Mr. B and suggested him to seek approval from the Senior Social Security Officer (SSSO) to disregard the value of the property so as to resume CSSA to Mr. A.

265. On 21 August 2000, the complainant turned up to enquire about the progress of the case. He was interviewed by both the caseworker and Mr. B. Mr. B suggested him to change the ownership of the property through HA. On 29 August 2000, the complainant informed the caseworker that his request for change of ownership was turned down by HA. The caseworker again submitted the case to Mr. B for follow-up action.

266. Thereafter, the complainant contacted the caseworker several times to enquire about the progress of the case. Each time, the caseworker had informed Mr. B to follow up the case. On 2 April 2001, the complainant informed the caseworker that his father had died on 1 April 2001 and he wished to apply for burial grant. On 6 April 2001, the complainant went to the SWD office and he was interviewed by Mr. B alone and signed an undertaking to give up his application for burial grant. On 18 April 2001, Mr. B passed the undertaking to the caseworker and instructed her to close the case.

267. The complainant approached The Ombudsman on 25 April 2001 to lodge the following complaints :

- (a) SWD had delayed action in processing his father's application to resume CSSA payment; and
- (b) Mr. B had given him \$10,000 in private to exchange for his agreement, by signing an undertaking, to withdraw the application for burial grant and close his father's application for resumption of CSSA payment.

268. After investigation, The Ombudsman considered that complaint point (a) was substantiated but point (b) unsubstantiated due to lack of concrete evidence. On the whole, the complaint was partially substantiated.

269. The Ombudsman noted that the Director of Social Welfare had apologized to the complainant for the improper handling of the case and resumed the CSSA payment and burial grant. The matter was thus settled. Besides, the Computerised Social Security System of SWD implemented in October 2000 has facilitated supervising officers to monitor the work of frontline staff. The Ombudsman hoped that the existing mechanism could prevent occurrence of similar incidents. The Ombudsman also agreed with SWD's analysis that the complaint was caused by the fault of individual staff and was not directly related to SWD's work procedures.

270. In response to The Ombudsman's recommendations, SWD has implemented the following :

- (a) SWD has amended the Social Security Manual of Procedures to set out clearly the guideline that SSSOs have the discretionary power to disregard the value of a property in case the applicant, though being the registered owner on paper, can produce sufficient evidence to prove that he has never contributed any money towards the purchase of the property and is not the actual owner. A circular was issued on 17 December 2001 to inform staff to follow the guideline;
- (b) SWD issued a circular on 20 November 2001 to instruct the Supervisors of all Social Security Field Units to make use of

computer reports to conduct regular checks on cases handled by their subordinates, in order to avoid delay in processing cases; and

- (c) regarding the allegation that Mr. B had given \$10,000 to the complainant in private, the SSSO concerned had contacted the complainant for further investigation. The complainant claimed that at the time of the incident, only he and Mr. B were present. There was no third party involved and he could not produce any other evidence to support his allegation. In order to have a deeper understanding of the case, individual interviews were also arranged with other relevant staff, including the responsible caseworker and Mr. B's immediate supervisor. However, they declared that they did not know whether the complainant's allegation was true or not. SWD had therefore decided to end the investigation.

Student Financial Assistance Agency (SFAA)

Case No. 2000/2720 : Inefficiency and redtape in handling Non-means Tested Loan Scheme applications.

271. The complainants were a mother and her daughter who had obtained a Non-means Tested (NLS) loan in the 1999/2000 academic year and applied for a new loan in 2000/01. SFAA approved the new application and notified the daughter on 11 September 2000 that she should submit the requisite loan and indemnifier undertakings and supporting documents for processing by 22 September 2000. The mother, who had been authorised by her daughter to submit the documents, went to SFAA in the afternoon of 22 September 2000. The mother was dissatisfied with the counter service provided on that day because only two counters were open while there were some 20 clients waiting in the queue. Being in a hurry, she asked for an immediate service which was not acceded to. When her turn came, she became disgruntled by the way the documents were meticulously checked. As a number of corrections and signatures in the loan documents were required, the application could not be immediately processed further. On 25 September 2000, the daughter returned to SFAA to resubmit the documents, only to find that there was still one missing signature and therefore returned in the afternoon to complete the process. However on that occasion, the photocopies of identity cards were found to have been marked with the word "Sample", obscuring some important information. Further copies of the identity cards had to be provided. Nonetheless, the loan documents were accepted pending receipt of the photocopies by post. In the light of their unpleasant encounters, the complainants lodged their complaint with The Ombudsman in October 2000, blaming SFAA for gross incompetence, unsatisfactory customer service, poor attitude and rigid processing procedures.

272. After investigation, The Ombudsman considered that the complaint was partially substantiated as SFAA had room for improvement in better deploying staff to man its counter service, provision of clearer instructions to applicants and staff in completing forms and streamlining the vetting procedures. On the other hand, The Ombudsman also considered that being in a hurry was no excuse for the mother to seek immediate service ahead of others in the queue, and all applicants alike had the obligation to provide the requisite

information accurately. Their cooperation was essential for smooth processing of applications by SFAA.

273. In response to The Ombudsman's recommendations, SFAA has taken follow-up actions as below :

- (a) the scope for streamlining and simplifying vetting procedures is limited where amendments/omissions in a loan document are required/identified but rectification could not be done on the spot by the person concerned. Nevertheless, in handling illegible copies of identity cards of loan applicants who have applied for loans before, staff have been instructed to provisionally accept the applications pending internal records checks. If identity card copies are already held, fresh legible copy of the identity card will not be required. However, should checks reveal that previous identity card copies are not held, loan applicants will be required to resubmit legible copies of identity cards, which may be sent by post. This measure aims at reducing inconvenience to customers as far as practicable;
- (b) to provide better guidance on the completion of loan documents, clear directional signage has been put up to guide applicants to obtain service tickets and where to line up. A designated counter to answer general enquiries has also been established. Large posters have been displayed at the reception hall to demonstrate the proper way to complete loan documents;
- (c) regular reminders will be issued to counter staff on the importance of checking thoroughly for errors and discrepancies in one go to avoid unnecessary visits by applicants;
- (d) requirements concerning identity card copy have been incorporated in the internal guidelines for counter staff as well as in SFAA's "Checklists for Submission of Loan Documents" for NLS loan applicants to avoid misunderstanding; and
- (e) counter staff have been and will continue to be reminded on a regular basis of the need to be courteous and patient in serving the public and answering enquiries through regular briefings, monthly duty rosters

and circular reminders.

274. Apart from the measures above, SFAA has also strengthened its counter service since November 2000 and has been closely monitoring the manpower deployment to avoid recurrence of similar incidents. In addition, the timetable for deadlines for submission of loan documents has been rescheduled as far as practicable to avoid bunching of loan document submissions at the counters.

Television and Entertainment Licensing Authority (TELA)

Case No. 2000/1615 : Delay in handling the complainant's application for an Amusement Game Centre Licence.

275. The complainant in July 2000 lodged a complaint with The Ombudsman against TELA for delaying his application for an Amusement Game Centre (AGC) Licence.

276. The application was made in the wake of another application at the same address. According to a "priority rule" adopted by TELA, if there is one prior application made at the same place or within a 100-m area, the later applications will not be processed until the prior application is disposed of. Normally, an application will take five to 15 weeks for TELA to process depending on the complexity. If an appeal is lodged after this pledged time, the processing time will be extended to another six to nine months pending hearing of the case by the AGC Appeal Board. The complainant's case fell into this category as an appeal was lodged by the applicant of the prior application. As a result, TELA could not process his case earlier despite repeated requests.

277. The complainant considered that TELA should not wait for the result of the appeal made by the prior applicant because the complainant had already obtained the lease of the same address instead of the prior applicant. Owing to the "priority rule" and the policy of not intervening in lease matters, TELA did not accede to the complainant's request for departure from the normal procedure to handle his application. The complainant was also dissatisfied with the wording of two advisory letters. Although the wording was designed to advise all applicants who did not wish to await their turns to consider withdrawing their applications, the complainant felt that it gave a signal of refusal or unwillingness of TELA to process his application.

278. Taking all facts into account, The Ombudsman considered that TELA was correct to maintain a fair system to all applicants through the "priority rule". The Ombudsman concurred with TELA's policy of refraining from involvement with lease matters between applicants and their prospective landlords. The Ombudsman concluded that the complaint was

unsubstantiated.

279. Nevertheless, The Ombudsman suggested that in order to avoid possible misunderstanding on the part of applicants, the relevant wording in the standard advisory letter should be amended to convey the intended message accurately and to avoid misunderstanding. She recommended that the wording should read as follows :

“If you are no longer interested in applying for the licence operating an amusement game centre at the proposed premises, you are reminded to inform Television and Entertainment Licensing Authority as soon as possible, so that we can stop processing your application and other interested parties can submit their applications to operate a game centre at the same premises or any premises within the 100-meter distance of the proposed premises.”

280. In addition, The Ombudsman further recommended that the Home Affairs Bureau (HAB), being the Secretariat of the AGC Appeal Board, should strive to maintain close liaison with members of the Appeal Board in order to expedite the hearing process.

281. TELA has accepted The Ombudsman’s recommendation. The revised wording had already been incorporated in the advisory letter. HAB would also keep a close liaison with the Appeal Board so as to expedite the hearing process.

Transport Department (TD)

Case No. 2000/2279 : Failing to plan properly the proposed traffic management scheme at a lay-by, thus delaying the implementation of long-term solution to the traffic problem in the affected location.

282. In October 1999, the complainant wrote to TD complaining about the obstruction caused by illegally parked vehicles along a lay-by. School buses had to park outside the lay-by for the boarding of students.

283. When the complaint was received, TD considered that the problem should best be resolved by Police enforcement action against the illegally parked vehicles. This, however, could not totally resolve the problem and TD resorted to formulating a traffic management scheme to rectify loading and unloading activities at the lay-by in December 1999. The scheme involved the widening of the carriageway near the exit of the lay-by, which necessitated trimming down an adjacent traffic island. TD considered it preferable to carry out the works during summer holidays so as to minimise the inconvenience to the public, including the students.

284. The traffic management scheme was circulated to departments concerned in March 2000. TD was aware that such widening of the carriageway would require removal of the planters on the traffic island and had alerted the Home Affairs Department (HAD) and the Highways Department (HyD) during circulation of the scheme in March 2000. In response, HAD advised that it would take about two months to remove the planters. A works request was issued by TD in early July 2000 to HyD with a requirement to liaise with HAD for the removal of the planters. HAD commenced their removal works on 21 July 2000 and indicated on 11 August 2000 that the estimated time for the removal works was three months. The site was only ready for HyD to carry out the required works when planters were removed by HAD on 1 December 2000.

285. The complainant lodged a complaint with The Ombudsman in October 2000 that TD, as the lead department and the initiator of the traffic management scheme, had failed to inform HyD and HAD properly of the matters of concern thus causing delay to the works. After investigation, The

Ombudsman concluded that the complaint was substantiated.

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

- (a) a letter of apology was sent to the complainant on 28 March 2002 for the delay in the implementation of the traffic management scheme;
- (b) a circular memo dated 22 March 2002 was sent to all the regional offices of TD, reminding them to state clearly special matters of concern to other departments during the planning stage of traffic management schemes, and to set realistic target commencement and completion dates in consultation with works department; and
- (c) commencement and completion dates are shown in existing Works Request Forms. Also, the Works Request Form has been amended to include a section titled "Matters for Special Attention".

Treasury

Case No. 2001/1303 : Failing to carry out the attachment of income order properly.

287. Please refer to Case No. 2001/1304 under the Correctional Services Department.

Water Supplies Department (WSD)

Case No. 2000/3006 : Causing damages to the complainant's crops and fish ponds due to bursting of water mains.

288. The complainant is a fish pond renter. A pipe burst incident occurred near the complainant's fish ponds on 15 June 1999. The burst had caused damages to the fish ponds and the complainant claimed compensation from WSD in July 1999. Hence, WSD liaised with other departments concerned to examine the extent of damages, to evaluate the claims submitted by the complainant and to sort out any possible means to assist him in resuming his normal business as soon as possible.

289. Legal advice from the Department of Justice (DoJ) was sought as regards the Government's liability in August 1999. On the other hand, the complainant maintained his stance that the Government should compensate his damages and he refused all other forms of assistance on compassionate grounds. He also expressed that he would repair his damaged fishponds by himself if he received compensation from the Government. This had caused delay in rehabilitation of the fishponds by WSD.

290. Subsequently, the legal advice obtained by WSD was that the Government should not be held liable for any damages in this case. After the complainant was notified about such decision, he lodged a complaint with The Ombudsman in November 2000 on the following :

- (a) WSD refused to give him any compensation for the damages to his fish pond, red worm pond and lotus rhizome farm caused by the burst of the two WSD's water pipes in June 1999; and
- (b) WSD had not properly repaired the ponds' banks as damaged by the rush of water.

291. The complainant expressed at that time that he was in financial difficulty and was unable to repair the damaged fishponds. The Government therefore granted him ex-gratia allowance on compassionate grounds and on the basis of without acceptance of liability. In the course of the negotiation

process, WSD also assisted him to repair the damaged fishponds.

292. After investigation, The Ombudsman considered that WSD had not actively followed up the complaint and there was considerable delay before the case was finally settled. Therefore, The Ombudsman concluded that complaint point (a) was partially substantiated and point (b) unsubstantiated. On the whole, the complaint was partially substantiated.

293. In response to The Ombudsman's recommendation, WSD has taken the following actions :

- (a) a letter of apology was delivered to the complainant on 27 June 2001; and
- (b) a review report recommending improvement measures in handling similar cases in future was prepared and comments was invited from District Office (North), DoJ and Agriculture, Fisheries and Conservation Department. The review report was finalized in mid August 2001 and copies of the report were passed to the departments concerned for reference in handling similar claims.

Case No. 2001/1479 : Ill-manner of staff and failing to handle the complainant's water complaint.

294. The complainant saw some water main works near his premise and there was no signboard at the work site. He later noted deterioration in the quality of the water supplied to his premise. When he called WSD's Customer Telephone Enquiry Centre (CTEC) at 1:15 a.m. on 28 April 2001, he was told that there was no record of such works. WSD staff only arrived at the site at 8:50 a.m. in the same morning to resolve the problem. The complainant subsequently telephoned WSD twice but the officers who received his calls did not handle his complaints politely. Also, he faxed two complaint letters to WSD but only received a reply a month later.

295. The complainant therefore lodged a complaint with The Ombudsman on 22 May 2001 saying that WSD did not handle his complaint letters and follow up on his complaints properly.

296. After investigation, The Ombudsman considered that the problem could have been resolved and the nuisance caused to the complainant alleviated at an earlier time if staff of WSD had been more pro-active in offering assistance to the complainant. Also, there were apparently shortcomings in WSD's handling of the complainant's complaint letters. Therefore, The Ombudsman concluded that the complaint was partially substantiated.

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

- (a) a letter of apology was issued to the complainant on 19 November 2001;
- (b) the staff concerned were reminded to answer the customers clearly and with courtesy;
- (c) the procedures for recording site works in WSD CTEC were reviewed and improved; and
- (d) the procedures for handling multi-divisional complaints have been reviewed and are being amended.

Part II
Direct Investigation Cases

Health, Welfare and Food Bureau (HWFB)

The Mechanism for Enforcing the Prohibition of Smoking in No Smoking Areas and Public Transport Carriers

298. In view of community concerns over the adequacy and effectiveness of the Government's enforcement action against illegal smoking, particularly in restaurants, The Ombudsman initiated in late May 2001 a direct investigation into the mechanism for enforcing Part II of the Smoking (Public Health) Ordinance (the Ordinance), which provides for the designation of no smoking areas in public places and on public transport carriers. The Ombudsman completed the investigation and published the Investigation Report in March 2002.

299. After investigation, The Ombudsman concluded that :

- (a) Government action in enforcing Part II of the Ordinance had not been positive or rigorous enough;
- (b) deficiencies both in the enforcement mechanism and in the law should be redressed; and
- (c) the effectiveness of Government's anti-smoking policy had been undermined as a result.

300. The Ombudsman has then made a number of recommendations and HWFB's response is as follow :

- (a) the Ordinance might not be the most appropriate venue for setting out the way of handling the personal particulars of offenders or the reporting procedures as these are mainly administrative matters which could be suitably handled by means of guideline or information

booklets. In any case, the guidelines provided by the Tobacco Control Office (TCO) for venue management include what to do with the personal particulars of the smoking offenders and officers of TCO would also give verbal advice to them on this issue;

- (b) instead of making it an offence for venue management failing to enforce the smoking ban, HWFB will continue to adopt an approach which educates the venue management their responsibilities and the power conferred upon them, with a view to enlisting their support and co-operation. In addition, they will be suitably empowered to facilitate discharge of their enforcement duties through the provisions in the legislation and ongoing communication with and support by TCO;
- (c) as regards the issue on specifying clearly in the Ordinance the public agencies or officers responsible for enforcing the provisions in Part II, HWFB will follow up in the context of the future inter-departmental coordination group described at point (j) below;
- (d) HWFB will examine the feasibility and desirability of the proposal of making the enforcement of the ban on smoking a licensing condition of restaurants;
- (e) since May 2002, written guidelines on how to enforce the no smoking restrictions have been prepared by TCO and included in the education package provided for the venue management of no smoking areas. The guidelines will also be accessible through the TCO website which is now being developed;
- (f) starting August 2002, TCO will be collaborating with the Employees Retraining Board to provide training for security guards on tobacco control enforcement in shopping malls, housing estates and other public indoor premises. The legal requirement, enforcement procedures and duties of the security guards will be emphasized. In addition, information on the legal requirement and enforcement duties, education pamphlets, no smoking signs and other materials had been distributed to all major property management companies through the Hong Kong Association of Property Management Companies. 90

exhibitions were also conducted by TCO in shopping malls and MTR stations in the past 18 months and over 170,000 people were given one-to-one anti-smoking health education.

Regarding restaurants, since the establishment of TCO in February 2001, its officers had visited almost all the restaurants with 200 or more seats. Education and assistance had been provided for restaurant staff to facilitate their enforcement of the relevant requirements stipulated in the Ordinance. Officers of TCO will continue to visit these restaurants to monitor their level of law compliance and reinforce the education messages as appropriate.

HWFB will continue to liaise with TCO, the Hong Kong Council on Smoking and Health (COSH) and other government departments on the strengthening of publicity, education and training aspects of tobacco control for operators and management of no smoking public premises;

- (g) at present, officers of TCO are not empowered to prosecute smoking offenders. HWFB intends to rectify this deficiency by amending the Ordinance to the effect that public officers, particularly staff of TCO, would be delegated proper authority to discharge their enforcement duties more competently and effectively. As foreshadowed in the earlier Consultation Document, HWFB intends to step up enforcement actions through TCO, with the support and assistance from the Police, to prosecute smoking offenders in selected “black spots” with a view to achieving a deterrent effect. That said, given the wide scope of enforcement, full cooperation and support from individual operators of smoke-free public premises are needed for successful enforcement in a sustainable manner;
- (h) HWFB will address the issue on reviewing the division of responsibilities in enforcing Part II of the Ordinance in consultation with relevant bureaux and departments in the context of the future inter-departmental coordination group described at point (j) below;
- (i) TCO has been in contact with different government departments, namely, the Food and Environmental Hygiene Department (FEHD),

Environmental Protection Department, Housing Department, Police, Department of Justice, etc., to work out a referral system concerning public complaints on smoking related matters. TCO is also compiling the statistics on complaints received by different departments and organizations;

- (j) HWFB will set up an inter-departmental co-ordination group before the enactment of the amendment bill to work out the future enforcement arrangements;
- (k) one of the main objectives in the current legislative exercise is to bring about more effective enforcement of the various provisions in the Ordinance through an inter-departmental effort. Against this background, while the enforcement of the Ordinance falls outside the core duties of Health Inspectors of FEHD in their regular inspection of food business premises, HWFB will further explore with FEHD the scope for their assistance in the enforcement duties in the context of the future inter-departmental coordination group;
- (l) as an ongoing effort, COSH will continue to appeal for more voluntary participation in indoor smoking ban through publicity and other theme-based promotional activities;
- (m) in line with its mandate under the COSH Ordinance, COSH has been taking the lead in soliciting support of different businesses in voluntary smoking ban. Apart from arranging smoke-free workplace seminars, it has since 2000 organized an annual No-smoking Day in the Workplace Campaign with a view to promoting public awareness of smoke-free environment in workplaces and encouraging the adoption of smoke-free policies. This year, a total of 535 new organizations have signed up to adopt a smoke-free policy in their workplaces;
- (n) HWFB will give due regard to the appropriate length of grace period granted to the affected premises in the forthcoming legislative amendment exercise; and
- (o) the benefits of a smoking ban have been publicised widely by

different parties including TCO and COSH.

TCO has been conducting roving exhibitions and giving one-to-one health education in public indoor premises such as shopping malls, with the health benefits of a smoke-free environment as a core message. Furthermore, TCO is developing its website and a quarterly bulletin on tobacco control matters which will be available in the clinics of the Department of Health (DH) and other settings such as social centers.

In addition, COSH and various academic institutions have published various reports on the health and economic benefits of banning smoking in indoor premises. HWFB, DH and the Hospital Authority have also made use of different opportunities to inform the community the advantages of a smoke free environment.

Apart from TCO and COSH, there are also other Non-Government Organisations involving in similar activities with different target groups. HWFB will review the strategy and contents of the publicity efforts regularly with the parties concerned to identify scope for improvement.

Hong Kong Examinations and Assessment Authority (HKEAA)

Administration of Public Examinations

301. This direct investigation was initiated in the wake of a spate of errors reported in the 2001 examinations conducted by the former Hong Kong Examinations Authority (now renamed as HKEAA) for both the Hong Kong Certificate of Education Examinations (HKCEE) and the Hong Kong Advanced Level Examinations (HKALE). Most of the errors were found in question papers and listening tests. The Ombudsman examined the errors, the adequacy of the current arrangements for administration of the examinations and the areas for improvement.

302. After investigation, The Ombudsman found that there were mistakes in eight question papers, two incidents of flaws in arrangements for listening test centres, minor errors (mostly relating to language or administrative details) in another 21 papers and a number of language errors in two other question papers.

303. Causes of errors identified included inadequate vigilance of the personnel concerned, unclear role of proofreaders, proofreading without due diligence, unclear instructions regarding originality of questions, and inflexible adherence to guidelines.

304. Factors relating to the administrative practice of HKEAA had also contributed to the errors, e.g. the lack of an open recruitment system for Moderation Committee members. Some members accepted appointment solely out of goodwill with the nominators (HKEAA committee members or Subject Officers), hence might not take the task sufficiently seriously or could not afford sufficient time and energy for the examinations work. The enthusiasm of some Moderation Committee members was also dampened by lack of appreciation and recognition for their services.

305. With the heavy workload, Subject Officers in particular new recruits, were not able to pay as much attention as they should to prepare question papers. HKEAA management also did not take proactive steps to supervise and guide individual Subject Officers. Incomplete records on the

development processes of individual question papers for those involved to take reference or for supervising officers to keep track of progress; insufficient training for some Subject Officers and non-permanent examinations personnel; and outdated guidelines and manuals to Subject Officers and non-permanent examinations personnel were also cited as contributing administrative factors to various errors.

306. In conclusion, The Ombudsman was satisfied that the systems for the preparation of question papers and the administration of the examinations were basically sound and effective. The flaws in 2001 had been caused not by defects in the systems but deficiencies in implementation, inadequate vigilance being the main cause.

307. The Ombudsman has made a number of recommendations in relation to strengthening of the administration of recommendation. HKEAA accepted all the recommendations and the following measures had been taken or would be implemented :

- (a) HKEAA accepted that the relevant instructions, description of duties and guidance notes should be made clear to examinations personnel. Relevant documents were updated in December 2001 for the 2002 examinations, including notes for members of Moderation Committees, duties of chief examiners, notes for assessors, guidelines for Moderation Committees on the use of reference materials in question papers and procedures and guidelines on proofreading of question papers. These documents would be further revised as and when necessary;
- (b) in-house training sessions including handling and filing of security documents, effective proofreading, moderation of question papers, proofreading of question papers, development of grade descriptors and marking and checkmarking had been arranged for Subject Officers prior to the 2002 examinations. More training sessions, mostly in-house, would be organised from time to time. For non-permanent examination personnel, briefing by the corresponding Subject Officers would be strengthened starting from the question paper development process of the 2003 examinations. HKEAA would extend appropriate training seminars to non-permanent

examinations personnel. For example, they were invited to a seminar on assessment practices with speakers from the Mainland, Australia, Canada and the UK in September 2002. In addition, a pamphlet on the basic principles of test development was now being prepared and should be ready by November 2002;

- (c) due consideration would be given to their levels of experience and the specific requirements of different examination papers when allocating duties to Subject Officers;
- (d) with effect from September 2001, Subject Officers of subjects having similar nature had been grouped together (four to five in each group) and one Senior Subject Officer had been assigned to coordinate the work of each group. Regular group meetings were held to identify problems, if any, and facilitate experience sharing among Subject Officers. Each Senior Subject Officer would also serve as mentor to the new officers in the subject group that he/she coordinated. The Subject Officers' manual had also been updated in January 2002;
- (e) an internal quality audit system had been put in place for the 2002 examinations. Under the new system, the key stages of question paper development were recorded systematically for each paper by the Subject Officer concerned and audited by a senior subject officer;
- (f) the recruitment system would be made more open but not to the extent of launching an open exercise because of reliability and security concerns. School principals would be invited to nominate suitable teachers to serve as setters or moderators for the HKCEE and HKALE. This new recruitment method would be used in addition to the existing method of recruitment through nominations by the subject committees and would be implemented for the 2004 examinations. This was the earliest feasible as the appointment of setters or moderators for the 2003 examinations were already in progress;
- (g) a certificate of service would be issued to examination personnel when they leave the service;
- (h) regarding the use of listening test centers, a manager at graduate

master level had been specifically assigned to supervise the work of the Chief Administrative Assistants (ranked equivalent to Clerk Officer I) with effect from September 2001; and

- (i) as regards the recommendation of exploring the possibility of using other radio channels with better transmission efficacy for the delivery of listening tests, both Commercial Radio and the Metro Radio had ruled themselves out. The HKEAA Secretariat was actively considering the use of public announcement (PA) systems in delivering listening tests. This had been tried out in HKCEE Putonghua examination in 2002 and the results were encouraging. The HKEAA Secretariat was studying the feasibility of extending the use of PA systems to other listening tests in the 2003 examinations.

Hong Kong Housing Authority (HA) and Housing Department (HD)

Management of Construction Projects by HA and HD

308. Building problems revealed in the construction of the foundations of several public housing projects have given rise to public concern over the management of HA/HD's construction projects. The Ombudsman has conducted a direct investigation into the management of construction projects by HA/HD and published the report on 8 March 2002.

309. After investigation, The Ombudsman has made the following conclusions :

- (a) unclear working relationships (and at times grey areas) amongst Housing Bureau (HB), HA and HD were not satisfactory or conducive to having positive lines of responsibility and accountability;
- (b) in setting production targets, the Administration had not sufficiently taken into account the views of HA/HD, or its capacity for delivery;
- (c) members of HA and its standing committees were essentially part-time volunteers, yet they had to make important decisions;
- (d) HD should re-examine its tendering practices and introduce measures that would prevent exploitation of the tendering system;
- (e) multiple subcontracting without ensuring adequate capability to exercise competent control or appropriate monitoring put projects at risk, especially where the main contractors failed to supervise subcontractors or had little regard for the duty of care;
- (f) administrative issues thus identified indicated collectively deficiencies in HD's project management system for redress;
- (g) HD had been placing far too much importance on paper work with tendency to supervise by documentation and to monitor by paper chase;

- (h) HD should focus on training to improve staff calibre and attitude, and enhance vigilance to monitor consultants and contractors;
- (i) it would be in the interest of HA/HD, the Administration and the community at large to bring HA construction projects under the Buildings Ordinance as soon as practicable; and
- (j) the local construction industry overall needed general improvement in culture and practices, research and development as evidenced by the Construction Industry Review Committee (CIRC) putting forward 109 recommendations to bring about good practices in the construction industry.

310. The Ombudsman has also made a number of recommendations. HA/HD accepted The Ombudsman's recommendations in principle and have already made considerable progress in implementing many of them, especially those relating to project management and work supervision. Recommendations involving institutional and legislative changes are more complex and would require more time to consider the form and details of implementation. Progress in taking forward the recommendations are detailed as follows :

- (a) the Committee on the Review of the Institutional Framework for Public Housing (RIFPH), chaired by the Chief Secretary for Administration, published its report on 20 June 2002. Among others, RIFPH made the following recommendations relating to the responsibilities of HA members and the roles and operation of HA and its committees –
 - (i) streamlining of the committee structure of HA;
 - (ii) streamlined secretarial support to be provided to HA and its committees to enable them to discharge their advisory duties more effectively; and
 - (iii) in the longer term, diminishing the executive functions of HA and increasing its advisory functions;

(b) progress has been made in many areas through HA's Quality Housing Initiatives as follows -

(i) Organization and Structure

HA/HD have introduced measures to streamline operational process, facilitate decision-making and encourage professional judgment. In the operational context, an overall review of the quality management system is underway for migration to the Year 2000 version of ISO 9001. Mechanism is also in place to flexibly deploy staff according to the needs and areas of risks;

(ii) Communication and Leadership

HA/HD have stepped up communications between her staff, stakeholders and senior management. Workshops, forums, and consultation meetings are held from time to time to enhance communications, foster commitment and working relationship, obtain feedback and to drive changes. Procedures have been continuously reviewed in response to feedback from staff and other stakeholders;

(iii) Contract Management

HA/HD have adopted a quality-based approach in the procurement of construction services. Apart from reforming the listing and tendering practices, HA/HD have established the "Premier League" to secure competent contractors and launched the new Performance Assessment Scoring System 2000 for enhancing the objectivity of contractors' performance assessment. Also, in order to tighten up the control over sub-contracting in piling works, HA/HD have prohibited total sub-letting and limited sub-letting of principal piling activities to one layer. Measures have been introduced to improve the transparency of the sub-contracting of the building works. HA/HD have further reinforced on-site supervision and monitoring to ensure a high and consistent acceptance standard;

(iv) Training and Professionalism

HA/HD have strengthened training for site supervisory staff since April 2000. Induction courses are provided to new recruits on a mandatory basis, and refresher courses and training on trade practices/skills have also been provided as appropriate. A Comprehensive Integrity Action Plan has been introduced to promote ethical integrity. On industry-wide reform, HA/HD are supportive of the implementation of the Construction Personnel Registration Scheme and the formation of the subcontractor registration scheme recommended by CIRC;

(v) Partnering with Contractors/Consultants

HA/HD have rationalized risk allocation in their contracts to achieve more equitable risk-sharing with their contractors and have introduced new dispute avoidance and resolution mechanisms. On project implementation, HA/HD have strengthened the project management functions and professional services, and established more communication channels with the consultants. For all new projects, partnering workshops are conducted to promote teamwork, good practice and commitment on quality, safety and environmental protection; and

(vi) Consultation, Review and Feedback

HA/HD have been working closely with other stakeholders to strive for continuous improvement through consultation, feedback and review. HA/HD have actively contributed to the work of CIRC, and with the formation of Provisional Construction Industry Co-ordination Board (PCICB) in September 2001, HA/HD have continued their involvement and contribution in promoting a quality culture in the construction industry;

(c) The Housing, Planning and Lands Bureau (HPLB) has agreed in

principle to bring HA projects within the purview of the Buildings Ordinance and is examining how to take the matter forward having regard to legal, administrative, staffing and resource implications. As an interim measure, an Independent Checking Unit reporting directly to the Director of Housing was set up in HD in November 2000, with some staff seconded from the Buildings Department. The Unit institutes independent inspections to carry out checking of HA's public housing projects to ensure compliance with the statutory building controls enshrined in the Buildings Ordinance;

- (d) the formation of PCICB is to ensure a quick start on the implementation of CIRC recommendations and to draw up a framework for the future statutory body. The Environment, Transport and Works Bureau (ETWB) has taken up the role as the lead agency to co-ordinate all construction-related matters and the implementation of CIRC recommendations. Apart from institutional arrangements, notable progress has been achieved on some 76 recommendations covering major areas of CIRC report including construction procurement, partnering, management of subcontracting, employees' compensation insurance, quality culture, manpower development, safety, environment, innovation and productivity. HPLB is also committed to pursuing CIRC recommendations in collaboration with PCICB and other industry stakeholders having regard to changing community needs and aspirations;
- (e) ETWB has implemented a new tendering evaluation system in which both quality and price will be given due consideration in selecting tenders for public works projects. Past performance constitutes an important attribute in assessing the quality of tenders; and
- (f) the technical process of identifying and eventual allocation of land to HA for public housing development is a complex matter. Depending on progress of land formation and the purpose of the statistics, different approaches have been adopted by the then HB and HA/HD in compiling land supply statistics for public housing. The then HB's figures reflect Government records of sites physically allocated to HA, whereas HA/HD's figures are based on dates when the sites were first identified but not yet allocated by the Government. HPLB

and HA/HD will reconcile their approach and work out a uniform set of land supply figures. HPLB will follow up the matter through the Steering Committee on Land Supply for Housing.

Immigration Department (Imm D)

Procedures for Handling Travellers Suspected of Using False or Suspect Travel Documents

311. Following a media coverage on the treatment of travellers entering or transiting through Hong Kong using false or otherwise suspect travel documents in February 2000 which aroused public concern, The Ombudsman conducted a direct investigation to examine the relevant procedures of Imm D in handling such cases.

312. After investigation, The Ombudsman concluded that :

- (a) some immigration staff had not complied with the guidelines and procedures; and
- (b) Imm D should further improve its overall operation in handling travellers suspected of using false travel documents and matters associated with forgery.

313. The Ombudsman has then made a number of recommendations and Imm D has implemented the following measures :

Interview Process

- (a) Imm D has given instructions to extend the use of video recording interview (VRI) facilities since March 2000. The use of VRI facilities is no longer limited to District Court cases and cases involving syndicated crime of serious and complicated nature, but also used in all forged travel document cases if such facilities are available and the interviewees give consent to the video recording arrangement. There are presently four VRI rooms in operation at control points: three at the Airport Control Point and one at the Lo Wu Control Point. Imm D will include VRI facilities when planning new control points;
- (b) in order to provide further safeguards to teenagers aged 16 to 18 being investigated, particularly those suspected of using forged travel

documents, a written instruction has been issued to investigation officers to use VRI facilities to interview them as far as practicable if an appropriate independent witness is not available during the interview;

Interpretation Service

- (c) Court Interpreters Office (CIO) considered that the existing channel for Imm D to report cases of unsatisfactory performance of interpreters to her is acceptable. CIO has undertaken to follow up cases of unsatisfactory performance speedily. To ensure high quality of interpretation service, the interpreter under investigation by CIO concerned will not be hired as far as practicable until the investigation result comes out. Investigation Division of Imm D, being the major user of the interpretation service, has issued an instruction to direct its staff to monitor the performance of the interpreters;

Examination and Verification of Travel Documents

- (d) Imm D will continue to send suspected forged travel document to the Government Laboratory (Govt Lab) for forensic examination and makes the best use of the express service provided by Govt Lab. Also, Imm D maintains a very good relationship with the local consulates. Very often they are willing to assist in the verification of travel documents obtained through unlawful means from the authorities of their home countries;

Monitoring Mechanism and Control Measures

- (e) under the existing mechanism, all complaints are investigated by the assistant division heads concerned. All investigated complaints are reviewed by the Complaints Review Working Party (CRWP) which is independent from all other operation sections in Imm D and is headed by an Assistant Director with members from the Management Audit Division. For complaints where there is prima facie evidence that a criminal offence is involved, the case will be reported to the Police. Complaints of a serious nature but not involving a criminal offences such as allegations of serious misconduct will be investigated by an

independent investigation team of Imm D under the direction of a directorate officer, comprising members from other sections not involved in the alleged misconduct. Members of the public may also lodge complaints against Imm D with external bodies such as the Office of The Ombudsman.

Imm D has studied the recommendation to incorporate independent persons in the CRWP. As independent mechanisms are already in place both within and outside Imm D to investigate and handle complaints objectively, impartially and effectively, and the number of complaints against the abuse of power by Immigration Service officers is very small, Imm D is of the view that there is no need to include independent persons in the CRWP;

- (f) detention quarters at control points are designed to provide a temporary shelter to refused landing passengers pending their repatriation on the next available flight or ship. As regards suspected immigration offenders, including those involved in forged travel document cases, they will be referred to and detained at the Ma Tau Kok Detention Centre (MTKDC) pending further investigation and prosecution. MTKDC has already been included in the visit programme of the Justices of Peace;
- (g) the case officer in charge, usually of the rank of Immigration Officer, is responsible for overseeing the whole investigation process. He has to ensure that his staff adhere to the relevant procedures and guidelines. He is also required to inform the suspects under investigation or in custody of their rights as soon as possible, and enquire if they have any complaint during the investigation process before they leave. The Senior Immigration Officers and Chief Immigration Officers do the monitoring work by studying case files afterwards or by physical spot checks during the processing period. Moreover, the Management Audit Division of Imm D will conduct surprise visits to offices handling detainees or where recording of interview takes place with a view to ensuring that the proper procedures are fully complied with;

Training and Documentation

- (h) the Investigation Division of Imm D organised two one-week training courses for its junior investigators (i.e. Immigration Assistants) in April and September 2001, focusing on techniques in investigation and procedures in handling suspects. Depending on the availability of resources, Imm D plans to organise this sort of training courses four times a year. In addition, the Immigration Service Training School ran an eight-week Investigation Course for Senior Immigration Assistants in December 2001, providing a more comprehensive training in the techniques and procedures of investigation;
- (i) the updating of Immigration Service Standing Orders (ISSOs) is an ongoing process. Updated ISSOs will be issued to Immigration Service officers who are regularly reminded to make reference to the ISSOs in the execution of their duties; and
- (j) review and updating of working procedures and guidelines are ongoing processes. After the incident of LIN Qiao-ying, the Investigation Division has conducted a review of the investigation procedures and introduced many improvement measures. Other than making extensive use of VRI facilities and full utilisation of the express forensic examination service provided by Govt Lab on forged travel documents, the following measures have also been implemented –
 - (i) investigators have been reminded to make contemporaneous entries of records as far as possible to ensure accurate timings. To facilitate the entry of records, a new form to record take-over/return of cases from/to other units has been introduced;
 - (ii) investigators have been reminded to adhere to the “Rules and Directions for the Questioning of Suspects and the Taking of Statements”. They should post-record a suspect’s admission made outside an interview in the officer’s notebook or in the preamble to the record of interview wherever applicable. These have been covered by Investigation Division Training Courses;

- (iii) investigators have been educated to avoid using standardised or formularised wordings in the “Grounds for non-removal” form. Persons who are served with this form should be free to write in their own words or, if necessary, investigators will write down for them in accordance with what they say; and
- (iv) revised interview record forms have been introduced after review to facilitate clearer recording of suspects' personal and family particulars and the requests made by them.