THE GOVERNMENT MINUTE

IN RESPONSE TO

THE SEVENTEENTH ANNUAL REPORT OF THE OMBUDSMAN

ISSUED IN JUNE 2005

Government Secretariat

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CONTENTS

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Introduction

The Chief Secretary for Administration presented the Seventeenth Annual Report of The Ombudsman to the Legislative Council at its sitting on 22 June 2005. The Administration undertook to prepare a Government Minute in response to The Ombudsman's Annual Report.

2. This Minute sets out the action that the Administration has taken or intends 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

Agriculture, Fisheries and Conservation Department (AFCD)

Case No. 2004/0530 : (a) Failing to adequately publicise a new statutory requirement for owners of endangered species; and (b) Poor staff attitude in answering telephone enquiries.

3. The complainant lodged a complaint against the AFCD on matters relating to the ownership of Three-Striped Box Turtles (*Cuora trifasciata*) (the turtles) which were put under the control of the Animals and Plants (Protection of Endangered Species) Ordinance (the Ordinance) in February 2002.

4. In January 2003, the complainant learnt in a public forum that effective from February 2002, owners of freshwater turtles were required to obtain possession licences from AFCD and existing owners were given a three-month grace period to apply.

5. According to the complainant, she then tried to seek more information about the licensing procedures by calling the AFCD's general enquiry hotline. Officer A manning the hotline told her to submit an application for the licence but could not provide information about the grace period. She was advised to contact officer B of the Endangered Species Protection Division (ESPD) of AFCD direct. Upon contacting that officer, the complainant was told that the grace period had already lapsed and late applications would be subject to investigation. Officer B also informed the complainant that the relevant legislative amendments had been published in the Government Gazette and all relevant animal traders and local green groups were notified.

6. The complainant was not satisfied with the information provided by officer B and requested further explanation as to why private veterinary clinics and the Society for the Prevention of Cruelty to Animals (SPCA) were not notified separately of the legislative amendments. She contacted officer C in the Enforcement Unit of ESPD

and claimed that officer C told her that SPCA and veterinarians in private practice were not notified separately as the turtles seldom required veterinary care. The complainant then contacted officer D of the AFCD and claimed that officer D explained to her that as very few veterinarians kept pet turtles themselves, AFCD had not notified them separately of the legislative amendments.

7. In February 2004, more than one year after the complainant contacted the AFCD officers, the complainant lodged a complaint to The Ombudsman against AFCD. She opined that AFCD did not give sufficient publicity to the legislative amendments and failed to identify private owners of the turtles as stakeholders of the amendment exercise. She alleged that the AFCD staff had a poor attitude and provided her with inconsistent information. She also complained that there were different licensing requirements for different species under the Ordinance and felt that private owners of the turtles were being discriminated against.

8. Prior to the legislative amendments being made to the Ordinance, AFCD had undertaken extensive consultation with green groups, traders and other parties directly involved in the trade or conservation of endangered species. Circulars announcing the legislative amendments were sent to all the concerned parties in AFCD's records, including known owners of endangered species. AFCD also arranged a series of publicity programmes, such as a press conference, radio announcements and advertisements, to inform the public of the legislative amendments. For these reasons, the complaint against AFCD for inadequate publicity about the legislative amendment is unsubstantiated.

9. The Ordinance is to give effect to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which aims to protect certain endangered species from extinction by regulating their trading. Import, export or possession of such endangered species requires licences issued by the AFCD unless exempted. A possession licence is required irrespective of whether the turtles are kept for commercial purposes or as private pets. Separately, since studies indicated that Hong Kong could be the only place in the region where a healthy population of the turtles could be found, the protection of this local wild species would warrant different possession

control from other species. As such, the complaint against AFCD for discriminating against private owners of the turtles is also unsubstantiated.

10. With regard to the allegation of poor staff attitude and inconsistent information, the complaint was made more than a year after the telephone conversations between the complainant and the AFCD staff and none of the staff concerned could recall exact details of their conversations with the complainant. The Ombudsman could not establish that AFCD had a poor attitude. However, as the complainant claimed that some information given by the officers was at times inconsistent and The Ombudsman considered that they had no reason to doubt the accuracy of the complainant's claims, the complaint against AFCD of poor staff attitude and inconsistent information was partially substantiated.

11. AFCD has accepted and implemented The Ombudsman's recommendations as follows :

(a) AFCD has arranged full publicity on the new legislative amendments proposed to be made to the Ordinance. Eighteen consultation meetings were conducted with the relevant trades from May to November 2004. A large scale public consultation forum on the legislative amendments was organized. A circular letter concerning the legislative amendments was sent to 18,000 individuals and traders on AFCD's mailing list in December 2004. Another circular letter was issued after the amendment Bill was gazetted in April 2005. The Bill was posted on the AFCD website;

(b) AFCD has included in its mailing list the SPCA and all registered veterinary surgeons listed under the Veterinary Surgeons Board in Hong Kong;

(c) AFCD has prepared a notice for traders to display in their shops to alert prospective buyers of turtles of the need to apply for possession licences, and distributed the notice to pet shops and aquaria in November 2004 and January 2005; and

(d) When the new amendment Bill is passed and comes into effect, AFCD will organize a comprehensive publicity campaign to inform members of the public about the new legislative amendments. It will include TV and radio APIs, advertisements in Mass Transit Railway and Kowloon Canton Railway train compartments and stations, distribution of posters and pamphlets, panel displays at shopping malls and schools and issue of circular letters.

Buildings Department (BD)

Case No. 2003/3310 : Impropriety in handling a complaint about an unauthorised structure ("Pai Fong") built partly on Government land and partly on private land.

12. After purchasing a house in the New Territories, the complainant found that a *pai fong* and a boundary wall adjoining her house were built partly on her land and partly on unleased Government land. She, therefore, complained to BD, Lands D and HD, but was not satisfied with the way they handled her case.

13. In November 2003, the complainant lodged a complaint with The Ombudsman against :

(a) BD for improperly handling a complaint about an unauthorized structure built partly on Government land and partly on private land;

(b) Lands Department (Lands D) for failing to take enforcement action against an unauthorised structure built on Government land, while accepting an application for Short Term Tenancy by the owner of the structure (the owner); and

(c) Housing Department (HD) for failing to take enforcement action against an unauthorised structure built on Government land.

14. At first, because of insufficient details given by the complainant, BD staff went to inspect a different place. Upon receipt of relevant drawings from the complainant, BD arranged another inspection.

15. The complainant doubted the accuracy of BD's inspection because it involved only a visual inspection of the structures and taking of some photographs. She e-mailed BD several times to enquire about the inspection result, asking also for clarification as to who should be responsible for assessing the safety of the structures and for compensation in case of injury, death or damage resulting from collapse of the structures. Nevertheless, BD only replied by telephone that the

structures posed "no imminent danger", without addressing the question of compensation.

16. BD explained that visual inspection was its normal practice for assessing the safety of structures. Its staff had told the complainant of the result immediately after their site inspection. BD had also informed her via the Government's Integrated Call Centre that the structures posed no imminent structural danger. As the method of inspection involved professional judgment, it was outside The Ombudsman's jurisdiction.

17. However, The Ombudsman considered that there were inadequacies in BD's reply. As BD had not given the complainant a clear and substantive written reply, she had to make a number of enquiries by e-mail. The Ombudsman understood that the question of compensation involved complicated legal issues. However, BD, rather than being evasive, should have followed its internal guidelines and replied in writing, stating clearly to the complainant that the issue was outside its jurisdiction and that she should seek legal advice.

18. The complaint against BD was, therefore, partially substantiated.

19. The complainant had sent e-mails to the relevant District Lands Office (DLO) under Lands D to enquire whether the structures were legal and safe. DLO replied that it had never issued any licence for the structures and that her enquiries had been referred to HD's Squatter Control Office (SCO) to verify whether the number marked on the boundary wall was a squatter control survey number.

20. The owner subsequently applied to DLO for a short-term tenancy (STT) for the Government land occupied by the structures. The complainant alleged that DLO had favoured the owner in accepting the application.

21. The Ombudsman deemed it acceptable that DLO awaited SCO's confirmation as to whether the structures were covered by squatter control survey before considering any further action, otherwise the two departments might act inconsistently.

22. The root of the problem lay in the intrusion of the structures into the complainant's land, which could be resolved only by settlement between the complainant and the owner. However, DLO was responsible only for dealing with the occupation of Government land by the structures. The Ombudsman agreed that DLO should take decisive and effective action to regulate such occupation by way of STT. This was in line with Lands D policy and not favouring the owner.

23. The complaint against Lands D was, therefore, unsubstantiated.

24. Lands D told the complainant that it had to wait for SCO's verification of squatter control record whilst SCO said it had to wait for Lands D's assessment of the owner's STT application. As a result, the complainant was very dissatisfied.

25. HD found it technically not feasible to demolish the part of the *pai fong* on Government land as that would affect the remaining part and even the boundary wall on private land. The dispute over the structures on private land should be resolved by settlement between the complainant and the structure owner. To avoid inconsistency in decision and action between the two departments, SCO had to wait for Lands D's assessment of the STT application before it could decide on the demolition of that part of the *pai fong* on Government land.

26. The Ombudsman considered it reasonable and responsible for HD to wait for Lands D's decision on the STT application and action on the structures before considering any demolition action. Nevertheless, HD had taken three months to give a simple reply that the structures did not have a squatter control survey number. HD explained that its staff had been occupied by other projects while the Department itself was being reorganised. The Ombudsman believed that there were inadequacies in HD's staff deployment and supervision, thus adversely affecting the service of SCO.

27. The complaint against HD was, therefore, partially substantiated.

28. Overall, this complaint was partially substantiated.

29. BD, Lands D and HD have accepted The Ombudsman's recommendations and taken the following action :

(a) BD reminded staff in May 2004 to handle enquiries and complaints carefully and to give substantive replies as soon as possible. The current staff instructions have already provided clear and detailed guidance for frontline staff in this respect;

(b) since 2003, BD has implemented the Building Condition Information System (BCIS) in phases to monitor the progress of complaint cases. The system allows users to generate reports of all outstanding cases and written replies for monitoring purpose;

(c) regarding telephone enquiries and complaints, if BD's reply is not received within a pre-set time frame, the Integrated Call Centre would send escalation notices of the overdue cases to the case officers' supervisor for immediate follow up;

(d) Lands D has approved the STT, and the tenancy agreement was executed on 15 February 2005. The tenant is required to comply with the requirements of the relevant ordinances and regulations. Any legal action by other departments and relevant parties towards the *pai fong* and the boundary wall is not affected by the tenancy;

(e) HD has reviewed the staffing, supervision and staff handover arrangements to ensure that no service would be neglected or delayed. HD has reorganized and downsized its Operations Section, including the SCO, in April 2004 together with an overall review of the distribution of squatter structures and front-line staff's patrol boundary, patrol frequency, patrol routing and timing. Furthermore, regular discussion sessions are held between management staff at the HD Headquarters and out-station staff so as to enhance communication and tackle problems encountered;

(f) on 22 August 2003, HD issued an Operations Section General Order requiring front-line staff to monitor progress on

outstanding complaints on a monthly basis and keep complainants informed periodically of the progress of their complaint according to the prevailing departmental pledge; and

(g) to ensure clear handing-over of duties without affecting efficient service delivery to the public, both out-going and in-coming officers are required to jointly prepare and sign a hand-over checklist. Two workshops were held on 26 and 27 October 2004 for front-line staff to share their working experience and conduct case studies on complaint handling, highlighting The Ombudsman's observations and recommendations so as to prevent recurrence of similar complaints.

Case No. 2003/4277 : Delay in enforcing a removal order issued more than 20 years ago.

30. In December 2003, the complainant alleged that as BD had not followed up a removal order issued over 20 years ago against the unauthorised building works (UBWs) at his premises, he believed that the order had been revoked. When the Department sent him another removal order in late 2003, he had difficulty complying with the requirements.

31. The complainant's premises were a cockloft unit, which originally formed a duplex flat with the ground floor unit. The former owner split the duplex flat into separate cockloft and ground floor units and sold them to the complainant's mother and another buyer. The complainant's mother resold the cockloft unit to him in October 2003. The complainant claimed that the entrance to his unit would be blocked if he reinstated the premises in compliance with the removal order.

32. According to BD, between the issue of order in 1982 and 1986, the Department had been following up on the matter. When it was found that the reinstatement works required cooperation between the owners of both units, however, a new superseding order was issued to the two owners in 1984. However, since the issue of the new order up to July 1986, the Department had not been able to reach the complainant's mother. Because of limited resources, the Department had to focus on

more dangerous UBWs and thus did not follow up the case. BD also underwent reorganization in 1987, 1990 and 1991 and work priorities were rearranged. A task force was set up in 2000 to clear the backlog of removal orders. In January 2002, its staff made another visit to the premises to follow up the case.

33. BD explained that staff had tried to visit the cockloft unit several times but could not gain access. They could only leave a contact slip. In case of questions, the complainant should raise an enquiry. If he was worried that compliance with the order would block the entrance to his unit, he should discuss with the owner of the ground floor unit. As the removal order had been registered with the Land Registry, it would not be revoked due to the passage of time.

34. The Ombudsman considered BD too tolerant towards owners not complying with removal orders. It failed to take determined action when owners did not respond. This case could have been concluded much earlier if BD had taken firm action. The case was further delayed because BD had failed to check the accuracy of the new order when the Department issued it to the owner of the ground floor unit and so had to issue superseding ones.

35. On the other hand, owners had the responsibility to comply with removal orders and to ensure the safety of their buildings. The complainant's mother had all along not responded to BD's removal orders, letters and contact slips. When BD took up the case again, the complainant blamed his own non-compliance on the Department's insufficient supervision. This was not reasonable. The complainant or his mother ought to have liaised with BD earlier to discuss a practicable solution and reinstate the premises.

36. Overall, the complaint against BD was thus substantiated.

37. BD has fully accepted and implemented The Ombudsman's recommendations as follows :

(a) to follow up on the long outstanding removal orders, BD has introduced the following measures :

(i) set an annual target of clearing the backlog cases;

(ii) closely monitor the progress of compliance and take vigorous action to ensure compliance with all outstanding orders;

(iii) make timely data input into the Building Condition Information System (BCIS) so that the records are always up-to-date, and regularly submit information on the compliance situation to the senior management for monitoring and follow-up action; and

(iv) provide information to the public through BD's website on the compliance and ageing analysis of the outstanding cases, in order to enhance public accountability;

(b) BD has set up a special working group to carry out an extensive study with a view to formulating a long-term strategy. At present, BD considers that the measures in paragraph (a) above and the proper use of resources would be able to tackle the backlog problem effectively in the short and medium term;

(c) BD has stepped up prosecutions against uncooperative owners. The number of prosecutions instigated against owners failing to comply with removal orders has increased from 213 in 1999 to 1,664 in 2004. The number of prosecutions from January to May 2005 has reached 1,308, and the target number of the year is 3,000; and

(d) BD has reminded the concerned officers to check removal orders carefully in order to avoid the issuance of superseding orders in future, which will unnecessarily increase the workload.

Case No. 2004/0385 : Failing to follow up repeated complaints about unauthorised building works.

38. In November 2003, the complainant lodged a complaint with BD's enquiry hotline against an unauthorised flat roof structure (UFRS) erected on the floor below his premises causing environmental and hygiene problems. On 1 December 2003, BD called the complainant to inform him that it was following up on his complaint. The complainant made further calls to BD's hotline on 8 and 19 December 2003 regarding the UFRS.

39. On 2 January 2004, the complainant called BD's hotline again requesting BD's enforcement action against the UFRS, as BD was taking enforcement action against all unauthorised building works in the building. In late January 2004, the complainant lodged a complaint with The Ombudsman against BD's failure to follow up his complaint, as he saw no removal order issued against the UFRS since lodging his complaint.

40. According to BD, it had in fact issued a removal order in 1997 to the owner of the UFRS though no enforcement action was taken until 12 July 2002. In 2003, BD included the building in question under its Large Scale Operation for clearance of projecting unauthorised building works (UBWs) on the external walls of buildings. The inspection tasks and enforcement actions against the UBWs were outsourced to a consultant. In the present case, the consultant had explained to the complainant since November 2003 that a removal order would be issued to the owner of UFRS. BD had also referred the complainant's enquiries made in December 2003 to the consultant for follow-up action. Yet, as the complainant's earlier complaint was already on record, the consultant did not give a further reply to the complainant on the grounds that it had been busy with its works on the building.

41. On 14 January 2004, BD called the complainant to explain the situation. It then also conducted an inspection of the premises and issued a superseding order to the owner of the UFRS demanding its removal.

42. The Ombudsman considered that it was inappropriate for the

consultant not to give a reply to the complainant. On the other hand, The Ombudsman considered that BD had in fact taken follow-up actions on the complaint, though the consultant should have informed the complainant of the latest situation to avoid misunderstanding. The complainant's case was not substantiated.

43. The Ombudsman however considered that BD had delayed in following up on the removal order. Overall, the complaint was thus substantiated other than alleged.

44. BD has fully accepted and implemented The Ombudsman's recommendations as follows :

(a) To follow up on the long outstanding removal orders, BD has introduced the following measures :

(i) set an annual target of clearing the backlog cases;

(ii) closely monitor the progress of compliance and take vigorous action to ensure compliance of all outstanding orders;

(iii) make timely data input into the Building Condition Information System (BCIS) so that the records are always up-to-date, and regularly submit information on the compliance situation to the senior management for monitoring and follow-up action; and

(iv) provide information to the public through BD's website on the compliance and ageing analysis of the outstanding cases, in order to enhance public accountability;

(b) BD has set up a special working group to carry out an extensive study with a view to formulating a long-term strategy. At present, BD considers that the measures in paragraph (a) above and the proper use of resources would be able to tackle the backlog problem effectively in the short and medium term;

(c) BD has stepped up prosecutions against uncooperative owners. The number of prosecutions instigated against owners failing to comply with removal orders has increased from 213 in 1999 to 1,664 in 2004. The number of prosecutions from January to May 2005 has reached 1,308, and the target number of the year is 3,000; and

(d) The UFRS in question was removed in April 2005.

Case No. 2004/1140 : Negligence of duty and delay in handling a complaint about unauthorised building works.

45. On 16 April 2003, BD received a letter from the complainant complaining about unauthorised building works (UBWs) at a house on an estate in the New Territories (House A). BD conducted a site inspection on 20 May 2003, and found that the unauthorised canopy at the front of the house did not constitute an imminent danger, but could not verify the status of the rear garden from the public area due to the design of the estate. On 19 June 2003, upon the invitation of the owner of another house (House B) in the estate, which faced the rear garden of House A, to inspect the condition in House B after removal of an UBW, BD also took the opportunity to inspect the UBW in the rear garden of House A and assessed that there was no imminent danger.

46. Since the complainant did not mention in his letter that the UBWs were newly erected and that similar UBWs had been erected in most of the houses in the estate, BD handled the case as a normal complaint about existing UBWs. After completion of the investigation report, BD gave a written reply to the complainant on 9 July 2003 explaining the Department's existing enforcement policy on UBWs, advising him of the investigation result and the reason for not taking action on the large number of existing UBWs at the same time. BD also suggested the complainant report cases of UBWs under construction immediately in future so that BD could stop the proliferation of UBWs effectively.

47. After receiving BD's reply, the complainant called BD on 18

July 2003, pointing out that the UBWs were newly erected and there were also UBWs inside House A. BD then promised to conduct a further investigation by, for instance, obtaining aerial photos from the Lands D for reference. Based on the aerial photos, some UBWs outside House A were confirmed to be newly erected, in respect of which the Government would give priority for removal. On 21 July 2003, BD issued a letter to the owner/occupant of House A requesting access to carry out inspection of the interior. On 6 August 2003, BD informed the complainant of the result of the investigation and issued a letter to the owner/occupant of House A advising him to remove the UBWs voluntarily.

48. After obtaining the owner's particulars from the Land Registry, BD served a statutory order on 16 October 2003 requiring the owner to take action to remove the UBWs. On 19 December 2003, the owner of House A sent a letter to BD requesting more time for arranging the removal. As the owner had the intention to remove the UBWs voluntarily, BD gave a reply to him on on 28 January 2004 stating that the inspection would be carried out after 15 March 2004. An authorised person (AP) sent a letter to BD on behalf of the owner on 27 February 2004 asking for an extension to 1 September 2004. BD replied to the AP on 16 March 2004 to turn down the request.

49. On 18 March 2004, BD carried out a site inspection and found that the UBWs still existed. BD, therefore, issued a warning letter to the owner on 25 March 2004. The AP sent a letter to BD on 15 April 2004 informing them that he had been formally appointed by the owner to coordinate the removal of the UBWs. The AP also requested again on behalf of the owner an extension to September 2004 on the ground that the UBWs were in a safe condition. Since the owner had the intention to remove the UBWs and the AP confirmed that they were safe, BD replied AP on 30 April 2004 stating that site inspection would be conducted after 30 June 2004.

50. BD aims to instigate prosecutions of about 2000 cases each year against owners who have failed to comply with removal orders. However, as priority had been given to handle the extra workload from the Team Clean Operation, prosecution against the owner of House A had not been taken.

51. Since the UBWs of House A had not been removed by the end of March 2004 and similar UBWs were being erected in the adjacent houses, the complainant considered that BD had not handled his complaint and enforced the removal order diligently, leading to proliferation of UBWs. He therefore lodged a complaint with The Ombudsman in April 2004. The complaint was substantiated.

52. BD has fully accepted and implemented The Ombudsman's recommendations as follows :

(a) BD has reminded the concerned staff of the need to communicate with the complainants to obtain details of the UBWs including the date of erection for determining appropriate follow-up action, and to ensure that the enforcement policy against UBWs is provided in the reply to the complainant. BD has also required the staff of the Integrated Call Centre to ask complainants for the date of erection of UBWs for follow-up action; and

(b) BD has formed a working group to review the procedures on processing requests for extension of time relating to orders. The working group has completed the review and is revising the instructions to the concerned staff according to legal advice sought from Department of Justice. The revised instructions will be implemented shortly.

Civil Engineering and Development Department (CEDD)

Case No. 2003/3617 : Dereliction of duty over its actions in relation to the illegal excavation of natural river boulders for use in an infrastructure project.

53. In December 2003, the complainant lodged a complaint with The Ombudsman against the then Civil Engineering Department (later renamed Civil Engineering and Development Department (CEDD)) for dereliction of duty over their actions in the sourcing of natural river boulders from the Tung Chung Stream for use in the Infrastructure for Penny's Bay Development project. Specifically, the complainant alleged that CEDD had :

(a) failed to prudently and properly ascertain the legality of the source of the boulders;

(b) conveyed, by its inappropriate actions, tacit approval for the removal of a substantial quantity of river boulders;

(c) failed to supervise its consultant and its contractor in the sourcing of boulders from a legal supply; and

(d) allowed an illegal excavation of the Tung Chung Stream, which lay on Government land and was ecologically valuable, to the extent that some 330 metres thereof have been destroyed.

54. After investigation, The Ombudsman considered that allegations (a) and (c) were partially substantiated, whilst allegations (b) and (d) were unsubstantiated. Overall, the complaint was partially substantiated.

55. The Ombudsman, with a view to avoiding a recurrence of similar incidents, recommended that CEDD should strengthen communications with its consultants for projects under its supervision, and that CEDD should take a more proactive role in matters requiring Government input or having possible adverse impacts on the environment.

56. In response, CEDD wrote to The Ombudsman on 7 September

and 13 October 2004, taking the view that they had already exercised due diligence and taken reasonable action in supervising the consultant, and thus allegations (a) and (c) should not be substantiated. Nonetheless, CEDD has taken the following measures in response to The Ombudsman's recommendations :

(a) CEDD has reassigned the duties within its Special Duties Office in March 2004, and formed a project team for each construction contract. The duties of a project team include, *inter alia*, the coordination of construction works under various disciplines (e.g., engineering, architectural and landscaping, etc.) of a certain construction contract. This would enhance communications among team members, as well as the efficiency and effectiveness in the overall management of the consultant's performance and the monitoring of works progress;

(b) CEDD has held regular meetings with its consultants, such as Monthly Progress Meetings, Weekly Construction and Site Management Meetings, and specific task group meetings , so as to closely monitor the progress of the works and associated activities; and

(c) CEDD has disseminated The Ombudsman's investigation report to all professional staff in the Special Duties Office and the consultants for reference, reminding them to be more alert to and proactive about preventing recurrence of similar incidents.

Correctional Services Department (CSD)

Case No. 2003/3373 : Failing to follow established procedures in prison security, which resulted in the complainant being assaulted and sustaining injuries while in prison.

57. The complainant was a prisoner in Shek Pik Prison. The complainant was taking a shower under the supervision of a CSD staff member in the evening of 17 August 2003. When the CSD staff member unlocked the bathroom gate, a prisoner of another dormitory entered the bathroom and assaulted the complainant with a sharpened toothbrush, causing the complainant laceration wounds. Subsequent to Police investigation, the assailant prisoner was prosecuted and eventually convicted of "wounding with intent". In November 2003, the complainant lodged a complaint with The Ombudsman against CSD's failure to follow the established procedures in prison security. The complaint was substantiated.

58. In the course of investigation, The Ombudsman noted that CSD had learned from the incident and issued internal guidelines, requiring staff to keep close surveillance on the situation in the vicinity before locking and unlocking gates/doors to enhance security.

59. CSD has fully accepted and implemented The Ombudsman's recommendations. Specifically, the Shek Pik Prison has adopted the following measures :

(a) strengthened in-service training for staff in areas of situational crisis management and security precautions;

(b) increased the frequency of surprise searches, so as to prevent prisoners making and possessing weapons;

(c) reviewed and revised routes for escorting prisoners to minimise security risk;

(d) reviewed and enhanced staff deployment for prisoner escort duties; and

(e) promulgated internal guidelines to remind staff to stay alert while unlocking and locking gates/doors.

Electrical and Mechanical Services Department (EMSD)

Case No. 2003/2294 , 2003/2314 : Errors in cremation process and failure to take appropriate remedial measures.

60. In March 2003, the new free-fall type cremators were put into use in the Kwai Chung Crematorium. This new type of cremator was designed to handle the cremation of two bodies simultaneously, inside different chambers of the cremator, and is capable of segregating the remains of the deceased from one another.

61. On 11 June 2003, the two deceased of the two complainants were cremated at the Kwai Chung Crematorium. The following day, staff of the Food and Environmental Hygiene Department (FEHD) phoned the complainants to arrange a meeting on 14 June, and told them at the meeting that due to mechanical failure, the cremated remains of the two deceased were mixed together.

62. On 19 June 2003, the complainants and FEHD staff met to discuss the remedial measures. FEHD staff offered an oral apology, but stressed that the incident was caused by mechanical failure. Since FEHD could not separate the cremated remains, the complainants requested the cremains be returned to the families, and that the families would entrust the task to an expert, with the costs to be borne by the Government. After some discussions, FEHD orally agreed to the arrangement. On 26 June 2003, the complainants met FEHD staff again and submitted the résumé and quotation of the forensic odontologist they would like to employ.

63. In the course of The Ombudsman's investigation, it was discovered that the incident also involved some EMSD staff who were stationed at the crematorium. With the complainants' consent, EMSD was also included in the investigation. The complaint was partially substantiated.

64. FEHD and EMSD have fully accepted and implemented The Ombudsman's recommendations as follows :

(a) FEHD issued a written apology to each of the two complainants on 27 January 2005;

(b) FEHD issued an internal circular on 7 March 2005 setting out the guidelines for its staff on the non-technical operation of the "free-falling" cremators including procedures on handling emergency situations. To monitor the operation of the crematorium, the same circular also set out an inspection system whereby supervisory staff would inspect the crematorium at regular and irregular hours. Written records of inspection findings would be kept;

(c) regarding the formulation and revision of relevant guidelines, EMSD has taken the following measures :

(i) reviewed and revised the relevant guidelines on security measures for entering the control room and the cremator control system;

(ii) in order to meet the operational needs of the crematorium, EMSD has arranged the meal time for operational staff flexibly;

(iii) reviewed and revised the guideline "Points to Note for EMSD Staff resident at Kwai Chung Crematorium", to remind staff to refer to the "operation and maintenance manual" for troubleshooting, and to approach the supervisor and equipment supplier for assistance as and when necessary; and

(iv) the resident Assistant Inspector will remind the staff concerned during the regular toolbox briefing sessions to ensure that they are well aware of the relevant guidelines. In addition, all the guidelines have been posted inside the plant room for staff's easy reference;

(d) subsequent to the incident, EMSD has followed up with the Architectural Services Department (Arch SD), which is responsible for the design of the cremators, and its contractor regarding potential design problems of the free-fall cremators.

EMSD has also provided necessary assistance to Arch SD in reviewing the design of the cremator to prevent recurrence of similar incident;

(e) for the newly completed Fu Shan Crematorium, EMSD has strengthened communication with Arch SD and its contractor, and has conducted necessary quality inspection and testing of the cremators.

As for the Diamond Hill Crematorium re-provisioning project, EMSD has provided suggestions to Arch SD relating to the operation and maintenance of the prospective cremator, and has been in close liaison with Arch SD's project team;

(f) EMSD has conducted monthly toolbox briefing sessions to ensure that staff are familiar with the guidelines on and techniques for operating the cremators;

(g) EMSD has made available work plan and job specifications for officers working in the Kwai Chung Crematorium. It has also adopted various security measures such as combination locks for access to the control room, personalized passwords for accessing the computer system, and random surprise visits by management staff with proper documentation;

(h) EMSD has conducted a disciplinary review on the incident. Warning and advisory letters have been issued to the concerned staff as appropriate; and

(i) emergency drills for cremator fault, fire, chemical spillage and power outage, etc. are conducted regularly to ensure that EMSD resident staff are able to handle emergencies swiftly. Relevant notices and guidelines will be reviewed and updated regularly.

Food and Environmental Hygiene Department (FEHD)

Case No. 2003/2020 : Delay in processing an application for a vacant burial plot for disposition of human ashes.

65. The complainant, noting the urn space next to his late father's grave in a cemetery had been vacated, intended to apply for that space for his deceased mother. He went to an office of the Cemeteries and Crematoria Section (the Office) under FEHD in April and October 2002 for enquiries but was advised that the space was not vacant. As the Office did not keep a register of urn spaces for the cemetery in question, the complainant was unable to check the records himself although he believed the FEHD staff had given him incorrect information. Afterwards, he wrote to ask FEHD about the latest situation. In December 2002, he received a written reply that the space had become vacant and available for application. The complainant followed the Guidance Notes to Application for Used Urn Spaces and completed his application at the Office that month. However, as there was no response by mid-February 2003, he telephoned FEHD and learned that his application was still being processed.

66. In late February 2003, FEHD notified him that his application had been approved and asked him to pay the fees within 14 days. In early March 2003, he went to the Office for the formalities but was told that his file was missing. As he did not bring along his birth certificate that day, the staff asked him to take an oath to affirm his kinship with the deceased. He refused to do so and said he would complain to the management. Next day, he received a call from FEHD to say that the documents had been found. He was asked to complete the formalities, which he did accordingly.

67. In March 2003, the complainant lodged a complaint with FEHD through the Integrated Call Centre under the Government Secretariat and a newspaper against the staff of the Cemeteries and Crematoria Section for dereliction of duty. In mid-April 2003, he enquired with FEHD by e-mail about the progress of his complaint but had no response. However, the next day, he found FEHD's reply to his complaint in the

newspaper. It was not until two weeks later that he received FEHD's written reply. He criticised the Department for disparity in treatment by attaching importance to the media rather than the complainant. Moreover, he held that the Department had failed to give him a satisfactory reply.

68. In July 2003, the complainant lodged a complaint with The Ombudsman against FEHD. The complaint was partially substantiated.

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

(a) in the light of legal advice, FEHD has installed stainless steel boxes at five cemeteries not stationed with officers to keep grave registers, in order to comply with section 4 of the Public Cemeteries Regulation. FEHD has also drawn up guidelines for cemetery staff on handling of public requests for inspecting the grave registers;

(b) FEHD has given a detailed written explanation and apology to the complainant on 20 April 2004. The Department has also instructed its staff to give simultaneous reply to the complainants and the media in future;

(c) FEHD has further reminded its staff in April 2004 to strictly follow the administrative circulars and performance pledge in issuing replies to complainants; and

(d) FEHD has formulated documentation measures for verification of verbal enquiries and replies. The measures have been in effect since 2 June 2004.

Case No. 2003/2124 , 2003/2148 : Errors in cremation process and failure to take appropriate remedial measures

70. Please refer to Case No. 2003/2294 , 2003/2314 under the Electrical and Mechanical Service Department.

Case No. 2003/2624 : Failing to take prompt action in dealing with a report on littering.

71. The complainant claimed that in January 2003 she saw a van driver throw a cigarette butt onto the street. She faxed a "Littering From Vehicle – Report Form" to FEHD on the offence.

72. After examining the facts and noting that the alleged driver had got out of his vehicle when throwing the cigarette butt, a Health Inspector (Inspector A) classified the offence as "littering in public places" actionable under section 4(1) of the Public Cleansing and Prevention of Nuisances Regulation (the Regulation), instead of "littering from specified vehicles" under section 9A. He checked with the Transport Department (TD) and was advised on 10 March 2003 that the vehicle owner was a limited company. He wrote to the Companies Registry on 29 April, seven weeks later, and received the registration details of the company on 27 May.

73. On 13 June 2003, FEHD sent a letter to the company asking for the personal particulars of the driver concerned. The company did not respond. On 30 August, Inspector A wrote to notify the complainant that no prosecution could be instituted as the vehicle owner had refused to disclose the driver's identity. He also stated that the case was time-barred from legal action because six months had lapsed since the alleged offence. The complainant was disappointed that FEHD had treated the matter so casually.

74. Neither section 4(1) nor section 9A of the Regulation requires the registered owner of a vehicle to inform FEHD of the particulars of the driver of his vehicle. FEHD did not have any specific guidelines or circulars for staff in conducting enquiries into reports of offences under sections 4(1) and 9A of the Regulation. FEHD kept a prosecution record book for monitoring purposes and FEHD officers were expected to take into account the six-month statutory time bar when processing a case.

75. The Ombudsman noted that Inspector A had taken two weeks'

vacation leave within the period from 10 March to 28 April 2003 with no one taking up his duties in his absence. Then he had a heavier workload because of the outbreak of Severe Acute Respiratory Syndrome. He did not issue any reminders to the registered owner of the vehicle after FEHD's first letter to the owner on 13 June and before the final reply to the complainant in late August. As a result, idle periods adding up to four months had been wasted.

76. The Ombudsman regarded that FEHD had failed to meet its performance pledge at an early stage in sending a belated acknowledgment to the complainant on 25 February 2003. It had also failed to inform the complainant at once when the offence became time-barred from prosecution on 29 July. Overall, the complaint was substantiated.

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

(a) FEHD has issued a reminder to its staff on the need to observe the Department's performance pledge and internal circulars in acknowledging receipt of letters and issuing interim replies;

(b) FEHD has organised a series of courses on relevant statutory provisions for staff between June and October 2004;

(c) FEHD revised the relevant guidelines with a detailed workflow, and incorporated these in the relevant operational manual in August 2004;

(d) FEHD issued guidelines in May 2004 on procedures to ensure that the absence of an officer for various reasons such as vacation leave, training, transfer and duty visit would not affect the operation of the office;

(e) legal advice has been obtained which states that FEHD has to rely on the voluntary disclosure of information by registered vehicle owners;

(f) the "Littering From Vehicle – Report Form" has been revised in August 2004 to confine cases to the reporting of littering from vehicles under section 9A of the Regulation. As section 4(1) of

the Regulation deals with the enforcement against any person dumping litter in a public place, through the issue of summons or Fixed Penalty Notice in cases where littering is being witnessed by authorized officers, the use of a reporting form is not applicable;

(g) FEHD sent a written apology to the complainant on 23 July 2004; and

(h) FEHD has revised the guidelines to ensure its staff would keep track of each summons issued.

78. As for The Ombudsman's recommendation to consider, in consultation with the relevant policy bureau, the need to amend the Regulation to make the disclosure of information by the vehicle owners mandatory, FEHD has consulted the Health, Welfare and Food Bureau (HWFB), which considers that the existing law is adequate. If there is sufficient evidence for an offence of littering from a specified vehicle, and the vehicle owner concerned fails to provide a valid defence, the owner will have to shoulder the liability. There is no question of the vehicle owner being able to relieve the liability by not identifying the driver.

79. FEHD has conveyed HWFB's considerations to The Ombudsman, who accepted vide her letter of 9 May 2005 that there might not be a need to amend the concerned legislation.

Case No. 2003/3037 : Administrative error in processing an application for exhumation of remains, which resulted in loss of the remains buried in the grave.

80. The complainant's mother passed away in 1964 and her remains were buried in an urn grave cemetery in 1971. The cemetery was at that time under the management of the then Regional Services Department but FEHD took over in January 2000. As part of the grave was damaged, the complainant had it repaired in 1993. She did not know that the remains in the grave had been exhumed.

81. In April 2003, the complainant's father applied to FEHD for

exhumation of his late wife's remains for cremation and safekeeping in a columbarium. FEHD then discovered that in 1985, exhumation of the remains had been granted to a Mr A for cremation and the ashes taken away. The Department tried to contact Mr A but to no avail. The whereabouts of the ashes were unknown. In July 2003, FEHD dismantled the grave without notifying the complainant and her family. In August 2003, the complainant lodged a complaint with The Ombudsman. The complaint was substantiated.

82. The complainant further claimed to have spent some $5,000 to restore the grave in 1993 and then some $32,000 for a private niche for the reinterment of her mother's ashes before the incident came to light. She hoped that FEHD would compensate for the loss.

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

(a) FEHD sent a written apology to the complainant on 31 August 2004 for failing to notify her and her family before dismantling the deceased's grave.

(b) FEHD has drawn up a timetable in November 2004 for disposing of or destroying the inactive files and records in the Cemeteries and Crematoria Section.

(c) FEHD instructed its frontline staff in August 2004 to ensure that the burial information input into the computer database is complete and accurate.

84. As to The Ombudsman's suggestion to make appropriate compensation to the complainant, FEHD has made an ex-gratia payment to the nominated family member of the deceased in January 2005, after having obtained legal advice from the Department of Justice and approval from the Financial Services and Treasury Bureau

85. The deceased's family has subsequently returned the urn grave to the Government for re-allocation.

Case No. 2003/3192 : Failing to take appropriate action in tackling obstruction of public places by several restaurants.

86. A food premises complex was operating on the ground floor of the building in which the complainant resided. The food premises often extended their seating areas illegally to public places, causing obstruction to pedestrians and residents. Moreover, it operated until the early hours and the noise disturbed the local residents.

87. The complainant lodged a complaint with FEHD by phone in late 2002. In response, FEHD said that they would follow up on the case as far as possible, and that owing to limited staff resources, inspection at all times could not be guaranteed. Subsequently, the complainant found some improvement during the daytime up to 8:00 p.m., but the situation remained from 8:00 p.m. to 3:00 a.m. Since FEHD could not resolve the problem, the complainant called the concerned Police Station for assistance. However, the situation did not improve after the Police's inspection.

88. In the autumn of 2003, the complainant called FEHD again, and was told that his case would be referred to FEHD's Environmental Hygiene District Office for follow-up. However, the complainant did not receive any reply afterwards. The complainant was dissatisfied about this and lodged a complaint with The Ombudsman in November 2003. The complaint was unsubstantiated.

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

(a) FEHD mounted two operations against the illegal extension of the food premises at 1:00 p.m. on 22 April 2004 and at 10:00 p.m. on 30 April 2004. Prosecutions were initiated against four and five premises respectively during the above two operations;

(b) FEHD has liaised closely with the management company of the concerned building with a view to tackling the problem of obstruction and illegal extension to public places caused by the food premises. From 20 February to 15 March 2004, the management company issued warning letters to six owners/operators of the food premises, drawing their attention to

the relevant provisions of the Deed of Mutual Covenant which disallowed occupation of the public areas, and stating that legal action would be taken unless the premises implemented improvement measures to meet the specified requirements. The management company also mounted operations on 26-28 March 2004 against illegal extension of the food premises and ordered the responsible persons to remove the tables, chairs and miscellaneous articles causing obstruction in the public places.

In addition, FEHD has provided the management company with the circumstantial evidence collected during the operations for the latter to consider whether legal action would be taken against the owners concerned/ responsible persons of the food premises; and

(c) the Police has worked with FEHD in the operation on 30 April 2004 to address the noise emission problem. The level of noise emission detected during the operation was found not to be excessive.

Case No. 2004/1498, 2004/1499, 2004/1552, 2004/1553, 2004/1568 and others : Failing to offer ex gratia payment to poultry traders affected by the ban on import of chilled/frozen poultry from the Mainland.

90. When suspected cases of avian influenza broke out in a number of Mainland provinces in late January 2004, HWFB and FEHD temporarily suspended the import of live birds and poultry meat from the Mainland, which resulted in a blow to the business of poultry traders.

91. In February and March of the same year, the Government offered ex-gratia payments (EGP) to operators in the live poultry trade but not to chilled/frozen poultry traders. The latter subsequently lodged the following complaints with The Ombudsman in May 2004, that :

(a) HWFB and FEHD were unfair in handling the matter, as only operators in the live poultry trade were granted EGP whilst they were not given any assistance; and

(b) FEHD was remiss in failing to negotiate with the quarantine

authorities in the Mainland in setting down a uniform set of quarantine requirements for chilled ducks and geese for both Hong Kong and the Mainland, leading to the delayed resumption of the import of chilled ducks and geese from the Mainland to the local market.

According to the complainants, they were all traders of chilled/frozen poultry (mainly chilled poultry), selling solely chilled/frozen poultry imported from the Mainland, though their Fresh Provision Shop (FPS) licences had endorsement for selling both chilled/frozen poultry and other chilled/frozen meat. The complainants noted that during the avian influenza outbreaks in the Mainland, the nearby countries/places were also affected; hence they could not import any chilled/frozen poultry. The chicken breeds in Europe and America were mostly "white chickens" instead of the "Three Yellow Chickens " favoured by Hong Kong people.

92. HWFB and FEHD pointed out that in deciding whether to grant EGP to a particular sector for the import ban, the Government considered various factors, including :

(a) whether operators in a particular trade were directly and seriously affected by the temporary suspension of the import of Mainland poultry and poultry meat; and

(b) whether they could switch to sell other goods during the import suspension to ease their operational difficulties.

93. Taking account of the constraints of the layout and facilities of live poultry retail outlets, and the difficulty for operators to make substantial modification to their stalls or shops in order to sell other goods, EPG were granted to live poultry traders. Even though a minority of live poultry traders also held FPS licences with endorsement to sell chilled and/or frozen meat, they could not switch business within a short time because of the said layout constraints and the fact that their shop space had already been taken up by live poultry cages and slaughtering facilities. Import of live chickens from distant places to Hong Kong was also unfeasible, given the high mortality rate of chickens

when transported over a long distance and the high cost of transporting chickens by air-freight. As for live chicken transporters, they could not switch to transporting other goods unless certain installations were removed from their vehicles. Even if they were willing to transport other goods, people might not patronize their services for fear of avian influenza.

94. As for traders of chilled and frozen poultry, they were also permitted to sell other chilled/frozen meat. As facilities required for selling chilled/frozen poultry were basically the same as those for chilled/frozen meat, they could switch to selling or selling more chilled/frozen meat without substantial modification to their stalls/shops' layout and facilities. Refrigerated vehicles that transported chilled poultry could also switch to transportation of other chilled/frozen meat without technical difficulties. On the supply side, FEHD understood that the United States and Canada also supplied chilled yellow chickens with heads. The operators could negotiate with the exporters about the specifications for the products required.

95. The Ombudsman accepted the above explanation from the Bureau and Department and agreed that all trades carry inherent business risks. At difficult times, the operators must strive to improve their business environment by exploring other opportunities. It is a business decision to determine how to survive at difficult times. Government should not subsidise the losses that a trade might suffer at such difficult times without due consideration.

96. However, The Ombudsman believed that the Bureau and Department had made a mistake in handling the matter, i.e., when Hong Kong resumed the import of chilled chickens from Mainland at end 2002, some live poultry retailers also began to offer chilled chickens in their stalls/shops as a sideline. In other words, some live poultry retailers who held FPS licences with endorsements to sell chilled/frozen poultry could switch to sell chilled/frozen poultry when the import suspension was in force. The Ombudsman considered that according to the criteria for granting EGP, those live poultry retailers should not be granted EGP. Even if they were granted the payments, the amount should not be the same as that granted to those who were allowed to sell live poultry only.

97. The Ombudsman considered that the first part of the complaint was partially substantiated. HWFB and FEHD have reservations over The Ombudsman's conclusion, as it is not related to Government's decision not to provide chilled/frozen poultry traders with EGP.

98. HWFB and FEHD contended that they had not deviated from the principle of granting EGP, i.e., EGP would be given to live poultry licencees as their licensing conditions prohibited them from selling other products during the period of suspension of importation of live chickens. For live poultry traders who were also licensed to sell chilled poultry, although they were allowed to sell chilled poultry, their business had been seriously interrupted by the import suspension as live poultry was their primary line of business. As the operation mode of selling live poultry differs significantly from that of chilled poultry, live poultry retailers could hardly switch to selling chilled poultry products within a short period of time and without major renovation to the physical layout of their shops/stalls. As such, HWFB and FEHD considered it appropriate to provide EGP to live poultry traders even though they were also licensed to sell chilled poultry.

99. HWFB and FEHD have carefully considered The Ombudsman's recommendation of setting different amounts of EGP for traders who are licensed to sell live poultry only and traders who may sell both live and chilled poultry, but consider it not feasible. Since the first avian influenza outbreak in Hong Kong in 1997-98, the Government has been paying the same amount of EGP to live poultry retailers regardless of the size of their shops/stalls or the scale of their business. As the EGP is an emergency relief measure, the amount of funding has been carefully set at a level that would on one hand assist the traders to tide over the difficult period, and on the other hand would not abuse the use of public money. Reducing the amount of EGP to live poultry traders who are also licensed to sell chilled poultry may defeat the purpose of the EGP payment as a means to help the traders tide over the difficult time. It would also open a window for negotiation and invite traders to suggest higher tiers of EGP to cater for larger live poultry stalls and/or stalls with more live poultry workers. In addition, it would be difficult to argue for awarding a smaller EGP to live poultry stalls selling chilled/frozen poultry only, but

not those selling, say, other wet goods (e.g. vegetable/fruit/meat, etc.) or dry goods. Furthermore, under the emergency relief situation, HWFB and FEHD would not have the time to set different levels of EGP for different groups of retailers. Given the emergency relief and ex-gratia nature of the fund and the technicality issues, it is not appropriate to devise different levels of EGP for different groups of recipients. In any event, there should no longer be a need in future to trigger this EGP arrangement, now that a voluntary surrender scheme has been approved by the Legislative Council for live poultry retailers. The Ombudsman was informed of the above considerations.

Case No. 2004/2007 : Failing to take action against drying of laundry by some local residents in public places.

100. The complainant walked past a tree-lined pedestrian link everyday. Regrettably, the environment was marred by laundry hung on the trees and railings of public staircases. Complaints were lodged with the Housing Department (HD), the Highways Department (Hy D) and FEHD. However, they all said that the problem was "outside their jurisdiction". The Home Affairs Department (HAD) indicated that the issue had to be tackled jointly by several Government departments.

101. Lands Department (Lands D), HAD, FEHD, Hy D, Transport Department (TD), Architectural Services Department and the Police held an inter-departmental meeting in mid-November 2003 to discuss "grey areas" in street management. Removal of laundry in public places was on the agenda. Representatives reaffirmed that their respective departments were not authorised to deal with this problem. They agreed that, pending Hy D's obtaining legal advice, they should refer repeated complaints within a particular district to the relevant District Office (DO) for it to advise the residents against this practice.

102. Subsequently, the complainant lodged a complaint with The Ombudsman. The Ombudsman's investigation covered six Government departments, namely HAD, FEHD, the Lands D, the Leisure and Cultural Services Department (LCSD), Hy D and TD.

103. The Ombudsman considered that the local DO had played a

proactive role in coordinating inter-departmental efforts to find solutions to the problem. The complaint against HAD, therefore, was unsubstantiated.

104. The other five Departments, namely LandsD, FEHD, LCSD, Hy D and TD, claimed that they had no authority to take action on their own. The Ombudsman took the view that none of them was willing to assume the sole responsibility or a leading role in solving the problem. The complaint against the five Departments was, therefore, substantiated.

105. The Ombudsman recommended that an agreement be reached within the Administration for a single department to take up a leading role in enforcement action to remove laundry as a matter of routine. The Administration should also obtain legal advice with a view to seeking empowerment for the five departments to act within their own jurisdiction against laundry hung in public places. This may involve legislative amendment.

106. In response to The Ombudsman's recommendations, the Chief Secretary for Administration directed HAD to conduct a comprehensive review to come up with a solution to the problem. The review was completed in May 2005, and the review report was submitted to The Ombudsman. The review findings include :

(a) according to legal advice, although there is no provision under the existing laws that enables immediate enforcement action against laundry drying in public places, the concerned departments may abate public nuisance on their respective land/premises (e.g. remove laundry hung in public places) under the common law;

(b) responsibilities of departments should be clearly delineated and each concerned department should tackle the problem within their jurisdiction. This should be supplemented with public education; and

(c) if the management responsibility of the blackspots falls under more than one department or if the situation is serious, the concerned District Officer will step in and coordinate joint clearance operations.

107. The review found that introducing a new piece of legislation to prohibit laundry drying in public places is not recommended. Although laundry drying in public places may have an adverse visual impact on the living environment, it would be too draconian to make it a criminal offence. In addition, having examined the statutory and resource constraints and staff deployment, it is considered unfeasible to assign one single department to tackle laundry drying in public places.

108. Pursuant to the HAD's review, the concerned departments have agreed to the following division of responsibilities :

(a) LCSD – to clear laundry in parks and on trees at roadside amenity areas;

(b) Lands D – to clear laundry on fences of vacant Government land under its remit;

(c) HD – to participate in clearance operations in the vicinity of public housing estates as most of the laundry drying blackspots are near public housing estates;

(d) Hy D – to modify, where appropriate, the design of street furniture such as roadside railings to prevent laundry drying, and to participate in operations to clear laundry on the railings; and

(e) FEHD – to provide collection bins for collection of the removed laundry, and to remove unclaimed items.

109. Upon receipt of the review report, The Ombudsman has asked for information on the follow-up action arising from the above review. The Administration provided The Ombudsman with the information on 30 September 2005.

Government Logistics Department (GLD)

Case No. 2004/1110 : Impropriety in tender procedures which resulted in loss of a bank cashier order submitted with a tender by the complainant.

110. In this case, tenderers bidding for the subject tender issued by the Government Property Agency (GPA) were required to deposit their tenders into the GLD Tender Box by noon on 14 January 2004. In accordance with the Tender Notice, a cashier order in an amount of three months' rent as tendered had to be submitted together with the tender. The complainant's tender was invalidated by GPA because it did not enclose a cashier order. The complainant later lodged a complaint with The Ombudsman alleging that the GLD Tender Opening Committee (TOC) had mishandled their tender, resulting in the loss of their cashier order.

111. Under the existing practice, tenders deposited in the GLD Tender Box are processed by the GLD TOC in accordance with the GLD Tender Opening Procedures. The TOC comprises one chairman and two members drawn randomly by a computer programme from the pool of eligible appointees who are members of the Supplies Grades in various Government bureaux and departments.

112. On 14 January 2004, the responsible TOC collected, opened and authenticated the tenders received through the GLD Tender Box, in accordance with the GLD Tender Opening Procedures. Bids for four tenders, including the subject tender, were closing on that same day.

113. Three tenders were received for the subject tender. The TOC took out the tenders from the tender envelopes, checked the contents and confirmed that nothing was left in the tender envelopes. After day-stamping and initialing the tenders received, checking the duplicate copies against the original copies, etc., the TOC filled in the relevant form and sealed the original copy of the three tenders received in an envelope for return to GPA for tender evaluation, with a covering memo.

114. The Tender Notice stated that only tenders complying with all

the terms and requirements set under the Tender Notice would be considered. On this basis and for the sake of fairness, GPA, having noted the cashier order was missing in the complainant's tender, did not ask the complainant to resubmit a cashier order during the evaluation process.

115. In March 2004, the complainant lodged a complaint with The Ombudsman. The major consideration in this case was whether the TOC had lost the complainant's cashier order.

116. After investigation, The Ombudsman considered that the tender opening procedures were highly organised. During the tender opening process for the subject tender, the 3-person TOC recorded in writing that the complainant had not enclosed a cashier order in the tender concerned whereas the other two tenderers had. As the documents required for the subject tender were relatively simple, The Ombudsman considered it unlikely that the TOC had made an error. Moreover, there was no report of misplacement of any cashier order. The Ombudsman therefore concluded that it had no grounds to suspect that the loss of the cashier order was the result of mishandling of the tender by the TOC. The Ombudsman pointed out that given the many possibilities, it was difficult to ascertain as to why the complainant's cashier order was lost.

117. The Ombudsman also considered it reasonable and fair for Government not to ask the complainant to resubmit a cashier order after closing of the tender, as it would be unfair to other tenderers who had submitted all required documents. Allowing resubmission would also provide a window for corruption activities, compromising the integrity of the concerned departments and Government as a whole. Hence, the existing procedures for handling tenders should be maintained.

118. In the light of the foregoing, the complaint was unsubstantiated. Nevertheless, The Ombudsman, upon examination of the Tender Notice issued by GPA, commented that if the Tender Notice had stipulated that an "incomplete tender would not be considered", the complaint could have been avoided.

119. GPA has accepted and implemented The Ombudsman's

recommendation. Effective from December 2004, the relevant provision of the Tender Notice has been amended to read, "all tenderers must submit all the required information and documents before closing of the tender. Government will not consider or assess any tenders submitted which did not comply with all the terms and requirements of the Tender Notice".

Government Secretariat – Civil Services Bureau (CSB)

Case No. 2004/3845 : Delay in replying to a written complaint.

120. The complainant lodged a complaint with The Ombudsman in September 2004 against CSB for its lack of response to his earlier complaint lodged with the Bureau and the absence of complaint handling procedures to ensure follow-up action.

121. The complainant lodged his earlier complaint with CSB in August 2003. The responsible division in CSB followed up on the issue immediately, and sent interim replies to the complainant in August and September 2003. CSB subsequently completed follow-up action on the subject matter of the complaint in October 2003. Unfortunately, the case file was then misplaced and a substantive reply was not issued to the complainant. In September 2004, the complainant lodged a complaint with The Ombudsman about CSB's lack of response to his earlier complaint.

122. After reviewing the case, CSB recognised the administrative oversight and deficiency in its complaint handling procedures, and took proactive steps with a view to preventing a recurrence of similar incidents in the concerned division.

123. After investigation, The Ombudsman noted that CSB had taken immediate action to address the key issue raised in the initial complaint, yet to the extent that it failed to give the complainant a timely reply, the complaint was substantiated.

124. CSB attaches great importance to the proper handling of complaints from the public. In the present case, prompt and appropriate action was taken to address the complaint. Nonetheless, CSB has accepted and implemented The Ombudsman's recommendations as follows :

(a) all directorate officers in CSB (including all division heads) have

been reminded to be mindful of their role and responsibility to be a role model for the whole Service;

(b) all divisions in CSB have been advised to ensure that the following steps are in place to ensure proper handling of complaints and enquiries :

(i) to re-circulate periodically in the division the latest CSB internal circular on handling complaints and enquiries to ensure implementation of the procedures set out therein;

(ii) an officer in the division to be designated to maintain a register of complaints received for record and monitoring purposes;

(iii) the subject officer to inform the designated register officer of completion of action on the complaint for the latter's record;

(iv) the designated register officer to bring up the case to the subject officer if a substantive reply to the complainant has not yet been sent two months after receipt of the complaint. This would serve to remind the subject officer to give a substantive reply to the complainant in three months' time after receipt of the complaint, where possible;

(v) the designated register officer to bring up the outstanding cases to the respective subject officers once a month to ensure that they are keeping the complainant informed of progress; and

(c) CSB will continue to review and improve relevant internal procedures to ensure appropriate handling of all complaints and enquiries coming into the Bureau.

Government Secretariat – Education and Manpower Bureau (EMB)

Case No. 2004/0599 : Administrative errors in assessing the academic qualification of a teacher.

125. In January 2002, the complainant's school made a written request to EMB for assessing whether the complainant's academic qualifications were equivalent to a local university bachelor's degree. EMB then sought assistance from the Qualifications Section of CSB in February 2002. In May 2002, CSB replied that the complainant's qualifications were considered not comparable to a local degree. Subsequently, EMB informed the concerned School Supervisor in writing of the assessment result by letter, but mistakenly indicated that the complainant's qualifications were comparable to a local degree.

126. An EMB officer read the record of the complainant's case in October 2003 for reference to a similar case, and noted the mistake. The school was immediately informed by letter of the correct result, but without further explanation of the mistake.

127. In February 2004, the complainant lodged a complaint to The Ombudsman against the Bureau's reversal of the assessment result after nearly one and a half years, which was not only contradictory but had also seriously affected his plan of further study.

128. The complaint was substantiated.

129. EMB has fully accepted and implemented The Ombudsman's recommendations as follows :

(a) EMB issued a written apology to the complainant in November 2004. Officers of School Development Section of the concerned district visited the school in February 2005 to follow up the case;

(b) EMB will directly issue the CSB assessment result to the applicant in future, to avoid any human errors; and

(c) the staff of the Bureau (including the responsible subject officer in the current case) were urged to handle every application for qualification assessment meticulously so as to avoid any human errors.

Government Secretariat – Efficiency Unit (EU)

Case No. 2004/1041 : Failing to follow up a complaint about environmental condition after road works.

130. The complainant first lodged a complaint via email to Highways Department (Hy D) in November 2003, on environmental conditions after road works. Hy D is one of the thirteen departments using the EU's Integrated Call Centre (ICC) service, and the complaints and enquiries for Hy D are therefore handled by the ICC.

131. ICC checked the database provided by Hy D and found that the road section in question was under Architectural Services Department (Arch SD)'s purview. On the following day, ICC referred the complaint to Arch SD for follow-up action. The complainant was informed accordingly. Arch SD replied to ICC via email on the same day, with a copy to the complainant, that the road works concerned were conducted by a public utility company under an excavation permit issued by Hy D, and requested ICC to refer the case to Hy D. As Arch SD did not quote the relevant case reference in its reply email, ICC had to seek clarification from Arch SD subsequently in order to follow up on the case.

132. On receiving Arch SD's email, the complainant considered that Hy D was shirking responsibility, and thus lodged a complaint with The Ombudsman.

133. After reviewing the case, ICC found that, in the course of internal communications with ICC, Arch SD had copied its emails to the complainant. As the complainant did not have a full picture of the case development, she got the impression that Hy D was trying to get away from the case.

134. After investigation, The Ombudsman considered that Arch SD and Hy D had conducted on-site inspection to follow up on this case. Both Hy D and ICC had appropriately and proactively followed up on this case. The complaint against Hy D and ICC was, therefore, unsubstantiated. ICC had used the name of Hy D in replying to and

dealing with the complainant, leading to the complainant's misunderstanding of Hy D.

135. EU, Hy D and Arch SD have accepted and implemented The Ombudsman's recommendations as follows :

(a) since June 2004, ICC has revealed its identity when handling hotline services for seven out of its thirteen participating departments. From July 2004, both Arch SD and Hy D have also agreed to start this arrangement. At present, ICC reveals its identity when handling citizens' enquiries and complaints for all participating departments, except for Hongkong Post;

(b) in August 2004, Arch SD reminded its staff to quote file references when responding to ICC. Before reaching a consensus with the departments concerned, internal communications should not be forwarded to members of the public. Arch SD has also revised the relevant quality management manual in September 2004;

(c) ICC has all along been playing a coordinating role in cases involving more than one department; and

(d) in October 2004, ICC emailed all participating departments to remind them of the need to quote the case reference when corresponding with ICC and that they should not copy internal correspondence to complainants.

Government Secretariat – Environmental, Transport and Works Bureau (ETWB)

Case No. 2003/0994 : Mishandling the installation and dismantling of noise barriers at Tolo Highway.

136. The complainant alleged that there had been maladministration by Hy D, Environmental Protection Department (EPD) and ETWB in installing and then removing the noise barriers along Tolo Highway. He considered it a waste of public money to remove the noise barriers when an Environmental Impact Assessment (EIA) study had already confirmed the need for them. He also considered that as the barriers were too colourful, they could be a hazard to road safety.

137. In November 1998, based on the EIA study completed in 1997 and the supplementary information submitted by Hy D in October 1998, EPD issued an Environmental Permit (Permit) for the Tolo Highway Widening Project (the Project), requiring installation of the noise barriers for the protection of existing and planned noise sensitive developments against traffic noise impact. The planned noise sensitive developments were mainly in Areas A and B. As there was no firm schedule for the Area B developments, Hy D specified only the foundation work for the noise barriers in the contract while the installation of the upper parts of the noise barriers was included as a "provisional item" only. In September 1999, as there would not be any firm development programme for Area B before 2004, Hy D confirmed that the "provisional items" would not be carried out.

138. In June 2000, the Town Planning Board proposed to cancel the installation of noise barriers for Area A due to a change in the schedule. Hy D cancelled the installation of the noise barriers for Area A after obtaining EPD's approval to vary the Permit conditions. In August 2000, Hy D also sought a variation of the conditions so as to defer the noise barrier works for Area B. In January 2001, EPD informed Hy D that a new EIA study and public consultation would be required for the proposed variation. Hy D worried that if the application was rejected after the EIA process, the noise barrier works would fall behind the

schedule stated in the Project contract, which might result in claims from the contractors. Hy D therefore decided in March 2001 to install the noise barriers for Area B.

139. In November 2002, ETWB briefed the LegCo Panel on Transport on the Project and the installation of the noise barriers, and undertook to review the provision of noise barriers. At the joint meeting with the LegCo Panel on Environmental Affairs and Transport in January 2003, ETWB explained the policy and guiding principles for the provision of noise barriers.

140. In April 2003, with detailed information on the traffic noise impact, Hy D applied to EPD for a variation of the Permit conditions so as to remove or modify the noise barriers. EPD approved the application in May 2003 on condition that the noise barriers be reinstated before the completion of the noise sensitive developments in Area B and the university in the vicinity. The removal and modification of the noise barriers were generally completed in the same month, and the noise insulation panels recovered from the Project will be used in other projects.

141. After the investigation, The Ombudsman concluded that the complaint was partially substantiated. The choice of color for the noise barriers was a professional matter and outside The Ombudsman's jurisdiction.

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

(a) it is a normal procedure for Government to consult the public on new plans and works, and to consider and balance different views. In the Tolo Highway noise barrier case, ETWB consulted the LegCo Panel on Transport twice. A number of District Councils either sent their representatives to attend the panel meetings or provided their written replies to ETWB. Hy D has also consulted the Traffic and Transport Committee of the relevant District Council. The Government will continue to adopt this standing practice to consider and balance different public

views; and

(b) ETWB issued a Technical Circular on 1 April 2005, requiring project proponents to liaise closely with Lands D and the Planning Department about Government's future land sales programme and any proposed changes in land use or development parameters, to determine if the installation of noise barriers should proceed any further in a contract. When drawing up implementation plans for works contracts involving Environmental Permits (EP) under the EIA Ordinance, one should allow time for compliance with the statutory requirements and procedures, including public consultation, should a variation of EP conditions be necessary due to a change of the planned environmentally sensitive uses. Once a decision for an EP variation is made, the project proponent should act promptly and closely liaise with EPD at the directorate level to expedite the approval of the EP variation so as to minimize the impact to the works programme.

Government Secretariat – Health, Welfare and Food Bureau (HWFB)

Case No. 2004/3251、2004/3252、2004/3253、2004/3254、2004/3255 and others：Failing to offer ex gratia payment to poultry traders affected by the ban on import of chilled/frozen poultry from the Mainland.

143. Please refer to Case No. 2004/1498、2004/1499、2004/1552、2004/1553、2004/1568 and others under the Food and Environmental Hygiene Department.

Highways Department (HyD)

Case No. 2003/3302 : Failing to follow up a complaint about environmental condition after road works.

144. Please refer to Case No. 2004/1041 under the Government Secretariat – Efficiency Unit.

Case No. 2004/0829 : Failing to take action against drying of laundry by some local residents in public places.

145. Please refer to Case No. 2004/2007 under the Food and Environmental Hygiene Department.

Case No. 2004/1935 : Providing information on road closure publicity boards.

146. In February 2004, the complainant lodged a complaint with The Ombudsman that :

(a) the Kowloon-Canton Railway Corporation (KCRC) unnecessarily and unduly prolonged the temporary closure of the a road section, resulting in inconvenience and confusion to drivers; and

(b) Hy D failed to monitor the execution of the temporary road closure, resulting in misleading information being provided to drivers.

147. The complaint against Hy D was unsubstantiated. The complaint against KCRC was substantiated other than alleged.

148. Hy D and KCRC have fully accepted and implemented The Ombudsman's recommendations as follows :

(a) Hy D has issued a letter to KCRC specifically advising that a realistic anticipated final completion date of the works in respect

of the relevant road section should be shown on the road closure sign;

(b) Hy D has conducted a comprehensive review of the Guidance Notes on "Publicity Boards for Motorists" and promulgated the enhanced version in June 2005;

(c) Hy D has requested the Transport Advisory Committee (TAC) to review the requirement to display information on road closure sign boards. The TAC maintained its requirement for the information to be displayed. The Ombudsman accepted the response of the TAC; and

(d) KCRC issued an apology to the complainant in January 2005.

Home Affairs Department (HAD)

Case No. 2004/0059 : Failing to conduct proper consultation on the issue of a new "kaito" ferry service licence by Transport Department.

149. In April 2003, the Transport Department (TD) received an application from a ferry company for a new "kaito" ferry service between Kwun Tong/North Point and Po Toi on Saturdays, Sundays and public holidays. TD considered that, together with the complainant's existing service between Kwun Tong/North Point and Po Toi operated by the complainant, the introduction of the new service could bring in some synergy in enhancing the business. TD thus processed the application in accordance with the procedures in its departmental instructions.

150. The concerned District Office(DO) under HAD was requested by TD to conduct local consultation on the new kaito service. The DO orally consulted the relevant Village Representative and the Chairman of the relevant Rural Committee (RC), who both indicated no objection to the application.

151. In October 2003, the concerned RC Chairman informed TD that some local residents and a kaito operator objected to the new route application. The complainant also lodged a complaint with the DO on TD's processing of the application. DO arranged a meeting in October 2003 for the RC Chairman to discuss the matter with TD. The RC Chairman then arranged another meeting for discussion between villagers and TD in November 2003. Eventually, TD issued a licence to the ferry company, and the new route has been in operation since 1 February 2004.

152. The complainant lodged complaints with The Ombudsman against TD and HAD, alleging that TD had treated him unfairly by requiring his service to operate on weekdays while approving the operation of the new service on holidays. He further complained against TD for failing to put up the new kaito service for public tender. The complainant also alleged that HAD had failed to conduct proper consultation on the issue.

153. The Ombudsman noted that TD's departmental instructions drawn up in the early 1980s were silent on how to ascertain the need for circumstances under which public tender should be invited and how to conduct public consultation. She opined that there would not be any

"unfair treatment" if the new service were put to public tender and the complainant were given an equal opportunity to bid for it. The complaint against TD was, therefore, partially substantiated.

154. Further, The Ombudsman considered that the consultation by the District Office could have been done in a more complete manner if clearer instruction had been given by TD. The complaint against HAD was, therefore, unsubstantiated.

155. TD and HAD have fully accepted The Ombudsman's recommendations and implemented the following actions :

(a) TD revised its departmental instructions on kaito services in February 2005 and has incorporated the guidelines on tender requirements and consultation arrangements into the instructions. A copy of the revised departmental instructions was sent to The Ombudsman in February 2005; and

(b) HAD issued a memo in September 2004 to all DOs to remind staff that they should clarify with the relevant departments the purpose and ambit of the requested consultation if there is any ambiguity.

Case No. 2004/0713 , 2004/1365 : Wrongly sending the complainants five reply letters with the same contents.

156. A DO under HAD consulted local residents on a certain issue. Afterwards, Mr A and Mr B, the complainants, each received five identical letters, informing them of the outcome of the issue. The complainants considered the DO's arrangements perfunctory and wasteful.

157. In this case, the DO had sent out consultation letters to residents of a building, including the complainants. Subsequently, it sent letters to those respondents who had raised an objection, to inform them of the outcome of the issue. As four respondents had supplied Mr. A's address as their residential addresses and there was a clerical error by DO staff, Mr. A received five such letters. As for Mr. B, five respondents had supplied his address as their residential addresses, so he too received five such letters. Moreover, all such letters did not have the addressees'

names.

158. The Ombudsman appreciated DO's concern over the need to maintain privacy and to inform each respondent and, therefore, did not consider such individual mailing wasteful. However, the names of the addressees should have been clearly and correctly written on the envelopes. This complaint was, therefore, substantiated.

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

(a) HAD admits negligence on its part for not writing the addressees' names on the envelopes and for sending one of the letters by mistake. HAD has put in place improvement measures;

(b) HAD has issued clear guidelines to all DOs to remind them of the importance of avoiding occurrence of similar incidents; and

(c) HAD has sent written apologies to the complainants.

Case No. 2004/2005 : Failing to take action against drying of laundry by some local residents in public places.

160. Please refer to Case No. 2004/2007 under the Food and Environmental Hygiene Department.

Hongkong Post (HKP)

Case No. 2003/4329 : Mistakes by post office staff in processing payments of bills.

161. On 15 October 2003, the complainant tendered two invoices (Invoices A and B) for payment at a post office. According to the complainant, when the counter staff processed his payments, he printed on Invoice A the amount paid but the relevant organization (Organisation A) notified the complainant on 20 November 2003 that Invoice A remained unpaid. The complainant rang up Organisation A to clarify that he had paid Invoice A and faxed the relevant bill to Organisation A on 21 November 2003 for reference.

162. On 4 December 2003, an assistant manager of the Post Office informed the complainant that Organisation A had referred the case to the Post Office for follow-up and explained to the complainant that the post office staff made a mistake by inputting the payment amount for Invoice B for his Invoice A. The complainant then discovered that the amount printed on the Invoice A was the smaller amount for Invoice B, instead of the amount which he had actually paid for Invoice A. Although the assistant manager undertook to follow up the matter with Organisation A, the complainant claimed that he had not since heard from either.

163. On 24 December 2003, the complainant lodged a complaint with The Ombudsman.

164. The Post Office's investigation revealed that the counter staff made a mistake by inputting twice payment information of Invoice B. Hence, the amount printed on Invoice A represented the repeated payment for Invoice B. In other words, the complainant tendered two payments for the same Invoice B, without paying Invoice A.

165. On discovering the mistake, an assistant manager of the Post Office rang the complainant on 4 December 2003 to explain the cause of the mistake and explain follow-up action.

166. The Post Office's PayThruPost system allows members of the public to overpay a bill. This design is intended to provide convenience to members of the public, so that they can choose to pay a bill in advance. The mistake in the case could have been avoided if counter staff

concerned had followed proper procedures to process the bills.

167. On 8 December 2003, the Post Office rectified the mistake in its computer system relating to the complainant's payment of Invoice A. The Post Office's assistant manager rang the complainant on the same day to inform him that the Post Office would arrange with Organisation A to amend his payment information, and cancel the surcharge in his bill.

168. On 9 December 2003, the Post Office informed Organisation A of the results of its investigations and requested cancellation of the surcharge. The Post Office also wrote to Organisation B, explaining the mistake, and requesting amendments to Invoice B and reimbursement of the amount overpaid.

169. The Post Office deeply regrets that the mistake did not come to light because neither the counter staff concerned, nor the Postmaster of the concerned Post Office had carefully checked the figures in the course of balancing work at the close of business. The staff concerned have been suitably disciplined.

170. The Post Office has accepted all recommendations of The Ombudsman and has taken the following actions :

(a) the Post Office sent a letter of apology to the complainant on 20 September 2004;

(b) the Post Office has reminded all counter staff and supervisors by circular memos and at training sessions to strictly follow the laid down procedures for processing bill payments and to carry out proper checking on the amount of cash collected against the amount of stubs on hand;

(c) pursuant to the Post Office's Departmental Rules, all counter staff are required to report any cash shortage or surplus to the Police and the Finance Director if the discrepancy is suspected to have involved fraud or is in excess of $1,000. If no fraud is involved and the amount is less than $250, the counter staff should report to the supervisor. The Post Office revised the Departmental Rules in December 2004 to require all counter staff to also report any discrepancy not involving fraud and between $250 and $1,000 to the Finance Director;

(d) the Post Office has reminded all managers that, in following up

complaints concerning payment with the relevant department or organization, in addition to telephone calls, they should follow up by memo or email; and

(e) the Post Office has reviewed bill payment arrangements and adopted the measures stated in (b) and (c) above to prevent duplicated payment of the same bill or omitting payment of a bill and ensure early identification of any such error.

Hospital Authority (HA)

Case No. 2004/0917 : (a) Removal of the call button from a patient by a nursing staff, resulting in the patient's subsequent coma and death; and (b) Changing entries in the Patient Progress Sheets, with an intent to cover up.

171. The complainant's father (the patient), suffering from cerebral infarction, was transferred to Hospital A on 23 August 2002 for rehabilitation. He became comatose on 28 August 2003 and succumbed in February 2004. On 19 September 2003, the complainant's mother found two letters written by the patient before his coma, in which the patient alleged that a ward nurse of Hospital A took away his call bell without reason one night at about 1:00 am and only returned it to him at 7:00 am, and that no nursing staff performed tracheal aspiration for him during the time, thus causing him much discomfort. Suspecting that the patient's coma might be attributable to the nurse's taking away the call bell, the complainant lodged a complaint with the HA on 20 September 2003. The case was referred to Hospital A by the HA for handling in line with the established complaint system. Dissatisfied with the Hospital's reply, the complainant appealed to HA's Public Complaints Committee (PCC) on 21 October 2003. On 9 January 2004, the PCC gave the complainant a substantive reply which included the PCC's findings on what had happened in the morning of 28 August 2003 when the patient became comatose, and the emergency medical treatment rendered. The PCC concluded that the patient's coma was unrelated to the alleged call bell incident.

172. The complainant lodged a complaint with The Ombudsman in March 2004 and obtained from Hospital A a copy of the patient's Patient Progress Sheets covering the period from July to September 2003. He found that many entries on the Patient Progress Sheets had been covered or amended (including the names of medical and nursing staff and page numbers), and suspected that one of the pages had been deliberately replaced. He therefore was of the view that the Hospital had the intent to cover up. On 22 March and 2 April 2004, the complainant met the HA Chairman and the staff of Hospital A respectively and questioned the patient's medical record. The Hospital conducted an investigation and found that one of the pages of the Patient Progress Sheets had in fact been replaced with non-contemporaneous entries. In view of the serious procedural error made by the nursing staff, the Hospital reported the incident to the HA Head Office and the PCC. The HA in turn informed

the complainant of the latest development of the matter on 16 April 2004 and reported the case to the Police and Coroner's Court. The PCC also decided to re-open its investigation of the case upon completion of all the related legal proceedings.

173. After investigation, The Ombudsman noted that :

(a) according to the standing regulations of HA, under no circumstances are call bells to be removed from patients. The nurse involved in this case had denied having taken away the call bell from the patient as alleged. According to The Ombudsman's investigation findings at a site visit, all beds in the ward where the patient was accommodated were equipped with call bells. The complainant claimed that before the patient's letters were found by his mother, he and his family had no idea of the call bell having been taken away from the patient, and that he and his family had never discussed in the ward any matters related to the removal of the call bell. The complainant's claim was however in contradiction with the testimony of a long-term-stay patient (the witness) in the ward given to The Ombudsman, who had allegedly witnessed one or two times the patient's family questioning in the ward the removal of the call bells from the patient. Due to the apparent inconsistencies in the statement of the complainant and that of the witness, The Ombudsman was unable to determine whether or not the patient's call bell had been taken away one night during the more-than-a-year period between the patient's admission to the Hospital and the time he became comatose;

(b) the patient was comatose from 6:50 am on 28 August 2003 until his death in February 2004. Timing-wise, even if the nurse had actually taken away his call bell at the small hours and returned it to him at 7:00 am, she could not have done so on the date the patient became comatose. Therefore, the alleged incident in the patient's letter, even if it were true, could not be directly related to his coma; and

(c) HA acknowledged that one of the pages of the Patient Progress Sheets had been replaced by the nursing staff of the Hospital. According to the guidelines promulgated by HA, patient records, once written, should not be amended. If it is really necessary to make amendments to the records, the established guidelines must be followed, i.e. the part to be amended should first be crossed out

and the amendments made thereafter should be initialled by the one who made the amendments. Under no circumstances should the original record be removed and rewritten. In this complaint case, although the investigation findings of the Hospital revealed that the intention of the staff concerned to re-write the record was merely to supplement facts so as to give a complete account of the events, The Ombudsman regarded it as an act of maladministration.

174. In view of the foregoing, The Ombudsman was incapable of drawing a conclusion on the first part of the complaint. The second part of the complaint was partially substantiated.

175. HA has accepted and implemented The Ombudsman's recommendations as follows :

(a) HA will initiate appropriate disciplinary action against the staff member concerned for not following the established procedures when making amendments to the medical records, in accordance with its human resource policies and upon completion of the legal proceedings; and

(b) HA has reminded all medical and nursing staff in HA hospitals to comply with the established procedures and the relevant codes of professional conduct in discharging their duties.

Housing Department (HD)

Case No. 2003/1765 : Abuse of power in occupying part of the common area of a Tenants Purchase Scheme housing estate without consulting the owners' corporation of the estate.

176. The Owners' Corporation (OC) of a Tenants Purchase Scheme (TPS) estate alleged that HD had occupied part of the common areas of the estate for three years without the owners' consent. The Department had used the site as its Property Management Services Office (PMSO) for management of the estate and also as its Tenancy Management Office (TMO) for leasing and sale of the housing units that it owned. The OC considered HD's occupation of the common areas for its TMO an infringement of the owners' common ownership and demanded HD explain and compensate the OC at market rate.

177. HD admitted occupation of the site but refused to compensate the OC at market rate. It pointed out that since the site could not be used for commercial purposes, the OC had not suffered any loss of rent as a result of HD's occupation. It had used the site temporarily because it had no other choice and the TMO was meant to serve both public housing tenants and prospective owners. HD had not gained any actual benefits. Unless the OC could prove its loss, the Department would not consider compensating the OC.

178. The Ombudsman pointed out that under the Deed of Mutual Covenant (DMC), HD, as Manager of the estate, could authorize Government or any person(s) to occupy any part of the common areas. As such, it was not entirely without legal justification for HD to set up its TMO at the site. However, in so doing, the Department might have restricted or hindered the owners' common ownership and use of the common areas.

179. The DMC also provided that OC approval was required for the Manager to use the common areas. At the initial stage, the OC had not yet been formed and HD was unable to find an appropriate alternative site for the TMO. As HD was aware that it might have contravened the DMC, it had considered relocating the TMO to its shopping arcade in the estate. However, the relocation plan was subsequently shelved as the Department planned to set up a regional office elsewhere to replace the TMOs in different estates.

180. The Ombudsman revealed in their investigation that HD had not made proper forward planning. As a result, it had no choice but to occupy part of the common areas of the estate. Subsequently, it had also failed to relocate the TMO earlier. Moreover, after the OC was formed, the Department had failed to discuss promptly with the OC its continued occupation of the site.

181. However, The Ombudsman pointed out that the operation of the TMO was open knowledge. Being aware of its existence, the OC should not have allowed the occupation to persist for three years. The OC was, therefore, partly responsible.

182. The complaint was therefore partially substantiated.

183. HD accepted the recommendations of The Ombudsman and implemented them as follows :

(a) HD issued a written apology to the OC on 10 May 2004; and

(b) HD has resolved the case with the OC through mediation.

Case No. 2003/3252 : Providing inaccurate information to Registration and Electoral Office for updating the address of a registered voter.

184. An eligible person who applies for registration as a geographical constituency (GC) elector has to provide his principal residential address to the Registration and Electoral Office (REO). Based on this address, the elector is assigned to an appropriate GC in which he will cast his vote in a District Council or Legislative Council election. If an elector has moved to a new address, he has a responsibility to notify REO so that his electoral record will be updated, and he will be assigned to an appropriate GC within which the new address is located. Despite efforts made by REO to publicise the need for a registered elector to inform REO if he has moved to a new address, not all registered electors will inform REO after they have moved to a new address. This has rendered some of the information contained in the voter register out of date.

185. Maintaining an up-to-date record of the principal residential addresses of voters in the voter register is important. In compiling a

provisional voter register, if it has come to the attention of REO that the address of an elector as appeared in the voter register is no longer correct (e.g. when the previous poll card could not be delivered and was returned to REO by the Post Office), REO will trigger an inquiry process in accordance with the law which may eventually lead to the elector being deleted from the voter register.

186. Owing to the "live-in" requirement of the residents in public housing estates, REO considers HD a good source to obtain information on changes to the residential addresses of electors, based on which the electoral record is updated. With prior approval from the Privacy Commissioner for Personal Data, REO conducts data matching exercises with HD to update electors' addresses. If updating is required, REO would send two notices of address updating to an elector's existing electoral address and the new address provided by HD respectively. These notices inform the elector that REO will update his address in the voter register based on the information provided by HD. REO will automatically update the elector's record unless the elector replies to the contrary within a specified timeframe.

187. The complainant previously lived with her family in a public housing unit in Kowloon. On marriage in 1999, she moved to the New Territories; while her family moved to a Home Ownership Scheme (HOS) flat in Kowloon in 2002. After asking HD to delete her name from the public housing tenant records in 2000, she also notified REO to update her residential address. In the 2000 Legislative Council election, she voted in her geographical constituency in the New Territories.

188. At REO's request, HD provided REO with the change of particulars of public housing tenants and HOS occupants aged 18 and above on a monthly basis. After deleting the complainant's name from the public housing tenant records, the HD staff concerned did not follow the established procedures and failed to pass the photocopies of the updated documents to the Home Ownership Centre for follow-up action. The Home Ownership Centre, therefore, could not update its records and consequently sent the wrong information to REO. In accordance with the established practice, REO sent notices by surface mail to the complainant's addresses at HOS and in the New Territories, stating that her electoral address had been changed to the HOS address and she could advise REO of any correction within one month. On receiving no response, REO assumed that the address provided by HD was correct. Thus, for the 2003 District Council election, REO changed the complainant's electoral address to her family's address at the HOS flat

and assigned her to vote in a constituency in Kowloon.

189. HD stressed that the staff member concerned was just negligent and did not mean to misinform REO. On learning about the incident, HD deleted the complainant's name from the HOS records, reviewed the relevant procedures and adopted improvement measures.

190. The Ombudsman considered HD's procedures for deleting the complainant's name from the public housing tenant records inadequate. The Department also failed to keep a clear record of the monthly submission to REO on the changes of tenants' particulars, rendering the checking of such records impossible.

191. The Ombudsman therefore considered the complaint against HD substantiated.

192. Apart from complaining that HD had provided inaccurate information to REO, the complainant had also claimed that she had never received any updating of address notice from REO. She considered it improper for REO to change her constituency. On receiving the complaint, REO changed her electoral address back to her address in the New Territories in 2004.

193. As updating of address notices were not sent by registered mail and REO did not keep such records, The Ombudsman could not verify whether REO had really sent out notices. According to The Ombudsman, even if REO had done so to both the new and old addresses, it was questionable whether REO should assume that the complainant actually received them, understood the contents and did not want to respond. The Ombudsman considered that REO should take the initiative to contact the complainant by telephone or other means (such as by fax) before updating her electoral address.

194. In this light, The Ombudsman considered the complaint against REO unsubstantiated. However, there was maladministration other than that alleged on the part of REO as it had failed to take the initiative to verify the complainant's address (i.e substantiated other than alleged).

195. Overall, the complaint was partially substantiated.

196. HD and REO have accepted all recommendations of The Ombudsman and implemented them as follows :

(a) HD sent a written apology to the complainant on 21 September 2004;

(b) HD issued an Estate Management Division Instruction on 15 May 2004 to remind frontline staff to check whether tenants have their names in the HOS records when deleting them from the public housing tenant records, and to inform the Home Ownership Centre promptly within a specified period for follow-up action;

(c) HD has made electronic copies of the tenants' particulars provided to REO since 3 January 2005, for easy subsequent checking;

(d) REO looked into past records and noted that, in most cases, there was no response from the electors. Only a very small number of cases in which the affected electors had notified the REO that their electoral records should not be changed. In view of this, starting from February 2005, REO has revised on a trial basis the content of the "updating of address notice" to the effect that the electoral address will be changed only upon receipt of a written confirmation from the elector that his address should be updated. However, as the new arrangement may subsequently lead to certain electors being disenfranchised if they do not confirm their new residential address with the REO, the REO will conduct a review of the arrangement before taking a decision whether it is to be adopted as a long-term arrangement. REO will also consider, in consultation with HD, how best HD can ensure that the information provided by the department to the REO is accurate. Depending on the review outcome, it may be necessary for the REO eventually to act on the basis of information about address changes provided by HD, if the registered electors fail to respond and HD affirms accuracy of the information to the best of the department's knowledge;

(e) REO is exploring with other departments/organizations the possibility of obtaining addresses from them for the purpose of updating electoral records; and

(f) REO will enhance publicity in future voter registration campaigns to remind electors of their civic responsibilities through different channels including posters, radio/TV APIs etc.

Case No. 2003/3312 : Failing to take enforcement action against an unauthorised structure ("Pai fong") built on Government land.

197. Please refer to Case No. 2003/3310 under the Buildings Department.

Case No. 2004/0788 : Delay in processing the complainant's application for a Green Form Certificate, resulting in her failure to seek a Home Assistance Loan.

198. The complainant had applied for public housing and was put on the Waiting List. On 16 July 2003, she submitted an application to HD for a Green Form Certificate (GFC), with which she could apply for a Home Assistance Loan (loan). According to her, HD staff had told her that a GFC could be issued in a month or so and that HD would stop allocating public housing to her upon receipt of her GFC application.

199. However, about a week after submitting her GFC application, she was allocated a public housing unit. Two days later, she called the concerned HD office to reject the allocation.

200. In early November 2003, she received her GFC and a supplementary note stating that the number of loan applications had already exceeded the quota for the year. Applications submitted in or after October would therefore be wait-listed. HD staff also told her that should her loan application fail, her GFC would become invalid and she would not be issued another GFC. She therefore decided not to apply for a loan at that time. On 26 November 2003, The Hong Kong Housing Authority (HA) decided to stop accepting new loan applications with immediate effect. The complainant felt aggrieved at losing the chance of securing a loan due to HD's delay in processing her GFC application and failure to forewarn her about over-application for loans or the impending discontinuation of the Home Assistance Loan Scheme.

201. HD explained that it normally would not accept rejection of public housing allocation by telephone. Moreover, it did not have any record of the complainant calling up any HD office to reject the allocation. Recording of telephone conversations however showed that the concerned HD staff had told the complainant that the GFC would be issued in two to three months rather than "a month or so".

202. The Lettings Unit of HD actually received the complainant's GFC application on 23 July 2003, but failed to file it in time to stop the public housing allocation process. As a result, more than two months had been taken to process the allocation and the complainant's subsequent rejection, before the GFC was finally issued on 29 October. The whole process had taken more than three months, slightly exceeding the verbal pledge made by the HD staff.

203. A letter from HD was in fact attached to the GFC to notify applicants about the over-application for loans. Since such a situation was very rare, the HD staff concerned might not be fully aware of the detailed arrangements, particularly the fact that the applicant could actually seek to extend the validity of the GFC. No details of such arrangements were given on the GFC for applicants' information. Otherwise, the complainant could have applied for a loan without having to worry about the possible invalidation of her GFC.

204. The discontinuation of the Home Assistance Loan Scheme was a decision made by HA on 26 November 2003. The HD staff could not have notified the complainant in advance.

205. The Ombudsman therefore considered the complaint partially substantiated.

206. In response to The Ombudsman's recommendations, HD has implemented the following :

(a) HD issued a written apology to the complainant on 2 September 2004;

(b) HD has reviewed, streamlined and improved the procedures for handling GFC applications; and

(c) HD has spelt out clearly on the GFCs the arrangements for extending the validity of GFCs.

Case No. 2004/2198 : Failing to supervise effectively a property services company, thus delaying the completion of maintenance work in the complainant's public housing unit.

207. The complainant became a tenant of a public rental housing (PRH) flat in Kowloon in 1991. The PRH estate was subsequently included in the Tenants Purchase Scheme in 2001. The complainant purchased the flat he was occupying and continued to live there. Before the sale of the flats, HD carried out repair works, including re-plumbing works, repairs to pedestal water closet pans and floor slabs and replacement of bath-tubs. These works were undertaken by an outside management company engaged by HD.

208. About a month after the pre-sale repair works had been completed, the complainant found that there was water seepage in his flat and the problem affected the flat below. The management company carried out repair works again. Upon completion of the works, the complainant found that there was still water seepage at the base of the bath-tub and the flooring of the living room was deformed and stained because of the water seepage. Again, the complainant reflected the problem to the management company which, however, kept delaying and did not send its staff to follow up the case. The flooring sustained even more severe damage as a result. Therefore, the complainant started lodging complaints with HD in March 2003 while claiming compensation from the management company at the same time.

209. HD explained that in as early as mid-2002, it had already been aware of the poor overall performance of the management company in carrying out repair works. Despite repeated oral and written warnings from HD, the management company had not made any significant improvements. In March 2003, the Property Services Companies (PSC) Review Committee under HD conducted a hearing on the management company and eventually gave it a warning. HD, however, did not take further disciplinary actions against the company.

210. Following continued enquiries from the complainant and the pressure of HD, the management company finally completed the repair works. Nevertheless, water seepage still occurred time and time again. From January to December 2003, the complainant repeatedly asked the management company to carry out repair works. However, as the contract of the management company expired on 30 November 2003, HD

took up the case.

211. The Ombudsman was of the view that HD should have monitored the performance of the management company even more closely as it already noticed in mid-2002 the company's poor performance and unsatisfactory handling of complaints and supervision of works. Furthermore, HD was aware that the repeated warnings from the frontline manager were of no use and that there was a need for the PSC Review Committee to conduct a hearing and give a warning to the management company. However, upon receipt of the complainant's repeated requests for assistance, HD had only referred the complaints to the management company and inspected the company's reports without taking any actions to ensure a solution to the problems as pointed out by the complainant.

212. The Ombudsman agreed that under the outsourcing system, it was reasonable for HD to refer the complaints to the management company for follow-up according to the contract. However, the management company is only an agent of HD. The ultimate responsibility rests fully with HD. In this incident, HD has not fully discharged its duties in estate management and in the monitoring of its agent's performance.

213. As for the reinstatement of the flooring for the complainant, The Ombudsman suggested that HD discuss the matter immediately with the complainant so as to reach a consensus as early as possible. Otherwise, the case should be referred to the courts.

214. The Ombudsman was of the view that although HD had noticed the poor performance of the management company, it remained rather passive and did not monitor the management company effectively. Therefore, The Ombudsman considered the case substantiated.

215. HD agreed to The Ombudsman's recommendations and implemented the following actions :

(a) HD completed the outstanding repair works at the flat in early March 2005. Upon receiving the final bills of repairs, HD will recover the costs from the management company pursuant to the conditions of the Property Services Contract;

(b) HD has reinstated the timber flooring of the flat;

(c) HD issued guidelines on 3 June 2005 to remind frontline managers to step in in the event of adverse performance of management companies, to ensure that works are completed satisfactorily within a reasonable time and to recover the costs from the management companies in accordance with the contract terms;

(d) HD will closely monitor the outsourcing system to enhance effectiveness and efficiency in the provision of services to the tenants; and

(e) HD issued a written apology to the complainant on 22 December 2004.

Case No. 2004/2395 : Failing to take appropriate action in response to a complaint of water seepage.

216. A religious group rented several units on the ground floor of a block in a public housing estate in Kowloon to run a reading centre. On the night of 9 March 2003, HD received a complaint from the tenant of a flat on the ground floor of that block about the seepage of foul water from the upper floor. After inspection, the duty staff of HD said that they had turned off the flushing valve and left. The seepage of water, however, continued.

217. As the staff of the reading centre were off duty that night, they had no knowledge of the seepage. The complainant, who was in charge of the reading centre, made a complaint to HD over the phone immediately after discovering the seepage on the following day. After inspection, the works staff of HD believed that the seepage was caused by the blockage of drains. The problem was under control after clearing the drainage. The complainant was dissatisfied, as HD did not clear the accumulated water until the works had been completed.

218. The complainant tried to claim compensation from HD for the damage caused by the seepage. The case was then referred to the adjuster of the public liability insurer of the Hong Kong Housing Authority (the adjuster) for follow-up. The adjuster remarked that HD had done nothing wrong in this incident as it had fully performed its duties, and therefore HD should not be held legally responsible. The complainant was dissatisfied with HD's refusal to pay compensation for the damage caused by the seepage.

219. HD explained that the duty staff member had conducted site inspection after receiving the complaint from a tenant that day. He turned off the flushing valve immediately to mitigate the seepage and asked the contractor to come to the site, attempting to carry out repairs. However, he eventually decided to leave the repair works until the following day because the repair works must be carried out inside the reading centre which was closed then, and the centre had not provided any emergency contact numbers to HD. As the incident happened outside office hours, HD could not get in touch with the staff of the reading centre, and the repairs were delayed as a result.

220. The Ombudsman was of the view that as the seepage was so serious at that time and as the staff concerned had called the contractor many times to come to the site for repairs, HD should have carried out the

repair works immediately without delay.

221. The Ombudsman found it unacceptable that HD claimed that the reading centre had not provided them with telephone numbers for emergency contact purposes. The Ombudsman discovered from the files of the reading centre that the priest of the centre did give HD his mobile phone number and a non-office telephone number of the reading centre on two earlier occasions in September 1997 and May 2003. In the opinion of The Ombudsman, HD could have got in touch with the staff of the reading centre, but the HD staff member concerned did not attempt to do so, hence they could not gain access to the reading centre for repairs.

222. The Ombudsman was also of the view that the HD staff member had made a wrong judgment of the situation and that he had failed to seek advice from his senior on any further repairs or remedial actions, thus causing delay in the handling of the matter. However, there were also inadequacies in HD's guidelines and the lack of a proper mechanism for making emergency contacts with tenants. These also accounted for the frontline staff's failure to make timely reports to their seniors and resolve the case earlier.

223. The Ombudsman considered the complaint substantiated, as HD had not fully discharged its management duties and failed to handle this seepage incident properly.

224. In response to The Ombudsman's recommendations, HD has carried out the following actions :

(a) HD issued a letter of apology to the complainant on 10 January 2005;

(b) HD issued an instruction on 7 January 2005 to remind all frontline staff that if they encounter any emergency that they cannot handle independently, they should seek the advice of the senior officers immediately;

(c) HD has prepared an emergency contact telephone list to be kept at a place readily accessible by Estate Assistant Grade staff or Guard Supervisors for each property management office; and

(d) HD has provided detailed information to the insurance adjuster to facilitate its review of the claim for compensation from the complainant. The case is being studied by the insurance company.

Case No. 2004/2662 : Staff abuse of authority, removing or taking possession of property in the complainant's unit.

225. The complainant and his family used to live in a public housing unit (unit). In March 2004, they moved out to a private flat without informing HD. The complainant's wife was then hospitalized and later referred to an Integrated Family Service Centre (the Centre) under the Social Welfare Department (SWD). The complainant alleged that a SWD Officer had told his wife that HD would write to SWD if it was to recover their unit, in which case she would alert them.

226. As rent for the unit had remained outstanding since March 2004, HD served a Notice-to-Quit at the end of April 2004 to terminate the tenancy on 31 May 2004. On 24 June 2004, after the appeal period had expired, HD's estate office took action to recover the unit.

227. In June 2004, the complainant learned that HD had disposed of all his belongings in the unit except for several electrical appliances which were to be auctioned and the proceeds would then be used to offset the rent in arrears. The complainant alleged that HD staff had taken possession of some valuable items and personal documents in the unit. He also complained that the SWD Officer had failed to alert him before HD recovered the unit.

228. HD explained that under the Housing Ordinance and the Departmental Financial Instructions, HD was empowered to take custody of property found in a recovered unit and to post a notice, listing the property found, at a place where the property was found. The owner could claim the property within seven days. In the absence of a claim, the property would be auctioned and the proceeds used to offset the rent in arrears.

229. On the day of flat recovery, the three Housing Officers (HOs) engaged in the operation did not find any cash or valuables among the abandoned articles except for four electrical appliances. They recorded and photographed the appliances and followed the guideline to take

custody of the items and put up a notice. Out of sanitary considerations, they directed the workers to dispose of perishable goods like oranges and some odds and ends, which apparently had no value, in the unit.

230. The Ombudsman was of the view that the HOs had followed the departmental instructions. There was no impropriety on the part of the staff concerned.

231. The Ombudsman also pointed out that while the Housing Ordinance empowers HD to take custody of any property found and allows the owner to claim any such items within seven days, there was no distinction between "valuables" and "non-valuables". The complaint was therefore partially substantiated.

232. The Ombudsman did not comment on the complainant's allegation of HD staff taking possession of his valuables, as this amounted to a criminal charge.

233. HD accepted the recommendation of The Ombudsman. On 16 March 2005, HD issued new guidelines to its staff to explain clearly the procedures for handling "perishable goods" taken into custody during flat recovery. The Ombudsman was duly informed.

Case No. 2004/3055 : (a) Delay in calling for tenders again for certain shop spaces; and (b) Failing to respond to the complainant's enquiry.

234. The complainant tendered to lease Shops A and B in a public housing estate in September 2002 and September 2003 respectively, but in vain. When the successful tenderers of the two shops failed to execute the leases, HD did not call for tenders again until after more than six months. In May 2004, the complainant failed again in tendering for Shop C. Noting that the shop was not open for business after two months, he made enquiries with a Senior Housing Manager (SHM) of HD, but did not get any reply.

235. Shop A remained unleased after two tender exercises in September 2002 and January 2003, as the cheques submitted by the successful tenderers were dishonoured. In this regard, The Ombudsman opined that HD should ask for tender deposits in the form of cashier's order or cash to eliminate the risk.

236. For Shop B, HD had not strictly enforced the provisions in the

General Conditions of Tender (the Conditions), allowing the successful tenderer to delay the signing of the lease during the period from October to December 2003. HD did not forfeit the tender deposit until February 2004. However, the new tender exercise was cancelled upon objection from a tenant. This reflected a lack of careful planning. As a result, the shop was left vacant for a prolonged period.

237. When the successful tenderer of Shop C was disqualified in 2004, HD should have awarded the tender to the tenderer who offered the next highest bid instead of calling for tenders again.

238. In view of the above, The Ombudsman concluded that the first part of the complaint was substantiated.

239. As for the handling of the complainant's enquiry, the SHM concerned had been transferred to another post shortly after receiving the enquiry in July 2004, but he had briefed his successor about the case. His successor telephoned the complainant in early August 2004 and replied to his two written enquiries. As such, the second part of the complaint was unsubstantiated.

240. Overall, the complaint was partially substantiated.

241. In response to The Ombudsman's recommendations, HD has implemented the following :

(a) HD has issued guidelines to staff on strict enforcement of the Conditions regarding forfeiture of tender deposits;

(b) in January 2005, HD revised the Conditions as follows: " ..... In the event the tenderer fails for whatever reasons to attend the interviews or to execute the Tenancy Agreement within the time specified, the entire deposit shall forthwith be absolutely forfeited as liquidated damages and not as a penalty to the Authority without any notice. ....."; and

(c) HD has reviewed the current tender procedures and revised the workflow in order to speed up the process.

242. HD noted that the recommendation to accept only cashier's orders or cash for payment of tender deposits was relevant to the Open

Instant Tender held at the HD's Business Opportunity Centre, which has ceased operation since May 2005.

243. As for the recommendation to consider awarding the tender to the tenderer offereing the next highest bid when the successful tenderer was disqualified or failed to take up the lease, HD pointed out that there was generally a time gap between the cashing in of the deposit cheque or cashier's orders from the highest bidder and the actual signing up of the tenancy agreement. This is necessary due to the need to conduct interviews with the successful tenderers, checking and verification of relevant documents, etc. The whole process would normally require one to two months. For new shopping centres, the time gap may be extended up to six months due to the possible delay of construction programme as a result of inclement weather, slow progress of contractors, etc. In any event, should the successful tenderer fail to execute the lease and his tender eventually be cancelled, usually a few months would have elapsed. It is considered inappropriate to automatically award the tender to the next highest bidder for the following reasons :

(a) the market conditions might well have changed and the rent assessment might no longer be valid during the time elapsed. It may not be in the best interest of HD to automatically award the tender to the next highest bidder;

(b) this may be criticized as unfair treatment to other unsuccessful tenderers who are deprived of the right to re-submit a tender for the commercial premises; and

(c) the arrangement might invite 'collusive tendering' by unscrupulous tenderers in an attempt to abuse the system.

244. In view of the above, HD considered that a re-tendering is preferred under the circumstances, and has informed The Ombudsman of the above considerations.

Case No. 2004/3854 : Failing to settle the outstanding public housing rentals for the complainant while he was in custody in a psychiatric centre, and unreasonably recovering his housing unit.

245. The complainant originally lived alone in a public rental housing

flat (the flat) and had been receiving Comprehensive Social Security Assistance (CSSA), including a rent allowance. In May 2004, he was taken into custody in a psychiatric centre for committing an offence and was not released until September 2004.

246. HD had not received any rent payment for the flat since April 2004, so it served a Notice-to-Quit (NTQ) at the end of June 2004 to terminate the tenancy at the end of July 2004. On knowing that the complainant was detained in a psychiatric centre, HD sent a staff member to visit him in July 2004. The complainant eventually filled out a form to appoint the HD as his agent to collect the CSSA rent allowance from the Social Welfare Department (SWD). However, SWD only paid HD the rent allowance for the two months of June and July as it had already transferred the rent allowance for April and May to the complainant's account earlier and it could not pay the allowance again for the same period.

247. As the complainant failed to clear the two months' arrears by the end of July 2004, HD had made arrangements to recover the unit in early August 2004. However, the complainant claimed that he had lodged an appeal in early July 2004. The flat recovery action was therefore postponed, pending clarification of the situation. Meanwhile, HD continued its endeavours to collect the rent and mesne profit in arrears from the complainant, but in vain. The rent and mesne profit were finally settled after the complainant's release from the psychiatric centre in September 2004. HD eventually granted a new tenancy to him in October 2004.

248. The Ombudsman pointed out that the complainant's failure to pay rent on time after receiving the rental allowance was the main reason leading to his termination of tenancy agreement. SWD had just helped to pay two months' rental arrears (June and July) instead of four because the other two months' rental allowance (i.e. April and May) had already been granted to the complainant who, however, failed to pay rent to HD. It was absolutely correct for SWD not to issue duplicate rental allowance. On the other hand, HD has fulfilled its responsibility of an agent to collect the rental allowance from SWD and to pay the outstanding rent. It was proper for HD to terminate the tenancy agreement as the complainant had refused to pay rent with the rental allowance given by SWD. As a matter of fact, HD did not enforce action to recover the flat and the tenancy agreement was reinstated after the complainant had been discharged from prison and cleared the rental arrears.

249. The Ombudsman concluded that the complaint was unsubstantiated

250. However, The Ombudsman observed that the appointment form filled out by the complainant to appoint HD as his agent to collect the rent allowance from SWD had no clear indication of the validity of the appointment. This had resulted in HD and SWD having different interpretations of the validity period.

251. HD and SWD accepted The Ombudsman's recommendation and revised the appointment form to clearly indicate the validity period. The new form has been put into use since June 2005, and relevant operational guidelines have been issued to the staff of both departments.

Kowloon-Canton Railway Corporation (KCRC)

Case No. 2004/0531 : Providing misleading information on road closure publicity boards.

252. Please refer to Case No. 2004/1935 under the Highways Department.

Lands Department (Lands D)

Case No. 2003/1498 : Delay in processing a short-term tenancy application and allowing illegal occupation of Government land.

253. In June 2003, a group of owners lodged a complaint with The Ombudsman against Lands D for (a) delay in handling their application for a short-term tenancy (STT) of a piece of Government land and (b) allowing the illegal occupation of the said Government land and the felling of trees by an illegal occupier.

254. Following an investigation of the matters, The Ombudsman noted that the occupier had indeed occupied Government land illegally for two and a half years. However, there was no evidence that Lands D had allowed the illegal occupier to fell trees.

255. Therefore, the first part of the complaint was substantiated, and the second part was partially substantiated. Overall, the complaint was partially substantiated.

256. Lands D fully accepted and implemented The Ombudsman's recommendations as follows :

(a) Lands D advised all District Land Officers (DLOs) in April 2003 to adopt a number of measures to control/eliminate rent/waiver arrears if they were not already in place. Lands D will review these measures from time to time;

(b) the concerned DLO issued an internal circular in October 2004 to advise staff to take swift action to terminate the tenancy if sufficient evidence for sub-letting is gathered and the tenant does not purge the breach within reasonable time or the adjoining residential lot has been sold. The said termination clause will be adopted in all new garden tenancies and will also be added in the existing garden tenancies at an appropriate time, if the same has not already been included. It is believed that by implementing the above measures, sub-letting situations can be minimised, whilst recognising that it is often difficult to obtain clear evidence to prove sub-letting;

(c) Lands D issued a technical circular in July 2003 to improve the procedures for processing STT applications, so that an applicant will be informed of the time required and the reason(s) for delay if the processing concerned cannot be completed with a reasonable span of time; and

(d) the concerned DLO has introduced new measures for STT processing. For straightforward garden STT cases, a computerized record has been created to monitor the case progress. For complicated cases, a monthly meeting chaired by the DLO has been set up to review case progress. Lands D has also instructed other DLOs to conduct a review on the STT applications being processed to ensure no omission or delay.

Case No. 2003/2644 : Delay in taking action against illegal occupation of Government land by unauthorised building works.

257. The complainant complained against a District Lands Office (DLO) under Lands D for delay in demolishing an illegal structure erected on a walkway.

258. The DLO first received a written complaint on 7 January 2002 from the Village Representative (VR). Site inspection carried out on 15 January 2002 confirmed that government land was occupied. A notice under the Land (Miscellaneous Provisions) Ordinance (Cap. 28) was posted on 8 October 2002. Subsequent site inspection on 6 December 2002 revealed that the doors of the illegal structure had been taken down. However, it was discovered that the doors were reinstalled when the DLO re-inspected the site again on 26 March 2003. The VR approached the DLO enquiring about the progress of the case. He left his telephone number and corresponding address, requesting the DLO to inform him of the progress of the complaint. A fresh notice under Cap. 28 was posted on 23 July 2003 and a warning letter was sent to the occupant on the same day. A letter dated 29 July 2003 was sent to the VR informing him of the latest situation.

259. Upon receipt of the DLO's warning letter of 23 July 2003, the occupant and the owner of the Ground Floor of an adjacent lot wrote in on 30 July 2003 explaining that he had no intention to illegally occupy the government land and proposed to rent the area from the Government.

Having considered the occupant's proposal, the DLO rejected his application on grounds that the area in question is a common access.

260. The Ombudsman opined that irrespective of whether there was any complaint, Lands D had the responsibility to take land control action against illegal occupation of government land. Although the complainant only complained that the walkway had been obstructed, the DLO should have requested the occupier concerned to demolish the glass house completely when issuing the first notice, and should not stop pursuing the case just because the door leaf had been removed. Since the DLO had not taken land control action thoroughly, the occupier reinstalled the door leaf soon after its removal. As a result, the DLO had to spend more resources in following up the case and it took longer time to resolve the complaint.

261. Besides, in the notices issued by the DLO in accordance with section 6(1) of Cap. 28, it was stated clearly that the occupier concerned had to cease occupying the land before the specified time. Taking into consideration the relevant legal definition, The Ombudsman opined that even after the door leaf of the glass house was removed, it should still constitute an "occupation of land", and so the DLO should enforce the "cease occupation" requirement as stipulated in the first notice without awaiting the issue of the second notice.

262. Furthermore, The Ombudsman considered that, as Lands D had not formulated any criteria about "ceasing occupation" (of government land), the DLOs might freely make their decisions. In this case, two notices requiring the ceasing of occupation of government land had been issued. For the first notice, the removal of the door leaf was regarded as compliance with the requirement. However, for the second notice, the occupier concerned had to demolish the entire structure. Such practice might easily lead to inconsistent standards and unfair treatment.

263. The Ombudsman noted that apart from the toe wall, the truss and top glasses remained on site. Lands D should decide whether the occupant concerned had complied with the requirement as stipulated in the second notice in accordance with its criteria.

264. In this case, upon receiving the complaint, the DLO took two years to complete the land control action. It failed to enforce the requirement as stipulated in the first notice, thus necessitating the issue of the second notice. Besides, when the illegal occupation of the government land concerned was observed on each occasion, it took

several months for the DLO to issue notices in accordance with Cap. 28. Although there were many other cases for the DLO to handle, the pace of handling this case had been too slow and unacceptable. The complaint was therefore substantiated.

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

(a) Lands D has formulated and issued departmental guidelines for determining whether the notices issued under section 6(1) of Cap. 28 have been duly complied with;

(b) the trusses were not demolished at the outset because there was a level difference between the footpath and the vacant land in front of it. After DLO's removal of the trusses, the concerned District Office has erected a railing there.

With regard to the toe wall, the DLO is processing the application for a short-term tenancy; and

(c) All DLOs have set up District Review Boards for monitoring progress of land control cases including posting of notices under section 6(1) of Cap. 28. The review boards conduct regular meetings to monitor progress of work and to review priorities of the cases in hand.

Case No. 2003/3311 : Failing to take enforcement action against an unauthorised structure ("Pai Fong") built on Government land, while accepting an application for Short Term Tenancy by the owner.

266. Please refer to Case No. 2003/3310 under the Buildings Department.

Case No. 2003/3562 : Mishandling the complainant's application to build a small house.

267. Village A was one of the four villages which were cleared and removed on 23 January 1981, and resited houses were granted in 1986 to eligible villagers affected by the clearance. Village A is regarded a "village resited after 1945" and under the small house policy, since compensation on concessionary terms has already been offered to the

affected villagers, they and their descendants are no longer entitled to any private treaty grants of Government land for small house purposes.

268. In September 1981, the complainant submitted an application to build a small house in Village A to the local DLO notwithstanding the above mentioned clearance.

269. In November 1987, the DLO asked the complainant to complete and return an application form for further processing of the application.

270. Separately, as part of the negotiation for the removal of the village, the DLO, the village representatives of the four villages and the relevant Rural Committee had since 1987 been in discussion as regards the cut-off date (COD), after which any submission of new small house applications should no longer be dealt with. On 2 August 1993, the DLO agreed with the parties concerned to take "23 January 1981" as the COD. Hence, in pursuance of this understanding, the DLO would not entertain any applications received after the date. Unfortunately, the DLO did not immediately inform the complainant that his application would not be considered.

271. In November 2000, the complainant and other applicants wrote to the DLO urging it to expedite the processing of their applications. However, the DLO rejected their applications in November 2001 but it still did not mention the existence of COD.

272. In October and November of 2003, the complainant wrote to the DLO requesting it to reconsider his application. In November 2003, the DLO pointed out for the first time that the complainant's application could not be considered because it was submitted after the COD. The DLO also apologized to him for the misunderstanding caused by its letter of November 1987.

273. In November 2003, the complainant lodged a complaint with The Ombudsman against Lands D for impropriety in handling his application for building a small house in Village A. He complained that the DLO had misled him to have reasonable expectation that he was eligible for small house grant by requesting him to submit the application for further consideration in the letter of November 1987, more than 6 years after the deadline for submission of application in accordance with the village removal arrangement. However, contrary to that expectation, the DLO rejected his application in November 2001, more than 20 years after his submitting the application in 1981.

274. The Ombudsman considered that the complaint was substantiated.

275. Lands D accepted The Ombudsman's recommendations, and has again reminded all DLO staff to handle small house applications in a timely manner, inform the applicants of the results of their applications as early as possible, and explain the grounds for rejecting their applications clearly.

Case No. 2003/4265 : Failing to revise Government rent upon redevelopment of a lot and being unfair to the current owners in asking them to pay the arrears of rent that should have been paid by the former owners.

276. In January 2004, the complainant complained against (amongst others) Lands D and Rating and Valuation Department (RVD) for not revising the Government rent of the lot upon two redevelopments in 1978 and 1993. In 2003, Lands D retrospectively revised the Government rent and asked the current owners to pay the arrears since September 1978. The complainant considered this unfair to the current owners, as part of the arrears should have been paid by the former owners.

277. A great number of renewable Government Leases expired in the 1970s. The lessees could renew their leases for a further 75 years but they had to pay a new re-assessed Government rent. The lot owner of the subject lot at that time applied for lease renewal and was given a grant of the lot on 5 May 1973 by way of "Conditions of Exchange in lieu of Renewal". The term was 150 years commencing from 1 January 1901. It was stated in the Conditions that the Government rent was $84,874 per annum from 1 January 1973 to 31 December 2050. Later, the Government rent was revised to $82,840 per annum from 19 January 1977 because of a surrender of part of the land on the subject lot back to the Government.

278. Shortly after the renewal of the lease of the subject lot, Government announced on 20 June 1973 a concession to be given to the lessees of renewable leases, including a renewal of the leases by Government, but the Government rent would not be re-assessed in accordance with the relevant Land Offices Memorandum (the Memorandum). Instead, the levy of the Government rent of the concerned lots would be based on an amount of 3% of the rateable value.

If the lot were redeveloped, the Government rent would be based on the new rateable value of the new building.

279. According to the Memorandum, the Government rent for the Lot as of 1 July 1973 should be the amount specified in the lease or an amount equal to 3% of the rateable value of the Lot, whichever is the less. Because of the low rateable value of the Lot at that time, the Government rent of the Lot was reduced to $536 per annum, payable until redevelopment triggered revisions to the Lot's rateable value and therefore Government rent.

280. In 1978, the Lot underwent its first redevelopment and the Government rent should have been increased to $8,280 per annum. The Lot was further redeveloped in 1993 and the Government rent should have been revised to $82,840 per annum. Nevertheless, Government rent of $536 per annum continued to be demanded by the Treasury and no revision was imposed after 1973.

281. Before 2002, RVD did not notice that the Government rent of the subject lot was governed by the Memorandum. Consequently, when the Lot was redeveloped twice, RVD did not notify the Treasury of the new rateable value. The Treasury thus did not demand a new Government rent based on the new valuation. In June 2002, RVD discovered that the subject lot had been redeveloped twice, on a routine checking of the lease records. RVD considered that the Government rent of the lot might need to be revised after redevelopment and informed Lands D of this on 17 July 2002. Lands D decided that the subject lot was liable for the Government rent according to the Memorandum after a meeting with RVD and obtaining a legal opinion from its Legal Advisory and Conveyancing Office. After obtaining from RVD the rateable values of the subject lot after the first and second redevelopments and their effective dates, Lands D issued the Government rent demand note to the Management Company of the current building on the subject lot on 17 July 2003 for recovery of the total underpaid Government rent of $868,420.20 since 1 September 1978.

282. After investigation, The Ombudsman considered that RVD had not advised the Treasury of the new rateable values according to the Renewal Policy and Procedures when the subject lot was redeveloped in 1978 and 1993. Therefore, the Treasury had not demanded the new Government rent. On the other hand, Lands D also had not advised RVD of the list of newly completed buildings. Both RVD and Land D had not dealt with the Government rent matters according to the

established procedures after two redevelopments of the subject lot. Hence, the complaints against Lands D and RVD were substantiated.

283. Lands D had a duty to notify RVD of new buildings for assessing their rateable value. However, Lands D did not alert RVD in 1993 of the need to reassess the newly constructed development on the subject lot. Notwithstanding this, Lands D considered that the current owners of the subject lot are legally obliged to pay Government rent including all arrears.

284. Lands D and RVD have accepted and implemented The Ombudsman's recommendations as follows :

(a) since October 2004, Lands D has reinforced the message that a prospective property buyer should always check, through his lawyer, to ensure that the Government rent has been paid up prior to completing a property purchase; and

(b) Lands D and RVD have considered possible improvement measures to avoid recurrence of similar incidents. RVD has revised the concerned Departmental Standing Technical Instruction and issued it in April 2005. The Instruction states the procedures for the assessment of Government rent for redeveloped buildings, including the relevant procedures and respective responsibilities of RVD and Lands D on the assessment of Government rent for redeveloped buildings. Lands D is compiling a master list of land lots subject to the Memorandum for RVD's monitoring of re-assessment of Government rent in future.

Case No. 2004/0964 , 2004/0965 : Failing to clarify the land status of a car park site and leaving the car park idle for months after completion.

285. The complainant complained that due to a dispute over land ownership between Government and a group of indigenous villagers, a car park had been left idle for months since its completion in July 2003. He considered that Lands D and Transport Department (TD) should have clarified the land ownership before constructing the car park.

286. The car park was situated on Government land and was meant for local villagers and their visitors. Although the Lands Administration

Office Instruction (Instruction) of Lands D provided that it be metered and managed by TD, the villagers strongly objected and applied for a short-term tenancy (STT) of the site at nominal rent instead. Lands D's counter-proposal of an STT at full market rent was endorsed by the District Lands Conference and TD.

287. Lands D had explored the possibility of opening the car park to the public in the interim, while processing the STT application. However, TD showed concern over the possible adverse public reaction when the car park was closed again in future for the villagers' exclusive use under the STT. The District Office also advised that the villagers were likely to react adversely. Lands D therefore shelved the idea. To reduce the idling time of the car park, it urged the villagers in June 2004 to form a legal body within three months to manage the car park as the tenant of the STT.

288. In March 2004, the complainant lodged a complaint with The Ombudsman. After investigation, The Ombudsman considered that the complaint was partially substantiated.

289. In respect of The Ombudsman's recommendations, Lands D has taken the follow-up actions below :

(a) Lands D is working on the suggestion to revise the concerned Instruction to allow for greater flexibility;

(b) Further to the Lands D's urging, the villagers has formed a legal body in August 2004 to take up the STT; and

(c) Lands D granted an STT on 1 March 2005, and notified the villagers.

290. As for The Ombudsman's recommendation that the car park should be made available to the public in the interim, The Ombudsman noted that the negotiations on STT terms were in progress and most villagers had accepted the small house grants. She therefore withdrew this recommendation.

Case No. 2004/1938 : Delay and impropriety in handling the complainant's application for building two New Territories Exempted Houses.

291. The complainant was the owner of two lots A and B. In November 1996, he applied to the local DLO under Lands D for approval to build two New Territories Exempted Houses (NTEHs). Besides providing the DLO with further information, he inspected the lots with DLO staff and engaged a professional surveyor to set out their boundaries. Despite these efforts and numerous oral and written reminders, the DLO still could not reach a decision by May 2004. The complainant was dissatisfied with the delay.

292. The Land Registry did not have any record that Lot A had a "house" status. The complainant provided documents in December 1997, indicating that Lot A included 0.02 acre of "house" land. He inspected the site again with DLO staff and submitted a proposed layout plan in September 1998.

293. As the proposed NTEHs were both to be within Lot A, it was necessary to transfer 390 square feet of "house" land from Lot B to meet the shortfall. However, under the current Lands D policy, the gross floor area of a building lot was not transferable to another. After seeking legal advice, the DLO informed the complainant in October 1999 that his proposal would be unacceptable if it was ascertained that the house land on Lot A was only 0.02 acre.

294. In March 2000, at the DLO's request, the complainant again submitted a sketch of his proposal. In April 2000, the DLO sought legal advice on the development conditions of Lot B, but these could not be ascertained, as neither the relevant file nor the land grant conditions of Lot B were available.

295. The DLO informed the complainant in December 2002 that his application could not be processed further, because the policy did not allow the land exchange and there was local objection to his proposal. The DLO later undertook to look into the local objection and keep him informed.

296. In March 2004, the complainant wrote to the DLO to complain about slow progress. The DLO then found the main case file missing. It had to reconstruct a new file but failed to ascertain whether the assistance of the District Office should be enlisted to resolve the local

objection according to the normal procedures.

297. Lands D had advised that if the complainant intended to build two NTEHs on Lot A, he ought to apply for a land exchange by surrendering his two lots to the Government for re-grant of a new lot.

298. The complaint was, therefore, partially substantiated.

299. In respect of The Ombudsman's recommendations, Lands D has taken the following actions :

(a) an apology letter was sent to the complainant on 2 December 2004;

(b) there is still no agreement reached between the complainant and the objector, which has held up the further processing of the case. It is understood that they are negotiating on the amount of grave removal expenses and the complainant intends to seek assistance from the relevant Rural Committee.

Planning permission for the proposed development has expired. The complainant was reminded to arrange renewal of the permission.

The DLO will monitor the progress of this case; and

(c) Lands D has reminded DLO staff to process similar applications in a timely manner, and has updated the relevant Land Instructions.

Case No. 2004/2006 : Failing to take action against drying of laundry by some local residents in public places.

300. Please refer to Case No. 2004/2007 under the Food and Environmental Hygiene Department.

Legal Aid Department (LAD)

Case No. 2004/0995 : Failing to update the complainant's correspondence address despite her written request.

301. The complainant had applied to LAD for legal aid for her divorce case. To prevent her husband from learning of her application, the complainant gave her elder brother's address (Address C1) as her "correspondence address" and entered her current residential address with her husband (Address R) in the "residential address" column of the application form.

302. Later, the complainant wrote to LAD to change her correspondence address to Address C2. She further telephoned the Department to confirm receipt of her letter. About a month later, she enquired with the Department on the progress of her application and was informed that a letter had been issued rejecting her application. However, she did not receive that letter and so asked the staff to send it to her again. Subsequently, she discovered that the letter had been sent to Address R. She telephoned to ask why the Department had failed to send the letter to Address C2. Nevertheless, the staff replied that it did not matter as her husband would sooner or later know.

303. In accordance with established procedures, the personal particulars of the legal aid applicant, including any correspondence address, provided on the application form will be input into the computer to facilitate future case management.

304. The complainant had initially filled in only Address R in her legal aid application form and later added Address C1 as her correspondence address. LAD however only input Address R into the computer. Similarly, when the complainant subsequently informed LAD of the change of the correspondence address to Address C2, LAD did not update the change. Hence, LAD's letter on refusal of the legal aid application was sent to the complainant at Address R. When the complainant enquired about the progress of her application, LAD realized the omission. It updated the complainant's correspondence address immediately, and sent the letter of refusal to Address C2.

305. When the complainant later telephoned LAD to query the mistake, a staff member of LAD explained to her that relevant documents of the divorce petition of a legally aided person had to be sent to the

opposite party, and hence the opposite party would be informed.

306. In March 2004, the complainant lodged a complaint with The Ombudsman against LAD for failing to send the letter to her correspondence address. She was also not satisfied with the response of the LAD's staff when she queried the mistake. After investigation, The Ombudsman considered that it was due to the negligence of LAD staff that the Department had repeatedly failed to update the complainant's correspondence address. As for the response of the LAD staff who answered her query, The Ombudsman accepted that it could have been due to some misunderstanding in communication.

307. LAD accepted The Ombudsman's recommendation and issued a written apology to the complainant in August 2004.

308. LAD has also taken the following steps to prevent similar occurrences in the future:

(a) a Circular has been issued to remind staff that they should exercise care in handling and updating personal data of applicants;

(b) a system is now in place under which senior officers will carry out random checking periodically to ensure that all relevant data are input into the computer promptly and accurately; and

(c) the case in question has been included in a recent workshop on case studies conducted to improve staff performance and customer service.

Leisure and Cultural Services Department (LCSD)

Case No. 2003/3067 : Abuse of power in handling a "wax burning" incident in a park at the Mid-Autumn Festival.

309. On the night of 11 September 2003 (Mid-Autumn Festival), the complainant and his family went to a park to celebrate the Festival. They lit some candles in a moon-cake container for about half an hour. An LCSD special patrol team came and gave them an oral warning about wax burning. A row then ensued and the LCSD staff called the police for assistance. When the complainant and his family were leaving the park, two team members followed them. Suddenly, allegedly one of the team members lay on the ground, claiming to have been assaulted and injured. The police arrived and tried to mediate. The team leader asked the team member who claimed to have been injured not to pursue the case and the police let the complainant and his family go.

310. Alleging that the staff concerned had misused their authority, the complainant filed a complaint to the Home Affairs Bureau, a Legislative Councillor, a radio programme and LCSD on 18 September 2003, copying his letter to The Ombudsman. On completion of its investigation, LCSD sent a written reply to the complainant on 2 October 2003. However, the complainant was not satisfied with the reply and felt that LCSD had handled his complaint perfunctorily without an in-depth investigation. In October 2003, he therefore lodged a complaint with The Ombudsman.

311. After investigation, The Ombudsman considered that although the LCSD staff had not misused their authority, there was clearly room for improvement in their handling of the incident. The team leader had failed to report to LCSD the staff injury in the course of duty in accordance with the relevant administrative circular. On the other hand, as LCSD had conducted an investigation upon receipt of the enquiries and complaint and explained the result of the investigation to the complainant, The Ombudsman considered that LCSD had not handled the complaint perfunctorily.

312. Overall, the complaint was partially substantiated.

313. LCSD has accepted and implemented all recommendations of The Ombudsman as follows :

(a) LCSD issued a memorandum in June 2004 stipulating that supervisors/officers-in-charge should ensure that suitable medical assistance be made available to an officer who had been assaulted or injured on duty according to his/her condition; and he/she must be delivered to hospital for treatment if necessary or upon his/her request. In addition, supervisors/officers-in-charge should submit an accident report to the Department in accordance with the relevant administrative circular;

(b) in order to raise the alertness of staff and avoid any conflicts with the public when they are handling suspected wax-burning cases, LCSD issued guidelines on the law enforcement operation against wax-burning activities to all staff concerned in September 2004 to facilitate their control of wax-burning activities in the LCSD public pleasure grounds including bathing beaches at the Mid-Autumn Festival. LCSD also conducted a briefing session in September 2004 for all staff concerned to clearly explain to them the detailed arrangements and the appropriate ways for handling different situations to help them carry out their duties more effectively;

(c) in order to strengthen the law enforcement training for supervisory staff, LCSD has already included the following topics into the law enforcement training programme :

(i) the official guidelines on "handling wax-burning activities in LCSD public pleasure grounds and bathing beaches"; and

(ii) procedures for reporting and handling cases involving officers injured or died on duty.

LCSD organised refresher courses on law enforcement in August and September 2004 to enable the staff to update and acquire new knowledge, share their experience and increase their confidence in law enforcement operations; and

(d) LCSD has reminded the team leader that an accident report has to be submitted to the Department when an officer is injured on duty, regardless of the seriousness of his/her injury. The team leader understood that it was inappropriate not to submit an accident report in relation to his team member's injury on duty.

He provided the concerned accident report to the Department in April 2004.

Case No. 2004/0830 : Failing to take action against drying of laundry by some local residents in public places.

314. Please refer to Case No. 2004/2007 under the Food and Environmental Hygiene Department.

Case No. 2004/2362 : (a) Lack of transparency in processing the complainant's application to organise a music event; and (b) Delay in processing the application.

315. The complainant alleged that he phoned Officer A of LCSD in early January 2003 to enquire about the application procedures to organize a concert. On 17 January 2003 he mailed to LCSD from Guangzhou a proposal to organize a music event. The complainant phoned Officer A around mid-February and learned that LCSD had not received the proposal. He sent it again by surface mail in Hong Kong on 14 February 2003. The complainant alleged that Officer A had informed him by phone on 18 February 2003 that the two sets of information had been received. After that, LCSD had not been in contact with him until the end of May 2003, when he received a written reply from LCSD dated 27 May 2003, informing him that the proposal was considered unsuitable as it could not fit into LCSD's programme plan.

316. The complainant sent two letters to LCSD on 13 June and 31 August 2003, questioning the way his application was processed and the explanation given. In reply, he was told that his proposal would be reviewed. The complainant re-submitted his proposal on 26 November 2003 and was requested by LCSD to provide supplementary information. On 16 April 2004, the complainant received a reply from LCSD informing him that his proposal was not accepted. The complainant considered that LCSD had handled the case without fairness or transparency. He suspected partiality and complained of the delay in processing his proposal. His original programme proposal was retained for more than fifteen months without any reason. He felt aggrieved and lodged a complaint with Office of The Ombudsman in June 2004.

317. After investigation, The Ombudsman did not find any evidence to prove that LCSD was "partial" in processing the programme proposals.

The Ombudsman was of the opinion that LCSD had processed and assessed the two proposals from the complainant in accordance with the guidelines. However, it is observed that LCSD, on notifying the complainant of the decision on the first proposal, had not informed the complainant of the true reasons for not considering his proposal which, under the principles of fairness, openness and transparency, LCSD should have done. Such handling had caused the complainant to question LCSD's assessment criteria and procedure. The first part of the complaint was, therefore, partially substantiated.

318. In considering the alleged delay in the handling of the first proposal, The Ombudsman accepted LCSD's explanation and regarded mid-March 2003 as the date the first proposal was received. This being the case, LCSD's replying to the complainant on 27 May 2003 on the decision of his proposal should not be considered a delay.

319. As regards the handling of the second proposal, The Ombudsman was of the opinion that LCSD had taken a rather long time in consulting the advisers, and only informed the complainant of the result in April 2004. However, taking into account that the normal time required to handle a proposal would be three months, and that LCSD did not have any performance pledge in this regard, the complaint on delay was considered unsubstantiated.

320. The Ombudsman noted that LCSD met the complainant on 27 August 2003 and sent a letter to him on the following day to confirm he had checked and acknowledged, in person, all the materials returned to him as being complete and intact; and that there were inconsistencies in the information the complainant supplied to The Ombudsman. Taking these into account, The Ombudsman did not see any ground for the complaint that LCSD had retained the complainant's original proposal for as long as fifteen months. The second part of the complaint was, therefore, unsubstantiated.

321. Overall, the complaint was partially substantiated.

322. LCSD has accepted all recommendations made by The Ombudsman and has taken the following follow-up actions :

(a) on 22 November 2004, LCSD uploaded information on the time required for processing a programme proposal in the relevant guideline on its website, stating that "it normally takes about 3 months to process an application with all details complete and

sufficient. Proposals with insufficient information will take a longer time to clarify and process." The same point will be made in the acknowledgement letter to the applicants;

(b) to enhance transparency and openness of the assessment process for programme proposals, the names of all expert advisers on performing arts for 2004 to 2006 were uploaded on the LCSD web page on 31 January 2005, with the expert advisers' consent; and

(c) commencing mid-December 2004, LCSD has clearly stated the factors considered and grounds for declining a programme proposal in reply letters.

Official Receiver's Office (ORO)

Case No. 2004/1109 : Failure to reply to the complainant's written enquiries.

323. In July 1998, one of the complainant's clients successfully petitioned the court to wind up a company. In March 2002, in response to the complainant's enquiry, Case Officer A of the ORO provided some information about the liquidation to the complainant and requested the complainant to revert in six months' time. The case was re-allocated to Case Officer B in July 2002.

324. In October 2002, the complainant wrote to Case Officer B for updated information but received no reply. Thereafter, a total of thirteen reminders were written from February 2003 to March 2004. However, there had not been any response from Case Officer B. The complainant felt aggrieved and lodged the complaint with The Ombudsman in March 2004.

325. After investigation, The Ombudsman concluded that the ORO lacked an effective mechanism to monitor case handling and timely response to incoming correspondence. The complaint was substantiated.

326. ORO agreed to The Ombudsman's recommendations and has taken the following actions :

(a) ORO has tendered a written apology to the complainant. ORO has also issued a written warning to the staff concerned;

(b) ORO issued a memo to all staff in June 2004 to remind them of the importance of complying with the requirement of timely response to incoming correspondence in the relevant general circular, which was issued to all staff in January 1999. Furthermore, the memo and the relevant general circular on timely handling of correspondence will be re-circulated to all ORO staff every six months as a reminder; and

(c) ORO will highlight the complaint channels available on its website and in its publicity materials, so that any members of the public who are dissatisfied with the Office's services can lodge complaints with the ORO Management earlier.

Case No. 2004/1177 : Failure to take timely action on the complainant's report against a bankrupt dishonestly borrowing money from him.

327. In November 2002, the complainant reported to the ORO that Madam A had borrowed money from him without disclosing her bankruptcy status.

328. The complainant then telephoned the ORO Case Officer every two months to enquire as to the progress of the investigation. However, each time the reply was "due to manpower shortage and heavy workload, the case was still being processed" or similar.

329. When the complainant called the ORO again in March 2004 to enquire about progress, he was advised that the Case Officer had retired and that Madam A had been discharged from bankruptcy. The complainant was also advised that he could make a fresh bankruptcy petition against Madam A if he wanted to continue his claim for the debt.

330. The complainant complained to The Ombudsman in April 2004 at the ORO not taking appropriate action after fifteen months of receipt of his report.

331. The investigation by the ORO had confirmed that there was not sufficient evidence to prosecute the bankrupt person for the alleged offence.

332. After investigation, The Ombudsman concluded that the ORO had no effective monitoring system for handling and overseeing reports on bankruptcy offences, especially those in connection with 'non-active' cases; and there were no clear internal guidelines to ensure that reports were duly followed up and investigated.

333. The complaint was, therefore, substantiated.

334. To address the recommendations of The Ombudsman, ORO has taken the following actions :

(a) ORO has introduced a register on allegations and reports of insolvency offences received;

(b) all Case Officers are required to record all allegations and reports

received in the register as soon as possible. If an allegation or report relates to a "no further action" case, that case should be re-activated for investigation as appropriate. On a monthly basis, the register will be brought up to the supervisors for review of progress, which will continue until the investigations and actions are concluded. If the informant disagrees with the result, the case will be transferred to a supervisor for handling; and

(c) the guidelines on the above were issued to all Case Officers in April 2005.

Office of the Privacy Commissioner for Personal Data (PCO)

Case No. 2004/2320 : Delay in investigating a complaint against a company and failure to keep complainant informed of the progress.

335. The complainant lodged a complaint against a company to PCO in July 2001. PCO completed the investigation on 2 May 2003 and asked the company to provide an undertaking to carry out remedial actions as recommended by PCO, which included the formulation of guidelines to ensure data accuracy. The company provided the undertaking in writing on 23 May 2003.

336. Upon receipt of the written undertaking, the supervisor of the investigating officer of this case considered that the company should also produce a copy of the guidelines before concluding the case. The company did not provide the requested information until August 2004. Due to the oversight of the investigating officer, coupled with a recording of the case as "closed" on PCO's Complaint Handling System, it resulted in PCO's failure to comply with its in-house requirement of informing the complainant of the progress of investigation every two months until formal closure of the case.

337. This complaint was substantiated.

338. PCO has accepted all recommendations of The Ombudsman and implemented the following :

(a) PCO sent a written apology to the complainant in writing in December 2004; and

(b) PCO has revamped the Complaint Handling System which included improvement to the "bring up" system for monitoring of the investigation progress.

Rating and Valuation Department (RVD)

Case No. 2004/3347 : Failing to revise Government rent upon redevelopment of a lot and being unfair to the current owners in asking them to pay the arrears of rent that should have been paid by the former owners.

339. Please refer to Case No. 2003/4265 under the Lands Department.

Registration and Electoral Office (REO)

Case No. 2003/3253 : Updating a registered voter's particulars without her prior consent.

340. Please refer to Case No. 2003/3252 under the Housing Department.

Social Welfare Department (SWD)

Case No. 2004/2042 : (a) Failing to follow up properly a report of fraudulent rental allowance claims; and (b) Poor staff attitude.

341. The complainant let her flat to Mr A, who stopped paying rent after eight months. The complainant applied to the Lands Tribunal to recover the rent and won the case. To assist SWD to investigate whether Mr A had made fraudulent claims for rental allowance under the CSSA Scheme, she submitted a photocopy of the tenancy agreement. She also requested SWD to give Mr A's rental allowance to her to cover the outstanding rent, which SWD refused to do. She, therefore, complained against SWD for failing to take action on her report and continuing to grant the rental allowance to Mr A.

342. Upon receipt of the complainant's report, SWD's Social Security Field Unit referred the case to the Department's Fraud Investigation Team (FIT) for further action. Before the fraud was substantiated, SWD had to continue paying Mr A the rental allowance.

343. The Ombudsman found that SWD had taken prompt action to refer the case to FIT for action. It was also reasonable for SWD staff to have refused to divulge details of the investigation to the complainant because of privacy concerns. As regards the recovery of the outstanding rent, that was a civil dispute between the landlord (the complainant) and the tenant (Mr A). SWD had rightly not intervened. The complainant should recover the rent through civil proceedings, certainly not through SWD's transfer of Mr A's rental allowance to her. The first part of the complaint was, therefore, unsubstantiated.

344. The complainant also alleged that the attitude of SWD staff was poor, having kept her waiting in their office for hours. The staff claimed that they had called her name but she had not responded.

345. Though there was no independent evidence to prove that SWD staff had called the complainant, The Ombudsman considered it fair and reasonable for them to finish all their appointments first before receiving the complainant who had not made any appointment. There was also insufficient evidence about their attitude. The second part of the complaint was, therefore, unsubstantiated.

346. Overall, the case was unsubstantiated.

347. SWD agreed to The Ombudsman's recommendation and has implemented the following :

(a) SWD has reminded frontline staff to be courteous to the public and avoid an antagonistic attitude; and

(b) SWD has also recommended its frontline staff attend relevant training courses on customer service so as to enhance their quality of service.

Case No. 2004/3853 : Failing to settle the outstanding public housing rentals for the complainant while he was in custody in a psychiatric centre, such that his housing unit was unreasonably recovered by Housing Department.

348. Please refer to Case No. 2004/3854 under the Housing Department

Television and Entertainment Licensing Authority (TELA)

Case No. 2003/2650 : Failing to follow proper procedures in processing an application for Amusement Games Centre (AGC) Licence, thereby causing delay in handling the complainant's application and misleading other applicants.

349. The complainant submitted an application to TELA for an AGC Licence. However, TELA replied that his application could not be processed for the time being because the Department had received a prior application made at the same address. The complainant considered that TELA failed to follow the procedure to vet the content of the prior application which was submitted with fake documents, resulting in a delay of processing the complainant's application. The complainant had checked the public register of TELA but could not find any information about the prior application. Hence, he considered himself being misled by the register.

350. The allegation of forgery in respect of the prior application could not be substantiated after Police investigation. Hence, TELA had not caused any delay in processing the complainant's application.

351. As regards the failure to file the prior application in the register, TELA admitted the mistake and apologized to the complainant in the first instance. TELA also reassured the complainant that such omission would in no way affect the priority of his case. After the omission was revealed, TELA immediately improved its procedures which included the setting up of an effective monitoring mechanism and the issue of internal guidelines. TELA believed that the act of omission had not in any way misled the complainant in making his application having regard to the sequence of events. According to a letter written by the complainant, he was only aware of TELA's mistake through checking of the public register on 9 April 2003. As the complainant's application was made on 7 March 2003, it was not possible that he had been misled by a mistake which was only revealed at a later date. TELA had reported the facts to The Ombudsman and pointed out that apart from the above complaint, TELA had not received any other complaint in connection with any application being misled by the omission. TELA considered that the complaint that the omission had misled the complainant was unsubstantiated.

352. Overall, the complaint was partially substantiated.

353. TELA has accepted and implemented all of The Ombudsman's recommendations as follows :

(a) TELA has set up an effective monitoring mechanism and incorporated in its internal guidelines information on how to handle and update the register; and

(b) TELA will speed up the follow-up of the prior application with a view to processing the applications on the waiting list as soon as possible.

Case No. 2004/2582 : Delay in processing a complaint and in replying.

354. The complainant lodged a telephone complaint with TELA, the executive arm of the Broadcasting Authority (BA), in late March 2004 about certain errors made by the host in an episode of a television quiz broadcast in late February 2004. TELA sent him an interim reply on 20 April 2004, followed by a substantive reply on 4 June 2004 stating that the matter was outside BA's jurisdiction. The complainant was dissatisfied that TELA had taken so long to reach the conclusion.

355. TELA claimed that it had met its performance pledge by issuing the interim reply within 15 working days. However, as the complaint appeared to be outside BA's remit, TELA had accorded it a low priority in view of its reduced staff strength and increased workload. That was why it had taken 53 working days to inform the complainant.

356. Whilst TELA's interim reply indicated that investigations into the complaint had begun, no investigation had actually been undertaken. The absence of accurate details in the interim reply also raised questions as to whether it could be considered a "substantive response to complainant on progress or results of investigation" which, according to TELA's performance pledge, should be issued within 15 working days. The substantive reply issued on 4 June far exceeded the target of 15 working days.

357. Besides, it should have been obvious to TELA staff at the outset that the complaint was outside BA's remit. Taking 53 working days just to confirm this fact and inform the complainant was unduly long by any standard.

358. The Ombudsman's investigation also revealed that TELA had reviewed a wrong episode of the quiz though the information provided by the complainant through The Ombudsman was basically correct. This illustrated that TELA staff had handled the complaint and the inquiry in a lax manner.

359. The Ombudsman considered this complaint substantiated.

360. TELA has accepted all recommendations of The Ombudsman. As regards the allegation that TELA had reviewed a wrong episode of the quiz, TELA would like to clarify that this was due to the incorrect information provided by the complainant. The actions taken by TELA in response to The Ombudsman's recommendations are as follows :

(a) TELA sent a written apology to the complainant on 6 January 2005;

(b) TELA has provided guidance to its staff and duly reminded them to provide accurate information in their letters to the public;

(c) TELA has reviewed the processing mechanism for broadcasting complaints and has replaced the performance pledge with three new target statements. With effect from 1 January 2005, TELA targets to issue a substantive reply to complainants on the results of complaints involving no investigation within 3 weeks of receipt of the complaints; for complaints involving straightforward investigations, within 8 weeks; and complaints involving complex investigations, within 4 months. In the first half-year of 2005, i.e. from 1 January to 30 June 2005, the new targets for complaints were fully met; and

(d) following an internal review, TELA has introduced an early streamlining system for all complaints received. As a result, no investigation will be carried out on complaints that are outside the BA's remit. Since the introduction of the streamlining system, the target time for informing complainants of the results of cases outside the BA's remit has now been reduced from an average of 34 working days in 2004 to 21 days.

Transport Department (TD)

Case No. 2003/4239: Failing to conduct proper consultation and invite tenders before issuing a new "kaito" ferry service licence.

361. Please refer to Case No. 2004/0059 under the Home Affairs Department.

Case No. 2004/0673 : Failing to take action against drying of laundry by some local residents in public places.

362. Please refer to Case No. 2004/2007 under the Food and Environmental Hygiene Department.

Water Supplies Department (WSD)

Case No. 2004/1549 : Failing to reply to the complainant's written enquiry.

363. In December 1998, the complainant, a Government contractor of the Home Affairs Department, was carrying out drainage improvement works in the vicinity of a damaged water main. WSD suspected that the damage was caused by the complainant's works. In March 2000, WSD issued a preliminary demand note to the complainant for the repair cost.

364. In May 2002, WSD worked out the actual repair cost. Its Expenditure Section was then instructed to demand payment from the complainant. However, no supplementary demand note was issued. According to WSD, this was due to the absence of a computer routine to alert its staff of the omission. As a result, the omission was not discovered until 2 years later. A demand note was thus issued to the complainant on 2 April 2004.

365. On 16 April 2004, the complainant wrote to WSD objecting to the demand for payment and requesting a reply. As there was no response from WSD by 9 May, the complainant lodged a complaint with The Ombudsman.

366. On 21 June 2004, WSD replied to the complainant that it was still considering the case and apologized for the delay in replying. On 30 June 2004, WSD informed the complainant that the demand note had been cancelled after thorough investigation of the matter.

367. WSD admitted the delay in replying was due to an internal misunderstanding between staff of different sections involved in handling the case. The Ombudsman therefore found the complaint substantiated.

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

(a) WSD has reviewed the procedures of issuing demand notes for recovering repair costs in cases of damages to WSD facilities. The department issued, in December 2004, guidelines to clearly define the timeframes for issuing demand notes for the estimated cost and final cost of the repair works. Pursuant to the guidelines, subject officers are required to monitor the progress

of processing such cases and to keep in view cases under their purview. For long outstanding cases, subject officers are required to escalate the cases to their seniors and to recommend actions to settle the cases; and

(b) WSD has enhanced its computer system for the computer to generate regular reports to facilitate the monitoring of the progress of finalizing the repair costs in damage cases to ensure timely issue of demand notes.

Part II
Direct Investigation Cases

Government Secretariat – Education and Manpower Bureau (EMB)

2003 Priority arrangements for surplus teachers in aided primary schools

369. EMB's 2003 priority appointment (the 2003 arrangements) to assist placement of surplus teachers in aided primary schools had an impact on stakeholders in the education field. Aware of the immediate impact and the implications for secondary schools and eventually the tertiary sector, The Ombudsman initiated a direct investigation.

370. After investigation, The Ombudsman has the following observations and opinions :

(a) EMB's stated aim in making the 2003 arrangements was to retain experienced and committed teachers in the profession. In reality, the 2003 arrangements retained the surplus teachers regardless of their performance. This adversely affected the employment of fresh graduates of teacher training institutions, hindered schools' selection of teachers, impaired Government's initiative on school-based management, deterred young people with good potential from taking up a teaching career and would eventually affect the interest of students. The appointment of "Special Supply Teachers" under the 2003 arrangements also cost an extra $9.68M in public funds;

(b) The Ombudsman does not question the need for EMB to play a part in resolving the surplus teacher issue. Government has a duty to ensure that the transition does not unduly disrupt school operations, to balance the interests of all stakeholders, to facilitate the retention and recruitment of quality teachers and to guard against waste of public resources. However, EMB should not participate directly in "persuading" schools to take on only surplus teachers during the "priority appointment" period;

(c) on the other hand, the teaching profession must equip itself, through re-training, refresher course and injection of new blood, in order to face the changing requirements in education and

maintain the professionalism of teachers. Appointment by seniority, rather than performance and professional excellence, would impact on the education for our young, standards of teachers and development of the profession;

(d) the Government, school sponsoring bodies, principals, the teaching profession, teacher training institutions and parents of students are all partners in the education of our young. Each party should critically re-examine the respective roles and responsibilities for the development and preparation of young Hong Kong for the challenges in life and contribution to the community; and

(e) there were contradicting provisions in the Code of Aid for Primary Schools on whether School Management Committees can terminate a teacher's service.

371. The Ombudsman has also made a number of recommendations. EMB has taken the following actions in response:

Re-examination of the arrangements for surplus teachers

(a) EMB terminated the arrangement of according priority appointment for surplus teachers in 2005;

(b) regarding the appointment of unemployed surplus teachers as Special Supply Teachers, EMB revised the remuneration to a daily rates in 2004 to safeguard public funds. Subject to the latest teacher projections, EMB will review the need to continue the scheme in 2005;

Schools to develop a proper appraisal system

(c) EMB has issued, and will review periodically, guidelines on "Teacher Performance Management" to assist schools in formulating a fair, open and objective performance appraisal system. The School Development Officers provide due support and guidance to help schools set up and improve their staff appraisal system;

(d) EMB has also provided the schools with a classroom observation form to help assess teachers' performance in classroom teaching, which is one of the essential elements to understand a teacher's

effectiveness;

(e) the staff appraisal system is one of the areas assessed and validated by the external school reviews or quality assurance inspections;

Schools to practice school-based management properly

(f) the Education (Amendment) Bill came into operation on 1st January 2005. EMB has organized various briefing sessions and seminars to familiarize the school sponsoring bodies, schools, parents, parent-teacher associations and the public with the implementation of school-based management;

(g) EMB will continue to monitor the progress and effectiveness of school-based management in aided primary schools;

Review of Code of Aid

(h) EMB has completed the review on the part of the Code of Aid relating to employment and termination of service of teachers. Relevant recommendations are being piloted in some schools with effect from the 2005/06 school year. Feedbacks will be collected from the pilot schools on a regular basis for further refinement of the Code of Aid;

Forward planning

(i) EMB has reviewed the process of approving class structure in aided primary schools, which includes improving the current administrative procedures to allow a two-week period for the school management to make representations on their special circumstances to EMB; and

(j) EMB will regularly review the impact of student population decline on teacher supply and demand, and measures to address the manpower issue of the teaching force. The provision of teacher education programmes has also been taken into consideration.

Food and Environmental Hygiene Department (FEHD)

Administration of urn grave cemeteries

372. In the wake of a complaint to The Ombudsman and media reports that a man had been sweeping the empty urn grave of his wife for over ten years, The Ombudsman initiated a direct investigation into the management of urn grave cemeteries.

373. After investigation, The Ombudsman has the following observations and opinions :

(a) the size of the cemeteries and the massive number of urn graves made their administration difficult. However, this was no excuse for lack of vigilance;

(b) the lack of complete and accurate records of all urn graves had contributed to inefficient and ineffective administration of urn grave cemeteries. The Ombudsman considered a full survey necessary and affordable;

(c) current measures against illegal burial and exhumation were piecemeal and ineffective. Prosecution had never been contemplated. Follow-up action on detected cases had been slow and dilatory. The Ombudsman found this unsatisfactory and unacceptable; and

(d) it is a time-honoured Chinese tradition to respect one's ancestors. It is sad that this seems to be breaking down by neglect due to emigration, lack of descendants or their indifference. Government has a social responsibility to facilitate, encourage and sustain this culture of care and respect.

374. FEHD has accepted The Ombudsman's recommendation and has implemented the following :

<u>Staff Attitude</u>

(a) FEHD has arranged for circulation of the guidelines on "Courtesy in Dealing with Members of the Public" and has organised customer service training for all cemetery staff at

regular intervals;

Full Survey

(b) FEHD will take forward a full-scale survey of all urn graves to verify the existing data in its records. Given the large number of urn graves involved, FEHD plans to conduct the survey by phases. The first phase to verify the records of some 5,000 urn graves in selected sections of Wo Hop Shek Cemetery (WHSC) has commenced recently for completion by end 2005;

(c) based on experience gained from the first phase of the survey, FEHD will embark on the remaining phase(s) with a view to transferring all the updated data to a single computer database;

(d) the old computer databases and manual records will be abolished when the new database is set up and fully tested;

Long-term Measures

(e) to deter illegal activities, FEHD has enhanced inspection by requiring cemetery staff to step up routine inspections and conduct daily patrol of selected areas near the main roads in WHSC, and set up four security guard posts to strengthen surveillance at strategic locations;

(f) FEHD has installed stainless steel boxes at those cemeteries without offices for keeping grave registers in order to comply with Section 4 of the Public Cemeteries Regulation, and drawn up guidelines on handling of requests for inspecting the grave registers by the public for cemetery staff to follow;

Urn Grave Record

(g) all cemetery staff are reminded on a regular basis to properly maintain the three sets of database and to keep the integrated database accurate and up-to-date;

Urn Grave Space Allocation

(h) FEHD has shortened the processing time for allocating vacated urn grave spaces from 3 weeks to 2 weeks;

(i) FEHD will review the need for site visits when the new, fully tested database is ready;

Burials and Exhumations

(j) FEHD will consider further improvement measures as necessary upon completion of the full survey on urn grave records;

(k) since mid-November 2004, FEHD has put on its website educational messages that it is the duty of the descendants to maintain the graves of their ancestors and that it is important for the descendants to be present at burial/exhumation process. FEHD has also attached this message to the application forms for burial/exhumation for the attention of both the descendants and the trade when they apply for burial or exhumation permits;

Illegal Burials and Exhumations

(l) FEHD has installed 50 warning signs against illegal burial/exhumation, and 160 directional signs to facilitate descendants to locate urn graves in WHSC;

(m) FEHD has since March 2005 established a registration system for contractors providing exhumation, burial and grave covering/headstone services in the public cemeteries. All contractors are required to register with FEHD on a compulsory basis in order to gain access to FEHD's cemeteries to carry out work;

(n) if the contractor fails to comply with the conditions for registration, FEHD will issue a warning letter. If there is a further breach, FEHD will remove the contractor from the registration list for a period of 12 months. In addition, on detection of any illegal burial/exhumation, FEHD will prohibit

the contractor from entering the cemeteries and carry out prosecution. Upon conviction, FEHD will de-register the contractor permanently;

(o) FEHD will arrange training courses on prosecution techniques for cemetery staff on a regular basis;

(p) FEHD is drawing up guidelines on follow up actions in cases with irregularities, for cemetery staff to follow;

(q) concerning the five cases already detected, one case was resolved and the family concerned subsequently applied for exhumation and returned the vacant lot to the Government for reallocation. FEHD has taken steps to follow up on the remaining four outstanding cases, including posting notices on the graves inviting parties concerned to provide information and making further attempts to contact the descendants of the registered deceased and others concerned in order to collect more facts on the burials that were not recorded by the then Regional Services Department. FEHD will formulate concrete plans when more information is gathered on the cases. As these urn graves were allocated some 40 years ago and may contain the remains of the deceased, FEHD will adopt a very prudent approach, seek legal advice and take regard of moral considerations when deciding on a course of action;

Urn Grave Maintenance

(r) FEHD has all along enlisted the assistance of the Architectural Services Department (Arch SD) to arrange preventive and remedial works for dangerous slopes and instructed frontline staff to report immediately any suspected dangerous slopes to Arch SD for follow-up; and

(s) FEHD has in place operational guidelines for dealing with slope slides in public cemeteries for cemetery staff, including ways to inform the descendants concerned.

Home Affairs Department (HAD)

Enforcement of the Building Management Ordinance

375. In view of considerable community concern, The Ombudsman conducted a direct investigation into the adequacy and effectiveness of the enforcement of the Building Management Ordinance (BMO) by the Home Affairs Bureau (HAB) and HAD.

376. After investigation, The Ombudsman has the following main observations and conclusions :

(a) HAD staff visit private buildings at least once a year, for an understanding of the general condition of the buildings and the functioning of the Owners' Corporations (OCs) / Management Committees (MCs) but not for enforcement purposes;

(b) all requests for prosecution from the public were screened by relatively junior HAB/HAD staff without proper delegation of authority from SHA. There was also no regular reporting to SHA on the handling of the requests. Furthermore, there were serious delays in processing and replying to some of the requests;

(c) HAB/HAD have made no attempt to prosecute even blatant cases. They adopt an attitude of indefinite, or even infinite, latitude towards offenders and interpret the factors affecting recommendation for prosecution in such a way as to justify inaction;

(d) HAD's guidelines on prosecution are inadequate. There are no guidelines for invoking SHA's powers of inspection under the BMO;

(e) HAD's efforts to promote corporate governance of OCs and to reinforce training for MC members have helped to reduce building management complaints and disputes; and

(f) compared with statutory avenues, there are obvious advantages in mediation. However, mediation also has limitations, and the participation is entirely voluntary.

377. In response to The Ombudsman's recommendations, HAB and HAD have implemented the following actions :

Enforcement

(a) HAB/HAD is now reviewing, in consultation with the Department of Justice, the enforcement policies and procedures on the BMO taking into account The Ombudsman's recommendations and the actual complaint cases. The guidelines and manuals for staff will be suitably amended after the review;

(b) on 27 April 2005, HAB/HAD introduced the Building Management (Amendment) Bill 2005 into the Legislative Council. The Bill includes various proposals which are aimed at facilitating the operation of OCs, rationalising the appointment procedures of a MC, and safeguarding the interests of property owners. These amendment proposals have been thoroughly discussed at the relevant Subcommittee under the Legislative Council for over two years and have also gone through extensive public consultation. A Bills Committee has been formed to scrutinize the Bill. The Amendment Bill, if passed, will bring about significant modifications to the legislative framework for OCs;

(c) for the easy understanding of the revised legislation by the general public, HAB/HAD will publish a layman's guide on the BMO, subject to the passage of the Amendment Bill, which will serve to highlight the most salient features of the relevant legislation;

(d) The Ombudsman recommended that HAB/HAD should arrange proper delegation of authority and SHA be appraised regularly of the exercise of such delegated authority. However, having considered the matter, SHA preferred to retain these powers under the BMO for the time being. This means that all cases requesting SHA's exercise of these particular powers under the BMO will have to be put to him for his personal decision. HAB/HAD will continue to monitor the situation and keep the matter under review.

Separately, in order to facilitate the delegation of the statutory powers of SHA in the future, HAB/HAD has proposed legislative

amendments to enable SHA to delegate to other public officers his powers and duties under the BMO. The proposal has been included in the Building Management (Amendment) Bill 2005. The Ombudsman noted the above amendments;

Systems and Procedures

(e) in the case of building management matters, requests for enforcement of powers under the BMO are often related to a particular complaint case. HAD has already outlined the required procedures for handling complaints by members of the public in a standing circular. HAB/HAD will strive to adhere to the pledges set out in the circular when dealing with requests for enforcement action under the BMO;

Mediation

(f) since mid-2002, HAD has been providing free mediation service under a pilot scheme with the assistance of two professional mediation bodies. The objective is to assess the feasibility of establishing a non-statutory mediation mechanism for building management disputes, thereby reducing the number of cases put forward to the Lands Tribunal. These two organizations intended to complete ten cases on a pro bono basis. However, after repeated promotion and publicity, only five cases have been completed by now. Other suggested cases were rejected either because of their complexity or the unwillingness of the disputing parties to participate in mediation. Out of the five cases, two were resolved after mediation.

The two successful cases were about water seepage and the apportionment of maintenance fees. The unsuccessful cases were about the apportionment of maintenance fees and the calculation of management fees in accordance with the deed of mutual covenant.

The Administration has encountered tremendous difficulties in encouraging the disputing parties to try mediation. The scheme would surely attract a higher take-up rate if mediation was mandatory. Nevertheless, the professional mediation bodies were of the view that for mediation to succeed, the disputing parties must participate on a voluntary basis. This is also the conclusion of the pilot scheme on family dispute mediation.

While mediation seems to apply quite successfully in the family dispute cases, the factors which are conducive to mediation, e.g. the disputing parties are willing to negotiate, have a history of trust and communication, and have some leverage on each other, etc. do not seem to apply in building management cases.

Both professional mediation bodies have agreed that the pilot project on mediation should be extended and be evaluated after ten cases have been completed;

(g) HAB/HAD will continue to give the scheme extensive publicity and keep the situation under review. HAB/HAD will further assess the effectiveness of mediation on building management disputes when more cases have gone through the pilot scheme;

(h) in addition to the pilot scheme, HAB/HAD has also used mediation to help resolve a case whereby the owners and OC of a building were held liable for paying damages to the plaintiffs of a fatal accident in the building. With the assistance of the Hong Kong Housing Society, all owners of the building were provided with a special interest-free loan (with a flexible repayment period varying from one year to life) to meet their civil liabilities. In parallel, a professional mediation body has rendered assistance by providing pro bono mediation services to the creditor (who is the major owner of the building) and individual owners. The mediation body has, through mediation, facilitated communication between the two sides, allowing them to reach a consensus on the questions of clearing debts and discharging civil liabilities of owners;

Statutory Avenues

(i) HAB/HAD has introduced the Amendment Bill into the Legislative Council to improve certain provisions in the BMO for the benefit of OCs and property owners. The proposals in the Amendment Bill have been generally agreed with the Subcommittee on Review of the BMO under the Legislative Council. A number of the proposals are aimed at rationalizing and improving the procedures of owners' meetings; and

(j) in July 2004, the Housing, Planning and Lands Bureau received a proposal to set up a Building Affairs Tribunal (BAT). The BAT is intended to serve as an independent arbitration mechanism to

deal with disputes in building management and maintenance between individual owners, owners and OCs, as well as disputes between owners and management companies or property managers of buildings. The initial thinking is that the BAT would handle disputes in building management and maintenance including those pertaining to water seepage, collection and use of management/maintenance funds, and removal of unauthorised installations in common areas (e.g. roof-top structures, advertising signboards, etc.).

The proposal involves a number of complicated policy and legal issues such as the legal status and institutional arrangements of the proposed BAT; its interface with the existing Lands Tribunal which also deals with building management disputes; its jurisdiction vis-à-vis Buildings Department which is the statutory Authority under the Buildings Ordinance; as well as the resource implications arising from the setting up of the BAT. The Government will carefully study the proposal and consult the public towards the end of 2005.

Housing, Planning and Lands Bureau, Building Department, Lands Department and Home Affairs Department (HPLB, BD, Lands D and HAD)

Enforcement Action on unauthorised building works in New Territories exempted houses

378. The Buildings Ordinance (BO) (Cap 123) prescribes that all building works require prior approval of Buildings Department (BD) as the Building Authority. In the New Territories, the construction of village-type houses within specified limits of height and size can be exempted from part of the BO. Under BO, Lands Department (Lands D) is the approving authority for these houses, namely, the New Territories exempted houses (NTEHs).

379. Unauthorised building works (UBWs) are building works that have not been approved by BD or Lands D, as appropriate. Common examples are rooftop structures, canopies, enclosed balconies and, more seriously, entire buildings without approval. UBWs in NTEHs are a long-standing problem.

380. In 1996, The Ombudsman initiated a direct investigation and made recommendations to the authorities concerned for more effective enforcement. In November 2003, The Ombudsman decided to conduct another direct investigation into enforcement against UBWs in NTEHs.

381. In 2001, HPLB set up an internal working group to map out a strategy to contain the UBW problem in NTEHs. Under the strategy, BD would take priority action on works-in-progress (WIP) cases (i.e. UBWs under construction), while Lands D would deal with all other cases as part of District Lands Officers' (DLOs) lease enforcement programmes. In this connection, Lands D would action on blatant breaches and tolerate minor breach cases.

382. HAD has the authority to grant rates exemptions to indigenous villagers subject to certain criteria being met, one of which requires a house to be free of UBWs. This serves partly as a deterrent against UBWs.

383. From the investigation, The Ombudsman has the following observations and opinions :

(a) NTEHs were part and parcel of Government's Small House Policy, established long ago. The Ombudsman considered this aspect of the policy should be reviewed in the light of the modernization of the New Territories;

(b) prolonged inadequate enforcement had engendered among owners and offenders disregard for regulation and disrespect for the authorities;

(c) limitations in each of Lands D's lease enforcement measures resulted in little effect in containing the problem;

(d) staff shortages would continue to be a problem for lease enforcement;

(e) inconsistent practices among District Land Offices (DLO) could lead to accusations of unfair treatment from owners;

(f) Lands D had a responsibility to guide and advise front-line staff on coping with the difficulties encountered in their lease enforcement work;

(g) differences in opinion between Lands D and BD over the definition of WIP cases had deterred them from taking a coordinated approach on enforcement and given the public an impression that they tended to avoid the problem; and

(h) ineffective enforcement action had reinforced owners' and villagers' perception about DLOs' toleration of UBWs and hence given rise to complaints and objections against lease enforcement teams in action.

384. HPLB, BD, Lands D and HAD have generally accepted The Ombudsman's recommendations and implemented the following :

(a) a Steering Committee on the Control of UBWs in NTEHs (SC) has been set up to take forward The Ombudsman's recommendations under the chairmanship of the Permanent Secretary for Housing, Planning and Lands (Planning and Lands), the membership of which includes the Directors of the BD, Lands D and Planning Department (Plan D);

(b) the SC has reviewed the overall enforcement strategy on UBWs

in NTEHs, and has decided to explore the feasibility of developing a rationalization scheme to address existing UBWs that are safe. The overall concept is to tolerate the existence of some categories of UBWs in NTEHs, provided that the UBW owners agree to join a "waiver" scheme administered by Lands D, and that the safety and other requirements in respect of the UBWs concerned are met. Given the complexity of the issue and the involvement of diverse interested parties, the Administration will conduct thorough consultation with the stakeholders over the proposal. The details of the scheme will thereafter be worked out;

(c) to ascertain the nature and magnitude of the UBW problem, Lands D has conducted a visual survey of the village houses in over 700 villages in the New Territories since late 2004. The survey was completed in early 2005;

(d) the Government has also conducted an opinion survey to ascertain the views of the general public on the proposed rationalisation scheme;

(e) the SC considers the strengthening of coordination among the enforcement departments as highly important. A liaison group involving two Assistant Directors from Lands D and BD has been set up to reconcile differences over WIP operations so that more effective enforcement action could be instituted against WIP at the earliest opportunity;

(f) Lands D has liaised with HAD to work out a system under which Lands D will conduct matching checks on ownership of detected UBWs in NTEHs to see if the owner is enjoying a rates exemption and to report such cases to HAD for action;

(g) the Administration is also considering the establishment of a joint enforcement liaison forum involving Assistant Directors from BD, Lands D and Plan D to ensure more coordinated and effective enforcement against UBWs in NTEHs;

(h) a common database will be set up to help simplify work processing and optimize the efficiency of the joint enforcement action taken by the departments; and

(i) action is also being taken to step up surveillance over WIPs

through the setting up of a patrol team.

385. The problem of UBWs in NTEHs is complex and long standing. It would take time for the Administration to work out a pragmatic solution to tackle the problem and gain public acceptance of it. Views from interested parties and the community at large would be crucial in the deliberation process. The Administration will keep The Ombudsman posted of developments in its six-monthly progress reports to be submitted to The Ombudsman.

Leisure and Cultural Services Department and Food and Environmental Hygiene Department (LCSD and FEHD)

Bloodworm incidents in public swimming pools

386. The discovery of bloodworms in public swimming pools from early August to early September 2004 attracted intense media interest. The LCSD, with the assistance of other Government departments and independent experts, investigated the causes of bloodworms in swimming pools. During the period of investigation, the media reported widely that FEHD findings (not published) had contradicted LCSD assertions that there was insufficient evidence of bloodworms breeding in pools. Furthermore, inconsistent views between LCSD and FEHD cast doubt over the co-ordination between the two departments. Against the above incidents, The Ombudsman initiated a direct investigation.

387. After investigation, The Ombudsman found that LCSD lacked impartiality in its own investigation into the bloodworm incidents and was selective in the reception of views. However, there was no evidence of a cover-up and there was also no deliberate attempt to destroy evidence.

388. On hygiene conditions, The Ombudsman found that LCSD had clear requirements for public hygiene and established practices for water quality assurance. However, there was insufficient time for proper cleansing around or inside the pools, play equipment and artificial features.

389. LCSD has accepted all of The Ombudsman's recommendations and has taken the following actions :

(a) LCSD has increased the frequency of bacteriological tests of water samples of public swimming pools from once a month to once a week with effect from 13 September 2004. Chemical examination for major parameters of water samples has also been increased from twice in a swimming season to once a week. There is also hourly measurement of free residual chlorine level and pH value of the pool water;

(b) from June 2005 onwards, LCSD has published the latest information on water quality of public swimming pools. Updated water test results are displayed at all 36 public

swimming pools and on the LCSD web site for public inspection in order to enhance transparency in the monitoring of water quality of public swimming pools;

(c) to enhance the hygiene of public swimming pools, LCSD staff now carry out weekly cleansing operations on top of normal daily cleansing work whereby each pool is closed for half a day in a week from 10:00 am in the morning to the end of the second session in the afternoon. The pool remains open during the early morning and in the evening sessions. The arrangement is welcomed by the public and supported by the District Councils as well as the Community Sports Committee under the Sports Commission;

(d) LCSD has issued guidelines on the cleansing of public swimming pools for pool staff and cleansing contractors to follow in carrying out cleansing operations. The guidelines set out the cleansing tasks to be carried out by pool staff and contractors in respect of pool deck, pool water, pool equipment (including play equipment), plant room, changing room, toilet, lobby, spectator stand and pool surroundings;

(e) there is daily cleansing of the pools and the surrounding areas, which is supplemented by the thorough weekly cleansing operation. As from mid May 2005, pool staff also stay behind after pool closure each night to immediately clean the pool side and scum gutter as a standard practice. LCSD have also asked the cleansing contractors to use 1:99 bleach water to clean the pool facilities in the weekly cleansing operation;

(f) further to the joint site inspection with FEHD completed in the swimming season of 2004, LCSD has devised specific checklists for the pool management to monitor the hygiene and cleanliness of the pools. On top of this, LCSD has introduced a due diligence checking system by management staff since April 2005 to further enhance the monitoring. Regional Chief Leisure Services Managers, the District Leisure Managers and their deputies as well as pool management staff are required to conduct checking and on-site inspections with full records. Pool management inspects the pool hygiene condition everyday, while district and regional management staff inspect the pool on a weekly and monthly basis. LCSD has also taken the opportunity to include relevant data on water quality tests as well

as readings of the filtration and sterilization systems in the checklists to facilitate the management's monitoring of water quality;

(g) LCSD arranged a joint site visit with FEHD in September 2004 to identify and remove the potential breeding sites in all public swimming pool complexes. FEHD has also agreed to provide more training for LCSD staff to carry out inspections to detect and prevent possible breeding of insects in the complexes. Following this agreement, the pest control officer of FEHD gave a seminar on prevention of breeding of insects to the pool supervisory and management staff before the opening of the 2005 swimming season. Representatives of FEHD also sit in the Steering Committee on Management of Public Swimming Pools to advise on environmental hygiene and pest control matters;

(h) LCSD organized a series of refresher training courses between October and December 2004 for pool venue managers and Amenities Assistants on filtration plant operation, swimming pool operation and implementation of the departmental operational instructions. Workshops for pool venue managers and Amenities Assistants were also organized to collect views and share experience on the policies and guidelines on management of swimming pools before the commencement of the 2005 swimming season.

The Working Group on Staff Training and Performance Management of Public Swimming Pools under the Steering Committee on the Management of Public Swimming Pools has reviewed and expanded the curriculum and schedule of training required to equip managerial, supervisory and technical staff of public swimming pools with the management, technical and operational knowledge in the management of public swimming pools;

(i) to facilitate training activities provided by LCSD and swimming clubs, swimming lanes are opened for training classes during the session breaks. This is to address demand for training during those specific hours. In such cases, the pool management would make special arrangement in the cleansing procedures to ensure that the overall cleansing operation would not be affected. Separately, the Working Group on Usage of Public Swimming

Pools has reviewed the allocation of swimming lanes to address the needs of different user groups, and has come up with some objective measures. The Steering Committee on Management of Public Swimming Pools noted relevant arrangements at its meeting in March 2005;

(j) LCSD has replaced the artificial turf in all public swimming pools by ceramic tiles which can be easily cleansed and managed. The Architectural Services Department has also inspected all water play equipment (279 sets) in LCSD swimming pools. 48 pieces of water play equipment were removed due to aging or problems in maintenance. 93 pieces of water play equipment were improved by sealing off the base to avoid the accumulation of stagnant water, or by drilling holes or using removable side panels to facilitate cleansing work. The rest (138 pieces) were found to be in order. They were cleansed and reinstalled in the swimming pools. LCSD will take these considerations into account when planning for future swimming pools;

(k) based on the comments and advice of the Department of Health (DH) on the hygiene standard of public swimming pools, the Working Group on Water Quality under the Steering Committee on the Management of Public Swimming Pools has worked out various guidelines for adoption in swimming pool operation. These include guidelines for sighting of unusual foreign objects, unsatisfactory bacteriological test results as well as detection of stool/vomitus. Moreover, LCSD has also increased the residual chlorine level in all pools (whether using chlorine or ozone for sterilization) to not less than 1 ppm (but not exceeding 3 ppm) to strengthen the disinfection;

(l) various workshops were held after the closure of the swimming season in 2004 and before the opening of the new swimming season in 2005, to enhance two-way communication between LCSD and frontline staff for better understanding of the rationale and priorities in the management of pools. Revised operational guidelines were clearly explained to frontline staff at briefing sessions. LCSD staff also visited swimming pools to explain the rationale of the guidelines and rehearse them with the pool staff on site;

(m) since 1 June 2005, LCSD has enhanced the release of information to the public regarding the water quality of public

swimming pools by displaying the updated water test results at all 36 public swimming pools and on the LCSD web site for public inspection in order to enhance transparency in the monitoring of water quality of public swimming pools. In case of special incidents at individual swimming pools, the pool management also displays relevant notices outside the pool complex promptly to inform members of the public of the relevant details;

(n) LCSD has engaged a consultant to conduct strategic communication workshops for senior managerial and directorate staff of the department with the specific aim to enhance staff understanding of public perceptions, key elements of public communication and crisis response strategies; and

(o) in the new swimming season of 2005, LCSD has stepped up measures to monitor the personal hygiene of swimmers. All swimmers are required to go through a shower and footbath and to soak their bodies from head to toe with chlorinated water before entering the pool deck areas. Swimmers who wish to wear slippers on the pool deck are advised to bring clean slippers to the swimming pool, wash the slippers in the changing room first and then go through a footbath before entering the pool deck. Swimmers who wish to wear T-shirts for swimming should wear clean and white T-shirts. LCSD has deployed staff at the exit of the footbath to the pool deck areas to advise swimmers to strictly follow these requirements. All these measures are widely publicized through Announcements in the Public Interest (API) on television and in radio, through posters and leaflets so as to educate the public and seek their support to help maintain the hygiene of public swimming pools. LCSD has also recruited Swimming Pool Ambassadors to assist in appealing to swimmers to follow these measures.

390. In addition to the above measures, LCSD has also implemented the following new initiatives in June 2005 :

(a) LCSD has also arranged with the Electrical and Mechanical Services Department (EMSD) to conduct regular checking and to seek their advice on the management and maintenance of the filtration and sterilization systems at all 36 public swimming pools. EMSD has undertaken to conduct monthly inspections to pools to ensure the proper functioning of the filtration and

sterilization systems. LCSD has devised log sheets for taking relevant readings to facilitate monitoring by staff;

(b) Since mid June 2005, LCSD has launched a four-month customer survey at all public swimming pools with a view to collecting comments from users on the hygiene and cleanliness at public swimming pools. In parallel, a 24-hour hotline has also been introduced where members of the public may offer their suggestions to LCSD on how to improve the hygiene of swimming pools; and

(c) LCSD has also invited the 18 District Councils to visit public swimming pools in their districts and briefed them on the operation and monitoring of hygiene standards at pools. With the community's participation, LCSD seeks to have a better understanding of swimmers' views and concerns which will help them to draw up improvement measures to further enhance the level of hygiene and cleanliness at pools.