THE GOVERNMENT MINUTE

IN RESPONSE TO

THE FIFTEENTH ANNUAL REPORT OF

THE OMBUDSMAN

ISSUED IN JUNE 2003

Government Secretariat

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THE GOVERNMENT MINUTE IN RESPONSE TO THE FIFTEENTH ANNUAL REPORT OF THE OMBUDSMAN ISSUED IN JUNE 2003

Introduction

The Chief Secretary for Administration presented the Fifteenth Annual Report of The Ombudsman to the Legislative Council at its sitting on 2 July 2003. 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 11 and 7 of the Annual Report respectively.

Part I
Investigated Cases

Architectural Services Department (Arch SD)

Case No. 2002/1623：Insufficient supervision of maintenance works in government quarters.

3. Major maintenance works started at a Government quarters development in January 2002. The maintenance works mainly comprised three projects including :

(a) refurbishment of Block C;

(b) replacement of fire service installations of all blocks; and

(c) replacement of fresh and flushing water systems of all blocks.

4. On 19 and 21 December 2001, Arch SD sent the project briefs and works schedules of the first two projects to the Government Property Agency (GPA) and its Property Management Agent (PMA). The latter then issued a notice on 28 December 2001 to all occupants of the Government quarters informing them that the first two projects would formally commence on 2 January 2002. On 18 January 2002, upon receipt of documents concerning the third project from Arch SD, GPA forwarded them immediately to PMA for follow-up action. However, PMA mistook the third project as part of the works under the first project and did not issue any new notice. Subsequently, the third project started on 28 January 2002. It was until 6 February 2002 before commencement of the replacement works of the third project at Blocks A and B began that PMA realized that such works were in fact the third project and issued a new notice. However, information on the replacement of fresh and flushing water systems was still not provided in the notice.

5. Being deeply affected by the noise and nuisance caused by the works, the complainant, who was an occupant of the Government quarters, lodged a complaint with The Ombudsman in April 2002 about the following :

(a) GPA had not, in advance, notified the occupants of the commencement date and details of the works; and

(b) GPA had not supervised the works properly such that the nuisance so caused had deeply affected the occupants and disrupted their daily lives (Arch SD was subsequently included as a department concerned in this complaint by The Ombudsman in May 2002 as agreed by the complainant).

6. After investigation, The Ombudsman considered that PMA had delayed in informing the occupants about the third project. Moreover, GPA also admitted that the notice was not clear enough and thus had caused misunderstanding to the occupants. Although this incident seemed to be the responsibility of PMA, GPA bore the responsibility of supervising PMA's performance. Therefore, complaint point (a) against GPA was partially substantiated.

7. As regards complaint point (b), The Ombudsman noticed that Arch SD was responsible for the planning, supervision and follow-up of maintenance works of Government quarters. PMA was responsible for the necessary coordination. Though GPA did not participate directly in the planning of maintenance works, its staff inspected the Government quarters on a regular basis. Apart from monitoring PMA's performance, GPA also attended to property management problems and complaints arisen from maintenance works. Having received four complaints concerning noise from the warehouse at Block A, PMA had already taken immediate action to stop the works at the warehouse. The works contractor of Arch SD had also upon advice removed the equipment in question. GPA staff carried out routine inspections on 8 January and 28 March 2002 and had not identified any other problem nor received any complaint relating to the works. On the other hand, The Ombudsman noted that the works contractors of Arch SD had carried out the maintenance works outside the agreed working hours which had caused nuisance to the occupants, despite the regular site inspections conducted by staff of Arch SD. Complaint point (b) was thus partially substantiated against GPA and Arch SD. On the whole, the complaint was partially substantiated.

8. Pursuant to The Ombudsman's recommendations, GPA and Arch SD

have taken the following actions :

(a) a joint meeting was held among Arch SD, GPA and its PMAs to strengthen liaison and communication. Arch SD would communicate directly, more positively and frequently with PMA regarding the detailed work scope and project programme, with a view to ensuring that PMAs are able to discharge their function of managing Government quarters effectively;

(b) GPA has instructed its PMAs that notices issued by them on major maintenance works at Government quarters must include basic information such as the type and duration of the works concerned, anticipated commencement and completion dates, as well as possible impacts on the occupants;

(c) GPA has instructed its staff to increase the frequency of inspections when major maintenance works are carried out at Government quarters;

(d) Arch SD would continue to supervise the works, manage the performance of its contractors and would strictly enforce the contract conditions. Regulatory actions would be taken against those contractors who have repeatedly failed to comply with instructions; and

(e) Arch SD would conduct surprise inspections to ensure that contractors comply with the agreed works programme and working hours.

Buildings Department (BD)

Case No. 2001/2498：Impropriety in handling the repair of a party wall.

9. During a routine inspection of a party wall of the subject building in December 1998, BD found some minor defects which, however, did not pose any imminent structural danger. In January 1999, BD issued an advisory letter to the Incorporated Owners (IO) of the building advising it to repair the wall.

10. The complainant, management company (MC) of the building, wrote to BD in March 1999 to clarify the ownership of the party wall. It wrote again in June and September 1999, expressing concern about the structural safety of the party wall.

11. During another inspection in September 1999, BD found some minor defects on the party wall, but there was still no imminent structural danger. Noting that the profile of the wall on site differed from that shown on the approved plan, BD discovered that the wall stood partly on an area surrendered to the Government for road widening in 1988. BD then enquired with the Lands Department (Lands D) about the land status and maintenance responsibility of the wall. Meanwhile, BD reaffirmed to the complainant that there was no immediate structural danger and no further action would be contemplated. Lands D replied to BD in October 1999 and requested further clarification on the location of the party wall. The request was not followed up. No further reply to the complainant was made until after the District Officer concerned referred the case to BD in May 2001. BD then resumed correspondence with Lands D on the maintenance responsibility of the wall.

12. Dissatisfied with BD's handling of its requests to clarify the ownership of the party wall, the complainant lodged complaints with The Ombudsman in August and September 2001 that :

(a) BD had wrongly held the IO as the owner of the party wall and failed to respond to the request for clarification; and

(b) BD changed its views on the structural safety of the party wall when

the Government was found to be the owner.

13. In October 2001, at the request of BD, Lands D advised that there was prima facie evidence that the exposed portion of the wall was within Government land. In April 2002, Lands D carried out repair to the party wall.

14. After investigation, The Ombudsman noted that BD would conduct ownership check when a statutory order was issued under the Buildings Ordinance. Advisory letters were normally served to urge owners to undertake timely repairs and maintenance. As the letters were non-statutory in nature, they were not served on named owners, but to the MC or IO of the building concerned. On the other hand, The Ombudsman considered that, for good administrative practice, BD should have responded to the complainant's inquiry after examining the relevant land status records in October 1999, if not earlier in March 1999 when the inquiry was first received. The delay in replying was largely due to mis-location of files and heavy workload experienced by the case officer. Therefore, complaint point (a) was partially substantiated.

15. As for complaint point (b), BD contended that ownership of the party wall did not affect the department's assessment of safety condition. The Ombudsman noted that BD's assessment of the structural safety of the wall was consistent. Hence, this complaint point was unsubstantiated. On the whole, the complaint was partially substantiated.

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

(a) BD conducted a review on the need to verify ownership before sending an advisory letter. Following the review, a new office instruction has been issued, advising BD's staff to carry out verification of ownership and the maintenance responsibilities of party walls situated on pavements prior to the issue of advisory letters. For other cases, BD's staff are advised to judge every case on its own merits in considering the need for ownership verification. They are also reminded to pay particular attention to structures straddling private lots or other complicated cases, and to confirm the land status, ownership particulars and maintenance responsibilities, whenever

there is doubt;

(b) regarding the upgrading of advisory letters on unauthorised building works (UBW) to statutory warning notices registrable against property titles, the necessary legislative amendments are included in the Buildings (Amendment) Bill 2003 which has been introduced into the Legislative Council on 30 April 2003; and

(c) as regards the feasibility of extending similar upgrading of advisory letters on repairs, BD considers that the plan announced in April 2001 to upgrade advisory letters to statutory warning notices is aimed at stopping the proliferation of UBW that do not warrant the issue of statutory orders for the time being. In repair cases, if building owners fail to carry out the necessary repair upon receipt of the advisory letters, BD will follow up by serving statutory orders on the owners.

17. Separately, the computerized Building Condition Information System (BCIS), which has been put into operation in BD since mid-2002, provides an effective means of recording, processing and retrieving details of complaints from the public and referrals from other Government departments. The system enables regular and timely internal monitoring and reporting. More specifically, there are provisions to record the target and actual date of reply for each complaint/inquiry case. It is hoped that the implementation of BCIS would greatly assist the office management to prevent similar incidents from happening.

Case No. 2001/2683：Issuing letters to an Owners' Corporation requesting for maintenance without verifying the ownership of the external walls and failing to reply to enquiry letters on the ownership and maintenance responsibility of the external walls in question.

18. In late 1999, BD issued an advisory letter to the Owners' Corporation (OC) of the building concerned requesting the maintenance of its external walls and common areas. Some flat owners wrote to BD to enquire about the ownership and maintenance responsibility of the external walls but they did not receive any reply from BD.

19. In late 2000, BD wrote to the OC again indicating that the building had been selected as one of the target buildings in the Coordinated Maintenance of Buildings Scheme. In February 2001, BD issued another advisory letter to the OC requesting the maintenance of the building by the latter.

20. In June 2001, the complainant (one of the flat owners) wrote twice to BD with copies of the Deed of Mutual Covenant of the building and the title deed of the external walls. The complainant considered that, instead of issuing advisory letters to the OC, BD should have served statutory orders on the owner of the external walls to carry out the necessary maintenance works. Receiving no response from BD, the complainant lodged a complaint with The Ombudsman in September 2001 against BD for :

(a) issuing letters to the OC requesting maintenance without verifying the ownership of the external walls such that the owners had to share the costs, and that made the complainant feel aggrieved; and

(b) failing to reply to the enquiry on the ownership of the external walls and the maintenance responsibility.

21. In October 2001, BD wrote to the company that owned part of the external walls and requested it to liaise with the OC to carry out maintenance works to the external walls.

22. After investigation, The Ombudsman considered that BD should have verified the ownership of the external walls before the issue of advisory letters requiring maintenance. Hence, complaint point (a) was partially substantiated. Furthermore, complaint point (b) was substantiated. On the whole, the complaint was partially substantiated.

23. BD has implemented all the recommendations of The Ombudsman as follows :

(a) BD has reviewed the procedure of issuing advisory letters requesting maintenance of buildings and issued office instruction to its staff. The instruction advised BD's staff to consider the necessity of

ownership check prior to the issue of an advisory letter based on actual circumstances of each individual case; and

(b) BD has issued office instruction to require its staff to give substantive or interim replies to the public within a specified timeframe. BD will remind its staff to note the instruction from time to time, with a view to maintaining good communication with the public and improving service quality. The implementation of the Building Condition Information System would also enhance the monitoring of progress in handling public complaints or inquiries.

Case No. 2001/3812：Delay in handling a complaint about unauthorised building works.

24. In September 1998, the complainant wrote to BD complaining about the conversion of a 1/F unit into 4 sub-divided flats and the alteration works of drainage systems in the sub-divided flats. The complainant alleged that the blockage of the drainage system in the sub-divided flats had caused water seepage in his cockloft and G/F shop. BD's staff inspected the premises in October 1998 and concluded that the water seepage problem had not caused any immediate structural danger of the building. Instead of serving any statutory repair order, BD issued an advisory letter to the 1/F owner in January 1999 requesting the rectification of the water seepage problem. The complainant was also informed of the result of the investigation and the advisory letter issued by BD.

25. At the same time, the then Urban Services Department (USD) was requested to furnish the test result of the water sample in order to establish the source of water seepage. It was not until June 1999 that the then USD confirmed that the test result was negative and the source of water seepage could not be ascertained.

26. In October 1999, the complainant wrote to BD again, requesting follow-up actions to the water seepage problem. BD considered that prolonged water seepage might have an adverse effect on the structural safety of the building. To prevent the structure of the building from deteriorating, BD served an order on the 1/F owner in April 2000 requiring him to have all

unauthorised building works (UBW) removed in order to rectify the water seepage problem. However, the 1/F owner lodged an appeal with the Appeal Tribunal (Buildings) against BD's order in August 2000. The appeal was rejected as it was lodged out of time. Since the necessary demolition works had not been carried out, a warning letter was issued to the 1/F owner in August 2000 informing him that prosecution action would be taken for his failure to comply with the order. As no rectification work was carried out, the complainant lodged a complaint with The Ombudsman in January 2002 against BD for the delay in handling his complaint about the UBW. Prosecution action against the 1/F owner was initiated by BD in March 2002.

27. After investigation, The Ombudsman considered that the complaint was partially substantiated because after having issued the statutory order, BD should have taken more expeditious enforcement action against the 1/F owner requiring the removal of UBW.

28. BD has accepted The Ombudsman's recommendations and taken follow-up actions as follows :

(a) in March 2003, a notification of completion of works was received from the 1/F owner. Inspection by BD's staff revealed that the UBW had been removed and no more water seepage was noted. A letter of appreciation was also received from the complainant on 15 May 2003; and

(b) with the implementation of the computerized Building Conditions Information System in mid-2002, BD's staff could now review and update information about UBW removal orders more readily thus enhancing the monitoring of outstanding orders. In addition, staff are reminded from time to time to follow up the outstanding UBW removal orders closely with a view to obviating any unnecessary delay.

Case No. 2001/3934：Undertaking the emergency repair works of a building without prior notice to the owners concerned and over-charging the owners for the cost of the works.

29. During a special operation of BD to identify dangerous elements on façades of buildings, loose rendering was found on the external wall of the building concerned on 12 June 2001 and immediate remedial works were required. As BD's staff could not contact the building owners and advise them to carry out the necessary remedial works, BD arranged for its contractor to carry out the works on 14 June 2001. A notice was posted on site advising that remedial works were being carried out by the Government contractor as a matter of emergency and the cost would be recovered from the owners. A letter was sent to the owners in September 2001 advising them of the emergency works carried out on 14 June 2001. Demand notes were sent to the owners in December 2001 to recover the cost of the emergency repair works. The complainant, one of the owners, lodged a complaint with The Ombudsman in December 2001 about the following :

(a) BD had taken the emergency repair works of the building without prior notice to the owners concerned; and

(b) BD had over-charged the owners for the cost of the works.

30. After investigation, The Ombudsman found that it was legally appropriate for BD to arrange its contractor to carry out the emergency works on 14 June 2001 after the inspection conducted on 12 June 2001. Notwithstanding that the owners concerned could not be contacted on 12 June 2001, the emergency works commenced in the afternoon of 14 June 2001. If BD could provide a contact slip and post it at a conspicuous location at the entrance and leave some extra copies to alert the owners of the emergency works, the owners would have a chance to contact the relevant officers before the works commenced. The Ombudsman considered that BD had neglected the required duty of care expected from a Government department and the case was found not fully in line with the "fair and open" standard. Complaint point (a) was partially substantiated.

31. Regarding complaint point (b), The Ombudsman considered that BD's practice to carry out the necessary repair works and then recover the cost from

the owners of the building concerned was in accordance with section 33 of the Buildings Ordinance (BO). This complaint point was therefore not substantiated. Overall, the complaint was partially substantiated.

32. The subject case was related to the emergency works arising from an ad-hoc operation. BD's staff had to carry out surveys of more than 300 buildings and follow-up remedial actions by initiating contractors' works where immediate danger was identified. All these surveys and subsequent remedial works were required to be accomplished within a few days. Owing to the tight schedule and the need to ensure safety, BD's staff could not afford spending too much time in trying to locate the owners and urge them to carry out the required works on 13 and 14 June 2001. Nonetheless, BD has implemented all the recommendations of The Ombudsman as follows :

(a) BD issued a letter on 17 September 2002 to the complainant to apologize for carrying out the emergency works without prior notification;

(b) BD has enhanced the training for all relevant staff in that officers should try their best to provide contact slips to the affected owners or on the premises when the owners could not be contacted during the inspection, to ensure that the affected owners have a chance to know about BD's actions and to contact the responsible officers easily;

(c) BD has revised the Emergency Handbook in November 2002 by requiring the responsible officer to post a signed notice, with contact details, at a conspicuous location of the building prior to the commencement of emergency works. BD's officers are also asked to try their best to explain to owners/occupants the situation whenever possible; and

(d) instructions have also been given for BD's officers to notify affected owners/occupants prior to the commencement of works whenever possible if emergency works are required, so that the owners/occupants may arrange the required works themselves. However, if the owners/occupants fail to commence the required works within a reasonable timeframe, BD should arrange for its contractor to carry out the required works in accordance with the

provisions of BO.

Drainage Services Department (DSD)

Case No. 2001/3407：Evading responsibility to repair a damaged stream bank adjacent to a house.

33. As the stream bank adjacent to his house had been seriously eroded, the complainant lodged a verbal complaint with DSD in June 2000. Following a site inspection, DSD informed the complainant that his request had been referred to the District Office (DO) of the Home Affairs Department (HAD) for action. As no public facilities were affected and considering that its minor works funds could not be used for the benefit of individuals, DO informed the complainant that it would not repair the damaged retaining wall (originally described as a "stream bank").

34. DSD maintained that DO had a responsibility for the maintenance of natural watercourses pursuant to Works Bureau Technical Circular (WBTC) No. 8/2000. Between June 2000 to June 2001, a year-long argument between DSD and DO took place. On 23 April 2001, DO asked the District Lands Office (DLO) of the Lands Department (LD) to check the lot ownership and to confirm whether the licensee of the lot should be responsible for the repair works. After a site inspection, DLO replied that information relating to the maintenance responsibility was not available. DLO also withheld action requested by DO to liaise with the licensee of the site to strengthen the foundation of the retaining wall, pending the outcome of the discussion between DO and DSD.

35. In response to DO's further request on 17 July 2001, DLO carried out another site inspection in August 2001, and decided to consult the Geotechnical Engineering Office (GEO) of the Civil Engineering Department about the need for urgent repairs. In November 2001, GEO confirmed that the retaining wall would need urgent repairs and that Lands D (not the licensee) should be responsible for its maintenance according to the Slope Maintenance Responsibility Information System (under the regime of another Technical Circular).

36. The complainant lodged a complaint with The Ombudsman in November 2001 against Lands D, DSD and HAD for evading responsibility to

repair the damaged retaining wall adjacent to his house. Eventually, the repair works were completed by Lands D in early March 2002.

37. After investigation, although there was no evidence of wilful or deliberate disregard of duties, The Ombudsman was disappointed by the departments' compartmental mentality in processing this case. The three departments separately conducted five site inspections but did not attempt any joint inspection or meeting. Each department was concerned only with its own interests and did not take a broader outlook or a more proactive and co-operative approach. The complaint was concluded as partially substantiated against Lands D, DSD and HAD.

38. Pursuant to The Ombudsman's recommendations, the Administration has taken the following actions :

(a) a meeting was held between Lands D, DSD, HAD and the Environment, Transport and Works Bureau (ETWB) to discuss possible ways to enhance communication between departments concerned in handling complaints and enquiries which involve more than one department. All parties agreed to enhance communication through telephone, inter-departmental meetings and/or joint site inspections in addition to written correspondence;

(b) Lands D, DSD and HAD have reviewed their departmental procedures for dealing with complaints that involve more than one department. Staff of these departments are also reminded to adopt a vigilant, positive and proactive attitude in processing complaints or enquiries from the public and other departments. Relevant departmental circulars have been prepared and issued;

(c) Lands D has reviewed the arrangements for advising other departments on slope maintenance responsibility under Systematic Identification of Maintenance Responsibility of man made slopes in Hong Kong (SIMAR), land status and lease provisions. Lands D considered that the current arrangements are working well but has reminded its staff to make effective use of the SIMAR computer terminals already installed in their offices as and when necessary;

(d) DSD is currently reviewing the procedures for referring complaints to another department under WBTC No. 8/2000, including the need to confirm the land status first to determine which department(s) would be responsible. An internal instruction had been issued to the Regional Division Heads to check land status and possible involvement of SIMAR slopes before referring a drainage channel related complaint to other departments for follow-up actions; and

(e) ETWB has prepared a draft revised WBTC No. 8/2000 to provide guidance on the administrative responsibilities in handling complaints in areas that may appear to involve several departments. A guideline would be added to help identify the maintenance department for the features (which may be a drain, and embankment, a slope or a retaining wall, or a part of these). The draft revised Circular was circulated to relevant departments for comments in July 2003.

Education Department (ED)

Case No. 2002/0167：Delay in processing reimbursement applications.

39. ED (now the Education and Manpower Bureau) that provides aided schools with subsidies for all construction works related to slope maintenance is responsible for approving reimbursement applications from schools and monitoring the administrative procedures for the reimbursement. The Architectural Services Department (Arch SD) would provide technical assistance to ED while schools would employ their own independent consultants. Reimbursement applications therefore have to be processed by both ED and ArchSD before payments by instalments would be made to the schools concerned. Schools may then make payments to their construction companies.

40. The complainant, a construction company, had entered into contract with several schools to carry out slope maintenance works. In January 2002, the complainant lodged a complaint with The Ombudsman against ED and Arch SD for delay in processing reimbursement applications from the schools, which in turn made it impossible for it to receive payment for the construction works punctually.

41. The complainant quoted 10 contracts of slope repair works as examples to illustrate the lengthy reimbursement process ED had taken. The complainant claimed that it was provided in the contract that construction costs should be settled within 21 days from the date the engineer issued the certificate. However, ED clarified that there was no such commitment vis-à-vis the construction company or the schools. In calculating the required time for processing reimbursement applications, ED counted from the day when all relevant receipts and documents were received from schools. ED also stated that as the reimbursement process involved two departments, the processing time might be long and the average processing time for most reimbursement cases took 29 calendar days. Among the 10 quoted contracts, there were a total of 35 applications for reimbursement. Eight of the applications took more that one and a half months and even two months for reimbursement. Two of the cases required 110 and 135 days' processing time.

42. After investigation, The Ombudsman noted that in one case, when the application reached the District School Development Section of ED, it could not be filed immediately for action as the file was still with the Subvention Accounts Section. The case was never brought up periodically for review so when the file was returned to the District School Development Section, it was more than one month after the application was received. Moreover, the misdirected memorandum between ED and Arch SD had caused a delay of one month in processing. It was also evidenced that the communication between the District School Development Section and the Subvention Accounts Section was inadequate as there was no acknowledgement of receipt of documents in spite of the long time lapse. Furthermore, the workload of the Subvention Accounts Section was unsteady; it sometimes took almost one month for them to approve and effect payment.

43. Although ED considered the number of delay cases as not significant, The Ombudsman was of the view that the department, being a public organization, should provide quality and effective administrative support services. The complainant's case should therefore not be delayed by reasons such as the department's own staffing arrangements. As such, The Ombudsman concluded that the complaint was partially substantiated.

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

(a) the whole process of the reimbursement of construction contract payments and the work objectives of the Subvention Accounts Section have been reviewed. The target and timeframe for each reimbursement process were set. In this connection, internal guidelines on approving reimbursement applications from aided schools for their slope repair works were issued for implementation on 1 November 2002. The guidelines laid down the points to note for each step to enhance communication between the District School Development Section and the Subvention Accounts Section; and

(b) the Administration Division of ED issued a departmental guideline on "Enhancing Office Efficiency by Keeping an Effective Records Management System" in September 2002 in which proper procedures of receipt and delivery of documents were mentioned. The District

School Development Section has followed the guideline on the receipt and delivery of memoranda and other documents.

Case No. 2002/2045：Refusing to meet with the complainant and to correspond with him in English as requested.

45. With a view to following up on matters arising from a previous complaint lodged by him with The Ombudsman regarding the improper handling of a leave application from his daughter and his subsequent complaint over the matter, the complainant sent a letter in English on 21 December 2001 to the headmaster of the primary school in which his daughter was studying to request a meeting. However, the headmaster turned down his request in writing on 31 January 2002 and the reply was written in Chinese.

46. The complainant sent letters in English to the headmaster again in April and September 2002 to request a meeting to review his daughter's examination papers and to discuss school administration and language teaching matters. The school issued a note in Chinese in the student handbook of the complainant's daughter. The note acknowledged receipt of the complainant's letter of April 2002, indicating that the request was under consideration. However, the school did not issue a substantive reply. The complainant also requested in his letters that the replies from the headmaster should be in English but the headmaster ignored his request. Therefore, he lodged a complaint with The Ombudsman about the following :

(a) the headmaster had been unreasonable in refusing his formal requests in writing for a meeting in December 2001, April 2002 and September 2002;

(b) the headmaster had failed to reply to his letters in English; and

(c) a teacher had reneged on her agreement to meet him in the presence of officers from the School Development Section of ED.

47. After investigation, The Ombudsman considered that the headmaster neither gave a substantive reply to the complainant's request made in April 2002 nor heeded ED's advice to meet with the complainant at the time when he

lodged his complaint with The Ombudsman. Therefore, complaint point (a) was substantiated.

48. As for complaint point (b), The Ombudsman noted that the school did once reply to the complainant in English on 9 December 2001 in response to the complainant's another letter of 1 December 2001, and the headmaster did eventually accept ED's offer of English translation. On the other hand, the complainant could have shown greater respect for the school's long-standing tradition of communicating with parents in Chinese. This complaint point was thus partially substantiated.

49. Concerning complaint point (c), The Ombudsman considered that the headmaster should ultimately be responsible for the decision not to arrange ED officers to attend the meeting. Moreover, there was no evidence of "reneging" on the part of the teacher concerned, although she could have handled the complainant's request better. Hence, this complaint point was partially substantiated. On the whole, the complaint was partially substantiated.

50. Pursuant to The Ombudsman's recommendations, the relevant parties have taken the following actions :

(a) an apology was sent to the complainant by the Chairman of the School Management Committee concerned on 15 April 2003 for not informing him earlier of the school's stance over the attendance of officers from the School Development Section in the proposed meeting;

(b) the school sent a letter in English to the complainant and his wife on 13 June 2003, informing them of the appointment system for arranging a meeting with staff of the school. Subsequently, a meeting between the complainant, the deputy headmaster and three teachers concerned was held on 3 July 2003. The Education and Manpower Bureau (EMB) learnt from the complainant that he had sent a letter to the school on 4 July 2003 and the school replied in English on 18 July 2003; and

(c) in view of the fact that the headmaster had operated against ED's advice and in breach of the "same language policy" stated in General

Circular No. 8/97 on “Office Procedures: Correspondence”, EMB will closely supervise the school staff concerned in dealing with their clients. In this regard, supervisors have also been reminded that, when necessary, appropriate disciplinary action should be taken to effectively enforce compliance with departmental instructions and guidelines.

Food and Environmental Hygiene Department (FEHD)

Case No. 2001/1869：Mishandling of a restaurant licence application；2001/2935：Delay in the issue of a provisional restaurant licence.

51. The complainant of Case No. 2001/1869 (complainant A) knew that the complainant of Case No. 2001/2935 (complainant B) had applied for a restaurant licence for the ground floor and cockloft of a building. The premises were within an area zoned as "Residential (Group C)" on the approved Outline Zoning Plan (OZP). This meant that all commercial uses, including those for "retail shop" and "restaurant", were not permitted in the area. However, in July 2000, FEHD, without noting the land use restrictions of the premises, issued a letter of requirements (L/R) to complainant B. Complainant A thus lodged a complaint with The Ombudsman against FEHD, Plan D and the Lands Department (Lands D) in August 2000 for mishandling a restaurant licence application (i.e. Case No. 2001/1869). He alleged that the issue of L/R could be regarded as FEHD's confirmation of the subject premises being suitable for licensing. He further considered that FEHD should have requested complainant B to seek approval from Plan D to relax the OZP restriction before issuing the L/R.

52. In the L/R issued to complainant B, it was stated: "When it is satisfied that all essential safety requirements have been met, the Director of Food and Environmental Hygiene will issue a Provisional Light Refreshment Restaurant Licence." Complainant B reported to FEHD on 4 October 2000 that all necessary licensing requirements had been complied with. However, FEHD refused to issue the provisional licence on the ground that the leasing and zoning conditions applicable to the subject premises had not been complied with. FEHD advised complainant B to approach Plan D to resolve the zoning restrictions and to clarify with Lands D the lease conditions for the subject premises. However, complainant B considered FEHD's decision unreasonable as all licensing requirements listed in the L/R had, in his opinion, been complied with. He refused to approach Lands D and Plan D for assistance since FEHD was the department primarily responsible for restaurant licensing matters. He felt aggrieved and lodged his complaint with The Ombudsman against FEHD, Plan D and Lands D in November 2000 for the delay in the issue of a provisional restaurant licence (i.e. Case No. 2001/2935).

53. After investigation, The Ombudsman noted that as the licensing authority for restaurants, FEHD should process applications for licences under the Food Business Regulation (FBR) and check their compliance with environmental hygiene requirements. Although FBR does not cover matters specifically concerning land use and lease conditions, FEHD has issued "A Guide to Application for Restaurant Licences" (the Guide) advising that it is the applicant's responsibility to ensure that all requirements or conditions imposed by Government departments under their respective legislation would be complied with.

54. The Ombudsman noticed that FEHD had issued a L/R to complaintant B without reference to current land use restrictions on the subject premises. The check for compliance with land use was overlooked in the process. Therefore, FEHD had mishandled the application by failing to ensure that complainant B had complied with the prevailing land lease conditions and the town planning requirements. Complainant B was likewise responsible for the incident as he did not check the lease of the subject premises as advised by the Guide. Thus, the complaint lodged by complainant A against FEHD was partially substantiated.

55. As for the complaint lodged by complainant B, The Ombudsman concluded that both FEHD and complainant B were partly to blame for the delay over the issue of the provisional licence. While complainant B did not check the lease of the subject premises or have the offensive trade clause in the lease conditions removed before applying for the licence, FEHD had failed to ensure that complainant B had complied with the prevailing land lease conditions and the town planning requirements. Thus, the complaint lodged by complainant B against FEHD was partially substantiated.

56. Since Plan D and Lands D were not involved in processing the restaurant licence, both complaints against these two departments were unsubstantiated.

57. In response to The Ombudsman's recommendations, Plan D and FEHD have taken the following actions :

(a) for proper compliance with planning requirements and zoning

restrictions, Plan D will examine the need for more concrete penalties as an effective deterrent under the Town Planning Ordinance in the context of the Department's on-going review of the Ordinance;

(b) currently there is a plan to amend the Town Planning Ordinance in three stages. The need for imposing planning enforcement/controls in urban areas will be examined in the last stage of the amendment exercise. Subject to the successful completion of the first two stages of amendments, the stage three amendment exercise is expected to commence in around 2006;

(c) FEHD has incorporated reminder clauses on the applicant's responsibility to comply with lease conditions and OZP restrictions in the Guide, the application form for food licence, and letters to restaurant licence applicants in the course of processing the applications;

(d) FEHD will maintain on-going dialogue with collaborating departments in alerting each other in case there are changes in statutory requirements relevant to the licensing of food business; and

(e) The Ombudsman recommended that applicants should indicate the results of their check on whether their proposed food business would contravene any lease conditions or OZP restrictions, and FEHD should refrain from issuing any restaurant licence unless it has been confirmed that no land use conditions or OZP restrictions would be violated. However, since Lands D does not support providing advisory service for the interpretation of user clauses in the lease conditions and in view of the trade's strong reservation, FEHD would have difficulty implementing these recommendations. With Plan D's agreement, FEHD proposes to refer licence applications to Plan D for comment on the OZP restrictions. FEHD would also take the following measures –

(i) to require the applicant to undertake through a declaration that he will check that the premises for the proposed food business would not violate any lease conditions;

(ii) to incorporate suitable clauses into its correspondence with applicants including the letter acknowledging receipt of application, the L/R and the letter for issue of licence, reminding applicants to comply with paragraph (i) above;

(iii) to refuse an application or refuse to issue a licence if the premises are discovered to be in breach of the lease conditions in the course of application;

(iv) to cancel a licence if after its issue, it is found that the premises have violated the lease conditions; and

(v) to include the consequences at paragraphs (iii) and (iv) above in the application form and the Guide.

Case No. 2002/1277：Failing to handle a complaint appeal case properly and to provide an interim reply.

58. The complainant lodged a complaint with FEHD against a newspaper stall for obstructing the pavement. A district office of FEHD conducted several site inspections and issued verbal and written warnings to the newspaper stall operator. As the obstruction persisted, the complainant felt that the district office had not handled his complaint seriously and he filed an appeal with FEHD's Complaints Management Section (CMS), requesting the assignment of a new investigation officer. CMS indicated that it would follow up the case and reply to him. However, the complainant was not contacted until one month later. He was dissatisfied that CMS did not investigate his complaint but referred it back to the district office. He thus lodged a complaint with The Ombudsman in May 2002 against FEHD for :

(a) failing to follow up his complaint properly; and

(b) failing to provide an interim reply to him.

59. After investigation, The Ombudsman noted that FEHD's normal practice was for district offices to handle complaints relating to environmental hygiene while CMS would handle and monitor staff-related complaints. The

complainant's appeal was therefore referred back to the district office for investigation and the complainant was so informed via CMS. However, the complainant considered that CMS should have taken up the appeal directly because he had specifically made it clear that he wished the head office would designate another officer to conduct the investigation as the district office staff might cover up one another. The Ombudsman was of the view that FEHD had not considered whether the complainant's request for assigning another investigating officer was reasonable or not. In view of his objection, FEHD should have given advance notice of the referral and offered explanation to the complainant. Therefore, complaint point (a) was partially substantiated.

60. As for complaint point (b), CMS had not contacted the complainant or given an interim reply within 10 days, as prescribed in the performance pledge. This complaint point was thus substantiated. Overall, The Ombudsman concluded that the complaint was partially substantiated.

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

(a) a letter of apology was issued to the complainant on 23 October 2002 for failing to issue an interim reply;

(b) FEHD has reminded all complaint-handling staff that they should issue an interim reply cum acknowledgement of receipt to the complainant within 10 calendar days on receipt of any verbal or written complaints in accordance with stipulated departmental guidelines; and

(c) FEHD has completed the review of guidelines on handling of complaints and promulgated revised circulars detailing the complaint-handling procedures. To ensure the continued observance of the guidelines, FEHD has also reminded officers concerned of the need to re-circulate the guidelines once every six months.

Government Property Agency (GPA)

Case No. 2001/2831：Prolonged renovation works at the management office of a government quarters.

62. GPA, the Architectural Services Department (Arch SD) and the concerned Property Management Agent (PMA) held a meeting on 7 June 2001 to discuss the alteration and renovation works inside the management office of a Government quarters building with a completion date in three months' time. On 14 June 2001, upon the verbal advice given by the works contractor, an employee of PMA (who stationed at the quarters but did not attend the meeting of 7 June 2001) put up a notice wrongly informing the occupants that the time required for completion of the works was "approximately one month and a half".

63. The works inside the management office started in mid June 2001 and were completed on 15 September 2001 without delay. However, in mid August 2001, another works project, which involved the construction of a new covered walkway and the renovation of podium floor, started outside the management office as part of a comprehensive project relating to two adjacent newly constructed quarters buildings commenced more than two years ago. This project was scheduled to be completed by early October 2001. As the occupants were aware of these construction works, no further notice was issued by PMA.

64. On 16 August 2001, an officer of GPA received a telephone call from the complainant on the noise pollution caused by the renovation works inside the management office. The complainant also mistook that the project outside the management office was part of the works inside the management office and all these works should complete in about one month and a half as stated in the notice. Being unaware at that time of the discrepancy in the notice issued by PMA, the GPA officer only explained to the complainant the necessity of the works inside the management office and did not discern the need for telling the complainant that such works were actually scheduled to be completed in three months. The officer also did not know that different projects in progress at the same time had caused the complainant's incorrect perception. Hence, the officer neither provided information to clarify such misunderstanding nor

considered working out a solution with Arch SD. Subsequently, the complainant lodged a complaint with The Ombudsman in September 2001 about GPA's failure to monitor the contractor in carrying out the renovation works for the management office of the Government quarters and the subsequent nuisance caused to occupants due to delay of the works.

65. After investigation, The Ombudsman considered that the crux of this complaint was that the notice issued by PMA had incorrectly stated the timeframe for completion of the works to be half of the required time and hence the misunderstanding. On the face of it, it was PMA's mistake. However, GPA had the responsibility to monitor PMA's work performance, so as to ensure its proper operation in management routines including the issue of notices with correct information. Therefore, this complaint was partially substantiated.

66. Pursuant to The Ombudsman's recommendation, GPA has taken the following actions :

(a) GPA has instructed the staff concerned on 17 December 2001 that in future similar situation, apart from offering an appropriate solution in the circumstances, they should also inform Arch SD in order to give an overall consideration to the problem. On 23 May 2002, GPA and Arch SD held a liaison meeting with PMAs to strengthen communication between Arch SD and PMAs in respect of maintenance works in Government quarters, so as to be able to correctly notify the occupants of the details and progress of the works;

(b) GPA sent a letter of apology to the complainant on 9 April 2002 and explained the matter in full; and

(c) GPA instructed its staff concerned on 17 May 2002 that they must increase the frequency of inspections if there are major maintenance works for the quarters.

Case No. 2002/1162：Insufficient supervision of maintenance works in a government quarters.

67. Please refer to Case No. 2002/1623 under the Architectural Services Department.

Government Secretariat – Civil Service Bureau (CSB)

Case No. 2001/3482：Unreasonably allowing Post Office to defer the complainant's promotion.

68. The complainant is a Postman. He declined an acting-with-a-view-to-promotion (AWAV) appointment in January 2001 on the ground that the location of the post office to which he was being posted was too distant. The Post Office (PO) had operated a debarring system under which a Postman who turned down an AWAV acting appointment would be automatically debarred from being considered for promotion to Senior Postman for the current year and the following two years. This system was introduced in 1993 after consulting the staff side as a means to tackle the high decline rate of taking up AWAV appointments by Postmen.

69. The complainant considered that his reason for declining the AWAV appointment should justify an exemption from the debarring effect. He appealed to PO but PO rejected his appeal. He then lodged a complaint with CSB in June 2001 against PO's decision of debarring him from promotion for three years. He later lodged a similar complaint with CSB through the Office of a Legislative Council (LegCo) Member in August 2001. Thereafter, he lodged a complaint with The Ombudsman in November 2001 against PO and CSB about the following:

(a) PO employed delaying tactics in handling his complaint, resulting in his loss of promotion opportunity in 2001;

(b) CSB had allowed PO to delay its reply to CSB on his case, resulting in CSB being unable to process his case; and

(c) CSB had not proactively replied to him on the up-to-date position of his case.

70. As regards complaint point (a), The Ombudsman opined that PO had taken a period of five months to respond to the complainant because there was no exemption arrangement when the debarring system was devised. Since there was no precedent, it did take a longer time for PO to put together relevant

information, such as background of the debarring system and similar posting cases, postings of other officers included in the particular batch under the AWAV appointment, possible home to office routes for the complainant and views of the management at various levels, for the Postmaster General to take a final decision. Nevertheless, PO did reply to the complainant before the 2001 promotion board was convened and his promotion opportunity in 2001 was not affected. Therefore, this complaint point was partially substantiated.

71. Concerning complaint point (b), The Ombudsman noted that CSB had asked PO to provide relevant information on the case immediately after receiving the complainant's letter in June 2001. After receiving the reply from PO in August 2001, CSB considered it necessary for PO to provide further information to explain the debarring system, and hence asked PO to provide the relevant information in September 2001. From then till PO's further provision of information in late November 2001, CSB had urged PO three times to expedite the reply, reflecting CSB's concern on the need for expeditious processing of the case. This complaint point was therefore not substantiated.

72. As for complaint point (c), The Ombudsman observed that CSB had handled the complaint lodged directly by the complainant and the one through the Office of the LegCo Member en bloc, with a view to fully addressing the complainant's concern. At the early stage, CSB had intended to reply to the Office of the LegCo Member copying the reply to the complainant and had informed the complainant of this intention. After review, CSB considered that it was more appropriate to provide separate replies to the complainant and the Office of the LegCo Member. The Ombudsman also noted that after giving an interim reply to the complainant on 10 July 2001, CSB did not write to the complainant until January 2002, though CSB had briefed the complainant on the position of the case every time he phoned the Bureau to enquire about the progress of his case. The interim reply also fell slightly short of the ten working days' requirement stipulated in CSB Internal Circular No. 2/99 on "Complaints/Enquires Handling System in Civil Service Bureau" (the Circular). Notwithstanding that CSB had informed the complainant the position of the case over the phone, The Ombudsman considered that CSB should also follow up with simple written replies to ease the complainant's mind. Hence, this complaint point was partially substantiated. On the whole, the complaint was partially substantiated.

73. In response to The Ombudsman's recommendations, the relevant parties have taken the following actions :

(a) the "debarring system" was abandoned by PO; the complainant and other officers placed under "debarring system" were all included in 2001 promotion exercise for consideration for promotion;

(b) PO has already reviewed the posting arrangement for AWAV appointments. The department would take all factors like operational need, residence of staff and their priority on the waiting list into consideration. To meet operational need and to minimize inconvenience to staff, the department would first consider retaining the officer in their current division/section. Other factors being equal, the priority of the officers on the waiting list would become a deciding factor. This was accepted by staff during staff consultation;

(c) according to the Circular, an officer handling a complaint which cannot be completed within three months should submit a report to account for the reason. CSB has informed The Ombudsman that the bureau would usually write to the complainant to keep him posted of the investigation progress within two months, and hence the communication with the complainant would not necessarily coincide with the submission of the said report. The Ombudsman was satisfied with this arrangement; and

(d) CSB has issued the following instructions for compliance by complaint-handling officers –

(i) if a full reply cannot be given within 10 working days upon receipt of a complaint, an interim reply should be sent within this period, stating that a reply will be provided as soon as possible (in accordance with the Circular);

(ii) for complicated cases requiring longer processing time, the subject officer should keep the complainant informed of the progress of the case regularly apart from issuing an interim reply within 10 days; and

(iii) where the complainant has lodged his complaint through various sources, the subject officer should ensure that separate replies will be issued to all sources including the complainant, if he has also lodged his complaint with CSB direct.

Government Secretariat – Education and Manpower Bureau (EMB)

Case No. 2002/0361：Failing to give a substantive reply to the complainant.

74. The complainants were two ex-employees of the Construction Industry Training Authority (CITA). They wrote to EMB on 18 July 2001 requesting the bureau to follow up on their dismissal by CITA on the ground of bankruptcy. After seeking information from the Labour Department (LD) and CITA, the officer responsible for this case replied to the complainants on 9 August 2001.

75. The complainants sent the officer responsible another letter on 20 August 2001 and requested EMB to follow up further on their cases. The officer responsible sought further comments and information from LD and CITA on the cases on 28 August 2001. The second reply was sent to the complainants on the same day informing them that EMB was following up their cases with LD and CITA. Upon receiving the responses from LD and CITA, the officer responsible considered that there was no mishandling of the dismissal cases by CITA and accordingly did not take any further action. He did not inform the complainants the result of the follow-up action.

76. The complainants claimed that they had sent the officer responsible a third letter on 31 October 2001 urging EMB to inform them of the results of the follow-up action. However, EMB did not receive the letter. Subsequently, the complainants lodged a complaint with The Ombudsman on 21 January 2002 about the following :

(a) in EMB's letter to the complainants on 28 August 2001, EMB said that it would follow up on their cases, but failed to inform the complainants the outcome of the follow-up action; and

(b) EMB did not respond to the complainants' letter of 31 October 2001.

77. After investigation, The Ombudsman concluded that complaint point (a) was substantiated while complaint (b) was not substantiated. Overall, the complaint was partially substantiated.

78. Following The Ombudsman's recommendation, EMB has issued an internal guideline reminding staff to respond to public correspondence within stipulated time limits. Arrangement has also been made for the guidelines to be circulated regularly. Separately, EMB wrote to the complainants on 28 May 2002 to apologize for the delay in replying.

Government Secretariat – Efficiency Unit (EU)

Case No. 2002/0864：(a) Failing to reply to the complainant's electronic mail; (b) delay in replying to the complainant's electronic mail; and (c) obtaining related complaint information from Transport Department without the complainant's permission.

79. The complainant made two enquiries via electronic mail to the Transport Department (TD) on 13 November 2001 and 8 February 2002 respectively. As TD is one of the departments using the Integrated Call Centre (ICC) of EU to handle their enquiries and complaints, these electronic mails were automatically diverted to ICC for handling via a computer system.

80. Subsequently, he lodged a complaint with The Ombudsman about the following :

(a) TD failed to reply to his electronic mail of 13 November 2001;

(b) TD had delayed in replying to his electronic mail of 8 February 2002; and

(c) ICC had obtained related complaint information from TD without his permission.

81. After investigation, The Ombudsman found that ICC did respond to complainant's first electronic mail of 13 November 2001 on 19 November 2001. Complaint point (a) was not substantiated. For the complainant's electronic mail of 8 February 2002, the subject officer of TD had sent her reply to an incorrect electronic mail account by mistake when the electronic mail should be directed to ICC for coordinating a reply to the complainant. Also, ICC had failed to track the case progress and send timely reminder to the subject officer of TD for action. Both ICC and TD only realized in early April 2002 during regular checking by ICC that the complainant had yet to receive a reply. TD immediately issued the reply by electronic mail to the complainant via ICC on 10 April 2002. The Ombudsman was of the view that both TD and ICC should be held responsible for the delay in reply. It was concluded that complaint point (b) was substantiated. The Ombudsman also concluded

that the transmission of the complainant's information from TD to ICC without the complainant's knowledge and consent was not acceptable. Hence, complaint point (c) was substantiated. Overall, the complaint was partially substantiated.

82. Pursuant to The Ombudsman' recommendations, EU and TD have taken the following actions :

(a) a letter was sent to the complainant by TD and EU on 3 and 6 January 2003 respectively to explain and apologise for the delay in replying to his electronic mail. In the letters, EU and TD explained to him the functions of ICC to provide assistance to several departments, including TD, in dealing with complaints and enquiries made by the public. All the enquiries and complaints lodged with the concerned departments would be forwarded to ICC automatically and ICC would relay those complaints to relevant parties for comments and follow-up actions. EU also clarified that the arrangement did not contravene the Personal Data (Privacy) Ordinance;

(b) TD and EU signed a "service level agreement" in July 2002 which stipulated the service provided by EU and TD's responsibilities. According to the agreement, on receipt of an enquiry or a complaint referred by ICC, TD should provide a reply to ICC within 20 days. A reminder would be sent to TD by ICC on the 18th day. If TD failed to provide a response within 20 days, ICC would notify the head of the division concerned of such a delay. A computer system has been installed for such purposes in ICC since August 2002;

(c) a meeting was held between EU and TD on 10 January 2003 during which both departments agreed to follow up on enquiries/complaints in a timely manner to avoid delay and to improve services to the public. In this connection, ICC has established a dedicated team since May 2003 to handle cases related to TD including all complaints via electronic mail, fax and letters and replies to complainants;

(d) TD issued an internal instruction on 10 February 2003 to remind all its officers that every care should be taken to ensure that replies to enquiries and complaints received through electronic mail should be

addressed to the originating persons or organizations, and that all information should be carefully checked to ensure its accuracy before sending off so as to avoid mistakes;

(e) in order to strengthen communication and enhance the efficiency of case-handling, an on-line system will be developed and installed by ICC to enable departmental subject officers to access the case details and progress via the Internet. The system is expected to be in place by the end of 2003; and

(f) a major publicity campaign has been launched since July 2003 to promote the role, functions and services of ICC. The campaign takes various forms, including publicizing the "1823 Citizen's Easy Link" through a series of Announcement in the Public Interests in television and radio, distributing publicity posters, leaflets and souvenirs, etc.

Highways Department (HyD)

Case No. 2001/2859：Failing to monitor the performance of a contractor properly.

83. In June 2001, a contractor of HyD carried out reconstruction works for a footpath of a certain road. On 16 June 2001, the complainant's mother went past the road and allegedly tripped over an excavated surface. She sustained some bruises on her face and had to be hospitalized. Subsequently, the complainant lodged a complaint with The Ombudsman in September 2001 against HyD for failing to monitor the performance of a contractor properly.

84. As the complaint was lodged three months after the incident, HyD could only review the matter based on relevant information from site records. HyD reported that regular site inspections were carried out and there were proper site records. According to HyD's records, the site was idle at the time of the incident. No defects were found nor reported on the section of road where the accident took place.

85. Nevertheless, after investigation, The Ombudsman concluded that the complaint was substantiated by referencing to a report from an independent eyewitness. According to the eyewitness, a hole had been dug outside his shop which was near to the spot where the accident occurred without any guarding at its sides for some time before the accident.

86. In accordance with The Ombudsman's recommendations, HyD has taken the following actions :

(a) an apology letter was issued to the complainant on 23 December 2002;

(b) all site staff of HyD have been reminded to check the quality of works, roadwork obligations and site safety, particularly for any idle sites, and to maintain proper inspection records which register the activities on site and deficiencies identified. The following steps have also been taken to ensure that site staff had carried out their site inspections in a proper manner –

(i) all works supervisors were provided with Site Check Diaries to facilitate them to record the findings and observations from their site inspections. The works supervisors were required to submit their diaries and road inspection reports to their immediate supervisors who should conduct further checks of selected sites to verify the findings of the works supervisors;

(ii) all engineers or chief technical officers would conduct spot checks on the Site Check Diaries and arrange site audits; and

(iii) all Site Check Diaries would be filed properly; and

(c) HyD has reviewed its instructions given to all contractors regarding safety measures on works sites. The following instructions have been given to all maintenance term contractors –

(i) the contractors should carry out daily inspection of all works sites, including those lying idle, especially on lighting, signing and guarding;

(ii) the contractors should ensure proper provision and control of safety measures and provide prompt responses to rectify any identified or reported deficiencies. Any identified or reported deficiencies would be discussed at the regular monthly safety meetings between representatives of the contractors and the engineers;

(iii) all works on the footway should be adequately protected by continuous barriers and the barriers should be properly lit at night;

(iv) notice boards with complaint hotlines should be installed at all roadwork sites, and any reported defects should be attended to and immediately rectified;

(v) the safety officers of the contractors were required to carry out comprehensive safety inspections on roadwork sites at weekly

intervals; and

(vi) the contractors should conduct special checks of all works sites during weekends and long holidays in order to ensure that the lighting, signing and guarding are properly provided and maintained.

Home Affairs Department (HAD)

Case No. 2001/3408：Evading responsibility to repair a damaged stream bank adjacent to a house.

87. Please refer to Case No. 2001/3407 under the Drainage Services Department.

Case No. 2002/0494：Delay in erecting a signboard in playground.

88. In November 1999, the complainant requested the then Regional Services Department (now the Leisure and Cultural Services Department (LCSD)) to install warning signs to advise the public against roller-skating, cycling and skateboarding at a public place off Tai Po Centre. Subsequently, LCSD replied to the complainant explaining that the area in question was outside the jurisdiction of LCSD and the case was referred to the Police and HAD for follow-up action. As no department/organisation claimed responsibility for the management and maintenance of the land, HAD had to check the land status with the Lands Department. In October 2000, after learning that the open space was situated on Government land, HAD wrote to LCSD requesting the erection of signboards as suggested by the complainant.

89. LCSD replied on 24 October 2000 explaining that the department was only responsible for horticultural maintenance in the area in question, and according to Works Bureau Technical Circular No. 18/94, the erection of signboards at the location was outside LCSD's jurisdiction. However, the correspondence with LCSD was not closely monitored as the HAD subject officer concerned was on leave at that time. HAD wrote to LCSD again on 14 March 2001 on the same subject. LCSD subsequently replied on 17 March 2001.

90. HAD finally decided in May 2001 to take up the project and consulted LCSD on the proposed location and wording of the signboards. After obtaining the consent of LCSD on the proposed location and revised wording of the signboards in November 2001, HAD proceeded with the project. Since it had taken such a long time to erect the signboards, the complainant lodged a

complaint with The Ombudsman in February 2002 against HAD and LCSD for the delay. Finally, the signboards were erected in April 2002.

91. After investigation, The Ombudsman found that the delay in the erection of signboards had been caused by breakdown of communication between HAD and LCSD. Apart from written reminders, HAD should have telephoned LCSD to monitor progress. Furthermore, the supervisor should monitor developments regularly when a subject officer was on leave. The Ombudsman concluded that the complaint against HAD was substantiated. For LCSD, The Ombudsman opined that there was no evidence that it had committed any delay in processing this case and concluded that the complaint against LCSD was not substantiated.

92. Pursuant to The Ombudsman's recommendations, HAD and LCSD have taken the following actions :

(a) HAD would regularly instruct its staff to follow up each and every case closely;

(b) HAD has reviewed the procedures to ensure speedy processing of the installation of warning signs; and

(c) both HAD and LCSD have reviewed the receipt and despatch systems in their district offices concerned to ensure the proper transmission of documents.

Case No. 2002/1174：Delay in processing an application for exemption and refund of rates to the owner/occupant of a Small House.

93. The complainant submitted an application for rates exemption on 21 July 1999 to the Rating and Valuation Department (RVD) which forwarded it to HAD on 3 April 2000 with the advice that the house had an illegal covered yard and roof top canopy and the application was not recommended. Hence, HAD rejected the application on 24 July 2000.

94. On 5 September 2000, the complainant informed HAD that he had removed the illegal structures. After seeking and obtaining advice from RVD

and the District Lands Office (DLO) of the Lands Department, HAD approved the application on 28 March 2001 with retrospective effect from 5 September 2000.

95. The complainant requested on 8 June 2001 that approval for rates exemption should be dated back to 1 April 1998 when his house was assessed for rates and requested a refund. Since there were many backlog cases to be handled in the Rates Exemption Section of HAD, it was until 24 April 2002 that HAD replied to the complainant and rejected the request, as one of the rates exemption requirements was that the house must be free of illegal structure and the complainant only met the above criterion on 5 September 2000. The complainant thus lodged a complaint with The Ombudsman in May 2002 against HAD for the delay in processing his application for exemption and refund of rates.

96. After investigation, The Ombudsman considered that it was reasonable for HAD to reject the complainant's request for approval of rates exemption dated back to 1 April 1998, but it was not acceptable that HAD had taken 10 months to process this request. The complaint was thus partially substantiated.

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

(a) HAD has reviewed the staff complement and has added additional staff to the Rates Exemption Section. The number of backlog cases has been reduced from 1,084 in 2002 to 762 in 2003;

(b) the processing officers have strengthened communication with RVD and DLOs in the New Territories for their early advice. This in turn has speeded up replies to applicants/appellants; and

(c) the timeframe for processing appeal cases has been set for completion within six to seven months.

Case No. 2002/2230：Unnecessary consultation on a STT application for addition of driving range facilities.

98. The complainant, an athletic association, held a short-term tenancy (STT) at a nominal annual rental of $1.00 for the use of a sportsground in the town centre. The complainant applied to a District Lands Office (DLO) of the Lands Department (Lands D) to amend the terms of STT to include a golf driving range in September 1999. DLO examined this application in close consultation with departments concerned and rejected it in November 2001, 26 months after the application.

99. In December 2001, the complainant lodged a complaint with The Ombudsman against Lands D about the following :

(a) inefficiency;

(b) unnecessary consultation with locals; and

(c) deliberate attempt to reject its application with reasons that should have been clarified two years ago.

100. The District Office (DO) concerned of HAD was involved in the investigation on complaint point (b) because of its role in consulting local residents.

101. After investigation, The Ombudsman considered that inter-departmental consultation was necessary but some of the exchanges between DLO and departments were repetitive and thus unnecessary, thereby causing delay. However, the delay was partly due to the complainant's failure to honour some of the terms of its original proposal and to respond promptly to DLO's requests for improvement. Therefore, complaint point (a) against Lands D was partially substantiated.

102. For complaint point (b), DLO and DO had consulted the local community on the proposed golf driving range a number of times unnecessarily. While HAD had faithfully fulfilled the duty of local consultation, the DO concerned should have resisted arranging unnecessary and repeated consultations. Hence, this complaint point against Lands D was substantiated

and HAD was also partly responsible. Therefore, this complaint point was partially substantiated.

103. Regarding complaint point (c), The Ombudsman noted that DLO's letter of refusal to the complainant only summed up the comments from departments and the outcome of DLO's efforts to address the problems and gave no reason for refusal. The Ombudsman considered that had DLO been more decisive and not prolonged the consultation process, the complainant could have been informed much earlier. Hence, this complaint point against Lands D was partially substantiated. Overall, the complaint against Lands D was partially substantiated and HAD was partly responsible for complaint point (b).

104. In response to The Ombudsman's recommendations, Lands D and HAD have taken the following actions :

(a) Lands D undertook a detailed review of the existing Land Instructions with a view to streamlining the procedures. In view of the very wide range of STT uses, the diverse geographical/neighbouring differences which make each case unique and the fact that the grant of land involved two contracting parties, Lands D considered it not possible or useful to set a performance pledge for processing all the different types of STT applications; and

(b) HAD has issued a memorandum to remind all District Officers to conduct thorough consultation through appropriate forums and with suitable frequency for matters of public concern.

Case No. 2002/2622：Improperly handling a complaint about an MAC activity which would affect the complainant's photography business.

105. The complainant and her husband were running a photography business in a shopping centre of a public housing estate. On the morning of 7 August 2002, they learned that a Mutual Aid Committee (MAC) in the public housing estate would provide a photography service at a discount in the MAC office in that evening. At 3 p.m. that afternoon, her husband approached the District Office (DO) concerned to request assistance to stop the MAC's

photography service because it would affect their photography business. The staff of DO who met him disregarded his complaint and asked him to leave the office without giving any reply. The complainant's husband alleged that the staff had told him that DO could not intervene because MAC had greater authority on the matter than DO and the Housing Department (HD). Subsequently, MAC provided the photography service as scheduled. The complainant thus lodged a complaint with The Ombudsman in August 2002 against the concerned DO for improper handling of her husband's complaint about the MAC activity which would affect her photography business.

106. Standing Circular No. 16/2000 entitled "Complaints by Members of the Public" of HAD stipulated that all oral and written complaints, including anonymous ones, received by DOs had to be referred immediately to the Complaints Officer for entry in a Complaints Register. However, after investigation, The Ombudsman found that the DO staff concerned did not strictly follow these internal instructions. He received the complaint on 7 August 2002 but only referred it to the Complaints Officer on 15 August 2002. He also did not make a record of his interview with the complainant's husband immediately to ensure that details of important information would not be missed. He only prepared a case report on 10 September 2002 more than a month later. The Ombudsman considered that the staff concerned had failed to handle the complaint in accordance with departmental procedures.

107. MACs are approved by the relevant District Officer under delegated authority from the Secretary for Home Affairs on a triennial basis for the purpose of exemption from the Societies Ordinance (Cap. 151). If an MAC in a public housing estate does not function in accordance with the relevant Model Rules, the District Officer can dissolve it by withdrawing his approval. The staff of DO concerned had wrongly perceived that his office had no authority to monitor activities of the MAC and that he could not intervene if the Executive Committee of MAC had passed a resolution on the provision of photography service. Therefore, he made no attempt to seek guidance from his supervisor and took no further follow-up action on the complaint. He should have immediately approached HD to clarify whether the MAC's photography service would contravene any HD's rules and regulations. Had he done so, HD would have advised him that under the tenancy agreement, MAC would not be allowed to undertake any commercial activity such as photography service. In this way, he would have advised MAC to stop the activity

immediately. The Ombudsman concluded that the complaint was substantiated.

108. In response to The Ombudsman's recommendations, HAD has implemented the following measures :

(a) HAD has directed all DOs to strictly follow the internal guidelines set out in Standing Circular No. 16/2000 when dealing with various kinds of complaints, including those relating to MACs. DOs would also re-circulate the circular to their staff every six months;

(b) HAD has reminded all its staff members to report problems relating to MACs to Senior Liaison Officers who would give advice as to how the problems should be resolved. The staff concerned would discuss sensitive or serious cases with their District Officer to ensure that they are dealt with properly; and

(c) HAD has reminded all staff members to exercise due care in dealing with complaints.

Hong Kong Examinations and Assessment Authority (HKEAA)

Case No. 2002/2142：Impropriety in releasing Hong Kong A-level Examination results on Internet in 2002.

109. The complainant was a candidate of the Hong Kong A-Level Examination (HKALE) in 2002. He lodged a complaint with The Ombudsman in July 2002 against HKEAA for impropriety in releasing the Hong Kong A-Level Examination (HKALE) results on the Internet in 2002. The complainant alleged that HKEAA's arrangements for providing passwords for day school candidates to access their HKALE results on the Internet after they had already received result notices at their schools was neither reasonable nor useful to the candidates.

110. After investigation, The Ombudsman noted that the arrangements to let day school candidates collect their result notices at their schools together with the passwords to view their web-based results online later than other categories of candidates was taken after consultation with school councils. It was in the interest of day school candidates as immediate counseling support by teachers could be made available when needed. However, The Ombudsman did not wish to comment on HKEAA's professional judgment on the need for providing counseling to day school candidates, although she considered that the arrangements under dispute was not useful to these candidates and was a waste of resources. The lack of clear explanation of the reasons for such a decision also contributed to the misconception of unfairness and unreasonableness of the decision. Hence, the complaint was partially substantiated.

111. The following actions have been taken by HKEAA in response to The Ombudsman's recommendation :

(a) in February/March 2003, candidates of day schools and evening schools and private candidates were informed of the arrangements regarding the release of results for the 2003 Hong Kong Certificate of Education Examination (HKCEE) and HKALE through the issue of circulars or letters. Day school candidates would collect their result notices at their schools together with the passwords to enable them to

view their web-based results online on the day of publication of results. Candidates of day schools would be able to view their results on the Internet from 11:00 a.m. onwards on that day for a period of three weeks. The underlying rationale for the arrangements was also explained. They were reminded that the time required to gain access to the website depended on the Internet traffic. A telephone hotline was available in case candidates wanted to enquire about technical problems. The relevant circulars were also put on the HKEAA's website for public access; and

(b) the public was informed again of the arrangements and the underlying rationale via a press release in July 2003 and August 2003 for the release of the HKALE and HKCEE results online respectively.

Housing Department (HD)

Case No. 2001/3085：Failing to take enforcement action against an unauthorised building structure.

112. The complainant had lodged a complaint with a District Lands Office of the Lands Department (Lands D) in April 2001 against unauthorised building structures at two lots. Subsequently, Lands D carried out a site investigation and found unauthorised construction work being conducted at one of the lots. Lands D later posted a notice on site requesting termination of the construction work. Since squatters with control numbers were involved, Lands D wrote to HD asking the latter to consider control action. Separately, vehicles were found parking on a piece of agriculture land at the other lot. As parking of vehicles on agricultural land did not violate the land lease, Lands D referred the matter to the Planning Department (Plan D). Plan D then asked for the identity of the vehicle owners but received no response from Lands D.

113. HD carried out a site investigation in June 2001 and gave verbal warning to the property owner who was asked to terminate the construction work and make an application to Lands D for redevelopment. After receiving the property owner's application including a land licence issued back in 1921, HD forwarded the same to Lands D on 6 August 2001 and indicated that no control action would be taken as long as the application was still being processed.

114. On 25 August 2001, Lands D replied to both HD and the property owner indicating explicitly that the application had been rejected and that Lands D would not further consider the application. Lands D also urged HD to carry out control action.

115. Later, Lands D and HD were in disagreement on the basis of enforcement, i.e. whether it should be pursued under Government licence or squatter control considerations, and both considered it as the responsibility of the other side. The complainant was dissatisfied with the irresponsible attitude of the two departments and lodged a complaint with The Ombudsman in October 2001 against Lands D and HD for failing to take enforcement action against an unauthorised building structure.

116. After investigation, The Ombudsman considered that the complaint against Lands D and HD was substantiated. However, The Ombudsman learnt that Lands D would soon take over the Squatter Control Section currently under HD and hoped that there would be no similar disputes when the handover took effect.

117. In response to The Ombudsman's recommendations, Lands D and HD have taken the following actions :

(a) a "contact man" system between the two departments has been put in place since 1989 to deal with operational issues at district level. This will be strengthened to ensure regular communication for effective handling of unauthorised structures on Government land and private land. In addition, joint operations will be carried out by both departments to rectify any irregularities detected;

(b) departmental circulars have been issued by Lands D and HD to remind staff of the importance of maintaining a client-oriented culture and adopting a proactive attitude in handling complaints; and

(c) HD has also set up a working group in 2002 to improve the existing workflow in respect of enforcement actions against newly erected/rebuilt unauthorised structures.

Case No. 2001/3678：(a) Misleading the complainant in a sale of HOS flat; and (b) breaking a promise of neutrality in voting on building management matters；2001/3687, 2001/3688, 2001/3689, 2001/3690, 2001/3833, 2001/3834, 2001/3835：(a) Misleading the complainant in a sale of HOS flats; (b) favouritism for the office-bearers of the OC management committee; and (c) breaking a promise of neutrality in voting on building management matters；2002/0053：(a) Depriving owners of autonomy in building management; and (b) breaking a promise neutrality in voting on building management matters.

118. The complainants, residents of a housing development, bought Mortgage Subsidy Scheme (MSS) flats under Buy-or-Rent Option Phase 1,

offered by the Hong Kong Housing Authority (HA). They lodged several complaints with The Ombudsman in December 2001 against HD about the following :

(a) HD misled them in the sale of a block in the housing development under MSS as the sales documents did not specify that other blocks in the development were rental blocks;

(b) HD gave undue favour to the Management Committee (MC) of the Owners' Corporation (OC) of the development since the staff of HA's appointed Property Management Agent (PMA) accompanied the MC Chairman to appear at the hearing of the Lands Tribunal while individual owners who filed the case were not given such preferential treatment;

(c) HD's vote at an owners' meeting of the development was against its promise of remaining neutral at such meetings;

(d) there was a conflict of interest among the different roles of HA being the owner of majority shares, the supervisor of the management company, and decision maker and executor of public housing policies. Furthermore, HA tried to conceal such conflict; and

(e) HD has deprived owners of autonomy in building management.

119. After investigation, The Ombudsman noticed that the sales brochure of the housing development concerned stated that "part of the flats/buildings of the estate might be used as public rental housing". According to the layout plan attached to the brochure, other blocks within the development were marked as subsidized housing which could mean housing for rent or sale. Buyers should have read the document carefully before making their decision. Therefore, complaint point (a) was unsubstantiated.

120. As for complaint point (b), The Ombudsman found that PMA was chartered to work for the OC in managing the housing development, hence it should cooperate with the MC and had a duty to accompany the MC Chairman to the hearing. The owners who made the application to the Tribunal did not represent all the owners. Thus, it was not unreasonable that PMA did not

accompany them at the hearing. Complaint point (b) was thus unsubstantiated.

121. Regarding complaint points (c) and (e), the complainant alleged that despite its promise to remain neutral, HD voted against two proposals at the owners' meeting: namely, to install window bars along the corridors at HD's expenses and to dissolve the MC. HD explained that as an owner, HA had already paid its share of management fees and the first proposal was unreasonable. On the second proposal, HD pointed out that the owners could seek to replace individual incompetent members in accordance with the Building Management Ordinance instead of dissolving the whole committee. To do so might jeopardise the operation of the owners' corporation and management of the housing development. The Ombudsman noted that HD had only promised to be neutral in general but not in all circumstances. Therefore, these complaint points were unsubstantiated.

122. For complaint point (d), The Ombudsman considered that there was no conflict of interest among the different roles of HA. Hence this complaint point was unsubstantiated. On the whole, all the complaints were unsubstantiated.

123. Notwithstanding the above, pursuant to The Ombudsman's recommendations, HD has taken the actions set out below :

(a) HD has considered the possibility of a separate Deed of Mutual Covenant (DMC). However, HD considered a single DMC for mixed tenure housing common in HA's developments and in the private sector, and such arrangements safeguarded the interests of all residents in the estate. Furthermore, DMC of the housing development concerned was a binding legal document between HA and individual flat owners and formed the legal basis for the day-to-day management of the development. It should not be varied at the request of individual owners or residents in order to resolve their disputes. HD also anticipated that in the process of moving forward the motion to revise DMC which had to be approved by all owners (including the mortgagees), different views and further disputes would be generated. In fact, if the flat owners concerned could consider and act in concert over the matter in the overall interest

of all residents of the estate, the disputes could be resolved without much difficulty; and

(b) regarding the management arrangements for similar developments in the future, HD would consider the most appropriate management model for each mixed tenure development in the light of individual circumstances. Generally speaking, each development was planned and designed as a comprehensive project, and all its residents had the right to enjoy the common facilities as well as the obligation to share the management and maintenance responsibilities of the estate. A single DMC could guarantee a fair distribution of rights and responsibilities. In any event, HA has now ceased all development projects and different management models for future mixed tenure developments would not be an issue for HA for the time being.

Case No. 2002/0526：Improper administration of debris removal fee.

124. The complainant, a flat owner of a housing development, lodged a complaint with The Ombudsman in March 2002 against HD for :

(a) being unfair to owners of small flats by permitting the property management company (PMA) to collect debris removal charges (DRC) from flat owners at a flat rate;

(b) permitting PMA to collect DRC which was unreasonably high and, to some owners, was in breach of one of the provisions of the Deed of Mutual Covenant (DMC) which stipulated that DRC should not exceed the sum of two months' management fee; and

(c) not taking positive follow-up actions on the reimbursement of overpaid DRC by PMA to the owners.

125. After investigation, The Ombudsman noted that the debris removal contractor was selected by tender. HD and PMA had followed a long-standing practice in fixing DRC at a flat rate. However, The Ombudsman considered that the volume of debris would normally be proportional to the size of a flat. In fact, DRC was pegged to the size of the

flats in most public rental housing and private developments. Thus, complaint point (a) was substantiated.

126. As for complaint point (b), the ceiling of DRC at two months' management fees was prescribed in the DMC. DRC tender price for the entire development was at a level comparable to that charged in nearby estates. The flat rate was determined by dividing the contractor's tender price by the number of flats in the estate. While DRC in total was reasonable, the unit rate for the complainant and other small-flat owners had exceeded the level prescribed in the DMC. Therefore, complaint point (b) was partially substantiated.

127. Regarding complaint point (c), HD had taken a long time to arrange with PMA to refund the excess payment to owners. Although clearly inefficient, this was beyond the sole control of HD as the matter involved interpretation of Lands Department guidelines and provisions of the DMC as well as negotiations with PMA. Hence, complaint point (c) was partially substantiated. In conclusion, this complaint was partially substantiated.

128. In response to The Ombudsman's recommendations, HD has :

(a) reminded its staff to pay attention to the "Handover Notes" of developments under the Home Ownership Scheme in which the requirements on the collection of DRC under the DMC has been clearly stated; and

(b) strengthened communication between the Agency Management Unit and the estate offices to ensure proper performance of the provisions of contracts and the DMC.

Case No. 2002/0688：Delay in processing an application for autopay and unreasonable refusal for payment of rent via Payment by Phone Service.

129. Starting from 1998, HD has accepted rent payment by Payment by Phone Service (PPS). To avoid double payment, HD has stipulated that tenants could not use both Autopay and PPS, and has to choose either one of the options.

130. In June 2001, the complainant applied for Autopay at the estate office. After a lapse of three months, the complainant still had not heard from HD whether his application was approved, so he went to the estate office to apply for rent payment by PPS in September 2001.

131. As the unit had been registered for rent payment by PPS, HD headquarters rejected the complainant's application for Autopay in accordance with the stipulation stated above. After knowing the decision, the estate office sent a staff to explain the stipulation to the complainant's father and asked him to advise the complainant that if he wanted to pay rent by Autopay, he would have to go through the formalities again.

132. However, in November 2001, the estate office cancelled the complainant's PPS Tenant Code since HD was in the belief that the complainant had originally intended to use Autopay; his PPS Tenant Code was therefore cancelled to facilitate his application for Autopay. The rent paid by the complainant via PPS for December 2001, Janauary 2002 and February 2002 thus could not be credited into the account for the unit. The complainant lodged a complaint with The Ombudsman against HD in March 2002 for the delay in processing his application for Autopay and unreasonable refusal for payment of rent via PPS.

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

134. HD has accepted all the recommendations of The Ombudsman and taken the following actions :

(a) a letter of apology to the complainant and his family has been issued;

(b) tenants are now allowed both options to pay their rent by Autopay or PPS at the same time;

(c) the "Easy Rent Payment" pamphlet and other relevant pamphlets have been revised, so that tenants would know that they can resort to both payment methods at the same time;

(d) procedures for processing applications for rent payment by Autopay have been revised, so that applications will be processed more efficiently; and

(e) a set of guidelines for its frontline staff has been issued to remind them that they have to notify the applicants concerned when they decide to cancel their rent payment arrangements.

Case No. 2002/1204：Improper handling of an application for buyback of HOS flat – (a) provision of wrong information about flat inspection; (b) delay in making flat inspection; (c) impropriety in identifying repair items; (d) over-charging of fees; and (e) inefficiency in providing quotation for repair works.

135. A former flat owner in a Home Owership Scheme (HOS) estate sold his flat back to the Hong Kong Housing Authority (HA) at the original purchase price. He lodged a complaint with The Ombudsman in April 2002 against HD, the executive arm of HA, for :

(a) misleading him on the procedures of flat inspection, which caused him to move out of his flat prematurely and thus sustain unnecessary interest payments;

(b) delaying the inspection of his flat on the excuse that "inspection was possible only after the date of execution of assignment had been confirmed by the solicitor";

(c) discarding an original wooden door unreasonably such that he had to bear a higher cost for repair and reinstatement works;

(d) deceiving him, as HD did not inform him beforehand that he had to pay an additional 20% on-cost if he contracted the reinstatement works to HD; and

(e) inefficiency, as it took a long time for him to receive the quotation for the reinstatement works.

136. After investigation, The Ombudsman found that HD's practice was to conduct a preliminary inspection, on request, to advise owners on the fixtures to be removed or reinstated. The reinstatement costs could only be confirmed after final inspection of the vacant flat, normally conducted about 10 days before the execution of assignment. As the complainant had no time to arrange a preliminary inspection and indicated his decision to contract the reinstated works to HD, HD advised him that the final inspection would be arranged after the execution of assignment date was fixed. As HD was following established procedures, complaint point (a) was not substantiated.

137. Regarding complaint point (b), The Ombudsman noticed that in its letter accepting the sell-back, HD had made it clear that it "would arrange for final inspection … about 10 days before the execution of the Deed of Assignment." HD had no intention to delay the inspection process. This complaint point was therefore unsubstantiated. As for complaint point (c), the door concerned could not be re-used as the laminated board at the back had been removed and the lock replaced. Hence, this complaint point was unsubstantiated.

138. Concerning complaint point (d), HD's staff had asked the complainant to sign on the agreement form which only provided the reinstatement items without the reinstatement cost during the final inspection. The cost was entered subsequently on the same form. HD's staff maintained that the complainant had been verbally informed about the on-cost and he was reminded again during the final inspection. As the agreement form signed by the complainant was clear about the imposition of the 20% on-cost, this complaint point was thus unsubstantiated.

139. Regarding complaint point (e), HD's staff had not followed the relevant internal guidelines by asking the complainant to sign the "Agreement Form for Required Reinstatement Works Item" before the "Agreement Form on Reinstatement Works Costs". In this regard, he was deprived of the right to object to the costs. Although the quotation was issued within seven days of the final inspection, thus meeting the departmental guidelines, it was only given to the complainant after the execution of assignment, and the purpose of issuing the quotation was defeated. The Ombudsman considered that HD had made a mistake and so this complaint point was substantiated. Overall, the complaint was partially substantiated.

140. HD has accepted all the recommendations of The Ombudsman and taken the following actions :

(a) HD has made a written apology to the complainant for its mistake of not asking him to sign on the "Agreement Form for Required Reinstatement Works Items" and "Agreement Form on Reinstatement Works Costs" separately during the final examination of the flat;

(b) HD has issued a new Estate Management Division Instruction to –

(i) define in clear terms the operational procedures for the initial and final flat inspections. Relevant information in written form should be given to flat owners;

(ii) remind its staff to explain the reinstatement standards to flat owners at the early stage of the buy-back, and give a set of original layout plans and a checklist for the estimated costs of the typical reinstatement work items to flat owners so that they would have the necessary information to decide whether the reinstatement work is to be carried out by HD;

(iii) remind its staff to explain to flat owners the sequence of signing the "Agreement Form for Required Reinstatement Works Items" and "Agreement Form on Reinstatement Works Costs";

(iv) remind its staff to inform flat owners in writing about the quotation criteria of HD and the requirement that a 20% additional charge will be levied so that flat owners would understand the situation when they appoint HD to perform reinstatement works for them at the beginning of the buy-back; and

(v) ensure that confirmation of the quotation is completed before the transaction so that flat owners have reasonable time for consideration; and

(c) HD has revised the standard letter to owners, upon their application

for buy-back, explaining clearly that they are required to undertake necessary repair and reinstatement works for reverting their flats to original conditions. The letter also states clearly that if the said works are undertaken by HA, the owners concerned have to bear the repair and reinstatement costs plus 20% on-cost as administration and supervision fees.

Case No. 2002/2726：Failing to respond to complaints lodged by the complainant through e-mail and to monitor the performance of a car park management contractor.

141. The complainant was a resident with a licence for overnight parking in an open car park of a public housing estate. He alleged that the car park management contractor had not taken adequate measures against illegal parking, particularly clamping vehicles loading and unloading goods in excess of 30 minutes without paying the parking charge. In addition, on several occasions, there was no attendant on duty at the car park entrance. He sent his complaints to HD via electronic mail in August 2002. Apart from acknowledgement of receipt, HD did not give substantive replies. He thus lodged a complaint with The Ombudsman in November 2002 against HD for :

(a) failing to provide substantive replies to his complaints against poor parking control in an estate lodged through electronic mail on 1, 4 and 13 August 2002; and

(b) failing to monitor the car park management contractor, resulting in the latter taking no enforcement action against illegal parking in that estate.

142. After investigation, The Ombudsman found that the complainant's electronic mails had been directed by the E-mail Coordinator of HD to an ex-Housing Manger of the estate. Following the departure of this ex-Housing Manager, the post had been deleted and all the electronic mails from the complainant were left unattended in his electronic mail box. Complaint point (a) was thus substantiated.

143. As for complaint point (b), there was no dispute that some vehicles

had entered the car park illegally, staying for almost an hour without being impounded. HD accepted that the car park contractor could exercise flexibility for the convenience of residents and visitors after taking into consideration the views of the Estate Management Advisory Committee (EMAC), an independent third party representing the residents. Nevertheless, HD had instructed the car park contractor to ensure proper manning of the car park entrance at all times. The Ombudsman considered that whether the car park contractor was right in deciding that an additional 30 minutes should be given before impounding the vehicles called for value judgment. There was also no evidence of unfairness by the car park contractor in implementation. Regarding monitoring of the car park contractor, The Ombudsman noted that the contractor's performance was subject to constant supervision by EMAC and was assessed by HD on a bi-monthly basis. Appraisal reports indicated that the car park contractor had been performing satisfactorily in the past years. In this light, complaint point (b) was unsubstantiated. On the whole, the complaint was partially substantiated.

144. HD has accepted all the recommendations of The Ombudsman and taken the following actions :

(a) a letter of apology has been sent to the complainant for mishandling his complaint;

(b) on the Electronic Mail Account Maintenance System, HD would -

(i) ensure the deletion of electronic mail accounts of all departing staff. A "Computer System Account Deletion Form" has been introduced and will be sent together with the Staff Departure Notification Letter to those who would leave the service;

(ii) ensure that there is no obsolete electronic mail account. HD will extract and check inactive electronic mail accounts (those with the last log on time one month ago or longer) every month and send the information to the corresponding section heads for verification. Upon confirmation, the accounts will be deleted accordingly; and

(iii) regular reminders are sent through electronic mail to require users

to inform their responsible sections upon their posting or departure;

(c) the workflow of the E-mail Coordinator has been revised and a new guideline on electronic mail complaint-handling has been issued to all staff of the Complaints and Enquiries (C&E) Sub-section; and

(d) a full registry of incoming electronic mails has been established, together with an acknowledgment system to ensure the proper receipt of electronic mails by the relevant subject officers. An acknowledgment reply slip will be sent together with every single electronic mail case to the relevant subject officer for return to C&E Sub-section. If the slip is not received in three days, staff of the C&E Sub-section will remind them again by phone. Similarly, the subject officers will be reminded again if a substantive reply to the complainant is not received in 21 days.

Inland Revenue Department (IRD)

Case No. 2001/3380：Failing to respond to enquiries, sending letters to wrong address and making errors in assessment.

145. In May 1999, IRD's assessing system noted that the income reported by the complainant's employer exceeded his income assessment for 1998/99 and generated an Income Discrepancy Advice to start follow-up actions. However, the case officer concerned failed to make effective use of the online enquiry system and could not locate the return filed by the complainant under his former dummy reference number. As a result, action on the Income Discrepancy Advice had since been dropped until the Head of the Service Section conducted periodic reviews and picked up this outstanding case in March 2001. An additional assessment for 1998/99 was subsequently sent to the complainant at his employer's address in Hong Kong in June 2001.

146. However, the additional assessment was returned undelivered and IRD had immediately redirected it to the complainant's last known residential address in Hong Kong. The complainant, who had left Hong Kong in March 2001, was in New Zealand at that time. The complainant eventually received the assessment in September 2001 and wrote to IRD from New Zealand on 17 September 2001 objecting to the additional assessment. The complainant wrote further on 5 November 2001 to enquire about progress. However, IRD did not reply to the complainant until 3 January 2002 due to the misfiling of the complainant's document by its staff. The replies on 3 January 2002 and afterwards were still sent to the complainant's last known residential address in Hong Kong.

147. The complainant lodged a complaint with The Ombudsman in November 2001 that IRD had :

(a) delayed in issuing the additional assessment;

(b) failed to respond to his enquires;

(c) sent letters to the wrong address; and

(d) made errors in the additional assessment.

148. After investigation, The Ombudsman considered that the delay in processing the Income Discrepancy Advice from May 1999 to March 2001 was unreasonable. Hence, complaint point (a) was substantiated. Complaint point (b) was partially substantiated since IRD had not replied to the complainant's letters until 3 January 2002 due to the misfiling of the complainant's document by its staff. Regarding complaint point (c), as the complainant had left Hong Kong in March 2001 without notifying IRD of his new correspondence address, pursuant to the statutory requirement under the Inland Revenue Ordinance, The Ombudsman found it proper for IRD to send the additional assessment to his last known residential address in Hong Kong. However, by September 2001 when the complainant wrote to IRD to object the additional assessment, IRD should have known that the complainant was residing overseas. IRD staff did not confirm with the complainant his new correspondence address at that time but assumed that he would move again and kept sending replies and letters to his last known residential address in Hong Kong. In the light of the complainant's statutory duty to notify his change of address, complaint point (c) was partially substantiated. Concerning complaint point (d), The Ombudsman considered that the additional assessment made by IRD was a technical issue and did not involve maladministration; hence this complaint point did not fall under the purview of The Ombudsman. On the whole, the complaint was partially substantiated.

149. The Ombudsman noted that IRD has already taken the following remedial actions :

(a) a letter of apology was sent to the complainant on 3 January 2002 explaining the reasons for the delay;

(b) the subject officer was reminded to keep taxpayers informed of progress; and

(c) all staff were reminded to be more careful in their work.

150. In addition, IRD has accepted and implemented all the recommendations of The Ombudsman by reviewing and improving the following areas and an internal circular was issued to the staff concerned :

(a) the training and supervision of tax assessment staff, including the effective use of the online enquiry system;

(b) the overall monitoring mechanism for ensuring prompt follow-up action on Income Discrepancy Advice cases, particularly those involving taxpayers not in Hong Kong;

(c) the filing procedures to minimise the possibility of misfiling of documents; and

(d) the procedures for serving notices on a taxpayer with an overseas correspondence address so that reasonable time is allowed for response including objection and any change of correspondence address is promptly recorded.

Intellectual Property Department (IPD)

Case No. 2002/1609：Improper handling of an application for registration of trade mark.

151. The complainant filed an application for registration of a trade mark under the Trade Marks Ordinance on 13 April 2000. After examining the application, the Trade Marks Registry (the Registry) of IPD issued a notice to the complainant on 27 July 2000 that he might proceed with the registration formalities by advertising the application in the Gazette. The complainant thus advertised the application in the Gazette on 11 August 2000. After expiry of the statutory two-month period for opposition, the complainant applied for formal entry of the mark as a trade mark in the register and the issue of a certificate of registration.

152. At that stage, the Registry found that the complainant's mark was in fact in conflict with another mark under an earlier application made by another applicant. On 1 November 2000, the Registry wrote to the complainant to inform him that his application had been "accepted in error" within the meaning of section 17 of the Trade Marks Ordinance and his mark could not be registered as a trade mark . Subsequently, the complainant lodged a complaint with The Ombudsman against IPD for improper handling of his application for registration of trade mark.

153. After investigation, The Ombudsman found that the normal procedures of examining a trade mark application would require the Registry to search its database of registered trade marks and marks under application for registration (collectively referred to as "marks") to determine whether there were on record any marks identical or similar to the subject mark under application. At the time of handling the application in question, the Registry was operating the old search facility in which the texts and images of marks were stored separately and the search report showed details of the marks in writing only without the image. In examining an application at that time, an Intellectual Property Examiner (the Examiner) would first examine the text of the marks in the search report. Where the Examiner had doubt that there could be an identical or similar mark with the one under application, he would further activate the image system to retrieve and view the image.

154. In the present case, the Registry's records show that in examining the complainant's trade mark application, the Examiner had made a search for identical or similar marks. The application number and the English text of a similar mark submitted earlier were generated in the search report. However, the Examiner had overlooked the earlier application and therefore did not search the image system as required. The Examiner thus failed to appreciate that the two marks were very similar to each other. The Ombudsman concluded that the complaint was substantiated.

155. Pursuant to The Ombudsman's recommendations, IPD has taken the following actions :

(a) the Registry has held an in-house meeting to review the case. After the meeting, Senior Intellectual Property Examiners reminded the staff to handle applications with vigilance to avoid similar omissions in future;

(b) the Registry has always been maintaining a set of internal guidelines for Examiners on the searching of marks. Following on the complaint, the Registry issued reminders to remind all Examiners that images of possible conflicting marks might not be shown in the search reports, and that if there was any doubt, they should activate the trade mark image system to make a comparison between the image of the mark applied for and images of marks recorded in the database. The guidelines also set out the factors to be considered in determining whether the marks were similar. The operation of a new computer system has now commenced (see paragraph (c)) below), but the internal guidelines for Examiners on processing trade mark applications continue to be in force; and

(c) in late January 2003, IPD has set up a new computer system with improved search facility. The new search facility stores the text and image of a mark together, and shows both in a search report. This facilitates the search for identical or similar marks considerably and thus helps avoid recurrence of the incident in question.

Labour Department (LD)

Case No. 2001/3366：Failing to provide necessary support to the complainant for lodging a claim to the Labour Tribunal.

156. The complainant alleged that her foreign domestic helper (FDH) left her employment without serving any notice. The complainant thus filed a claim for wages in lieu of notice at LD against the FDH. The FDH on the other hand also filed a claim for wages in arrears, wages in lieu of notice and airfare against the complainant. As no settlement could be reached at the conciliation meeting convened in October 2001 by LD, both the complainant and the FDH decided to seek adjudication for their respective claims. According to the legislation, the Labour Tribunal (LT) would handle claims of more than $8,000 and the Minor Employment Claims Adjudication Board those of $8,000 or less. In this case, the FDH's claims totalled to more than $8,000 whereas the complainant's claim was less than this amount. To avoid the situation of the same case being heard separately at two different courts, the LD's practice under such situation would be to refer the claim to LT and to indicate in the referral memorandum that the defendant would file a counter claim.

157. The complainant noted that LD had stamped the words "Case referred to Labour Tribunal" on the FDH's file and "Case settled" on hers. She requested LD to assist her in filing a claim with LT. LD advised her that in the memorandum referring the case to LT at the FDH's request, it had stated that the complainant would counter-claim the FDH. The complainant could, therefore, make her own case when the FDH filed her claim with LT. However, the complainant objected to the defendant status and wished to file a separate claim in her claimant capacity, but the case officer did not accede to her request. Therefore, she lodged a complaint with The Ombudsman in December 2001 against LD for :

(a) handling her case unfairly; and

(b) failing to provide assistance in referring her claim to LT.

158. After investigation, The Ombudsman considered that the words "Case

settled" implied that the case had been resolved, thus the complainant had reason to gain the impression that LD had closed her case before arriving at a solution. Whilst this procedure was not satisfactory, there was no evidence that LD had shown favouritism towards the FDH. Therefore, complaint point (a) was unsubstantiated. As for complaint point (b), under section 24 of the LT Ordinance, it was for LT, and not LD, to decide whether the claims from the two parties should be joined. In response to the complainant's request, LD's staff should have explained this arrangement clearly to her and let her decide whether to file a separate claim to LT, instead of advising her to counter-claim when the FDH filed her claim. Thus, this complainant point was substantiated. Overall, the complaint was partially substantiated.

159. LD agreed to The Ombudsman's recommendations and has taken the following actions :

(a) LD has gone through The Ombudsman's investigation report and its recommendations with the staff concerned in detail;

(b) experience sharing sessions have been conducted for conciliation officers on how to treat employer and employees fairly in similar situations;

(c) the relevant working procedure has been amended such that for a request similar to that of the complainant, the conciliation officer is required to bring the case to the supervising Labour Officer, who will then discuss with the Registrar of LT on how best to accommodate such request; and

(d) commencing August 2002, LD has already replaced the chop "Case settled" with "Case handled in (file ref)".

Lands Department (Lands D)

Case No. 2000/2767：Failing to take proper action in respect of a complaint about an unauthorised vehicular access; 2000/2865：Failing to take proper action in respect of a complaint about an unauthorised vehicular access.

160. The complainants, a village representative and a villager, lodged complaints with the District Office (DO) of the Home Affairs Department (HAD) that a vehicular access road had been constructed on Government land without approval. DO referred the case to the District Lands Office (DLO) of Lands D which posted a warning notice on site in August 2000, declaring that the access road was unauthorised and requiring the party concerned to clear the site and cease the unauthorised occupation. However, nothing was done and the villagers considered that the access road would aggravate the flooding problem of the village. Two complaints were then lodged with The Ombudsman in November 2000 against Lands D, HAD, Drainage Services Department (DSD), Transport Department (TD) and Highways Department (HyD) for failing to take proper action regarding the unauthorised access road.

161. After investigation, The Ombudsman concluded that the complaints against HAD, DSD, TD and HyD were not substantiated since these departments had handled the case properly. However, The Ombudsman found that DLO had been approached for permission to grant the access road in 1992 and that the handling of the application at that time was far from satisfactory. DLO appeared unaware that it was the approving authority for granting a vehicular access road on Government land. Whilst it had contacted HyD and TD and obtained their no objection in principle to the application, it had not clearly communicated its approval to the applicant then. On the other hand, DLO considered the conditional approval to have been revoked because the design of the access road had to be amended to overcome villagers' objections during construction. The Ombudsman considered that if there was any doubt about the previous approval, DLO should have taken reasonable steps to clarify the situation with other departments concerned. Furthermore, DLO had not informed the applicant at any stage that the conditional approval had been revoked. As a result, DLO's action had prejudiced the situation. Taking the case as a whole, the complaints against Lands D was partially substantiated.

162. In accordance with The Ombudsman's recommendations, Lands D has taken the following actions :

(a) DLO has been in constant liaison with the solicitor acting on behalf of the small house developer who built the unauthorised vehicular access road but has been unable to find a satisfactory solution as to who should hold the necessary Short Term Tenancy (STT) to regularize the access road. DLO proposed to demolish the access road but the solicitor objected with various reasons and suggested to retain it. DLO initially issued a demolition order in March 2003 but the solicitor continued to appeal with suggestions as to which party could take up the STT. Discussions are still ongoing. The latest situation is that the access road would be demolished unless the solicitor could prove that the limited company is capable of holding the tenancy and is not likely to be wound up when the small house development is completed;

(b) a Land Instruction was issued in May 2003 dealing with proposals for local improvement works in rural areas, including proposals to build vehicular access roads on Government land; and

(c) an application such as the one in this case normally involves circulation of the proposal to relevant departments and its subsequent processing through relevant committees such as the District Lands Conference. The newly issued Land Instruction mentioned above has stipulated the proper procedures to be followed.

Case No. 2001/3084：Failing to take enforcement action against an unauthorised building structure.

163. Please refer to Case No. 2001/3085 under the Housing Department.

Case No. 2001/3906：Delay in processing a request for felling a withered tree.

164. The complainant, a village representative, wrote to the District Office

(DO) of the Home Affairs Department (HAD) in June 2001 requesting that a withered tree in the village be felled. On 9 July 2001, DO made a joint site visit with the Agriculture, Fisheries and Conservation Department (AFCD) and the complainant. The complainant was then advised that the matter had been referred to the District Lands Office (DLO) of Lands D.

165. Upon receipt of the referral from DO, the case officer of DLO did not make any response. No reply of any kind was sent to DO and the complainant. It was until late August 2001 when another officer of DLO picked up the case that he liaised with AFCD. DLO then conducted a joint site visit with DO on 8 November 2001 but still did not inform the complainant of progress. The complainant thus lodged a complaint with The Ombudsman in December 2001 against Lands D for the delay in processing his request for the felling of a withered tree.

166. Eventually, despite the low priority given by Lands D to such tree felling requests and the fact that, according to AFCD, the tree posed no immediate danger, funds were obtained and DLO arranged for the tree to be felled in early 2002.

167. After investigation, The Ombudsman found that Lands D had no performance pledge on felling trees. However, it was considered that the lapse of four months between DO's referral and DLO's joint site visit with DO was unreasonable and that the complaint of delay was substantiated.

168. Pursuant to The Ombudsman's recommendations, Lands D has taken the following actions :

(a) DLO sent a letter of apology to the complainant on 24 February 2003; and

(b) currently, there is a Lands D Administrative Circular setting out detailed guidelines on the handling of enquiries and complaints. A new provision has been included in the Circular stipulating that enquiries and complaints referred from other departments or agencies must also be handled promptly, properly and closely monitored in accordance with the Circular.

Case No. 2001/3996：(a) Inefficiency in recovery of Government rent in respect of complainant's property for the period between 1992 and 1997; (b) overcharging Government rent for the period between 27 March and 30 June 1997 which the complainant had already paid; and (c) failing to provide assistance in answering the complainant's enquiry about a demand note for Government rent.

169. The complainant was the owner of a flat in a multi-storey building. The building was redeveloped in 1991 on eight land lots. The lots were subject to different Government rents in accordance with their respective lease conditions. The rateable values of the lots were revised upwards upon redevelopment and the annual Government rents based on the prevailing rateable values should also be revised with retrospective effect from 1 January 1992. In June 1993, the Rating and Valuation Department (RVD) notified Lands D of the new rateable values but Lands D did not revise the Government rents and continued to charge old rents.

170. During an annual review in 1997, Lands D spotted the irregularity and sent a demand note to the complainant in May 1997 for the shortfall in the Government rent payments for the period between 1 January 1992 and 30 June 1997. By calling up Lands D, the complainant queried the belated demand note and asked for a review. Moreover, since he had already paid the Government rents for March 1997 to June 1997, he wondered if there had been any double charge. The complainant claimed that the Lands D officer who handled his telephone call failed to answer his enquiry and only referred him to RVD for clarification.

171. After seeking legal advice, Lands D sent a revised demand note to the complainant in November 2001 limiting the charge to the period between 20 November 1995 and 30 June 1997. The complainant was not satisfied and lodged a complaint with The Ombudsman in December 2001 against Lands D for :

(a) inefficiency in recovery of Government rents in respect of his property for the period between 1995 and 1997;

(b) overcharging Government rents for the period between 27 March 1997 and 30 June 1997 which he had already paid; and

(c) failing to provide assistance in answering his enquiry about a demand note for Government rents.

172. After investigation, The Ombudsman considered that due to administrative inefficiency on the part of Lands D, substantial delay in updating Government rent records was caused and hence the belated recovery of Government rents in respect of the complainant's property. Therefore, complaint point (a) was substantiated. As for complaint point (b), although the complainant had already settled a demand note in respect of three lots covering the period between March 1997 and June 1997, the demand note under complaint from Lands D was in respect of the other three lots. Therefore, there was no overcharging and this complaint point was not substantiated. Regarding complaint point (c), The Ombudsman considered that since the specific demand note in question was issued by RVD, it was not unreasonable for the Lands D staff to refer the complainant to RVD for clarification. Therefore, this complaint point was not substantiated. Overall, the complaint was partially substantiated.

173. The complainant had finally settled the outstanding charges. Also, Lands D agreed with The Ombudsman that the time taken to update the Government rent chargeable in this case was undeniably long. However, there were constraints of resources and manpower in handling the heavy workload during the period from 1993 to 1997. Since 1 July 1997, Lands D was no longer responsible for revising Government rents as a result of changes in the rateable values of properties. This task has now been automated and is handled entirely by RVD.

Case No. 2002/0020：Improper handling, including inefficiency in processing, unnecessary consultation and deliberate rejection, of a STT application for addition of driving range facilities.

174. Please refer to Case No. 2002/2230 under the Home Affairs Department.

Case No. 2002/0472：Evading responsibility to repair a damaged stream bank adjacent to a house.

175. Please refer to Case No. 2001/3407 under the Drainage Services Department.

Leisure and Cultural Services Department (LCSD)

Case No. 2001/2379, 2001/2460：Failing to allocate swimming lanes in a fair manner.

176. The complainants, a representative from a swimming club and a parent of a participant of a swimming class organized by the swimming club, lodged a complaint with The Ombudsman in October 2001 against LCSD that the swimming lanes of a public swimming pool were allocated unfairly; some organizations/swimming clubs were given higher priority rendering the smaller clubs little chance in securing swimming lanes for training.

177. After investigation, The Ombudsman found that swimming lanes of LCSD's swimming pools were allocated to applicants in accordance with priorities as set out in the Booking Procedures of LCSD. Balloting would be arranged if the number of applications received exceeded the number of lanes available for booking for the same session.

178. However, the balloting arrangement for allocating swimming lanes at the swimming pool concerned deviated from the spirit of the booking policy. The affiliated clubs which were ranked as high priority groups by Hong Kong Amateur Swimming Association (HKASA) were selected to enter the first round ballot exercise while the other clubs ranked as medium or low priority by HKASA could only join a second round balloting exercise for the remaining lanes. This greatly reduced the success rate of the clubs of lower priority in acquiring swimming lanes for training. Therefore, The Ombudsman concluded that the complaint was substantiated.

179. LCSD has accepted all the recommendations of The Ombudsman and taken the following actions :

(a) the booking policy is being reviewed to balance the high demand for swimming lanes from various aquatic sports bodies;

(b) training classes organized by the department have been rescheduled to non-peak hours so as to release more swimming lanes for booking during peak hours; and

(c) LCSD has also increased the number of lanes in the main pool in the swimming pool concerned by converting the lane width from 2.5m to 2.1m to accommodate two additional swimming lanes for allocation to swimming clubs for training purposes.

Case No. 2002/0495：Delay in erecting a signboard in a playground.

180. Please refer to Case No. 2002/0494 under the Home Affairs Department.

Case No. 2002/0534：Improper procedures of handling books returned to a public library.

181. On 19 November 2001 and 3 February 2002, the complainant complained to a LCSD library that after her daughter had returned the borrowed books, the relevant entries in her borrower's record in the computer system were not deleted. At the request of the staff of the library, the complainant had completed the Claimed Return Form (CRF) in accordance with the procedures for handling "claimed return of library materials".

182. The complainant opined that there was inadequacy in the "returning-of-books" procedures because the computer system did not indicate the number of books returned by a reader. Library staff would neither confirm with readers on the spot the number of books they had returned, nor issue receipts to them. The complainant was dissatisfied that the library staff had not looked into the matter seriously before asking her to complete the CRF and did not inform her whether the books had been located. The complainant thus lodged a complaint with The Ombudsman in February 2002 against LCSD for improper procedures of handling books returned.

183. After investigation, The Ombudsman found that given the large number of books handled, it was impossible for LCSD to issue receipts on return of books. On the other hand, readers would not know if the borrower's record was properly updated since they could not check the computer record as the monitor faced the library staff rather than readers. Also, if the computer

failed to update the borrower's record, a reader could only complete the CRF to claim that a book had been returned. While the CRF stated that "the library reserved all its right to claim any loss", readers were not informed of the result of the follow-up action taken. The Ombudsman thus concluded that the complaint was substantiated.

184. Following The Ombudsman's recommendations, LCSD has taken the actions set out below :

(a) a letter has been sent to the complainant to explain the whole incident in August 2002;

(b) computer monitors at the circulation counters of all public libraries have been replaced to enable both the library staff and readers to view relevant information at the circulation counters;

(c) the procedures for handling "claimed return of library materials" as contained in the Staff Manual have been revised. Clear instructions have been given to front-line staff that any case involving two or more records of "claimed return of library materials" must be referred to the Librarian on duty for handling. The case would then be followed up and handled according to the reader's past record and individual circumstances. Irrespective of the outcome, the Librarian would request the reader concerned to confirm on the spot the items returned at the circulation counter when he returns borrowed materials the next time. Separately, the number of search for a book that should be conducted by staff within a specified time is listed out, and the requirement to notify the reader in writing if the "claimed returned library material" cannot be recovered during a period of two months is stated. Furthermore, items claimed to have been returned should be written off if not located after repeated searches in 12 months; and

(d) LCSD would continue to watch closely the development of information technology, and in particular the technological application of Radio Frequency Identification (RFID) in library services. The use of RFID is still on a trial basis and the cost involved is high. LCSD hoped that the returning of books could be handled with more sophisticated technology in future.

Case No. 2002/0580：Failing to make proper arrangement to stop payment of salary to an employee after resignation.

185. The complainant was a former non-civil service contract staff engaged by LCSD. The complainant tendered resignation in October 2001 and left the service with effect from 1 December 2001. Due to staff movement, new officers handling contract staff matters did not notify the Salaries and Allowances Sub-unit for stoppage of salary payment as appropriate. The complainant was hence overpaid with one month's salary. The overpayment was only subsequently recognized in early January 2002.

186. To recover the overpayment, LCSD accounts staff tried to contact the complainant by phone and mail but in vain. It was only until 22 January 2002 when the complainant happened to approach LCSD for a "certificate of service" that she was finally contacted. When requested to return the overpaid salary, the complainant informed LCSD that her savings account was due to other reason frozen by the bank and hence she was not able to return the money to LCSD. As the money was actually deposited to the complainant's account, LCSD staff continued to chase for refund from her.

187. The complainant subsequently lodged a complaint with The Ombudsman in February 2002 against LCSD about the following :

(a) LCSD had wrongly deposited one month's salary in her frozen bank account;

(b) LCSD had chased her for refund despite her account was frozen by the bank;

(c) LCSD did not bear the fault and put all the blame on her;

(d) LCSD had caused inconvenience to and put stress on her; and

(e) the complainant later claimed that she had requested a change of salary payment method in November 2001 but was rejected by LCSD staff due to the complicated procedures involved.

188. After investigation, The Ombudsman considered that complaint point

(a) was substantiated while the other points were not substantiated. Although there had been fault on the part of LCSD in handling the salary arrangement for the complainant after the latter's resignation, LCSD had clearly admitted the responsibility when it issued the first letter to the complainant for a refund of the overpaid salary. Also, there was no evidence or record to show that the complainant had made the request for changing the salary payment method. On the whole, the complaint was partially substantiated.

189. Pursuant to The Ombudsman's recommendations, LCSD has taken the following actions :

(a) an internal circular was issued on 9 August 2002 indicating the administrative procedures for handling salary-related matters and all staff members concerned were reminded to ensure that all administrative procedures would be strictly adhered to;

(b) after several negotiations with the respective bank, the overpaid salary was refunded to LCSD on 15 August 2002; and

(c) an explanatory letter was issued to the complainant on 27 August 2002 informing her that the respective bank had finally refunded the money to LCSD. The letter also explained to her the reason why there had been delay in stopping salary payment to her and apologised for the inconvenience caused to her.

Case No. 2002/2457：Failing to take proper measures to ensure observation of necessary regulations by people entering a swimming pool.

190. The complainant is a regular user of a LCSD public swimming pool. He was dissatisfied that LCSD allowed people to enter the deck area without wearing swimming suits. The complainant considered that LCSD had failed to strictly enforce the provisions of the Public Swimming Pools Regulation (the Regulation) to take proper measures to ensure that all people entering the public swimming pool should wear swimming suits and pass through a shower bath and a foot bath first. Therefore, he lodged a complaint with The Ombudsman in July 2002 against LCSD for failing to take proper measures to ensure compliance with the relevant Regulation by people entering a swimming

pool. The provisions he cited were Sections 4(i) and 8 of the Regulation. Section 4(i) provides that "No person, within a swimming pool or the precincts thereof, shall, except with the permission of an attendant, enter a swimming pool or walk or stand upon any sidewalk immediately adjacent thereto unless dressed for bathing." Section 8 provides that "No person shall enter a swimming pool without first having passed through a shower bath and a foot bath".

191. After investigation, The Ombudsman found that the people whom the complainant referred to were not ordinary swimmers but parents who had entered the "Parental Corner" of the swimming pool. Upon studying the Regulation, The Ombudsman held that it would be more reasonable to interpret the term "swimming pool" as mentioned in Sections 4(i) and 8 in a narrow sense, that is, "swimming pool" means any water pool used for swimming. In this connection, The Ombudsman deemed that the setting up of the "Parental Corner" and the permission for people in casual wear to enter the deck area should not be regarded as violation of the provisions concerned. Having carried out a site inspection, The Ombudsman was also satisfied that appropriate measures have been taken to ensure that all swimmers entering the swimming pool should wear swimming suits and pass through a shower bath and a foot bath first. The complaint was therefore unsubstantiated.

192. LCSD has fully accepted the recommendations made by The Ombudsman and taken follow-up actions set out below :

(a) LCSD carried out a survey in July and August 2003 at the concerned swimming pool to look into the effect of the provision of "Parental Corner" and its impacts on swimmers. Since "Parental Corners" are set up in eight out of 36 swimming pools under the management of LCSD, LCSD is also conducting an overall review on the policy of providing "Parental Corner", covering issues such as the effect of the Corner, its impacts on swimmers, and the management and operation of the Corner;

(b) LCSD has paid special attention to the use of the term "swimming pool" in internal guidelines or notices so that its staff and public may have a clear understanding of the term used as referring to "water area used to swimming" or "the precinct of swimming pool"; and

(c) LCSD has reminded all officers-in-charge of swimming pools to pay special attention to the cleanliness of users' slippers and to ensure that all non-swimmers have changed with clean slippers before entering the pool deck area. By doing so, public hygiene can be protected and adherence to the Regulation maintained.

Planning Department

Case No. 2001/2912：Delay in the issue of a provisional restaurant licence; 2001/1871：Mishandling of a restaurant licence application.

193. Please refer to Cases No. 2001/1869, 2001/2935 under the Food and Environmental Hygiene Department.

Post Office (PO)

Case No. 2001/3481：Delay in dealing with the complainant's complaint and promotion.

194. Please refer to Case No. 2001/3482 under the Government Secretariat – Civil Service Bureau.

Case No. 2002/2637：Misdirecting four letters to the complainant.

195. In July 2002, the complainant moved from an old address to a new address. Delivery of letters to both addresses was served by a certain delivery office of PO. Before moving to the new address, the complainant had obtained mail redirection service from PO for one year from 8 July 2002 to 7 July 2003 at a fee of $100.

196. Later, the complainant discovered that six letters, which should have been redirected to his new address, had been delivered to his old address. He made a complaint to PO on 19 July 2002. After investigation, PO replied to him on 12 August 2002 and admitted that the failure to redirect some letters to his new address was due to the negligence of the "leave substitute" delivery postman of the delivery office concerned. PO also tendered an apology to the complainant for failing to provide the redirection service and refunded the redirection fee of $100 on 2 September 2002 as a gesture of good customer service. Separately, the postman concerned was immediately cautioned by his supervisor.

197. On 14 August 2002, the complainant found that four letters, not addressed to him, were redirected to his new address. He thus lodged a complaint against the misdirection with The Ombudsman in September 2002.

198. After investigation, it was revealed that the error was due to putting wrong labels which contained the complainant's new address on these four letters by the clerical staff of the delivery office concerned, when the clerical staff processed letters picked out by delivery postmen for redirection. Therefore, The Ombudsman considered that the complaint was substantiated.

199. Since then, new control mechanism has been introduced by PO whereby every member of the clerical staff would be required to put his chop with his staff number on every redirection mail item handled for identification, and supervisors were required to step up their daily spot checks. Separately, PO has launched a new preparation frame since March 2002 to streamline and simplify the mail segregation process for redirection of mail. Postmen have been required to take on and complete the whole redirection process, including the labeling work previously done by the clerical staff. The revised procedures aim at eliminating human error. Trial runs of these arrangements were conducted in two delivery offices with satisfactory results. The new preparation frame and procedures would be extended to other delivery offices in phases.

200. Pursuant to The Ombudsman's recommendations, PO has arranged regular briefings to remind staff concerned of the correct work procedures. Relevant training has also been included in the routine on-the-job training. In addition, supervisors have stepped up spot checks to ensure compliance with the work procedures.

Social Welfare Department (SWD)

Case No. 2001/2989：Delay in processing an application of Disability Allowance for the complainant's mother who had been medically assessed as eligible for the said allowance ten months ago.

201. In May 2000, the complainant's mother approached a Social Security Field Unit (SSFU) under SWD to apply for Disability Allowance (DA) because part of her left leg had been amputated. She was arranged to attend a medical assessment but was medically certified to be not eligible for the allowance based on her actual condition. On 22 January 2001, the complainant's mother was found eligible for DA after a medical re-assessment of her health condition. She was verbally informed of the result of the medical assessment by the Medical Social Service Unit (MSSU) of the hospital concerned and MSSU sent the Medical Assessment Form (MAF) to SSFU by fax and by post. However, the MAF was not received by SSFU.

202. Around July or August 2001, MSSU received an enquiry from the complainant about the progress of her mother's DA application. After checking the computer records, MSSU informed her that the MAF had been sent to SSFU on 31 January 2001. Separately, because of the change of address of the complainant's mother, the staff recorded her new address in the MAF and faxed it to SSFU again upon the complaintant's request. As the complainant still did not hear from SSFU after months, she lodged a complaint with The Ombudsman in October 2001 against SWD for the delay in processing an application of DA for her mother who had been assessed as eligible for the allowance 10 months ago.

203. After investigation, the exact reason for the loss of the MAF was still unknown. However, The Ombudsman considered that SWD should be held responsible because the various possibilities for the misdelivery could be problems related to the department. Therefore, the complaint was substantiated.

204. SWD has accepted The Ombudsman's recommendations and taken the following actions :

(a) a written apology was issued to the complainant's mother; and

(b) based on the medical recommendation, DA for the complainant's mother was approved with effect from the date of her eligibility, i.e. 22 January 2001.

205. Furthermore, to improve the quality of service, the MSSU concerned has since April 2000 put in place a computerized record system for the receipt and despatch of MAF. Commencing September 2001, the MSSU would also attach an acknowledgement slip to ensure proper delivery of MAF to SSFU.

Case No. 2002/1911：Miscalculation of a disability allowance without noticing the mistake over the years.

206. The complainant's mother had been receiving Normal Disability Allowance (NDA) since April 1993. In June 1993, she was admitted to a private residential home for the elderly. In April 1995, she was waitlisted for a subsidized residential care place and was later allocated a subsidized place under the Bought Place Scheme in the same home. However, she did not report such change to SWD and the change did not affect her eligibility for receiving NDA at that time.

207. She was later medically certified to be eligible for Higher Disability Allowance (HDA) with effect from 27 April 1996. However, when she applied for HDA in June 1996 and upon a case review in April 1999, she declared that she had not been admitted to a Government or subvented residential institution. Therefore, HDA was granted to her with effect from 27 April 1996 based on her declaration and the medical recommendation.

208. When her case was reviewed in March 2002, SWD learnt from the elderly home that she was occupying a Government subsidized bought place in the home. According to SWD's regulations, occupying a place under the Bought Place Scheme is tantamount to receiving care in a subvented home, and such beneficiaries should be eligible for NDA only. Hence, the HDA payment received by her should be refunded to SWD.

209. SWD staff contacted the complainant and her mother to explain the

overpayment and discuss the refund arrangements. However, as the case was not fully clarified to the satisfaction of the complainant, she lodged a complaint with The Ombudsman in June 2002 against SWD for :

(a) granting HDA to her mother by mistake over the years; and

(b) being unable to provide reasonable explanation with regard to the incident in the course of correspondence and contacts with her.

210. After investigation, The Ombudsman considered that being the department responsible for approving and administering the change of bought place for the complainant's mother in the home, SWD should be aware of the change without relying on her declaration. Therefore, a loophole existed in SWD's checking and internal cross-reporting mechanisms. Nevertheless, the complainant's mother should also bear full responsibility to report her situation. Hence, complaint point (a) was partially substantiated. As for complaint point (b), there was no evidence that SWD's staff were unable to provide reasonable explanation to the complainant and her mother. This complaint point was thus unsubstantiated. Overall, the complaint was partially substantiated.

211. Pursuant to The Ombudsman's recommendations, SWD has taken the following actions :

(a) SWD has put in place the new Computerized Social Security System since late 2000. The new system has been equipped with a function to record the type of residential place occupied and to prevent the kind of overpayment that occurred in this case; and

(b) SWD has made improvements to the publicity pamphlets and revised the application/review forms to state clearly that subvented homes include residential home places bought under the Bought Place Scheme or Enhanced Bought Place Scheme or a subsidized place in a contract home. This should help ensure that applicants know exactly the regulations for the purpose of notifying SWD of any changes to their eligibility.

Student Financial Assistance Agency (SFAA)

Case No. 2002/0326：Poor staff manner in handling the complainant's enquiry about the Student Travel Subsidy Scheme.

212. In September 2001, the complainant applied for a travel subsidy for his son under the means-tested Student Travel Subsidy Scheme. In January 2002, having learned that his son's classmates had already received the subsidy and he had not, the complainant telephoned his son's vocational training center which referred his case to SFAA. A staff of SFAA telephoned the complainant to explain to him that his application had been unsuccessful as his average monthly income exceeded the income ceiling of $23,700 per month under the relevant means test. The complainant protested that the application form contained no information on the income ceiling and asked where such information could be found. He was informed that the income ceiling was published in SFAA's website and he could also obtain the information from the training center.

213. The complainant was aggrieved by the unfriendly and impatient manner of the SFAA staff who handled his enquiries and the fact that no information of the income ceiling or telephone enquiry number was set out in the application form. He thus lodged a complaint with The Ombudsman in January 2002 against SFAA about the following:

(a) the SFAA staff was impolite and unwilling to answer his enquiries;

(b) he questioned whether SFAA had informed the training center to pass on the income ceiling to parents; and

(c) he was of the view that an income ceiling should not be set for the Student Travel Subsidy Scheme which had replaced the former concessionary half-fare travel scheme for all students, and that SFAA should exercise its discretion in considering individual applications.

214. After investigation, The Ombudsman was of the view that there was insufficient evidence to support the complaint of impoliteness and unwillingness to answer enquiries against the SFAA staff. Complaint point (a)

was thus unsubstantiated. As for complaint point (b), the information on income ceiling was not included in the application form. Also, the form did not contain the telephone enquiry number which was only printed in the application guidance notes. However, the complaint might have been avoided had the complainant obtained from the training center information on the income ceiling which was contained in the explanatory notes for handling of applications that had been provided by SFAA to the training center. This complaint point was therefore partially substantiated.

215. The Ombudsman also noted that with effect from the 2002/03 academic year, SFAA would implement a new initiative to improve the application and handling processes for its means-tested schemes, including the Student Travel Subsidy Scheme, by dealing directly with the applicants instead of through the institutions. The revised processes would provide applicants with all the required information on eligibility. Moreover, the means-test and the single income ceiling would be replaced by a fairer mechanism based on the per capita income of the household.

216. On the eligibility of the complainant for obtaining the travel subsidy, The Ombudsman noted that SFAA had followed the prevailing rules to assess the complainant's eligibility and the Office had no jurisdiction to intervene. As the scheme was means-tested, The Ombudsman recognized that it was normal to set an income ceiling to ensure optimum use of resources. Complaint point (c) was thus unsubstantiated and the complainant was advised to lodge an appeal to SFAA through established channels. On the whole, the complaint was partially substantiated.

217. In response to The Ombudsman's recommendations, SFAA stressed that every application for financial assistance would be handled in a fair, just and effective manner in order to ensure that timely and appropriate financial assistance would be provided to successful applicants. In order to meet service standards and targets, SFAA would closely monitor the performance of each scheme of assistance. Following the completion of each application cycle, each and every scheme would be reviewed so as to assess its performance against pledged targets and examine what measures should be taken to further improve the operation of the schemes.

218. Since the completion of the first-year operation of the new initiative,

SFAA has undertaken a review of the processes to further improve its service delivery for the 2003/04 academic year. The improvement measures are as follows:

(a) the publicity pamphlet for 2003/04 introducing the types of financial assistance available to primary and secondary school students has included a description and illustration of the per capita income based means-test mechanism and the benchmarks for obtaining the different levels of assistance; and

(b) in addition to the inclusion of full details of the eligibility criteria and the telephone number to call for enquiries in the application guidance notes, the telephone enquiry number has also been included in the application form for ease of reference.

219. Apart from the above measures, SFAA has also strengthened its manpower to better monitor the provision of the hotline service.

Transport Department (TD)

Case No. 2002/1730：(a) failing to reply to the complainant's electronic mail; (b) delay in replying to the complainant's electronic mail; and (c) transferring related complaint information to Efficiency Unit without the complainant's permission.

220. Please refer to Case No. 2002/0864 under Government Secretariat - Efficiency Unit.

Case No. 2002/2914：Failing to inform the complainant of a restraining order and to execute the order properly.

221. The complainant registered as the owner of the concerned vehicle on 28 July 2000. Since the original owner of the concerned vehicle had been declared bankrupt with the winding-up order taking effect on 24 July 2000, the court ordered that the transfer of all vehicles under the ownership of the bankrupted owner after the commencement of the winding-up order should become void. The Official Receiver and the authorized liquidator thus requested TD to freeze the transfer of ownership and to refuse to renew the vehicle licence for this vehicle from 11 August 2000 onwards. TD accordingly included a refraining order against the vehicle in question in the licensing computer system for easy identification. However, due to human error, TD acceded to the complainant's application for the renewal of the vehicle licence on 13 July 2001 but TD refused the complainant's application in August 2002 to effect the transfer of vehicle ownership of the concerned vehicle in accordance with the instruction. The complainant thus lodged a complaint with The Ombudsman against TD in September 2002 for not informing him of the refraining order and accepting his renewal application of the vehicle licence of the concerned vehicle on 13 July 2001.

222. After investigation, The Ombudsman considered it acceptable that TD did not inform the complainant about the refraining order but was of the view that TD had not executed the refraining order properly. Therefore, the complaint was partially substantiated.

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

(a) a letter was issued by TD to the complainant on 14 March 2003 to apologize for the inconvenience caused;

(b) TD has completed a review on the handling and filing procedures for refraining orders and adopted a number of improvement measures to ensure the proper handling and execution of such orders. These improvement measures are set out as follows –

(i) a separate file number is systematically assigned for each document relating to a refraining order to facilitate proper filing;

(ii) when an application for a licence with record of a refraining order is received, the responsible management officer should carefully study all documents before deciding on the appropriate handling procedures; and

(iii) if the responsible management officer decides to cancel the refraining order or considers that there is a need to temporarily withhold the refraining order, he should record this decision on the internal document of the refraining order under his signature;

(c) the current licensing computer system was unable to include the summary of the refraining order. As the computer system is being upgraded, this improvement measure will feature in the new computer system. The target is for the new computer system with the improvement measure to be put in place in December 2004; and

(d) the space for storing full details of refraining orders will also be enlarged in the new licensing computer system.

Urban Renewal Authority (URA)

Case No. 2002/1322：Delay in handling complaints and impropriety in handling trade mix disputes between tenants.

224. The complainant was the wife of a tenant, a jade trader, in a URA shopping arcade. She had complained to a URA Assistant Manager against another tenant (the other tenant) for breaching the Licence Agreement (Licence) by selling jade in addition to the specified business. When enquired about the progress of the complaint case, the Assistant Manager would say either that the case was being followed up or that it was necessary to check the terms of the Licence. Three months later, her request to meet the Assistant Manager at the URA headquarters was refused. Her case was then referred to a Senior Manager but there was still no development. At an interview two months later, the Senior Manager told her that URA would enforce the licensing conditions and prohibit the other tenant from selling jade.

225. Half a month later, the complainant learned that all tenants, except her husband, had received notice from URA that they could apply to sell an additional item beyond those specified in the Licence. The other tenant had also been allowed to sell jade. She thus lodged a complaint with The Ombudsman in April 2002 against URA for :

(a) delaying to process her complaint against the other tenant selling a non-specified merchandise item;

(b) allowing the other tenant, out of favoritism, to sell a merchandise item beyond those specified in the Licence; and

(c) not notifying her husband of the new arrangement on the sale of an additional merchandise item.

226. After investigation, The Ombudsman found that the complaint was not settled by URA for six months because of the lack of guidelines on the handling of complaints. Since URA had not handled the complaint properly, complaint point (a) was substantiated. As for complaint point (b), The Ombudsman did not find any evidence that the decision to allow the other

tenant to sell jade had been made out of favoritism. The relaxation was aimed to assist all tenants in a difficult economic situation. The Licence between URA and tenants did not provide exclusive right to sell specified merchandise items. Relaxation did not, therefore, violate the Licence. Hence, complaint point (b) was not substantiated.

227. Regarding complaint point (c), the URA staff member who distributed the notice to tenants was also responsible for delivering the URA's reply to the complainant. Wrongly assuming that the notice was enclosed in the reply, he did not hand the complainant's husband a separate copy of the notice. When he was aware that no notice was distributed to the complainant's husband, he had immediately distributed one to him. The Ombudsman considered the error to have arisen from misunderstanding, not intentional omission. Complaint point (c) was thus unsubstantiated. Overall, the complaint was partially substantiated.

228. URA has accepted and implemented all The Ombudsman's recommendations as follows :

(a) two URA managerial staff visited the complainant and gave her a written apology in January 2003;

(b) a set of complaint procedures was established and implemented in June 2002 prior to The Ombudsman's recommendations;

(c) refresher training and coaching of URA staff of the shopping arcade concerned was conducted in June 2002; and

(d) URA has reviewed and revised the mode of operation of the shopping arcade in this case and introduced a single tenant-operator to run and manage the shopping arcade in April 2003. URA will continue to oversee and ensure the proper management of the shopping arcade.

Part II
Direct Investigation Cases

Education Department (ED)

Contingency and Relief Measures for the Secondary School Places Allocation Exercise 2001

229. Since 1978, boys and girls have been placed in secondary schools under the Secondary School Places Allocation (SSPA) System administered by Education and Manpower Bureau (EMB) (or the former ED). In July 2000, the Equal Opportunities Commission (EOC) sought judicial review on three allegedly sex-discriminatory features in the SSPA System :

(a) separate scaling of internal assessment scores for boys and girls;

(b) separate banding of students by sex; and

(c) fixed sex quotas for allocation of Secondary One (S1) students in co-educational secondary schools.

230. In late June 2001 (just 18 working days before the scheduled release of the SSPA result on 17 July 2001), the Court ruled that the three features of SSPA System were contrary to the Sex Discrimination Ordinance but the Court did not require ED to quash the three features immediately on the understanding that ED would have a relief arrangement to redress substantiated cases of discrimination in the 2001 allocation exercise.

231. Subsequently, ED introduced Relief Measures (RM) and Special Placement Service (SPS) in late July 2001 to place possibly affected students. The matter was an issue of public concern. The Ombudsman decided in early August 2001 to conduct a direct investigation to examine whether ED had taken appropriate contingency and relief measures in the light of the Court's judgment. The Ombudsman completed the investigation and published the Investigation Report in May 2002.

232. After investigation, The Ombudsman concluded that :

(a) ED had prepared for contingencies;

(b) the relief measures were fine in principle but deficient in implementation;

(c) administrative deficiencies had been identified in the procedures for the Monitoring Group (MG)'s execution of its advisory and supervisory functions;

(d) ED's treatment of requests for access to banding information from EOC and from aggrieved students or their parents was inconsistent;

(e) ED had made apparently "cautious", but in effect misleading, statements about the chances of success under the RM; and

(f) introduction of the SPS, in The Ombudsman's view a *de facto* extension of the RM, had been made with undue haste and without notice to students and parents.

233. The Ombudsman has made a number of recommendations. In response, EMB and ED have taken the following actions :

(a) in compliance with the Court judgment, the three gender-based features of the SSPA System were removed with effect from the 2002 SSPA exercise. During Central Allocation, the internal assessment of boys and girls would be treated together for combined banding. There are no preset S1 quotas for boys and girls in co-educational schools. In allocating school places, boys and girls are processed together. By removing the gender-based features, the SSPA System is in full compliance with the Sex Discrimination Ordinance. It is no longer necessary to have any relief measures to redress complaints on grounds of sex;

(b) a meeting was arranged by ED on 11 September 2002 and 4 October 2002 with the Privacy Commissioner for Personal Data (PCO) and EOC respectively to discuss the existing practice of retaining and

releasing banding information. It was confirmed at the meeting with the PCO representatives that there was no contravention of the Personal Data (Privacy) Ordinance in ED's practice of not retaining or releasing individual students' banding information after completion of the allocation process. The Personal Data (Privacy) Ordinance does not require a data user to retain or create data but allows data to be retained if justified by the data purpose. It is not required by the Ordinance that the data user has to reconstruct the banding information for the data subject even upon access request, if the banding information has not been retained and hence is not in existence. EMB considered that the present practice of handling student's banding information as one based on educational consideration.

At the meeting with EOC, ED conveyed PCO's view to their representatives. EOC suggested that ED should retain the banding information of individual students for 12 months to cater for processing of any appeals against the allocation results. In view of the adverse effects of releasing the banding information to students as well as the dwindling number of sex discrimination complaints after the removal of the gender-based features of the SSPA System as from the 2002 allocation cycle, ED proposed that EOC's suggestion should be held in abeyance and both EOC and ED agreed to review the situation in the light of further development. ED would be able to re-construct individual students' banding information from the raw data in case of EOC's possible investigation into relevant complaints; and

(c) in accordance with the Education Reform package endorsed by the Government in end 2000, a review of the SSPA mechanism would be due in 2003/04. For this purpose, an Education Commission Working Group on the Review of SSPA/Medium of Instruction has been formed in July 2003.

Home Affairs Department (HAD)

The Role of HAD in Facilitating the Formation of Owners' Corporations

234. Responsibility for managing and maintaining private property rests with the owners. The role of the Government is to assist and support responsible owners and to take action against non-compliance. The Government's established policy on private building management is to encourage property owners to form Owners' Corporation (OCs) and to advise and assist them in carrying out their responsibilities.

235. In April 2001, the Government announced a comprehensive strategy on building safety and timely maintenance. This included responsible building management, for which HAD was given considerable extra resources to promote and encourage. Meanwhile, there was considerable public concern over HAD's role in facilitating the formation of OCs in private buildings. Therefore, The Ombudsman decided in May 2002 to conduct a direct investigation to examine the means and mechanism of HAD for assisting property owners in OC formation, to ascertain their adequacy and effectiveness and assess the need for improvements. The Ombudsman completed the investigation and published the Investigation Report in March 2003.

236. After investigation, The Ombudsman concluded that :

(a) there was scope for HAD to improve the means and mechanism for delivering services on OC formation;

(b) HAD staff would benefit from clearer guidelines and procedures on services for OC formation;

(c) HAD staff should be more professional and proactive in assisting owners in OC formation; and

(d) HAD's overall efficiency and effectiveness in OC formation services could be raised if paragraphs (a) to (c) above were properly addressed.

237. The Ombudsman has made a number of recommendations. While

HAD has already been implementing similar measures in the past months to enhance its services in building management, the actions taken or to be taken are as follows :

Means of Service Delivery

(a) since April 2003, a comprehensive information-cum-resource kit which includes the booklet "How to form an OC and achieve effective building management" and a VCD "Formation of an OC" would be issued to owners who may be interested in forming OCs. The kit is also available at District Offices (DOs) and Building Management Resource Centres (BMRCs);

(b) HAD is constantly developing the website on building management to include more relevant information to facilitate its target clients. A section on OC formation and a sitemap have been included at the website. HAD has also added a Building Management Bulletin Board to include articles on building management, district newsletters on building management, and up-to-date information on building management. HAD conducted a survey in March 2003 to tap the views of its clients. For the period of 23 March to 10 April 2003, it received a total of 58 responses in which over 86% were satisfied with the information provided at the website;

(c) HAD has been conducting Customer Service Surveys at BMRCs since December 2001. It is fully aware of its clients' suggestion that the opening hours of BMRCs should be extended for their convenience. HAD worked out staff redeployment plan in February 2003 in spite of resource constraints. With effect from 1 April 2003, opening hours of BMRC (Kowloon) would be 10:00 a.m. to 10:00 p.m. during weekdays and till 6:30 p.m. on Saturdays;

(d) with effect from 1 April 2003, the telephone enquiry and advisory services were enhanced for client convenience in the following manner –

(i) opening hours of BMRC (Kowloon) have been extended as mentioned in paragraph (c) above;

(ii) after their office hours, the telephone lines of the other three BMRCs will be diverted automatically to BMRC (Kowloon) for continued provision of enquiry service; and

(iii) apart from the above, recording service is provided after office hours of all BMRCs;

(e) since July 2003, HAD has started preparing categorized court cases on building management for staff's reference. It will continue to circulate relevant court cases to DO staff;

(f) since May 2003, a notice publicizing the areas of advice, the limitations, and procedures of the free professional advice service has been prepared for distribution at BMRCs. The notice is also attached to the application form for free professional advice;

(g) a training kit, which includes operational procedures for delivery of services on OC formation, has been prepared for staff's reference in July 2003;

(h) HAD has, with the assistance of the Hong Kong Mediation Council and the Hong Kong Mediation Centre, launched a pilot scheme on mediation for building management cases in September 2002. The two professional bodies have so far processed four cases. HAD will continue to refer cases to the professional bodies under the pilot scheme;

(i) the pamphlets which set out clearly the role and functions of HAD in building management have been published and widely distributed in March 2003;

(j) HAD will continue to organize building management talks in which OC formation will feature as a main theme;

Support and Control

(k) from June 2002 to May 2003, professional advisory service in respect

of repair and refurbishment of old buildings, water seepage problems, fire safety problems and information on unauthorised building works were provided systematically to the frontline staff at six workshops;

(l) from April 2002 to May 2003, HAD has jointly organized with tertiary institutions a 37.5-hour staff training on legal aspects, a 40-hour advanced training on legal aspects and a 27-hour training on mediation, namely, "Legal Aspects of Multi-storey Building Management Part I", "Legal Aspects of Multi-storey Building Management Part II" and "Training Course in Mediation Practice". The three courses will be organized again in late 2003/early 2004. "Skills of Customer Services" training course was organized for HAD's Community Organizers in January 2003;

(m) since January 2003, HAD has included "hours spent" on attempts of OC formation to better reflect staff's efforts in this area. HAD has also been conducting regular customer satisfaction surveys on its service on OC formation since January 2000;

(n) relevant performance indicators on the performance of HAD on building management have been published in the Controlling Officer's Report of HAD;

(o) HAD has meetings with OC associations and professional bodies from time to time to gauge their views on HAD's service and provisions in the Building Management Ordinance (BMO). HAD has, from May to July 2003, conducted a large-scale consultation exercise on the proposed amendments to the BMO. HAD met all 18 District Councils (DCs) and held consultation forums for OC associations and district forums for individual owners and interested parties;

(p) HAD has sought constant feedback on its building management services from DC Members. It held a focus group discussion with DC Members in November 2002 to discuss specifically with them how its services in building management could be improved. It will continue to tap local knowledge of DCs through various means. It has also arranged training courses for DC Members and their assistants on building management matters. A training workshop on

"Multi-storey Building Management" by the School of Professional and Continuing Education of the University of Hong Kong was organized for DC Members in January 2003. Another training course on "How to form an Owners Corporation and achieve effective building management" for DC Members and their assistants was held in February 2003;

Organisational Set-up and Staff Deployment

(q) District Building Management Liaison Teams have been set up in all DOs and are responsible for frontline work relating to building management. Review on the organisational set-up in this area will be launched as appropriate;

(r) when invited to attend owners' meetings for the formation of OCs, HAD would send along liaison officers;

Others

(s) there are now nine provisions with a punitive clause in the BMO. Examples include section 27(3) (failure in maintaining OCs' accounts), section 36 (furnishing false information), etc. For complaints alleging non-compliance with these provisions, Secretary for Home Affairs, as the Authority under the BMO, has the powers to investigate the matter and take prosecution action, if necessary. However, there is no punitive clause for non-compliance with the legal requirements for OC formation. Instead of pursuing criminal action, owners can take civil action in case of non-compliance.

HAD aims to encourage owners to form OCs, but not to deter them. Therefore, it has to be very cautious in adding punitive clauses to the legal requirements for OC formation, which may be a disincentive to owners. It also considers that addition of punitive clauses may not be in the public interest. HAD is open to all suggestions and will pay special attention to public views expressed in this respect in the BMO amendment consultation exercise; and

(t) HAD will continue to seek feedback on its building management

services from its stakeholders, including DC Members, OCs, building owners and professionals and will take into account their views on the review of the department’s role and services.

Hong Kong Sports Development Board (SDB)

Funding of Sports Programmes by SDB

238. Grants are made annually by SDB to National Sports Associations (NSAs) to fund their programmes. SDB derives its income mainly from Government subvention. There has been concern over whether the grants from public funds are allocated and monitored fairly and efficiently. The Ombudsman announced a direct investigation into the matter in September 2001. She completed the investigation and published the Investigation Report in August 2002.

239. After investigation, The Ombudsman concluded that while there should be proper control of public funds, the present system was cumbersome, rigid and unreasonable on occasions. It gave the impression of a lack of mutual trust between SDB and NSAs. The Ombudsman noted that the Home Affairs Bureau had published a consultation report "Towards a More Sporting Future" to simplify procedures on funding of NSAs in June 2002. She supported the proposals and hoped that her findings and recommendations would help the review.

240. The Ombudsman has made a number of recommendations to SDB, and SDB has taken the following actions :

(a) SDB has already initiated a review of the funding system, with a view to enhancing fairness and effectiveness. SDB will continue to improve the existing funding system, but a major revamp can only be conducted when the new administrative structure for sports development is put in place;

(b) <u>Allocation of Grants</u>

(i) SDB is well aware of the aspirations of the sports community. Recommendations were made to the Government two years ago for separate funding to popular (in Popular Vote) and team (the Team Only Vote) sports. The proposal was also acknowledged in the Report on the Sports Policy Review issued by the

Government. However, without additional resources, the separate funding system cannot be implemented;

(ii) SDB agrees that the funding policy should be constantly reviewed. In fact, as a regular practice, NSAs are consulted on the SDB funding guidelines and criteria at the annual meetings with NSAs. NSAs' feedback is also collected regularly through day-to-day communication. During the annual meetings with NSAs in 2002/03, NSAs were consulted on the SDB funding policy and all NSAs reflected that the existing funding system was fair and transparent. For the funding cycle 2003/04, in order to help tide NSAs over the current unfavourable economic situation, a special arrangement of raising the SDB subvention level from 70% to 85% to support NSAs' attendance at overseas competitions has been implemented. This is an example of how SDB has exercised flexibility in its funding policy;

(iii) SDB will continue to ensure that NSAs are aware of the relevant policy, practices, procedures and guidelines in applying for SDB funding. Orientation programmes have also been specially designed to familiarize NSAs with the system, especially for new NSA staff/officials;

(iv) for those elements of the NSAs' Yearly Plan that may not change from year to year, e.g. staff subvention and office administration, SDB may consider giving an indication of funds for these elements. However, it is unlikely that SDB can inform NSAs of the amount of grants they are likely to receive before the preparation of the Yearly Plan since SDB funding is based on the programmes included in the Yearly Plan and that funding from the Government will not be confirmed until the later part of the financial year; and

(v) guidelines and measures are provided to help NSAs to use the funding effectively. NSAs rely on an allocation base for budgeting purpose. SDB will exercise discretion and flexibility as far as practicable and NSAs are allowed to change their Programme Plan in accordance with their general needs any time

in the year; and

(c) Monitoring

(i) plans and reports submitted by NSAs are necessary to ensure accountability for the use of public funds. To reduce paper work, the requirement for a Programme Plan has been suspended since 2002/03;

(ii) application forms have been revised with immediate effect to include information on athletes' residency status. Other forms would be reviewed as and when required;

(iii) for cases where SDB funding is involved, a system would be devised in the later part of 2003 to ensure that proper actions are taken by NSAs to comply with SDB's requirements; and

(iv) regarding the recommendation that monitoring measures carrying unduly harsh sanctions should be amended, SDB would review the funding measures regularly. The existing monitoring measures are however considered necessary to ensure effective use of public funds. In fact, since the "suspension and forfeiture" policy is in place, no NSA has made negative comments on the policy. NSAs have found the policy a timely reminder for them to maintain proper records and expedite evaluation processes.

Hospital Authority (HA)

Handling Missing Patients in HA Hospitals

241. Between June 1999 and May 2001, there were a total of 6,486 cases of missing patients in HA hospitals. In nine of those cases, the patients were later found dead. Patients disappeared from hospitals for a great variety of reasons. These ranged from a simple wish to meet with family and friends outside the hospital setting to the compulsion to obtain illicit drugs.

242. In response to reports of missing patients from HA hospitals, The Ombudsman decided in September 2001 to conduct a direct investigation to examine the administrative procedures and practices of HA for handling in-patients reported or found missing from HA hospitals, to evaluate their adequacy and effectiveness, and assess the need for improvement. The Ombudsman completed the investigation and published the Investigation Report in November 2002.

243. After investigation, The Ombudsman made the following conclusions :

(a) there was no standard definition of "missing patients" for adoption HA-wide;

(b) there was no uniform method of counting missing patients HA-wide;

(c) there was no uniform practice among HA hospitals in reporting missing patients to the Police;

(d) there was inconsistency in missing patient data and records maintained by HA Head Office and individual hospitals; and

(e) there were no guidelines on procedures for hospital staff to take suitable measures for minimising the risk of patients disappearing from hospitals.

244. The Ombudsman has made a number of recommendations. HA is of

the view that since hospitals are places for patients to receive medical treatment and to recuperate, HA hospitals are designed to offer an open environment for patients. Upon admission into hospitals, all patients are advised to inform hospital staff should they wish to leave their wards. However, in recognition of patients' right to decide whether to remain in hospital and receive medical treatment, HA considers that patients should continue to be allowed to go in and out of their wards without undue restrictions, except for those identified as "patients at risk" who should warrant the special attention of hospital staff.

245. HA attaches great importance to the safety and management of its in-patients and is committed to reducing the occurrence of missing patients. Following an internal audit on hospital security in September 2001, HA set up a working group to carry out a comprehensive review on the handling of missing patients in public hospitals and look into ways to improve the prevailing arrangements. The working group formulated a set of recommendations in 2002, which have since been fully implemented. HA is pleased to note that The Ombudsman's recommendations are broadly in line with those put forward by the working group.

246. Corresponding to the recommendations made by The Ombudsman, the improvement measures implemented by HA are set out below :

Definition and Method of Counting

(a) it is now a standard practice in all HA hospitals to classify a case as "missing patient" once a report is made to the Police. In other words, only those cases reported to the Police would be counted as "missing patient" cases;

(b) "patients at risk" is now defined as –

(i) those patients who are unable to make rational decisions due to young age or mental incapacity (whether permanently or temporarily);

(ii) those patients whose life may be at stake if medical intervention is discontinued; or

(iii) those patients who pose a risk to themselves or others;

Handling of Missing Patients

(c) HA has promulgated revised medico-legal guidelines on handling missing patients on 12 May 2003. The revised guidelines contain the standard procedures and practices that are applicable to all HA hospitals for reporting a missing patient to hospital management and the patient's family;

(d) HA has formulated a series of measures and guidelines to improve the management system, processes and facilities for preventing and minimising the occurrence of missing patients. Major features include –

(i) to improve and reinforce communication channels with patients (and their relatives) throughout the entire period of their hospitalisation, and to better understand the patients' needs so as to gain their cooperation not to leave the hospitals without notice;

(ii) to adopt an agreed corporate-wide protocol for handling missing patients and to provide relevant training to hospital staff;

(iii) to establish a two-way collaborative communication system with the relevant police station in handling a missing patient;

(iv) to identify "patients at risk" on admission and conduct periodic review;

(v) for identified "patients at risk", to consult or refer them to relevant specialists such as psychiatrist, psychologist, chaplain, social worker, etc. for appropriate treatment and support as soon as possible;

(vi) to accommodate an identified "patient at risk" to an appropriate ward area or bed that is closer to the nurse station or a dedicated cubicle away from the ward entry;

(vii) to increase the frequency of head counts in wards, especially between shifts;

(viii) to study the feasibility of extending the use of electronic tagging device for neonates to identified "patients at risk"; and

(ix) to consider the installation of closed circuit television and security alarms at suitable locations to facilitate monitoring of patients in high-risk areas (e.g. neonate/paediatric wards, psychiatric wards);

(e) hospital staff are now given training on the management of missing patients during their initial orientation. Those who work in units and/or areas designated for care of "patients at risk" will also receive annual reminders and ongoing training on this subject;

(f) HA hospitals have stepped up efforts to impress upon patients and their families the importance of complying with hospital rules and regulations. Upon admission to HA hospitals, all patients are informed by means of the "Admission Information Sheet" and prominent notices/posters that they should notify nurses/ward staff should they wish to leave their wards temporarily and of their expected time of return;

(g) HA has established a set of standard guidelines, procedures and practices for reporting missing patients to the Police. Under the new guidelines, all public hospitals are required to report missing "patients at risk" to the Police as soon as possible when a hospital-wide search fails to locate the patients. For other missing patients, a report should be made to the Police within 24 hours from their disappearance;

<u>Management information</u>

(h) management information on missing patients is now captured by HA's electronic Clinical Management System to ensure accuracy and consistency;

(i) the Risk Management Section of the HA Head Office has been designated to coordinate and collate records of missing patients across HA hospitals; and

Review

(j) HA is committed to reducing the occurrence of missing patients and will continue to regularly monitor, review and improve the handling of missing patients as part of its work in risk management.

Social Welfare Department (SWD) and Television and Entertainment Licensing Authority (TELA)

Monitoring of Charitable Fund-Raising Activities

247. Charitable fund-raising activities have long been a way of Hong Kong life. Since considerable amounts of money are involved, there has been community concern over the monitoring of such activities, especially whether the donations would be responsibly used. Therefore, The Ombudsman decided in March 2002 to conduct a direct investigation to examine the mechanism used by SWD and TELA for monitoring such activities, assess the adequacy and effectiveness of such mechanism and identify areas for improvements. The Ombudsman completed the investigation and published the Investigation Report in February 2003.

248. After investigation, The Ombudsman concluded that :

(a) existing Government control of charitable fund-raising was confined to activities and not the organisations, and even then, only to flag days and lotteries (the Administration would like to clarify that it should be "mainly", not "only", to flag days and lotteries, as noted by The Ombudsman in her Investigation Report);

(b) control did not cover all charitable bodies or even all charitable fund-raising activities;

(c) Government monitoring of charities was partial and patchy, fragmented and ineffective; and

(d) present legislative provisions could not effectively safeguard the public against unscrupulous or irresponsible fund-raisers.

249. In this regard, SWD, TELA and the responsible bureaux have taken the following actions :

(a) since August 2003, SWD has been conducting public consultation on a new proposed mechanism to help monitor charitable fund-raising.

Under the proposed system, SWD will draw up a Reference Guide for Charities on Best Practices for Fund-raising Activities (Reference Guide), covering donors' rights, fund-raising practices and accounting/auditing requirements to meet standards of transparency and public accountability. Charities which voluntarily undertake to comply with the Reference Guide may apply for listing in a Public Register for public inspection/information. Substantiated complaints against listed charities for contravening the Reference Guide would lead to removal of their names from the Public Register. This system is scheduled for implementation by the end of 2004;

(b) SWD has expanded the terms of reference of the Lotteries Fund Advisory Committee (LFAC), which comprises representatives from charities, community leaders and District Councillors and advises on flag day issues, to include giving advice on other fund-raising issues, updating the Reference Guide as and when necessary, reviewing the operation of the Public Register and adjudicating complaints against charities on the Register for non-compliance with the Reference Guide;

(c) at present, all lottery licensee organisations are required, under the licence conditions, to submit to TELA income and expenditure (IE) statements of lottery activities, audited annual financial statements of the organisations concerned and in cases where lottery proceeds are donated to charitable organisations, official receipts from recipients. Following a review of the licensing system, TELA has proposed to impose an additional licence condition requiring the licensee to obtain a written report on the IE statement by a professional accountant certifying that the IE statement is properly prepared and that the statement accurately reflects all the moneys collected and all disbursements made from the moneys so collected. The IE statement together with a copy of the report would be made available for public inspection. The Hong Kong Society of Accountants supports the proposal and is now consulting its members on a draft Practice Note. TELA aims to implement the proposal in the later part of 2003 after the Practice Note has been promulgated;

(d) TELA is in the process of devising a Code of Practice for potential

licensees with a view to advising them of good practices in the administration and management of their lottery activities. TELA will publish the Code incorporating the proposed licence condition mentioned in paragraph (c) above in order to facilitate members of the public to identify responsible and reputable organisers of lottery activities;

(e) Home Affairs Bureau will review from time to time the policy regarding the conduct of lotteries by charitable organizations for fund-raising purposes in future; and

(f) Health, Welfare and Food Bureau mapped out a medium-to-longer term policy on charitable fund-raising activities in 2002. In brief, the Government will continue to strengthen administrative controls over charitable fund-raising activities with a view to enhancing their transparency and accountability. The package of enhanced administrative measures, which includes the Reference Guide for voluntary compliance and the Public Register, would apply to all charitable fund-raising activities irrespective of their types and forms. The Government has carefully considered and eventually ruled out establishing further statutory controls at this time. Nevertheless, in the longer term, the policy, practices and monitoring mechanism of charitable fund-raising activities would be kept under review as appropriate, having regard to global trends and local developments.

Transport Department (TD)

Administration of Vehicle Registration Marks Auctions

250. Since 1973, selected vehicle registration marks (VRMs) have been offered for sale by auction organized by TD. There were regular media reports on bullying incidents at these auctions, where gang members might use different methods to deter participants from bidding so as to lower the VRM prices.

251. TD has been using surveyors from other departments and the Hong Kong Institution of Surveyors as auctioneers. A Senior Executive Officer (SEO) of TD is in charge of these auctions but the actual conduct of an auction is supervised by an Executive Officer (EO) II on site. Since the bullying incidents, starting from October 2001, one additional staff of the EO grade has been attending every auction to help oversee the order. Furthermore, since November 2001, TD has engaged security guards and strengthened liaision with the Police to maintain better order at auctions. All auctions are now attended by security guards and plain-clothes police officers.

252. Currently, admission is free and participants, including potential bidders, are not required to register before entering the venue. Guidelines are distributed on site to participants before the commencement of each auction. If there are reasonable grounds to believe that a bidder is being threatened, the auctioneer may consult the TD officer-in-charge and adjourn the auction, and take appropriate actions such as reporting the case to the Police or asking the trouble-makers to leave.

253. In order to examine whether there are deficiencies in the procedures and practices in administering VRM auctions, The Ombudsman decided to conduct a direct investigation into the administration of VRM auctions in April 2002. In October 2002, The Ombudsman completed the investigation and published the Investigation Report.

254. After investigation, The Ombudsman considered that while TD has tried to improve arrangements for VRM auctions throughout the past few years, there would be room for further improvement as follows :

(a) in case of untoward incidents, the subject officer, an EO II, might not be mature or experienced enough to control the scene;

(b) guidelines distributed to participants were not well presented and the order of VRM auctions was loose;

(c) TD staff and auctioneers were passive in dealing with harassment;

(d) on-site security guards appeared to be either unacceptably lethargic or they had not been suitably briefed to fully understand their duties; and

(e) TD should reconsider establishing the pre-registration requirement for all participants.

255. The Ombudsman has made a number of recommendations. In response, TD has taken the following actions :

Staffing

(a) to maintain professionalism and impartiality of auctions, TD considers it desirable to continue engaging qualified surveyors to act as auctioneers. Nonetheless, measures have been taken to enhance the quality of auctioneers. The performance of auctioneers is now regularly fed back to the Hong Kong Institute of Surveyors and the concerned Government departments which nominate the surveyors. Only those with satisfactory performance will continue to be appointed. In addition, TD has strengthened the supervision of auction by enhancing the management team. All auctions are now attended by an SEO and two EOI/IIs. The SEO is the overall manager and oversees the conduct of each auction. One Chief Executive Officer attends and supervises the auctions regularly.

The Ombudsman accepted that the combination of an experienced and mature auctioneer with an SEO should be capable of taking command of the situation and making quick decisions on the spot;

(b) in the selection exercise for security guards conducted in October

2002, greater emphasis has been accorded to the level of professionalism/quality of the security guards during the tender assessment. A sanction clause has been included in the contract if the security guards fail to meet the required standard. Number of security guards for each auction has also been increased from three to five. More briefing and debriefing sessions are held at the venue. Regular meetings between TD and the management of the security company are held so as to closely monitor the performance of the security guards;

General administration

(c) the guidelines and instructions distributed to all participants have been improved since September 2002. These guidelines and instructions are now set out in a clearer style and are of a better printing standard. The wording of guidelines and instructions will be reviewed on a regular basis. In addition, leaflets with more attractive presentation are being prepared;

(d) TD is now studying the possibility of introducing the pre-registration arrangement in consultation with the Department of Justice and will come up with a decision within 2003;

(e) TD has strictly enforced the requirement for participants to remain seated. Irregularities are immediately brought to the attention of the auctioneer who will then request all participants to remain seated and ensure his instruction is adhered to before he will continue with the auction. Security guards will escort the offenders to leave the venue if the offenders refuse to comply with the instruction;

(f) starting from 2003, auctions are held in more spacious venues like the Hong Kong Convention Centre with a higher seating capacity. This facilitates the auctioneer to request all participants to remain seated and maintain order at the venue. Besides, all TD supporting staff at the auction venue are in uniform. This measure makes TD staff more identifiable and is well received by participants who may need to seek assistance from the staff from time to time;

Measures against harassment

(g) TD has drawn up a list of examples of harassment and bullying behaviour. Each auctioneer and security guard are well informed of what constitutes harassment behaviour and actions which could be taken in addressing such behaviour. They are also advised to stay alert to abnormal behaviour of participants;

(h) auctioneers will now ask trouble-makers to stop their harassment behaviour and in case of non-compliance, to require security guards to escort trouble-makers to leave the venue;

(i) should trouble-makers refuse to cooperate, the auctioneers would adjourn the meeting until the order is restored and TD would seek assistance from the Police when necessary;

(j) TD has reconsidered the efficacy of video-taping the process of auctions as a means to defer harassment. It was envisaged that this measure, if adopted, could give rise to problems related to the possible contravention of privacy. As the video camera would only be able to capture a particular section of the auction venue at a distance at any one time, the chance of recording a full and clear coverage of a harassment incident was assessed to be low, hence limiting the use of video recording as evidence in any prosecution procedures. Besides, positive responses have been received after the introduction of the improvement measures since end 2001 to deter harassment, e.g. adopting a more proactive approach by security guards and auctioneers;

(k) TD is exploring with a few contractors the possibility of outsourcing the conduct of auction. Another alternative TD has examined was e-auctioning. Nevertheless, e-auctioning might reduce the competitive environment with individual bidders submitting their e-bids in isolation as against the current arrangement for all interested parties to be fully aware of other parties' bidding intentions. This might affect the ultimate level of bidding prices. As such, TD would accord priority to alternative methods which will not impact on bidding prices; and

Public information and forewarning

(l) TD has already publicized the improvement measures introduced since end 2001 through the media. If the pre-registration arrangement were to go ahead, TD will make the public announcement via its homepage, the press and information leaflets in opportune time.