THE GOVERNMENT MINUTE

IN RESPONSE TO

THE NINETEENTH ANNUAL REPORT OF
THE OMBUDSMAN

ISSUED IN JUNE 2007

Government Secretariat

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CONTENTS

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Introduction

The Chief Secretary for Administration presented the Nineteenth Annual Report of The Ombudsman to the Legislative Council at its sitting on 4 July 2007. The Administration undertook to prepare a Government Minute in response to The Ombudsman's Annual Report.

ii. This Minute sets out the action that the Administration and relevant public bodies have taken or intend to take in response to those 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 set out in Annexes 16 and 12 of the Annual Report respectively.

Part I
Full Investigation Cases

Agriculture, Fisheries and Conservation Department

Case No. 2006/1246：Failing to inform the complainant of the progress of a dog bite case in which his son was the victim

The complainant's son was bitten by a dog. The complainant made a number of enquiries on the progress in prosecuting the dog owner over the dog bite case. As there was insufficient evidence for prosecution, the frontline staff of the Agriculture, Fisheries and Conservation Department (AFCD) reported the situation to the complainant accordingly.

2. The complainant did not accept the answer from the frontline staff and asked for the telephone number of the AFCD's prosecution unit for further enquiry. As the case was never submitted to the prosecution unit for further processing due to insufficient evidence, the frontline staff did not see the need to provide the telephone number as requested by the complainant. The complainant then lodged a complaint with The Ombudsman against the AFCD for its failure to inform him of the progress of the dog bite case.

3. After investigation, The Ombudsman considered that the failure of the AFCD's staff in providing the telephone number of the prosecution unit, coupled with the AFCD's established way of practice that made it impossible for the victim or his guardian to know the progress or result of the case, had amounted to no reply at all to the complainant from the complainant's perspective. Therefore, the complaint that the AFCD had failed to properly inform the complainant of the progress and result of the case was substantiated.

4. The Ombudsman also considered that the AFCD's staff had taken timely action to record the particulars of the dog owner, observe the biter dog and provide a reply to every enquiry made by the complainant about the case. Therefore, the complaint that the AFCD had failed to take a statement from the dog owner was unsubstantiated.

5. Overall, the complaint was partially substantiated.

6. The AFCD has accepted The Ombudsman's recommendations and has taken the following actions -

(a) The AFCD has issued clear guidelines for implementation starting from September 2006 to instruct staff that for cases involving animal biting, in addition to responding to enquiries from the victim or his/her guardians, the AFCD should issue a written reply to the victim or his/her guardian and any other person involved upon conclusion of the investigation; and

(b) The AFCD has issued guidelines for implementation starting from late October 2006 to instruct frontline staff that appropriate advice should be given to a member of the public when the latter asks for the telephone number of an office of the department which is not responsible for the matter in question. However, if the member of the public insists to be informed of the telephone number of that particular office, his/her request should not be refused to avoid unnecessary dispute.

Buildings Department

Case Nos. 2005/1403 (Buildings Department) and 2005/1402 (Transport Department)：Failing to handle properly three separate incidents of fallen scaffolding and trees happening almost simultaneously in Kowloon, which resulted in massive traffic congestion on three trunk roads

7. Around noontime on 9 May 2005, amber rainstorm and thunderstorm warnings were issued by the Hong Kong Observatory. At around 5 p.m., the complainant got on a bus at a bus stop in front of a large department store at Nathan Road in Yau Ma Tei and intended to go to Fu Shan Estate in Wong Tai Sin. However, the bus had been moving very slowly all along and he did not reach his destination until 9 p.m. During the journey, the complainant did not receive any information on the road traffic condition and only learnt afterwards that there was serious traffic congestion in Kowloon as a result of three separate incidents of fallen scaffolding and trees happening almost simultaneously on three trunk roads in Kowloon, i.e. Argyle Street, Prince Edward Road East and Waterloo Road.

8. The complainant considered that the serious traffic congestion was caused by the failure of, among others, the Buildings Department (BD) and Transport Department (TD) in handling the incident properly and therefore lodged a complaint with The Ombudsman. Specifically, the complainant complained that -

(a) there was a lack of communication among the TD, BD and some other government department/bureau. As a result, the incident was not handled promptly;

(b) the Emergency Transport Co-ordination Centre (ETCC) of the TD failed to discharge its co-ordination function; and

(c) the TD failed to disseminate information on traffic congestion to the public properly and in a timely manner.

9. The Ombudsman conducted an investigation after receiving the complaint. The Ombudsman carefully examined the Report of the Task Force on Emergency Transport Coordination (Task Force) issued on 5 July 2005 by the Task Force appointed by the then Secretary for the Environment, Transport and Works specifically for the incident. On item (a) of the complaint, The Ombudsman considered that for both the TD and BD, the

complaint was partially substantiated. On item (b) of the complaint, The Ombudsman considered that the ETCC failed to discharge its function, and the complaint against the TD was partially substantiated. On item (c) of the complaint, The Ombudsman considered that the TD failed to disseminate traffic information in a proper and timely manner, and the complaint against the TD was substantiated.

10. The Ombudsman concluded that, overall speaking, the complaint against the BD and TD was partially substantiated.

11. The BD has accepted The Ombudsman's recommendation and has further liaised with the Police which have agreed that upon confirmation that an incident involves the BD, the Police will notify the BD immediately so that prompt follow-up actions can be taken by the BD.

12. Besides, the BD has thoroughly reviewed the procedures in handling emergency incidents and implemented a series of improvement measures since August 2005, including -

(a) setting up two dedicated pager numbers for the exclusive use of the Police and other government departments to report emergency cases relating to the BD during office hours;

(b) providing the Government Hotline 1823 (Hotline) with the mobile phone numbers of the senior professional officers of the BD so that upon receipt of reports of emergency incidents during office hours, the Hotline staff can contact the senior professional officers concerned directly and expeditiously for taking speedy follow-up actions; and

(c) revising the performance pledge time for conducting inspections to emergency incidents concerning buildings and building works during office hours. Upon receipt of an emergency report, the BD officers will immediately go to the scene to carry out inspections. The revised pledge, with effect from August 2005, is to inspect the sites of emergency incidents in urban area within 1.5 hours, in the new towns of the New Territories within 2 hours, and in other areas of the New Territories within 3 hours upon receipt of the emergency reports.

13. The TD has accepted The Ombudsman's recommendations and has taken/will take the following actions -

(a) the TD, in conjunction with relevant government bureaux/departments (including the then Environment, Transport and Works Bureau, the Police and other works departments) has reviewed the procedures for handling emergency traffic and transport incidents and issued the "Handbook on Handling of Emergency Traffic and Transport Incidents" (the Handbook). Apart from setting out the concerned departments' roles, responsibilities and contact points of various departments, the Handbook clearly states that the Police, upon receiving a report of an incident, must immediately deploy its staff to the site to conduct investigation and notify the TD upon deciding on the implementation of road closure or extension of the scope of closure or traffic diversions to facilitate the ETCC to arrange co-ordination and liaison as necessary. At present, the control centres of the Police on Hong Kong Island, in Kowloon and the New Territories would at once notify the ETCC by direct telephone lines the occurrence of an incident and the ETCC would immediately take follow-up actions upon being informed by the Police;

(b) it has been clearly stated in the Handbook that when the ETCC receives a report on the occurrence of an incident, the TD's duty officer should approach the first contact points of relevant departments for follow-up actions. In case of not being able to make contact with the relevant first contact points within the specified time frame, the ETCC should at once contact the designated senior staff of the concerned departments to ensure that the incident in question would be followed up;

(c) in the event of an incident seriously affecting the traffic, the ETCC will co-ordinate not only temporary service changes with various public transport operators, but also road traffic management with the Police. When necessary, the ETCC will seek the Police's assistance in intercepting vehicles in the peripheral districts and arranging motorists to make a detour round the scene of the incident in order to avoid causing the traffic queue to get longer and aggravating traffic congestion;

(d) at present, the ETCC will disseminate traffic news shortly upon receipt of notification of an incident. In the event of a serious incident that may affect the traffic condition of an extensive area, the ETCC will also disseminate the traffic condition of peripheral districts, such as where the traffic queues end on various trunk roads.

Apart from road traffic condition, the ETCC and TD's spokesperson will also provide the latest information relating to public transport services. The above arrangement would effectively divert motorists and members of the public to other roads and public transport network, thus reducing the impact of an incident on road traffic;

(e) at present, in case of emergency and possible serious impact on road traffic or public transport services, the ETCC will request the electronic media such as radio and television stations to disseminate traffic news in the form of "special traffic news", i.e. to broadcast the news and the TD's appeals in addition to the scheduled time slots for traffic news broadcasts. The TD will also request the Hong Kong Cable Television Limited to broadcast the latest traffic news by running text messages on the screen. This would facilitate members of the public in receiving timely information to reduce the chance of being trapped in "affected areas" if they miss a traffic news report;

(f) the TD has considered the proposal of notifying motorists, bus passengers on board and members of the public who wait for transport in the street of the occurrence of an incident by using loudhailers along the traffic queue with the assistance of the Police. At present, all police vehicles responsible for handling emergency cases are equipped with a public address system and there are established procedures for using such a system to disseminate information to the public. In the event of major incidents and depending on the situation, the Police will also arrange police officers equipped with loudhailers to appropriate locations for the exercise of crowd control. Major public transport operators will also assist in notifying members of the public of the emergency services at public transport interchanges concerned.

In addition, the TD will provide the public with real-time traffic information during incidents through various channels, including the electronic media, mobile telephone and paging companies, the government integrated call centre, display panels at bus termini, tunnel broadcasts and the TD's website. The TD's spokesperson will also provide the latest information to the radio or television to inform the public of the traffic congestion and alternative routes;

(g) the TD has requested property management companies and property developers to assist in disseminating relevant traffic news in major shopping arcades, office towers and residential buildings as well as on mega television screens in the event of traffic incidents. So far,

one company has agreed to assist in disseminating such news. The TD will continue to seek the assistance of other companies in disseminating such news;

(h) in preparing the Handbook, the TD has worked out a mechanism for conducting reviews with various departments. The arrangement was that the TD would work with relevant departments in reviewing and updating procedures for handling emergency traffic incidents six months after the issue of the Handbook. Thereafter, the review would take place every 12 months; and

(i) the TD, together with the HyD, has completed a study on the provision of "movable concrete barriers" at suitable intervals along the road as central dividers to facilitate temporary traffic diversion. The provision of these barriers as central divider has also been implemented at two pilot locations, and the technical feasibility of this measure has been ascertained. The TD and HyD will provide this kind of barrier at other suitable locations.

Case No. 2006/1534：Delay in handling a complaint regarding unauthorised building works

14. A complaint was made to the BD on 4 March 2004 against unauthorized building works (UBWs) erected on two roofs (Roof A and Roof B). The complainant later found the subject UBWs were not yet removed and lodged a further complaint to the Government Hotline 1823 on 9 June 2006. The complainant subsequently filed the case to The Ombudsman.

Roof A

15. The BD issued a statutory order on 28 October 2003 against the UBWs on Roof A. A warning letter was issued to the owner in January 2004. Following the complaint received on 4 March 2004, prosecution action was initiated on 11 November 2004 against the owner who did not follow the order. The owner was convicted on 26 January 2005. The UBWs were subsequently removed. Following the complaint lodged on 9 June 2006, the BD noticed the re-erection of UBWs on the roof and therefore issued another removal order on 14 July 2006. The UBWs were subsequently removed by the owner.

Roof B

16. Regarding the UBWs on Roof B, the BD issued a statutory order on 24 August 1999. Following the complaint received on 4 March 2004, the BD carried out an inspection and found that the UBWs were still present. A warning letter was issued on 16 April 2004. However, due to the change of appearance of the subject UBWs from the original ones for which the statutory order was issued in 1999, legal advice recommended the BD to withdraw the warning letter and to issue a new order instead. A new removal order was thus issued on 14 July 2006. The BD carried out follow-up inspections to the site and confirmed that the UBWs were demolished. Since the subject UBWs were removed, the removal order was withdrawn on 8 December 2006.

17. The Ombudsman held the view that BD had not actively pursued the statutory orders issued in 2003 and 1999. The BD did not take timely actions to remove the UBW; instead, only made inspections and issued warnings to the concerned owners, without effective enforcement actions. In respect of Roof B, the old removal order was withdrawn in April 2005,

but new order was not issued until July 2006. Thus, The Ombudsman considered that the complaint against the BD was substantiated.

18. The BD has accepted The Ombudsman's recommendations and has taken/will take the following actions -

(a) the BD initiated prosecution proceedings against the concerned owners on Roof A and Roof B cases in November 2006. The subject UBWs were removed subsequently. Should there be any re-erection on the two roofs in future, the BD will take immediate enforcement action.

The BD will step up its enforcement actions against UBWs and expedite prosecution actions against cases of non-compliance. In particular, the BD will take stringent enforcement actions against repeated offenders, expedite the issuance of removal orders and initiate prosecution actions; and

(b) the BD will maximize the utilization of its resources to carry out necessary measures to curtail the re-erection of UBWs. For example, comparison of aerial photos is made yearly to identify re-erection of UBWs. It will also consider deploying contractors to remove the UBWs at the cost of the concerned persons.

Case No. 2006/1632：Impropriety in handling a complaint on unauthorised building works and failing to respond to the complainant's enquiries

19. The BD received a complaint (first complaint) via the Government Hotline 1823 (Hotline) against a suspected unauthorized ventilation duct (UVD) erected on a roof (Roof A).

20. A similar written complaint (second complaint) from another complainant was received by the BD one week later. The BD inspected the site and confirmed that the UVD had no immediate danger. The BD issued a written reply to the complainant in May 2006.

21. Upon confirmation with the complainant of the first complaint, the BD ascertained that the alleged UVDs mentioned in the two cases referred to the same item on Roof A. The BD provided a verbal response to the complainant via the Hotline in May 2006.

22. Upon receipt of the verbal reply, the complainant of the first complaint made further verbal enquiries to the BD. Staff of the BD explained the established enforcement policy against UVDs to the complainant that the BD would not take immediate removal actions against UVDs with no immediate danger. The complainant subsequently lodged a complaint with The Ombudsman.

23. The BD at a later stage confirmed with the MTR Corporation Limited (MTRCL) that the concerned ventilation duct was constructed within railway premises and related to railway operation. As such, according to the Mass Transit Railway Ordinance, prior approval and consent from the Building Authority (i.e. the BD) for the construction of the ventilation duct were not required and the duct in question was not unauthorized works. The BD subsequently clarified the situation with both complainants in August 2006.

24. After investigation, The Ombudsman noted that whilst the ventilation duct was not unauthorized, the BD staff advised the complainant that the duct was unauthorized building works, although no immediate removal action was envisaged under the established enforcement policy. Upon receipt of MTRCL's letter in June 2006, the BD then advised the complainant that the ventilation duct was not unauthorized works. It

illustrated that the BD staff did not carry out in-depth investigation on the complaint at the initial stage and provided incorrect information to the complainant. The Ombudsman opined that the BD staff did not indicate to the complainant the completion date and the construction material of the ventilation duct although they were specifically requested. Hence, The Ombudsman considered that the complaint was substantiated.

25. The BD has accepted The Ombudsman's recommendation and has reminded its frontline staff to follow the internal instructions on handling complaints, including collection and confirmation of all available information before replying to the complainants.

Environmental Protection Department

Case Nos. 2005/1334 (Environmental Protection Department), 2005/0235 (Food and Environmental Hygiene Department) and 2005/1966 (Lands Department)：Ineffective enforcement action against the operation of an unlicensed barbecue restaurant

26. The complainant claimed that a barbecue restaurant in a village was suspected to be operating illegally on an agricultural land held under a block government lease since around 2002, and the noise from its customers at night caused nuisance to him. He had complained to the Environmental Protection Department (EPD), Food and Environmental Hygiene Department (FEHD) and Lands Department (LandsD). While actions had been taken by the government departments, the barbecue restaurant remained in operation. The complainant lodged a complaint with The Ombudsman against the EPD, FEHD and LandsD for their failure to take effective enforcement action against the operation of the barbecue restaurant.

27. Staff of The Ombudsman visited the barbecue restaurant as customers and found that upon paying an admission fee, customers could choose the frozen meat and barbecue food on the menu and had a barbecue there without extra charge. Barbecue pits and other barbecue equipment were available for free. Customers could also purchase drinks, including beer.

EPD's actions

28. The EPD staff had carried out site inspections repeatedly to follow up the case, but no excessive noise was detected. Noise measurements taken by the EPD staff at the complainant's premises in the night time also showed that the level of noise from customers of the barbecue restaurant did not exceed the limit contained in the Noise Control Ordinance (NCO).

29. After investigation, The Ombudsman concluded that the complaint against the EPD was not substantiated.

30. The EPD has accepted The Ombudsman's recommendation and has examined the applicability of sections 4 and 5 of the NCO to the barbecue restaurant in question. As the operation of the barbecue restaurant is commercial in nature and the premises concerned cannot be regarded as domestic or public places in nature, these provisions are found to be not applicable. The EPD has explained this to the complainant accordingly.

FEHD's actions

31. At present, there is no specific food business licence for the operation of a barbecue restaurant. Operator of a barbecue establishment usually applies for a "Food Factory Licence" (for the manufacture of food for sale) or a "Fresh Provision Shop Licence" (for the sale of fresh or chilled meat) to provide the food for barbecue and consumption off the premises. Customers will purchase the food or barbecue packs and have barbecues off the premises. If a food factory or fresh provision shop provides meals, drinks or reception services in the barbecue area, the person-in-charge is required to apply for a "Restaurant Licence". Failure to do so constitutes a contravention of the Food Business Regulation (Cap. 132X) or the licensing conditions. If the open space used for barbecues outside the premises of a food factory or fresh provision shop is owned or rented by the person-in-charge of the food business for the purpose of providing barbecue service, the FEHD will deem such a "2 in 1" operation mode to be a general restaurant. In that case, it is against the law should the person-in-charge fail to apply for a "General Restaurant Licence".

32. Since November 2002, upon receipt of numerous complaints from the complainant and nearby residents against the illegal operation of the barbecue restaurant, the FEHD has carried out investigations and found the complaints substantiated. From December 2002 to December 2005, the FEHD instituted a total of 25 prosecutions against the person-in-charge of the barbecue restaurant for illegal operation of a restaurant.

33. In view of the continued illegal operation of the barbecue restaurant, the FEHD intended to apply for a closure order from the court for complete suspension of its business at the end of 2004. However, the barbecue restaurant changed its mode of operation in March 2005, claiming that food was purchased from a store opposite the site and brought into the premises for barbecue by the customers themselves. As the barbecue site only provided barbecue facilities and services without offering any food, it was not a restaurant. The FEHD considered this was only a way to disguise the illegal operation and deployed its Intelligence Unit staff to collect evidence. It was found that the store concerned was also run by the person-in-charge of the barbecue restaurant. Accordingly, the FEHD prosecuted the person-in-charge twice in April 2005. In June 2005, the FEHD again sought legal advice with a view to applying for a closure order. The legal advice was that since the store had submitted a formal application for a "Fresh Provision Shop Licence" to the FEHD in May 2005, and, according to the law, the closure order would be rescinded upon the issue of the licence, it was not advisable for the FEHD to apply for a closure order at that stage.

34. Nevertheless, the FEHD continued to take actions against the illegal operation of the unlicensed barbecue restaurant. From October 2005 to April 2006, seven prosecutions were instituted against the store concerned for illegal sale of chilled meat. After investigation, The Ombudsman concluded that the complaint against the FEHD was unsubstantiated.

35. The FEHD has accepted The Ombudsman's recommendations and has taken/will take the following actions -

(a) the FEHD has all along been concerned with the mode of operation of the subject barbecue restaurant and has arranged frequent surprise inspections. During these surprise inspections, the FEHD did not find the store selling chilled meat. However, from end-2006 to mid-2007, the FEHD noticed that at times, there were people selling chilled meat in the open space nearby. The FEHD has instituted four prosecutions to tackle the situation. The FEHD will continue to closely monitor the premises. If it is confirmed that the premises are operating as an unlicensed restaurant, the FEHD will take enforcement actions, including the application of a closure order, in order to close down the unlicensed premises;

(b) according to the existing legislation, and having regard to the particular circumstances of each case, enforcement actions can be taken against the operator of the unlicensed barbecue restaurant. If the FEHD discovers that the premises are selling food for barbecue without a licence, the offender will be prosecuted under section 31(1)(d) of the Food Business Regulation (Cap. 132X) for operating an unlicensed fresh provision shop. If services and venues are also provided to customers for barbecue and consumption of food and drinks, the offender will be prosecuted under section 31(1)(b) of the same Regulation for operating an unlicensed restaurant. Furthermore, the FEHD may apply for a closure order from the court under section 128B of the Public Health and Municipal Services Ordinance (Cap. 132) to close the premises that carry on food business without a licence; and

(c) if the FEHD discovers during inspections that the subject barbecue restaurant is operated as unlicensed food premises and sells liquor illegally, in addition to prosecuting the operator of the premises, it will also refer the illegal sale of liquor to the Police for follow up. Joint enforcement actions will be taken with the Police if necessary.

LandsD's actions

36. Barbecue activity on agriculture land is not a breach of lease conditions under a block government lease; but if unauthorized structures are erected, it is possible to take action under Land (Miscellaneous Provisions) Ordinance.

37. As early as April 2002, the LandsD and Housing Department (HD) started to follow up the unauthorized structures erected on the barbecue site. In July 2002, the District Lands Office (DLO) issued a warning letter to the landowner requiring him to demolish illegal metal frameworks and chain-link fence, which were demolished by the operator accordingly.

38. In October and November 2002, movable market stalls with electricity and water pipe connections were found on the barbecue site by the DLO. Legal advice confirmed that these stalls were structures. The case was referred to Squatter Control Unit of HD (SCU/HD) for action in March 2003. At the request of the SCU/HD, a cross-departmental meeting was held in June 2003. At the meeting, it was agreed that the DLO should seek further legal advice to confirm whether the stalls were structures.

39. Legal advice was received in September 2003 and the stalls were confirmed to be structures. The DLO issued a letter to the landowner on 24 November 2003 requiring that the stalls be demolished before 8 December 2003, otherwise, the SCU/HD would take appropriate enforcement action. However, the landowner did not take any action in response to such warning.

40. A cross-departmental joint site visit was conducted on 4 December 2003. During the site visit, the electricity wires and water pipes were found disconnected from the stalls and all the stalls were demonstrated movable. The stalls were therefore not regarded as structures and no enforcement action was carried out. Since then, the SCU/HD has continued to inspect the barbecue site.

41. In October 2004, the complainant lodged a complaint to the DLO against the suspected unauthorized structures in the barbecue site. The DLO found that the stalls were connected with electricity wires and water pipes again. The operator was then warned at the spot to remove the structures. In the subsequent inspection, the DLO detected that the irregularity persisted. The DLO then requested the SCU/HD to demolish the unauthorized structures. However, the SCU/HD advised that no electricity wires and water pipes were

found connected to the stalls during their site inspections. The SCU/HD considered that the situation of the barbecue site was the same as that in the joint site inspection on 4 December 2003 and that the stalls were not structures. As such, the SCU/HD replied to the DLO that they could not take enforcement action.

42. The Ombudsman considered that the LandsD had repeatedly urged the HD to take enforcement action and had sought legal advice accordingly. As such, the LandsD had actively followed up the case. Complaint against the LandsD was considered not substantiated.

43. The LandsD has accepted The Ombudsman's recommendation. The case was discussed in the DLO District Case Steering Conference on Land-Squatter Control held on 11 August 2006. It was agreed that the unauthorized structures on the barbecue site should be cleared if the breach persisted upon expiry of the final "21-day" warning letter issued to the land owner. The first warning letter was issued to the landowner on 24 July 2006. During the inspection on 15 August 2006 it was noted that demolition work was being carried out by the landowner. On 22 August 2006, joint site inspection by both the DLO and the Squatter Control Unit of LandsD[1] found that all structures in question had been demolished.

[1] The Squatter Control duties of HD has been transferred to LandsD since 1 April 2006.

Food and Environmental Hygiene Department

Case Nos. 2006/0091 (Food and Environmental Hygiene Department) and 2006/0805 (Lands Department) : Lack of effective inter-departmental co-ordination and communication, thereby causing delay in approving an application for the provision of a dog latrine in the vicinity of a private housing development

44. In 2003, the owners' incorporation (OC) of a private housing development applied to the Food and Environmental Hygiene Department (FEHD) through its management company for the provision of a dog latrine in the vicinity. Years lapsed without much progress. The OC learnt from the FEHD that the application required the approval of a number of government departments. However, relevant details and progress were not available. The role of each department, the actual difficulties encountered, or whether there was sufficient inter-departmental communication, also remained unknown. The OC therefore lodged a complaint with The Ombudsman against the FEHD and subsequently requested that, among others, the Lands Department (LandsD) be also included as the subjects of the complaint. The OC complained that the lack of progress of the application had resulted from a lack of inter-departmental communication and co-ordination.

45. The FEHD submitted a total of three separate government land allocation applications for a site for the proposed dog latrine over a period of about 11 months. The FEHD's first application was submitted in October 2003 to the District Lands Office (DLO) but it was superceded by a second application in April 2004, which was again superceded by a third application in September 2004 because the first two locations were unacceptable after consultation with the relevant offices. The locations of the sites in each application were different.

46. In the course of site selection, the FEHD had to take into account the request of the OC to have the dog latrine built far away from its housing development but near an indoor sports centre.

47. The proposed dog latrine was classified as minor works and the FEHD's application was processed under the simplified allocation procedure. This procedure is intended to speed up the allocation procedure and allocation can be made on the basis of the simplified allocation conditions without the need for any prior formal circulation, unless the LandsD's case officer considers prior consultation is required. In normal cases where such prior consultation is not deemed necessary, the responsibility for

consulting other departments rests with the allocatee after the allocation is made.

48. In processing the first and second applications, the DLO had consulted the Water Supplies Department (WSD) but it had not conveyed the WSD's requirements, mainly the construction of u-channels to circumscribe the animal waste collection point to intercept the foul water to the FEHD because the two applications were subsequently dropped due to objection to the proposed location of the site.

49. In dealing with the third application, the DLO indicated the WSD's requirement mentioned above as part of the simplified allocation conditions. Moreover, on receipt of the WSD's advice that the proposed dog latrine might sit on top of an existing water main and that a trial hole to identify the exact location of the existing water main was required, the DLO conveyed such advice to the FEHD suggesting also that the existing water main needed to be diverted if required by the WSD.

50. In the end, as no suitable site in the vicinity of the private housing development could be identified for the provision of a dog latrine, the FEHD placed seven dog excreta collection bins nearby for use by the residents. Notices were posted in the area to educate dog walkers that they were responsible for cleaning up the excreta of their dogs. The FEHD's front-line staff would also pay special attention to street cleanliness and wash the pavements regularly.

51. The Ombudsman opined that, as the private housing development allowed its residents to keep dogs, it should also provide corresponding sanitary facilities for the convenience of its residents. It was unreasonable and selfish of the OC to expect the Government to solve its problem, and have a dog latrine built with public funds and according to its specification, i.e. far away from its doorstep and near an indoor sports centre. While the FEHD should give due consideration to any public request, in this case the District Environmental Hygiene Office (DEHO) concerned actually had sufficient grounds to refuse the request in the first place, considering the wider public interest involved. The delay due to indecision was unnecessary. Moreover, once it became obvious to the DEHO that it was not possible to build a traditional dog latrine in the flood pumping catchment area, it should promptly seek the advice of senior management and make a decision. The DEHO should also have convened working meetings as early as possible with government departments concerned to discuss the issues directly. This could have saved much time spent on communication by correspondence. The Ombudsman therefore concluded

that the complaint against the FEHD was substantiated.

52. The Ombudsman considered that had the DLO passed the WSD's requirement received in processing the first and second applications to the FEHD, it would have enabled the FEHD to learn about the foul water treatment requirement in the flood pumping gathering ground earlier. The Ombudsman concluded that there was no communication problem between LandsD and other departments, but the inadequacy in handling the case on the part of LandsD had indirectly caused delay in the application. Therefore, the complaint against LandsD was found to be partially substantiated.

FEHD's actions

53. The FEHD has accepted The Ombudsman's recommendations and has taken the following actions -

(a) the FEHD stated clearly in its reply dated 10 August 2006 to the management company that the latter's request for the provision of a dog latrine would not be entertained;

(b) the FEHD has updated the Operational Manual on "Provision of Dog Toilets or Dog Excreta Collection Bins" to clearly set out the detailed work flow. According to the updated Manual, a District Environmental Hygiene Superintendent (DEHS) should seek the advice of the respective Assistant Director for all special circumstances or complicated cases which cannot be readily settled. A decision should then be made as to whether to put the case to the District Management Committee or other forum of the District Council for deliberation so as to tackle the matter in a more effective and efficient manner; and

(c) the Manual has also detailed the factors to be considered for the provision of dog latrines and the situations under which dog excreta collection bins can be provided. The updated Manual was issued to all DEHSs on 12 September 2006 by email, and took immediate effect.

LandsD's actions

54. LandsD has generally accepted The Ombudsman's recommendation.

55. The Simplified Allocation Procedures, introduced in 1985, are aimed at simplifying the workflow in order to expedite the approval process so that the project office can start a project at the earliest opportunity. The Lands D has reviewed the procedures having regard to the comments made by The Ombudsman. The Lands D has reminded staff in DLOs in processing the applications for Government land allocation by way of Simplified Allocation Procedures to convey any comments received from any prior consultation to the applicant department as this may facilitate the processing of the application.

Government Secretariat – Education Bureau[2]

Case No. 2005/4125：Failing to properly handle a complaint about wilful decision by a subsidised school in changing its school uniform supplier

56. The complainant, originally the former school uniform supplier of an aided school (the school), complained that the school had failed to follow the guidelines set out by the Education Bureau (EDB) on changing its school uniform supplier. He also complained that the school requested him to provide some 300 prefect bands free of charge. In this connection, he lodged a complaint to the EDB but was unable to get a satisfactory reply. He deemed that the EDB had failed to handle his complaint properly by just giving written advice to the school in the light of his complaint but initiated no concrete follow-up action against its malpractice. He thus lodged his complaint to The Ombudsman against the EDB for its partiality towards the school.

57. After investigation, The Ombudsman held the view that the school had only acted as an intermediary in the purchase of school uniforms to allow parents to have another alternative in buying uniforms not only at an affordable price with desirable quality, but also meeting the school's requirements. The school was neither a buyer nor seller of school uniforms. It was not supposed to undertake purchases on behalf of parents so it was not required to go through any tendering procedures in selecting its school uniform supplier.

58. In its written reply to the complainant, the EDB had used the words "scheduled tenders". The choice of words might have caused the complainant to misinterpret that the school had committed a serious procedural mistake in changing its supplier and yet no penalty was imposed upon the school by the EDB. As he believed that the EDB was showing partiality towards the school, he lodged a complaint with The Ombudsman against the EDB.

59. Since the school and the nominated supplier did not have any business relationship as "buyer" and "seller", there was no need for the school to arrange a tender invitation to change its supplier. The EDB

[2] References to "Education Bureau" in the Government Minute also mean "Education and Manpower Bureau" before the re-organisation of the Government Secretariat on 1 July 2007.

should pay more attention to its inappropriate use of words in this case. All in all, no evidence was found in the course of investigation that the EDB had handled the complainant's complaint unfairly.

60. Besides, the complainant also queried about the school's request for the "donation" of prefect bands after it had made a decision to change its school uniform supplier. He stressed that he saw no reason why he had to subsidize the students. The Ombudsman pointed out that if the complainant held the view that the school's act of changing its uniform supplier was actually an act of ignoring his original purpose of donation and he was offended accordingly, then the complainant's thought and intent would inevitably lead to a skeptical impression that he was in fact offering an advantage to the school in return for doing business with it.

61. In this light, The Ombudsman ruled that the complaint was not substantiated. However, it opined that there was room for improvement in the EDB's handling of the case.

62. The EDB has accepted The Ombudsman's recommendations and has taken the following actions -

(a) the EDB has reminded its front-line staff to use clear and precise words when responding to the public in writing in order to avoid misunderstanding;

(b) the fundamental principles for conducting trading operations in schools, such as no purchase or acceptance of paid services should be compulsory, and prices should be negotiated with trading operators/suppliers annually where appropriate, etc., as stated in a circular to schools are also applicable to the arrangement on recommending a school uniform supplier to parents. The EDB will review the circular regularly and revise when necessary; and

(c) the EDB has given written recommendations to the school again to remind it of the following -

(i) the "Guidelines on Tendering and Purchasing Procedures in Aided Schools" should be strictly followed in respect of the school uniform suppliers. The EDB's approval should be sought prior to any change of suppliers;

(ii) the "Guidelines on Tendering and Purchasing Procedures in Aided Schools" concerning the provision on obtaining quotations in the purchase of prefect bands should be strictly followed; and

(iii) the "Guidelines on Tendering and Purchasing Procedures in Aided Schools" concerning the provisions on price and quality comparison between the suppliers and those on the market periodically should be strictly followed.

Government Secretariat – Development Bureau[3]

Case No. 2005/2190, 2005/2213：Mishandling two applications for short-term use of Government land

63. In September 2004, the complainants, who were two event organisers, separately applied for short-term use of a Government site, one for April and October 2005 and one for October 2005. At the same time, the Lands Department (LandsD) decided to let the site to a certain statutory body on a short-term tenancy (STT) for April and October for three years from 2005 to 2007. The Development Bureau (DEVB) replied to the two complainants in October 2004 that short-term use of the site was being considered and that LandsD would invite tenders by the end of 2004 or early 2005. The event organisers could then submit their bids.

64. Since then, the complainants had not seen any invitation for tenders, but another event organiser (Company A) was found to advertise in April 2005 a function to be held at that very site in October 2005.

65. Against this background, the complainants complained to The Ombudsman against the DEVB for mishandling their applications. The DEVB said in its reply on 12 October 2004 that the LandsD would invite tenders later and did not mention that the October slot had already been taken.

66. The Ombudsman considered that the DEVB had ample opportunities to inform the complainants of the results of their applications and the real situation. This was a straightforward matter of facts. There was no excuse for the DEVB not to be open and simply advise the complainants that the slots requested were not available.

67. The Ombudsman accepted the decision of the DEVB for not disclosing specific information about another applicant. However, it should have been possible, without any mention of another event organiser, to advise the complainants from the outset that the slots sought were not available and that the site was subject to subletting.

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[3] References to "Development Bureau" in the Government Minute also mean "Housing, Planning and Lands Bureau" before the re-organisation of the Government Secretariat on 1 July 2007.

68. The DEVB’s handling of the matter had fallen short of reasonable public expectations of an open, transparent and responsible government and the complaint was thus substantiated.

69. The DEVB has accepted The Ombudsman's recommendations and has taken the following actions in accordance with those recommendations -

(a) the DEVB issued an apology letter to the complainant in July 2006; and

(b) the DEVB has reminded its staff of the need to give timely replies with accurate and adequate information to public enquiries and applications.

Highways Department

Case No. 2006/0935 (Highways Department)：Failing to verify the ownership of a site, resulting in village lighting works being carried out on private land; and
Case No. 2006/0936 (Lands Department)：Issuing an excavation permit without checking whether the road works involved private land

70. The complainant, an owner of a village site, claimed that some years ago the enclosing wall on the site had been set back three feet by the former owner to enable the Government to build an access road for the villagers. At the request of another lot owner within the same village in August 2005, the Highways Department (HyD) decided to relocate a village light from the requestee's lot to government land thereon. After the HyD decided on the new location of the village light, its contractor proposed to run the cable from another village light underground through the government land. With delegated authority from the Lands Department (LandsD), the HyD exempted the contractor from applying for an excavation permit. However, the HyD did not check the land status and part of the cable was in fact laid outside the enclosing wall but within the complainant's site. The complainant lodged a complaint against the HyD for its failure to verify the ownership of a site, resulting in village lighting works being carried out on his site, and against the LandsD for issuing an excavation permit without checking whether the road works involved private land.

71. As the incident had been caused by the negligence of the HyD's staff, The Ombudsman was of the view that the complaint against the HyD was substantiated. However, as no application for an excavation permit from HyD was received, the District Lands Office (DLO) had never issued an excavation permit for the works in question. The complaint against the LandsD was found not substantiated.

72. Both the HyD and LandsD have accepted The Ombudsman's recommendations. The verification of the lot boundary of the complainant's lot and the adjacent government land has been completed. The HyD will continue to actively liaise with the complainant for earliest completion of the remaining cable trench reinstatement works within the complainant's lot and the relocation of the concerned village light from the complainant's lot to government land.

Hospital Authority

Case No. 2006/0445 (Hospital Authority)：Unreasonably requiring the complainant to attend a hearing test despite previous confirmation of his deafness by a doctor in respect of his application for Disability Allowance;
Case No. 2006/0446 (Social Welfare Department)：Wrongly referring the complainant to a general clinic for assessment of deafness in respect of his application for Disability Allowance

73. The complainant's father, an applicant to the Social Welfare Department (SWD) for disability allowance (DA) on grounds of deafness, was referred to a Hospital Authority (HA)'s General Outpatient Clinic (GOPC) for assessment. A doctor certified his deafness and recommended DA for six months.

74. Before expiry of the grant period, the complainant requested renewal of the applicant's DA. The SWD again referred the applicant for assessment at the GOPC. This time, another doctor did not conduct an assessment but referred him to an HA specialist clinic instead. There, the applicant was told to attend a hearing test more than 16 months after the expiry of the grant period.

75. The complainant criticized the SWD and HA for their lack of co-ordination over the applicant's renewal of DA.

76. To be eligible for DA, an applicant must be certified to be in a disabling physical or mental condition, or profoundly deaf. According to the SWD's manual of procedures, an applicant claiming to be profoundly deaf but not having had a hearing test will be referred to an Ear, Nose and Throat (ENT) doctor of the HA for assessment and certification.

77. After investigation, The Ombudsman concluded that it was reasonable for the HA to require all applicants for DA for profound deafness to have a proper hearing test. Consequently, the assessment of the doctor at the GOPC without such a test could not be taken as confirmation that the applicant was suffering from profound deafness.

78. In this light, The Ombudsman considered the complaint against the HA unsubstantiated. However, the certification of deafness and recommendation for DA by the first doctor at the GOPC without regard to proper procedures constituted an act of maladministration.

79. As regards the complaint against the SWD, The Ombudsman considered that the staff member might be excused for the first referral to a GOPC, as he might be uncertain about the applicant's ailment. However, it was clearly not in keeping with the SWD manual for the Social Security Field Unit to accept the assessment of deafness by the GOPC doctor, instead of an ENT doctor, and to grant DA to the applicant based solely on such assessment.

80. With the second referral, the staff member should have been quite clear that the applicant was seeking renewal of his DA on grounds of deafness and referred him direct to the specialist clinic for assessment, not to the GOPC again. There could be no excuse for this error. The complaint against the SWD was therefore substantiated.

81. The HA has accepted The Ombudsman's recommendation and has reminded its doctors of the SWD's established procedures for assessment of profound deafness for DA application purposes. In particular, GOPC doctors has been reminded that support for such cases could not be made in a GOPC and should only be made after the assessment and the conduct of hearing test by ENT doctors.

82. The SWD has accepted The Ombudsman's recommendation and has issued instructions to remind its staff members of the proper procedures in making referrals for medical assessment for cases applying for DA on grounds of profound deafness to avoid recurrence of such incident.

Housing Department

Case No. 2005/3789：Delay in recovering a public housing unit and effecting transfer of tenancy to the complainant, who had custody of her child after divorce

83. The complainant used to live in a public housing unit with her husband and son. After divorce, she was granted custody of her son and tenancy of the unit. Nevertheless, her ex-husband refused to move out. She complained that the Housing Department (HD) had delayed recovering the unit for her.

84. According to housing policy, divorced tenants will not be offered an extra housing unit. If they cannot reach agreement, the department will normally grant the tenancy to the party having custody of their children.

85. The HD had written and telephoned the ex-husband many times to arrange an interview but in vain. He only stated that he could not reapply for public housing because his income exceeded the limit. At the same time, he was unwilling to move out because of his alleged financial difficulty. At his request, the HD referred his case to a social welfare organisation. After assessment, the organisation considered compassionate rehousing not justified.

86. The HD notified him of the result and tried to make another appointment for an interview. Again, he did not respond. The department eventually issued him a Notice of Termination of Tenancy and a Notice to Quit (NTQ). He then lodged an appeal. As the hearing would take some time, the HD allotted another unit to the complainant. The process took over four months. The complainant then lodged a complaint with The Ombudsman against the HD for its delay in recovering her public housing unit.

87. The Ombudsman considered that the HD, having granted the tenancy of the unit to the complainant according to its policy, should have recovered the unit promptly from the ex-husband so that the complainant and her son would not be left homeless. If the ex-husband was in difficulty, the HD could help him by offering interim housing for one year. Referral of his case to a social welfare organisation had served no purpose.

88. The HD's procrastination by repeatedly arranging interviews with the ex-husband had caused considerable unfairness and hardship to the complainant. The complaint was thus substantiated.

89. The HD has accepted The Ombudsman's recommendations and has taken the following actions -

(a) the HD issued an apology letter to the complainant on 4 May 2006; and

(b) the HD issued a supplementary Estate Management Division Instruction on 31 August 2006, stipulating that if the divorced parties cannot have an agreement over their housing arrangement, a period of not more than two months would be allowed for the divorced parties to make up their mind. If the single displacee refuses to leave, NTQ should be issued to recover the unit within two months after the displacee has twice within a month failed to turn up for an interview without acceptable reasons.

Case No. 2006/2916：Failing to assist divorced tenants in solving their housing problems

90. The complainant, her husband and their two children were authorised persons of a public rental housing (PRH) flat, and her husband was the tenant of the flat. The Housing Department (HD) served a NTQ on her husband on 31 May 2005 to terminate the tenancy due to his rent arrears. He then lodged an appeal to the Appeal Panel (Housing) (Appeal Panel) which is responsible for determining appeals lodged under the Housing Ordinance against the termination of lease agreements between the Housing Authority and its tenants and waited for the hearing.

91. In early 2006, the complainant informed staff of the District Tenancy Management Office of the HD that she had completed the formalities for her divorce with her husband and was granted the custody of their daughter. Their grown-up son also agreed to live with her. They were living in a private rental flat temporarily and wanted to resume their PRH tenancy. The staff then explained to her that since the HD had issued a NTQ to her ex-husband and he had proceeded to appeal for reinstating the tenancy of the PRH flat concerned, whether the complainant and her children could resume the tenancy of the flat would be subject to the hearing to be conducted by the Appeal Panel and its decision over the NTQ.

92. In March 2006, the complainant told the HD staff that she wanted to resume the tenancy of the PRH flat as soon as possible and requested for a transfer owing to her being harassed by her ex-husband. The HD staff explained to the complainant again that she could apply for transfer to other PRH unit by giving justifications subject to the withdrawal of the NTQ by the Appeal Panel and the completion of the formalities for transfer of tenancy to her.

93. After conducting a hearing on the NTQ on 1 June 2006, the Appeal Panel decided that the NTQ should lapse automatically if her ex-husband could settle all the outstanding rent by 30 June 2006. The ex-husband made a request to stay over and the complainant agreed to let him live in the above flat up to 13 July 2006.

94. All the rent in arrears was settled on 15 June 2006 and the NTQ lapsed automatically. The HD staff invited her ex-husband to complete the formalities for the voluntary surrender of tenancy and the transfer of tenancy

to the complainant. She also completed the formalities for transfer of tenancy on 30 June 2006, and submitted an application for a Certificate of Eligibility for Purchase of a flat in the Home Ownership Scheme (HOS) Secondary Market on 7 July 2006.

95. On 19 July 2006, she made a telephone complaint to the HD staff stating that her ex-husband was still living in the above flat and had broken the chain and lock installed by her. In response, the HD staff said that her ex-husband should have moved out on 13 July 2006 according to their agreement. If he had not done so yet, it meant that he was occupying the flat illegally and the complainant could seek assistance from the Police. The staff also explained to her that the HD did not have the statutory authority to act on behalf of a PRH tenant and evict his/her ex-family members. To better understand the situation, the HD staff telephoned her ex-husband immediately. He said that he had moved out, and that he went back to the flat just for collecting his letters. He stayed in the flat because he found that his ex-wife had not moved back to the flat yet and the lock was not replaced either. When he later found that the metal gate was locked with a chain, he broke the padlock in order to leave the flat. The HD staff warned him not to return to the PRH flat again, otherwise, the complainant could report to the Police for assistance.

96. The complainant submitted a Notification of Surrender of Tenancy on 1 September 2006 on grounds of having purchased a second-hand HOS flat and she surrendered the PRH flat concerned on 15 September 2006.

97. The complainant lodged a complaint with The Ombudsman against the HD's failure to assist in solving her housing problems.

98. While the complainant agreed that her ex-husband could live in the flat up to 13 July 2006, she did not make a complaint to the HD against his failure to move out until 19 July 2006. By the time the HD staff knew about the case, he had already left the flat. All the HD could do to help the complainant at that time was to suggest that she should report the case to the Police and to contact her ex-husband for more details and give him a warning. The Ombudsman, therefore, considered that the case did not involve maladministration on the part involving the HD. The Ombudsman also considered it reasonable for the HD staff to refuse to accept the complainant's application for transfer before she formally became the tenant of the flat.

99. The Ombudsman could not come to a conclusion on whether the staff of the HD had unreasonably rejected the complainant's application for transfer and that this had caused the complainant to resort to the purchase of a HOS flat in the Secondary Market, due to no objective corroborative evidence on the dialogue between the two parties. The Ombudsman, however, considered that in dealing with similar cases, especially transfer cases which did not involve the abuse of public housing resources, the HD should offer its assistance more readily and handle such cases in a more flexible manner. Finally, The Ombudsman considered the complaint unsubstantiated.

100. The HD has accepted the Ombudsman's recommendation and has looked into the need for revising the standard procedures for handling the recovery of PRH flats arising from divorce cases. The HD's existing policies are as follows -

(a) if an agreement can be reached between the two parties to a divorce for matters such as which party to move out, accommodation arrangements during the transitional period, the effective date of the transfer of tenancy and the ownership of household items, the HD will respect their decision and proceed with the necessary tenancy procedures (such as transfer of tenancy and deletion of household members) according to the actual circumstances without persuading the party being granted the tenancy to let the other party stay in the flat temporarily; and

(b) if an agreement cannot be reached between the two parties to a divorce, the HD will grant the tenancy of the PRH flat in question to the party having been granted the custody of children by the court in accordance with the existing instruction. If the single party being displaced from the PRH flat (whether he/she is the tenant) is unco-operative, the HD will normally make transfer arrangements for the other party before issuing an NTQ to recover the PRH flat.

101. This policy enables the HD to adopt a flexible approach in handling the housing arrangements for PRH divorced couples, with due regard to the circumstances of individual cases. As such, the HD considers the existing policy effective. In addition, the HD is of the view that setting a standard procedure for cases where an agreement has been reached between parties to a divorce (such as requesting the displaced party to deliver up "vacant

possession" of the flat) may undermine the flexibility of management work and in turn dampen the effectiveness of the policy.

102. Drawing on the experience gained from this case, the management staff of the HD has been instructed to take timely action to explain the policy mentioned above to both parties to a divorce case. In addition, the HD will instruct its frontline staff to step up actions to guard against problems that may arise from the matters agreed between the parties to a divorce and take effective and practical measures (such as making arrangements as far as possible for the handover of keys from one party to the other party, and advising the party that retains residence in the flat to change the lock of the main door) to avoid the occurrence of similar conflicts.

Case No. 2006/3277：Impropriety in handling backflow of sewage in the complainant's unit and failure to take follow-up action after the incident

103. On the night of 23 April 2006, property management office of a PRH estate received complaints from two tenants in respect of backflow of the toilet of their flats. Investigation by the HD's maintenance contractor found out that the backflow was caused by the blockage of the soil stack at the clinic on the ground floor, which was a divested property of the Link Management Limited.

104. The soil stack was found to be concealed by decorative partitions. After liaison, explanation and persuasion, the operator of the clinic allowed the maintenance contractor to dismantle the decorative partitions. The blockage was then cleared. A towel therein, which clogged the drain, was taken away in the early next morning. Though the backflow problem was rectified, one of the tenants was dissatisfied with the HD's handling of the case and lodged a complaint to The Ombudsman about the following -

(a) improper handling of the toilet backflow problem of her unit causing a delay of about seven hours for its rectification; and

(b) no proper follow-up actions and response to her complaint and enquiry after the incident.

105. After investigation, The Ombudsman noted that upon receipt of the complaint, the security contractor staff of the HD had taken up the co-ordination and liaison role effectively. The Ombudsman also understood that it did take time for clearing the blockage, liaising with the shopping centre management agent and the clinic, as well as negotiating the arrangement of taking down the decorative partitions of the clinic. The Ombudsman considered that the actions taken by HD at the incident night were reasonable. Allegation (a) was therefore unsubstantiated.

106. Regarding the HD's follow-up actions and response to the complainant, The Ombudsman noted that the HD did provide appropriate follow-up actions after the incident. The Ombudsman also agreed that it was reasonable for the HD not to reply the complainant directly so as to avoid affecting the independent investigation of the adjuster. The Ombudsman hence considered that allegation (b) was unsubstantiated.

107. The HD has accepted The Ombudsman's recommendation and has reminded its frontline staff and the maintenance contractors to shut down the flush water supply as far as practicable subject to the condition, accessibility and available resources of the site in order to mitigate the backflow problem and the associated damages.

Immigration Department

Case No. 2006/1870：Poor General Enquiry Hotline Service

108. The complainant telephoned the Immigration Department (ImmD) General Enquiry Hotline a number of times in the period between 28 June 2006 and 3 July 2006, but the line was busily engaged and she was unable to reach the staff. She tried to call the Immigration Offices in Kowloon for enquiry but in vain. She was dissatisfied that the enquiry service failed to serve its function.

109. The Ombudsman considered that the hotline service of the ImmD was not satisfactory. The primary cause was that demand for the service had exceeded the level that the current system and manpower could cope with. The complainant called the hotline during the peak summer season, and was thus even less likely to reach ImmD staff.

110. However, The Ombudsman noted that the ImmD was mindful of the situation and has been endeavoring to improve its hotline service, such as submitting funding applications for enhancing the Telephone Enquiry System. In 2005, the Department also invited the Efficiency Unit to conduct a feasibility study on developing a comprehensive database to support the hotline service.

111. As the ImmD has all along been working hard to solve the problem and no maladministration was involved, The Ombudsman considered the complaint unsubstantiated.

112. The ImmD has accepted The Ombudsman's recommendations and has taken/will take the following actions -

(a) The ImmD regularly reviews the level of resources required for providing its various services. It has been seeking additional resources for the general enquiry hotline service. Besides, the ImmD has taken various measures to meet the operational need. The measures include temporary redeployment of two Immigration Officers to the Information and Liaison Section (ILS) for three weeks to handle the increasing number of email enquiries and the backlog; suspension of vacation leave of all staff between 25 June 2007 and 8 July 2007, which is the peak period for enquiry service; overtime work or cancellation of Saturday-offs; and conversion of

the eight telephone lines installed in the enquiry booths from internal access to external access in order to increase the number of telephone lines from 60 to 68. The ImmD would continue to monitor the workload and resources situation in order to maintain quality service to the public; and

(b) The ImmD was granted a funding of HK$9.5 million in 2007-08 for the replacement of the Telephone Enquiry System with the aim of increasing the number of telephone lines as well as enhancing the efficiency. Replacement of the existing telephone enquiry system is now in full swing. The new system will be implemented in the second quarter of 2008 tentatively. After the replacement of the telephone enquiry system, the ImmD plans to provide voicemail service subject to the availability of the required resources and the feasibility of providing such service.

Case Nos. 2006/2381 (Immigration Department) and 2006/2382 (Information Services Department)：Failing to respond to the complainant's email enquiry

113. The complainant sent an enquiry to the ImmD by email on 21 June 2006 about the refused entry of his friend but did not receive any reply. The complainant's email enquiry was screened out by the anti-virus programme of the ImmD's computer system and therefore not attended to.

114. On 26 June 2006, he sent an e-mail to the Information Services Department (ISD) asking for assistance. Similarly, he was not given any reply.

115. The Ombudsman considered it understandable for the ImmD to activate the "Message Filter" of the email processing software, by adopting its default value, for screening junk mails to tackle the emergency situation of a surge in junk mails at that time. However, being aware of the inadequacy of the software in which no auto alert function was available, ImmD failed to contact the software manufacturer on advice of the filter setting standards. There exist meagerness of the ImmD in this regard. The Ombudsman found the complaint substantiated.

116. According to the ISD's record, its Internet Resource Centre received the complainant's e-mail on 26 June 2006, which was sent to the Government Information Centre, and forwarded it to the ImmD for follow-up action on the same day. However, the staff responsible for handling this e-mail failed to follow the standing practice of informing the complainant that his e-mail had already been relayed to the ImmD for follow up action. After investigation, The Ombudsman concluded that the complaint against the ISD was substantiated.

117. The ImmD has accepted The Ombudsman's recommendation and sent a written apology to the complainant on 13 March 2007. Starting from February 2007, the ImmD had upgraded its system. With newly enhanced auto-reply features, senders of emails would receive acknowledgement. In its future system upgrades, the ImmD will also include the function of automated alert (i.e. an alert will be issued to a sender in situation where his email has been screened out).

118. The ISD has accepted The Ombudsman's recommendation and apologised to the complainant through an e-mail on 9 March 2007. It has reminded the staff concerned that she must follow strictly the standing procedures in dealing with similar cases in future.

119. In addition, the ISD noticed that referral of e-mails through Internet mail system might be subject to system failure or affected by the default settings of recipients' e-mail accounts. Hence, the ISD was unable to ensure that the policy bureaux or departments concerned had received the e-mails sent through the Internet mail system. In view of this, the ISD had taken immediate improvement measure that all e-mail enquiries would be relayed to the bureaux and departments concerned through the Government's internal e-mail system with return receipt function to ensure that the addressee concerned would receive the e-mail for follow up action.

120. Furthermore, a new Government portal, GovHK, jointly managed by the Office of the Government Chief Information Officer and the ISD was launched in September 2006. This new portal replaced the Government Information Centre on 25 May 2007. The GovHK is now providing a dedicated e-mail and hotline enquiry service, which is managed and operated by the Integrated Call Centre of the Efficiency Unit under the Government Secretariat. The Centre is equipped with an e-mail enquiry management system including detailed records on the receipt, reply and referral of every e-mail. It is expected that the new arrangement will be able to follow up e-mail enquiries more effectively.

Case No. 2006/3194：Poor Enquiry Hotline service at its Foreign Domestic Helpers Section

121. The complainant called the ImmD's Foreign Domestic Helpers Section (FDHS) Enquiry Hotline after receiving the reminder dated 25 August 2006 on employees retraining levy from FDHS. However, she could not get through the telephone line despite repeated attempts, and the voice mailbox was full at 0915 hours. She then called the ImmD's General Enquiry Hotline on 30 August 2006 and left her telephone number for reply by the staff of FDHS. As she did not receive any response in 6 days, she called the General Enquiry Hotline and FDHS Enquiry Hotline again but in vain. The complainant finally received a reply from FDHS on the seventh day after her enquiry, i.e. 6 September 2006.

122. The complainant then lodged a complaint with The Ombudsman against the ImmD for its poor enquiry hotline service at the FDHS.

123. The Ombudsman noted that the complainant had called FDHS but did not receive the required service. She then called the General Enquiry Hotline, but had not received a reply for six days. The complainant's dissatisfaction was therefore reasonable. Although the calls were made during the peak season and the ImmD's manpower for manning the General Enquiry Hotline and FDHS Enquiry Hotline was limited, there was no reason for the ImmD to take seven days to reply to the complainant's enquiry without notifying her the lead-time for reply in advance. The Ombudsman therefore found the complaint partially substantiated.

124. The ImmD has accepted The Ombudsman's recommendations. After conducting a review, the ImmD has issued an internal instruction setting out the procedures for handling telephone enquiry referred by the General Enquiry Hotline and the response time. If an enquiry was required to transfer to FDHS, staff of the General Enquiry Hotline would notify the enquirer that staff of FDHS would follow up the enquiry as soon as possible and would give a reply within four to seven working days.

Case No. 2006/3205：Poor telephone enquiry service at a marriage registry

125. The complainant intended to have his marriage celebrated by a civil celebrant of marriages and to give notice of marriage by himself. As advised by an officer of the ImmD General Enquiry Hotline, he called a marriage registry (Marriage Registry A) in early September 2006 to check the instant quota situation. However, the line was busily engaged and no voice mailbox service was provided. In the end, the complainant could not obtain the necessary information.

126. The complainant then lodged a complaint with The Ombudsman against the ImmD for its poor telephone enquiry hotline service at the Marriage Registry A.

127. The Ombudsman considered that as the complainant enquired about the quota situation for giving Notice of Marriage, it was correct for the officer manning the General Enquiry Hotline to advise the complainant to call Marriage Registry A directly. That said, given the difficulties in getting the line through during busy hours at Marriage Registry A, staff of the General Enquiry Hotline should make special arrangement with regard to the actual situation by referring the enquiry directly to the registry for reply. It would save the enquirer's time in making repeated but futile calls. The Ombudsman found the complaint partially substantiated.

128. The ImmD has accepted The Ombudsman's recommendation. All government appointment booking systems under the existing ESDlife website (www.esd.gov.hk) would be replaced by the GovHK website (www.gov.hk) in January 2008. The ImmD has been taking an active role in the development of the appointment booking system of GovHK. By then, all marrying couples intending to celebrate their marriages at a marriage registry, a licensed place of worship, or by a civil celebrant of marriages, can make an appointment for giving notice of marriage at a marriage registry either through the GovHK website or by telephone.

Lands Department

Case No. 2005/3240(A)：Failing to consult owners of an estate before approving the change of use of a shop in the shopping centre

129. In connection with an application for setting up a billiard establishment, the District Lands Office (DLO) under Lands Department (LandsD) received an application for amending the user stipulated in the Master Plans.

130. In July 2004, the DLO assured the complainant that it would consult all relevant government departments and that, in normal course, the District Office (DO) would collect local views as appropriate. In August 2004, the DLO consulted relevant departments who had no adverse comments. The DO enquired if there was a need for local consultation but the DLO did not reply. The DLO then gave a positive reply to the applicant.

131. Due to subsequent clarification of the departmental guidelines, the DLO, in April 2005, wrote to the applicant reminding him of the need to obtain approval to the proposed revision of the Master Plans, subject to payment of premium and administration fee and the agreement of other owners in accordance with Deed of Mutual Covenant. The complainant then lodged a complaint with The Ombudsman against the DLO for approving an amendment to the estate's Master Plan without consultation.

132. The Ombudsman found that the DLO had followed the departmental guidelines to consult other departments concerned before approving the application for the revision of Master Plan. However, the DLO had not carried out local consultation through the DO as expected before giving approval to the applicant. To sum up the above, The Ombudsman considered the complaint partially substantiated.

133. The LandsD has accepted The Ombudsman's recommendations and has taken the following actions -

(a) the LandsD sent a letter of apology to the complainant on 15 November 2006; and

(b) the DLOs were reminded to handle and reply carefully to enquiries from other departments at a directorate level meeting on 10 October 2006.

Case No. 2005/3573：Impropriety in handling a complaint about unauthorised change of land use and unauthorised structures, and failing to take enforcement action

134. In mid-2004, the complainant made a complaint to the LandsD about an unauthorized extension of an iron and steel factory (the factory) and change of use to a godown for storage of clothes.

135. The factory was covered by a short-term waiver (STW), which permitted operation of a metal manufacturing factory. The DLO referred the case in March 2005 to the Squatter Control Unit of the Housing Department (SCU/HD) for follow up action.

136. In June 2005, the operator of the factory (i.e. the tenant of the land concerned) submitted an application for a STW to regularize the unauthorized structures. In view of the application, demolition work was not carried out. On 20 October 2005 and 8 November 2005, the complainant lodged a complaint to The Ombudsman against the LandsD's impropriety in handling the earlier complaint to the LandsD. At the time of the complaint, no decision on the application was made by the DLO as the application was not submitted by the landowner and the landowner's consent to the application had not yet been obtained.

137. The Ombudsman considered that the DLO had failed to follow up the case actively after discovering the unauthorized structures. It simply tolerated the problem and hoped that SCU/HD would take action. Maladministration was indeed involved. Subsequently, the tenant of the concerned lot submitted an STW application in June 2005 to regularize the unauthorized structures, and the DLO did not need to require the landowner to demolish the structures for the time being. However, the DLO had not made any decision over one year after receipt of the application. Based on the above observations, The Ombudsman considered that the complaint against the LandsD partially substantiated.

138. The LandsD has accepted The Ombudsman's recommendation and promised to follow up and process the case actively. Following the rejection of the application for a STW to regularize the unauthorized structures on 30 August 2006, the operator of the factory was requested to demolish the unauthorized structures. On 29 September 2006, it was revealed that the factory had ceased operation but the extension remained on site. In view of the legal advice, lease enforcement action could not be

taken against the landowner. As the operator of the factory had not demolished the unauthorized structures, the STW for the factory was terminated on 10 May 2007. According to the company search, the operator of the factory was dissolved. Upon seeking further legal advice, DLO was advised that the structures could be demolished under section 12(1) of Cap. 28. A one month's notice under section 12(1) of Cap. 28 was posted on 3 August 2007. Demolition work was carried out by DLO upon expiry of the notice in early September 2007.

Case No. 2006/0090：(a) Failing to curb illegal earth filing; (b) Failing to cope with the consequential drainage and illegal parking problem; and (c) Not keeping the complainant informed of developments

139. The complainant complained to The Ombudsman that a DLO under the LandsD had been lax in enforcement action and failed to -

(a) curb illegal earth filling at a government site;

(b) cope with consequential drainage and illegal parking problems; and

(c) keep the complainant informed of developments.

140. According to the records, when the DLO detected the illegal earth filling, it was near completion. Reinstatement then was not feasible as it would affect the stability of the adjacent land and village houses. However, the DLO took steps to prevent deterioration.

141. The private land adjacent to the subject site was leased for village house purposes and the DLO had to conduct regular inspections. As the filling had been substantial and could not have been completed within a short time, the DLO could have detected and curbed it. Complaint (a) was partially substantiated.

142. The filling covered the drainage channels on a nearby slope managed by another government department. The DLO had notified the department concerned to handle the drainage problems. It had also conducted several site visits and liaised with relevant government departments on those problems. They had jointly explored various improvement measures and eventually requested owners of the adjacent private land to submit a site formation and drainage plan to solve the problems completely. This part of complaint (b) was thus unsubstantiated.

143. After discussion with the complainant, the DLO had thrice installed bollards to prevent vehicles from entering or parking at the filled area. However, facing strong protest from the village representative, the DLO allowed the contractor to remove some of the bollards.

144. The Geotechnical Engineering Office of the Civil Engineering and Development Department pointed out that for soil stability and pedestrian safety, no parking should be allowed there. Accordingly, The Ombudsman considered that the DLO should promptly erect additional bollards to stop vehicular ingress, instead of continuing to succumb to unreasonable protest. This part of complaint (b) was therefore substantiated.

145. After a site visit with the complainant, the DLO had informed him in writing of the situation and also kept in touch with him by telephone. Subsequently, the DLO visited the site again with him. The complainant had also been invited to attend an inter-departmental meeting on possible solutions to the problems. As the DLO had indeed kept the complainant well posted, complaint (c) was unsubstantiated.

146. Overall, the complaint was partially substantiated.

147. The LandsD has accepted The Ombudsman's recommendations and has taken the following actions -

(a) the LandsD has continued actively monitoring the site formation and drainage works in the context of soil stability, overall drainage and slope maintenance;

(b) the LandsD has reviewed the criteria to determine inspection priority and DLOs were instructed in February 2007 to step up the frequency of patrol and enhance early detection of such unauthorised activities;

(c) the DLO issued a letter to the complainant in February 2007 informing him of the latest progress to address his concern; and

(d) the DLO erected six metal bollards and one government land notice board at the site in January 2007.

Case No. 2006/1210：Failing to follow up an application for a short-term tenancy and a complaint about slope safety and unauthorised building works

148. In early October 1980, unauthorised occupation of Government land (GL) was detected in respect of a land lot (the Lot). As the Lot was found developed off-site, regularization by way of short-term tenancy (STT) could not be processed unless upon completion of boundary rectification. A Deed of Rectification (DR) was sent to the lot owner for execution. The DR was not executed due to changes of ownership of the Lot.

149. In December 1998, Complainant A, an owner of a unit of the Lot applied to the DLO for a garden STT. She was advised that the application would only be considered after execution of the DR. In April 1999, Complainant A applied for site boundary rectification. The DLO asked her to provide an agreement of all registered owners of the Lot regarding the boundary rectification. The agreement was then produced in June 1999.

150. In May 2004, the DLO received a complaint about illegal occupation of GL surrounding the G/F of the Lot. The DLO wrote to the concerned owners informing them of the illegal occupation and suggesting they should liaise with other owners of the Lot to execute a DR, prior to consideration of a STT to rectify the situation.

151. The DLO lost the subject file in respect of the period from December 1993 to September 2004.

152. In October 2004, Complainant B, another owner of a unit of the Lot complained to the DLO of unauthorized building works (UBW) on the 2/F and the roof. As the Buildings Department confirmed that there was no structural stress, the DLO informed the complainant that the UBW would be recorded for future enforcement action.

153. To resolve the STT issue, the DLO intended to process the STT in two phases whereby the GL involved in the boundary rectification would be covered by a STT upon completion of the DR. Upon circulation of the proposal, the Civil Engineering and Development Department (CEDD) in August 2005 did not recommend to grant the GL adjoining a slope on safety reason, unless the tenant agreed to maintain it. The DLO verbally enquired one of the complainants. In response, the DLO was requested to upgrade

the slope and to include the slope into the STT area. However CEDD said in October 2005 that they had no spare capacity to upgrade the slope.

154. In parallel, the DLO posted a notice in November 2005 regarding the proposed STT, six objections were received. In April 2006, the DLO approved the STT with conditions included to address the concerns of objectors.

155. In May 2006, Complainants A and B lodged a complaint to The Ombudsman against the LandsD for failing to -

(a) properly process the application for a STT;

(b) follow up the complaint against the UBWs on the second floor of the house; and

(c) take action to ensure the safety of the Government slope behind the house.

156. The Ombudsman considered that -

(a) though the LandsD had actively followed up the application for a STT after knowing the problem in 2004, the application had in fact been pending for five years. The DLO should be held responsible. Therefore, complaint point (a) was substantiated;

(b) due to resource constraints, the DLO has a need to prioritize its jobs. Though it is not ideal for the demolition action to be taken at a later time, it is not maladministration. Therefore, complaint point (b) was not substantiated; and

(c) as the Slope Maintenance Section did not consider that the subject slope would pose imminent danger, no immediate slope stabilization works were carried out. There is nothing wrong with that because the decision was made in accordance with LandsD's guidelines. Therefore, complaint point (c) was also not substantiated.

157. Overall, the complaint was partially substantiated.

158. The LandsD has accepted The Ombudsman's recommendation. In November 2006, the DLO issued an internal circular to remind all staff of security control and housekeeping matters. The LandsD Headquarters has also issued a LandsD Administrative Circular in November 2006 regarding 'Proper Control of Files' for reference and compliance by all staff. Some random checking will be done by the administrative team in the Headquarters from time to time.

Leisure and Cultural Services Department

Case No. 2005/2545：Failing to resolve the problem of some people using a roller skating rink for other sports activities

159. The complainant found some people often playing unicycle hockey in a Leisure and Cultural Services Department (LCSD)'s roller skating rink. She had been to the rink thrice within eight days and found unicycle hockey playing each time. Although she had complained to the LCSD each time, the problem persisted.

160. Upon receipt of the complaint, the Government Integrated Call Centre (ICC) referred it to the LCSD. The LCSD staff went to the rink several times to stop the unicycle hockey players. The LCSD considered prosecution not necessary since the players used the rink when there was no priority user and they stopped their activity upon advice. They had not obstructed or disturbed other users. The LCSD had subsequently taken actions for improvement, such as advising the unicycle hockey players to apply for non-designated use of the rink at specified time slots. The LCSD had inspected the rink more frequently. Booking charts of the rink for the current three months were posted prominently on a notice board nearby for public's information.

161. The Ombudsman considered the LCSD should review the mechanism for managing leisure venues and classify such complaints as urgent cases. If people played unicycle hockey in a rink without permission and obstructed roller skaters, the LCSD staff should act immediately and ask them to leave the rink. If they refused to co-operate or ignored repeated advice, the LCSD should consider prosecution for deterrent.

162. Since the complainant had to complain repeatedly and eventually went to another rink for roller skating, The Ombudsman considered that LCSD had failed to solve the problem and therefore substantiated the complaint.

163. The LCSD has accepted The Ombudsman's recommendations and has taken the following actions -

(a) the unicycle hockey players have accepted the LCSD's advice to book the rink for unicycle hockey activity. The LCSD also conducts frequent inspections to the venue and offers assistance on the days of use. The current arrangement is found effective and no further disputes have appeared so far;

(b) since the regulation of the bookings of the rink, it has been operating smoothly. The LCSD would take appropriate action, including prosecution, against those who ignore advice and cause disturbances to other users;

(c) booking charts of the roller skating rink for the current three months have been displayed on the notice board prominently for public's reference. In addition, contact telephone numbers for both within and outside office hours have been put up on the notice board to enable members of the public to seek timely assistance from the LCSD when required;

(d) the LCSD has liaised with the ICC duty manager to ensure that urgent cases similar to this complaint should be referred to the LCSD's responsible officers for prompt follow up action; and

(e) the LCSD has contacted the complainant to explain the booking policy and see if any further assistance is required. The LCSD has advised the complainant to make use of the advance booking mechanism so as to secure the facility for use. She has also been encouraged to contact the venue manager direct for urgent assistance if she encounters any problem in using the facility in future.

Case No. 2005/3809：Inadequate measures to protect personal belongings deposited in lockers in a public swimming pool

164. The complainant's daughter deposited her personal belongings in a locker in a swimming pool on 2 November 2005. While returning to the changing room, the complainant's daughter noticed that the locker deposited with her personal belongings had been opened by a staff member of the swimming pool without notifying her. The complainant also claimed that there were some other lockers which had been opened by the staff of the swimming pool without the presence of the locker-users. The staff explained to her that a swimmer had forgotten the location of her locker and the opening of those lockers was to enable her to identify the right one. The complainant then lodged a complaint with The Ombudsman against the LCSD for its inadequate measures to protect personal belongings deposited in the lockers of the swimming pool.

165. After investigation, The Ombudsman concluded that the LCSD staff concerned had failed to notice that the existing guidelines on opening a locker were not applicable to digital lockers and the complaint was thus substantiated.

166. As for the accusation that more than one locker had been opened at a time by the staff of the swimming pool, The Ombudsman offered no comment due to the absence of corroboration.

167. The LCSD has accepted The Ombudsman's recommendations and has taken the following actions -

(a) the LCSD issued an apology letter to the complainant on 4 May 2007;

(b) the LCSD has sought legal advice on the existing measures concerning the opening of a locker being occupied and the ways to protect the interests of both the pool staff and the swimmers in the course of opening such a locker; and

(c) in accordance with the legal advice, the LCSD has revised the relevant guidelines on Management of Lockers in Public Swimming Pool. Major details are as follows -

(i) staff should make a judgment, from the information provided by the swimmers (for example, testing by calling the swimmer's mobile phone if it is reported that there is a mobile phone inside the locker), as to whether he/she is the locker-user

before opening a locker for him/her;

(ii) to inform the affected swimmer, through public announcement, before a locker being occupied is opened;

(iii) according to the legal advice the LCSD received, staff members have the right to open a locker being occupied when sufficient reason is provided;

(iv) a maximum of three trials should be made by a staff member for opening an occupied locker for a swimmer. In case the three lockers identified by a swimmer are not the right locker, the swimmer should wait and search for his/her locker during the session break of the swimming pool or the close of pool, and while all the other swimmers have claimed their personal belongings; and

(v) relevant notices have been made to inform users that, where the situation warrants (such as cases involving safety of swimmers), staff would open a locker being occupied;

(d) staff members have been advised to provide warm clothing to the swimmers while they are waiting for assistance; and

(e) the lockers in different zone of the changing rooms would be in different colour or with clear demarcation, so as to reinforce the memory of swimmers about the location of their lockers.

Post Office

Case No. 2006/0549：Failing to reply to the complainant's request for a certified non-delivery record of a registered mail

168. On 27 September 2005, the Housing Department sent a recorded delivery mail item to the complainant inviting him for an interview. The delivery postman of the regional Delivery Office of the Post Office (PO) had attempted twice deliveries on 28 September 2005 and 29 September 2005 but in vain. A call-for notification card was then left in his letterbox for collection of the recorded delivery mail at a post office (designated post office). As the complainant had not collected the item in question within the 14-day retention period, the PO returned the item to the Housing Department on 15 October 2005.

169. The complainant lodged two enquiries at the PO on 18 January 2006 and 3 February 2006. The head of the designated post office advised him that the item in question was returned to the Housing Department. The head also assisted the complainant in submitting an enquiry form requesting for a certified non-delivery record. Although the enquiry form was then successfully referred to the PO's Mail Tracing Office (MTO) for follow up, it did not reach the PO's Mail Distribution Division (MDD) due to the failure of fax transmission. Accordingly, no reply had been given to the complainant on the result of his enquiry for a certified non-delivery record.

170. The complainant then lodged a complaint with The Ombudsman against, among others, the PO for its failure to reply to his request for a certified non-delivery record of a registered mail.

171. The Ombudsman commented that the PO had failed to reply to the complainant's request for a certified non-delivery record. The Ombudsman concluded that the complaint against the PO was substantiated.

172. The PO has accepted The Ombudsman's recommendation and has taken the following actions -

(a) the PO sent a written apology to the complainant on 19 July 2006 for not giving him a reply on his request; and

(b) with effect from 30 March 2006, MTO of the PO has started to make use of the Lotus Notes, an internal closed communication network, for referring enquiry cases to the relevant working units in the department (e.g. MDD) for action. In case the receiving

working unit does not confirm receipt of the referral within three days, the MTO will contact the receiving unit to confirm referral and necessary follow-up actions would be taken.

Social Welfare Department

Case No. 2005/3658：Failure to properly monitor the performance of a non-governmental welfare organisation

173. On 2 October 2005, the complainant called the Departmental Hotline of the Social Welfare Department (SWD) requesting the SWD to visit and help his neighbour, an elderly singleton with ill health and mobility problem. The SWD referred the case to the responsible non-government organisation (NGO) for that area for follow up. However, up to 17 October 2005, the NGO social worker did not contact or pay any visit to this elder. They only called the complainant and told him that it was necessary to send a letter to obtain the elderly singleton's prior consent before conducting outreaching visit to him. Although the complainant remarked that the elderly singleton might be illiterate and nobody could read the letter for him, the NGO social worker had insisted sending a letter to him first to obtain his consent. On 25 October 2005, the complainant learnt that this elderly singleton had died for several days. He then informed the NGO.

174. The complainant lodged a complaint to The Ombudsman against the SWD for its failure to ensure the provision of due care by the NGO to the needy.

175. The Ombudsman noted that the SWD had referred the case promptly to the NGO and its procedures and measures were reasonable. It was basically the NGO which had mishandled the case and was deficient in its procedures. In this light, The Ombudsman considered the complaint against the SWD unsubstantiated.

176. The SWD has accepted The Ombudsman's recommendations and has taken the following actions -

(a) domestic violence, suicidal attempt, child care problem, mental illness, elderly singleton with ill health/disabled person/chronic illness person or other people with urgent needs are classified by the SWD Departmental Hotline as urgent cases. To ensure that receiving service units will be alert and accord priority in handling these cases, irrespective whether immediate outreaching is required or not, the SWD Departmental Hotline's Referral Form was revised by adding an additional item - "Urgency of the Problem" with effect from 17 July 2006; and

(b) service units such as Family and Child Protective Services Units, Family Crisis Support Centre and Suicide Crisis Intervention Centre

which have guidelines/protocol in handling urgent cases were reminded to follow such guidelines/protocol closely. A guideline on "Procedures for Handling Case Referrals" which sets out the common principles/practice in handling case referrals, including urgent cases, was formulated and issued to all Integrated Family Services Centres/Integrated Services Centres and Medical Social Services Units on 20 October 2006 for immediate implementation.

Transport Department

Case No. 2006/0866：(a) Shirking responsibility in handling the complainant's request for construction of a public pier; (b) Lack of response to the complainant's request and failure to monitor the progress after referring the case to other departments; and (c) Disclosing the complainant's request to a third party

177. The complainant operated a *kaito* (local) ferry service between two outlying islands. He wrote to the Transport Department (TD) in May 2005 and March 2006 requesting construction of a public pier to ensure passenger safety and to save his expenses on renting a private pier. He was informed that the Civil Engineering and Development Department (CEDD) would follow up on the case. However, he did not receive any response except interim replies from the TD. He alleged that, among others, the TD had shirked its responsibilities and delayed responding to his request. Moreover, the TD had disclosed his request to the owner of the private pier without his consent.

178. Before 2006, the TD's and CEDD's responsibilities in these matters were unclear. The TD was mainly responsible for regulating *kaito* services and CEDD for constructing public marine facilities.

179. In January 2006, the departments concerned established new guidelines, under which the TD would coordinate responses to complaints involving more than one department and assess the need for construction of or improvement to public piers while CEDD would remain as the works agent for constructing and maintaining such piers.

180. The complainant made his request first to the TD. While the division of departmental responsibilities was then unclear, it would be reasonable to expect the TD to have acted as a coordinator, examined this issue with other relevant departments and consolidated a reply to the complainant. It is improper of the TD just to ask the CEDD repeatedly to reply to the complainant, thereby confusing him with incomplete replies.

181. It was only after January 2006 when the new guidelines had been promulgated that the TD actively liaised with other relevant departments, the owner of the private pier and the complainant to seek a solution to his problems. Thus, The Ombudsman concluded that complaint point (a) was

substantiated and complaint point (b) was partially substantiated.

182. The TD denied having disclosed the complainant's request to the owner of the private pier. It explained that it had merely enquired of the latter about the condition of the pier. In the absence of independent evidence, The Ombudsman could not make a judgement on the complaint point (c).

183. Overall, The Ombudsman considered that the complaint against the TD was partially substantiated.

184. The TD has accepted The Ombudsman's recommendations and has taken the following actions -

(a) the TD has instructed its staff to communicate and co-ordinate with other departments as appropriate in resolving cases that involved other departments such that a more effective response could be given to the public. The staff have been reminded to be positive and proactive in handling cases instead of referring to others for following up but neglecting his own responsibility. The staff have been further advised to take reasonable steps in handling cases that involve other departments, even if the division of responsibilities among departments was not defined clearly. The TD also made use of this complaint as a case study for discussion in two workshops held on 23 May 2007 and 5 June 2007;

(b) the TD has examined the feasibility of constructing a new public pier as well as other options such as improving the existing pier by dredging the seabed or increasing the pier length together with other relevant departments. At the meeting on 19 September 2006, the TD advised the complainant that further discussion with the owner of the private pier for improvement of pier facilities would be the most appropriate option because that owner had started the improvement works at the pier concerned. In addition, the location of the pier was appropriate and it was linked by roads which would facilitate passengers to interchange with other transport modes. The TD and other relevant departments conducted site inspection and berth trial at the said pier upon completion of the improvement works in early November 2006. It was concluded that the berthing facilities had no safety problem.

The result was reported at the follow-up meeting attended by the TD and other relevant departments with the complainant on 24 November 2006.

In response to the complainant's subsequent query, the TD confirmed that a new public pier was not necessary for the time being; and

(c) after investigation, the TD found that the cause why the referral could not be delivered to CEDD for providing a timely response to the complainant was that the concerned TD's staff had put the wrong fax number on the memo. As the staff concerned had not followed up the case with CEDD closely, the above mistake had not been detected early. In order to ensure that the faxed documents can properly be transmitted, recorded and filed, the TD had reviewed the procedures on receipt and dispatch of correspondence, and reminded the staff of the necessary procedures to avoid recurrence of similar incidents.

Case No. 2006/2910：Inadequate control over illegal passenger transport activities of light goods vehicles

185. A complaint was lodged against the TD with The Ombudsman on 18 August 2006. The complainant alleged that the problem of illegal carriage of passengers for reward by light goods vehicles (especially van-type light goods vehicles) was deteriorating and it had adversely affected the interests of the taxi trade. The complainant considered that the TD had mishandled the issue in the following areas -

(a) the TD had not exercised adequate control over light goods vehicles (such as cancelling the requirement for a business registration certificate from the vehicle operators; allowing them not to apply for special operation licence or motor vehicle licence; allowing them not to provide insurance cover for passengers carried; and the number of passenger seats in a light goods vehicle may be increased to five at will, etc.) so that light goods vehicle operators can easily conduct unauthorized passenger transport business; and

(b) the TD had not taken effective enforcement action or controlling measures against the day-to-day illegal carriage of passengers for reward by light goods vehicles.

186. Regarding complaint point (a), the TD is concerned about the illegal carriage of passengers by operators of light goods vehicles (especially van-type light goods vehicles) for reward, but did not agree that the current control on light goods vehicles was inadequate. The Ombudsman considered that the legislation had clearly stated that light goods vehicles were not allowed to carry passengers for reward, and that the TD had exercised appropriate control on the transport activities of light goods vehicles through the vehicle licensing system in accordance with the law. The Ombudsman also considered that the TD had clarified some misunderstandings of the complainant concerning the Administration's control of the operation of light goods vehicles.

187. Regarding complaint point (b), the TD had contacted and discussed with the Police and other relevant departments and organisations for measures to step up control and enforcement actions, upon the discovery of some light goods vehicle operators engaging in illegal activities. The TD also launched a series of promotional activities to educate the light goods vehicle trade and the public on the use and proper scope of service of light goods vehicles. The Ombudsman considered that the TD was pro-active and pragmatic in its discussions with the Police for enforcement arrangements and the formulation of control measures.

188. The Ombudsman considered that the complaint against the TD was not substantiated.

189. The TD has accepted The Ombudsman's recommendation and has taken the following actions –

(a) the TD has stepped up the publicity efforts on the scope of service provided by "van-type light goods vehicles". Since the golden-week holidays in early May 2007, the TD has started distributing publicity leaflets at the airport and various boundary control points, such as Lok Ma Chau and Lo Wu, to let tourists know of the scope of service provided by these vehicles. Since July 2007, the TD has also started the distribution of these leaflets in simplified Chinese characters at the aforesaid locations. In addition, the TD would continue its publicity efforts through radio broadcasts and posters to remind members of the public of the functions of "van-type light goods vehicles"; and

(b) the TD has reviewed and considered the need for amending the statutory name of "van-type light goods vehicles". A "van-type light goods vehicle" is defined under the existing legislation as a type of light goods vehicles, and there is no difference between the interpretation of the English term (van-type light goods vehicles) and the Chinese term (客貨車). According to section 52(3) of Road Traffic Ordinance (Chapter 374), "van-type light goods vehicles" cannot be used for the carriage of passengers for hire or reward. Hence, the operators cannot use these vehicles for the carriage of passengers for reward with the excuse that the Chinese character of 「客」is used in the name of "van-type light goods vehicles".

The term 「客貨車」is a neutral descriptive expression which merely describes what may be carried on board the vehicle without implying that it can be used for the carriage of passengers for reward. The payment of fare is not a pre-condition for a passenger to be regarded as a「乘客」. Furthermore, even if the statutory name of "van-type light goods vehicles" is amended, the operators concerned may not necessarily change their operational arrangement in practice and they may still call such vehicles as「客貨車」. Thus, the TD was of the opinion that enhancing public understanding of the functions of "van-type light goods vehicles" was more effective than a mere change of name. Thus, the TD concluded that there is no need to amend the statutory name of "van-type light goods vehicles".

Vocational Training Council

Case No. 2005/3975：Impropriety in conducting a tender exercise

190. The complainant, an engineering company, was aggrieved in a tender exercise for -

(a) being given only a short time for responding to the Vocational Training Council (VTC)'s invitation to tender for one lot (four items) of bakery workshop equipment; and

(b) being given a tight schedule for delivering the equipment.

191. It was alleged that the VTC might have had some understanding with a specific supplier (Company A) prior to the tender exercise.

192. The equipment was urgently required for the Open Day and anniversary celebrations of a VTC Institute of Vocational Education. The VTC invited 11 suppliers to tender, with the tender period cut under proper authority from five to three working days due to urgency. However, the tight timetable for tender closing and equipment delivery resulted in most bidders being unable to bid. This created a favourable environment for one single supplier, Company A, known to have the stock during a visit by campus staff earlier.

193. In the event, Company A made two bids -

(a) the first, submitted before tender closing, did not include quotation for one item (a spiral mixer) and offered delivery of another item (Item X) after the timeline specified by the VTC; and

(b) the second (i.e. supplementary quotation), submitted after tender closing, covered all items with delivery of the Item X amended and the spiral mixer expected "approximately six to eight weeks".

194. The Ombudsman noticed that Company A's initial offer had failed to conform to the tender specifications on the delivery of Item X and had not covered the spiral mixer. Moreover, Company A was allowed to submit a supplementary quotation even after tender closing.

195. However, Company A's second bid still failed to comply fully with the specified delivery rate for the spiral mixer. Although the VTC maintained that there had been a supplementary verbal agreement with Company A over the timely delivery of the mixer, this was not borne out by

any records. On the contrary, the VTC's purchase order enclosing Company A's second bid and order confirmation consistently referred to the deferred delivery of the spiral mixer.

196. Eventually, Company A did not deliver the spiral mixer on time. Instead, it lent a different model of the item to the campus until the specified mixer was available.

197. Thus, the situation lent credence to the complainant's suspicion that there had been some prior arrangements between the VTC and the specific supplier.

198. The Ombudsman could not accept the tender exercise as having been conducted fairly. Company A had indeed been given an unfair edge over other bidders with its supplementary quotation, non-conforming delivery date of the spiral mixer and lending of a different model of the spiral mixer for temporary use by the campus. The VTC's tendering system had been compromised. Its professed urgency could have been avoided by better planning for the events (especially for the anniversary). Alternatively, it could have resorted to the Council's provision of "direct purchase authority" for waiving competitive tendering at times of urgency. The complaint against the VTC was thus substantiated.

199. The VTC has accepted The Ombudsman's recommendations and set up a task force to take forward the recommendations as follows –

(a) to improve its procurement system, the VTC has reviewed and revised its procurement rules and procedures relating to clarifications of tender with reference to practices and procedures in government departments, University Grants Committee institutions and public bodies. Advice from the Government Logistics Department is being sought on the proposed revised rules. After these revised rules have been finalised, they will be circulated to staff concerned, together with a reminder on compliance and consequences of breaches; and

(b) the VTC has reinforced its internal audit system with random checks on tenders and purchases to ensure propriety and proper documentation.

Part II
Direct Investigation Cases

Education Bureau and Department of Health

Case No. OMB/DI/134：Assessment of Children with Specific Learning Difficulties

200. The Ombudsman observed that parents of children with specific learning difficulties (SpLD) are ignorant about what services are available. The Ombudsman initiated a direct investigation on whether the Government has systems and procedures in place to ensure timely identification of these children and the provision of adequate assistance to them.

201. The Education Bureau (EDB) and Department of Health (DH) have generally accepted The Ombudsman's recommendations and have taken the following actions -

<u>EDB and DH</u>

(a) the EDB and DH have jointly set up a Working Group, comprising local and overseas experts, as well as frontline psychologists and relevant professionals, to review the assessment criteria and related matters. The review is expected to be completed by late 2008;

(b) the EDB has been working closely with Parent-Teacher Associations (PTAs) and non-governmental organisations (NGOs) in the dissemination of information through various means, such as seminars, talks, etc. so as to further raise parents' awareness of SpLD. Briefings on school choice and support services were held by the EDB for parents of pre-school children with special educational needs (SEN) in January and June 2007. Apart from taking part in talks/seminars for parents organised by NGOs, the EDB has scheduled over 10 seminars/workshops for parents on SEN, including SpLD, in the 2007/08 school year. The DH will also continue to work closely with NGOs and the community through seminars, etc. to promote awareness of SpLD;

(c) the EDB and DH will make available relevant publications of the EDB and DH at their respective service outlets and continue to provide the contact information of both departments in the relevant publications;

(d) the DH is conducting a thematic household survey through the Census and Statistics Department to study public awareness and attitudes towards children with developmental problems, including SpLD. The survey is expected to be completed by early 2008;

(e) the EDB has updated leaflets on "Early Identification and Intervention of Learning Difficulties Programme for Primary One Pupils" and "Helping your Child with SpLD in Reading and Writing". The former was distributed to parents in October 2007 through schools and other channels such as NGOs, PTAs, etc. while the latter will be ready for distribution by early December 2007. The EDB website will be further enhanced with more comprehensive information on the assessment and support services. The DH and EDB will take in view the findings of the thematic household survey on public awareness in order to plan possible programmes to enhance public knowledge and attitudes towards SpLD as well as parents' awareness of the available assessment services;

(f) the EDB and DH have set up regular co-ordination meetings involving senior officers to take forward The Ombudsman's recommendations concerning both departments, apart from the long standing liaison meetings between the two departments. At a later stage, the scope of the liaison meetings can be extended to take over the work of the co-ordination meetings;

(g) the EDB and DH have agreed to align statistical compilation for different time periods as necessary for different needs;

(h) the EDB and DH will further discuss joint publicity strategies. As a first step, the EDB leaflets will also include contact information on the DH's services outlets; and

(i) the EDB will continue to meet with NGOs from time to time and explore opportunities for co-operation. The EDB also held a meeting with relevant NGOs recently to explore how to further enhance co-operation. The DH will continue to work regularly with NGOs and SpLD parent groups to provide support to newly diagnosed clients, and to draw up programmes in the community for children with SpLD and their families.

EDB

(j) (i) the timeframe for the remaining three stages of the "assessment through teaching" has been set to be between February and June each year; and

(ii) the educational psychologists will aim to complete the assessment within nine months upon receiving the referral, subject to the projected work demand;

(k) the EDB has commissioned an overseas consultant to review the outsourced Educational Psychology Service (EPS). The review will be completed by the end of this year and will shed light on our deliberation on the future modus operandi of our EPS;

(l) there is a built-in quality assurance (QA) mechanism for the outsourced EPS. Apart from the inspection of mid-year and end-of-year reports, the EDB also conducts QA service inspections annually. Post QA meetings with Educational Psychologist (EP)s' professional supervisors and the serving EPs are held to make recommendations for improvement. The EDB will keep track of the adequacy of the quality assurance mechanism and, where appropriate, consider further improvement;

(m) parents will receive a copy of assessment summary, written in easily comprehensible terms. Upon request, parents will also be provided with an additional copy of the assessment report for school;

(n) the EDB revised the information leaflet on "Early Identification and Intervention of Learning Difficulties Programme for Primary One Pupils" to include the assessment workflow to facilitate parents' understanding of the assessment process. The leaflet was distributed to parents in October 2007; and

(o) the EDB continues to conduct a questionnaire survey in March every year to collect teachers' views on the "Early Identification and Intervention of Learning Difficulties Programme for Primary One Pupils" to identify any operational difficulties and to make improvement. During the EDB officers' consultation visits to schools, teachers' views will be collected. Teachers' queries and

difficulties will also be addressed on the spot. In September every year, the EDB will conduct territory-wide seminars for teachers to familiarise teachers with the Programme.

DH

(p) for cases seen by the Student Health Service, assessment will be completed within six months after triage for 90% of cases highly suspected of having SpLD;

(q) the Child Assessment Service will continue the practice of providing a report to both parents and schools, and is working to make the current Chinese report more comprehensive, whilst remaining understandable and actionable; and

(r) the DH will continue to accept referral for suspected dyslexia with co-morbid developmental problems in pre-school children, and those assessed to be at risk of dyslexia will continue to be referred for necessary support service.

Central Administration

(s) the EDB and DH are deliberating the implementation details on a clearer definition of responsibilities between EDB and DH to enable parents and teachers to have better understanding of what, and where, services are available; and

(t) the EDB and DH are deliberating the implementation details on the identification of pre-school children at risk of SpLD for early intervention and prevention.

Transport and Housing Bureau, Development Bureau, Lands Department, Buildings Department, Planning Department and Transport Department

Case No. OMB/DI/119：Administration of the Mid-Levels Moratorium

202. In 1972, Government introduced an administrative moratorium (the Moratorium) to restrict building development in Mid-Levels to ease traffic congestion in the area. The Moratorium has remained in force since. The Ombudsman's investigation into a complaint raised questions as to how the Moratorium has been administered. Against this background, The Ombudsman initiated a direct investigation to examine the rationale for the Moratorium, the roles and responsibilities of the relevant bureaux and departments in its administration and the review mechanism, if any.

203. Relevant government bureaux and departments concerned have generally accepted The Ombudsman's recommendations and their follow-up actions/responses are as follows -

(a) the Moratorium is only one of a comprehensive range of measures the Transport and Housing Bureau (THB) has taken over the past 30 years in tackling traffic congestion in the area. Other measures THB has adopted include building new road infrastructure, such as the Aberdeen Tunnel and Hill Road Flyover completed in early 1980s and the Central Mid-Levels Escalator Link completed in 1993, and implementing various traffic management measures. THB has also put in place a network of public transport services to encourage the use of the public transport system.

The effects of these measures are reflected in the results of THB's monitoring of the traffic situation in the Mid-Levels area. Over the past two decades, the general trend of traffic speeds in the area has remained relatively stable. For example, the Bonham Road/Caine corridor has registered only slight variations in average vehicular speed. It was 17.3 km/hr in 1984, 14 km/hr in 1995, 14.6 km/hr in 2005 and 14.7 km/hr in 2006. While these speeds were lower than the average speed on Hong Kong Island, the package of measures THB adopted, including the Mid-Levels Moratorium, has been able to largely contain the traffic congestion problem in the area.

In a territory-wide context, the rapid and extensive expansion of the railway networks over the past 30 years has also helped to reduce

the growth of traffic on the roads generally, including traffic in the Moratorium area. More recently, THB is actively finalizing the implementation details of the MTR West Island Line (WIL). Some of the entrances and exits of the proposed University Station and Sai Ying Pun Station of WIL fall within the Mid-Levels Moratorium Area. Large-capacity elevators will be provided at the above stations to facilitate pedestrian movements between the station concourse and the street level of Pok Fu Lam Road and Bonham Road. The station concourses will also be linked with entrances and exits at roads on the downhill side. The WIL and its underground pedestrian links, together with the opening of the proposed Centre Street Escalator Link between Third Street and Bonham Road in 2010, would help relieve the traffic conditions in the Mid-Levels Moratorium area. Based on the preliminary assessment conducted by the Transport Department (TD), the opening of WIL in 2012 will reduce the overall public transport volume (including franchised buses and Public Light Buses) along the main corridors in the Mid-Levels Moratorium area (namely Caine Road/Bonham Road, Robinson Road and Conduit Road) by about 20% in terms of passenger car units, and the total traffic volume by about 10% in that year;

(b) (i) THB would continue to monitor the traffic situation in the area closely in light of the latest developments and changes in circumstances. In view of its positive effects in helping to prevent the traffic congestion in the Mid-Levels area from further deterioration, the Moratorium should be maintained; and

(ii) implementation of the Mid-Levels Moratorium, like the implementation of many other public policies, involves many different departments. In the case of the Moratorium, the THB is the policy co-ordinator. It closely monitors traffic and decides on the need for maintaining the Moratorium as one of the measures to alleviate the traffic congestion problem. The TD, working under the guidance of the THB's policy, will continue to carry out regular traffic surveys and assessments to monitor the traffic situation in the Mid Levels Moratorium area. They will also continue to explore what more, if any, could be done in terms of provision of transport infrastructures and public transport services as well as traffic management measures to help relieve traffic congestion in the area. Besides, they will continue to provide traffic inputs to other

concerned departments in considering development proposals, e.g. building plan submissions under the Buildings Ordinance and planning applications under the Town Planning Ordinance which are not subject to the Moratorium; and

THB will continue to work closely with the Development Bureau, the Planning Department (PlanD), Lands Department and the TD in monitoring the implementation of the Mid-Levels Moratorium. Assistance from other bureaux/departments will be solicited if necessary;

(c) as part of a comprehensive review to follow up on the recommendations of The Ombudsman's report, THB has consulted the Central and Western District Council (C & W DC) and the Land Sub-committee (LSC) of the Land and Building Advisory Committee (LBAC) in October and November 2006 respectively. While members of the C&W DC welcomed the review, they requested that it should go beyond the single aspect of traffic consideration, and should assess the overall development capacity of the Mid-Levels, having regard to factors such as air-ventilation, light penetration, view of the Peak ridge line, etc. The sentiment is that the Moratorium should not be lifted and there should be more control to curb excessive development. Some members of the LSC of the LBAC, on the other hand, opined that the rights of the lot owners under the existing lease should be respected and further control or reduction in development potential should be avoided as far as possible.

The PlanD is currently reviewing the Outline Zoning Plan (OZP) covered by the Mid-Levels Moratorium. The TD and PlanD will undertake a study jointly to examine this issue in detail in the context of the OZP review; and

(d) THB will keep the public posted on any latest developments or changes from time to time regarding the Mid-Levels Moratorium and the OZP review.

Food and Environmental Hygiene Department

Case No. OMB/DI/155：Monitoring of Cases with Statutory Time Limit for Prosecution

204. The Food and Environmental Hygiene Department (FEHD) is responsible for enforcing legislation on food safety and environmental hygiene. Prosecution of such offences must be brought within a statutory time limit of six months.

205. The Ombudsman noted that the FEHD had been debarred from prosecuting offenders in certain cases because the statutory time limit had expired. The Ombudsman, therefore, initiated a direct investigation to examine -

(a) the procedures and practices for processing cases with statutory time limit for prosecution (but not the decisions of whether or not to prosecute); and

(b) the system, if any, for monitoring progress of cases for prosecution to ensure timely action.

206. The FEHD has, on its own accord, implemented some improvement measures shortly after The Ombudsman initiated this direct investigation. The FEHD has accepted The Ombudsman's recommendations. In response to The Ombudsman's recommendations, other improvement measures have also been or will be implemented. These measures are set out below -

<u>District Operations</u>

(a) the FEHD has since September 2006 put in place a manual system for tracking the progress of prosecution cases. To further enhance liaison among the Headquarters, Districts and the Prosecution Section in handling prosecution cases, the FEHD, in collaboration with the Efficiency Unit, launched an intranet-based Summons Tracking Facility in June 2007 to enable all relevant parties to track and monitor the progress of each case and ensure timely processing;

(b) having reviewed the existing file handling procedures, the FEHD issued a reminder to all Sections and Districts in August 2007 to remind staff of the proper file handling procedures / practices in

order to manage file movement more effectively and to avoid loss of files;

(c) to instil the concept of good case management, a training course was tailored for Senior Health Inspectors (District) (SHIs (District)). By end August 2007, almost all SHIs (District) have completed the course; and

(d) The FEHD completed a review and issued in September 2007 guidelines on the storage and delivery of food exhibits, in particular those collected during weekends and long holidays.

Prosecution Section

(e) guidelines have been issued to require District staff to comply with the new requirement to mark clearly on each summons file the contravention concerned and the date of the statutory time limit (bar date). They are also reminded to place summons paper arising from different incidents in separate files to minimise the risk of oversight and delay in processing;

(f) the FEHD issued an e-mail in August 2007 to impress upon the SHIs (Prosecution) that reliance on the clerical staff in the Prosecution Section would not absolve them from their responsibility;

(g) the FEHD twice reminded staff of the Prosecution Section by e-mails in April 2006 and again in August 2007 of the importance of complying with the statutory time limit;

(h) the FEHD twice reminded staff of the Prosecution Section by e-mails in April 2006 and again in August 2007 that prompt actions should be taken in respect of all prosecution cases; and

(i) the FEHD completed a review of the lead time for scheduling court hearings in August 2007. The review recommended the introduction from September 2007 onwards a bi-monthly assessment of the adequacy of Judiciary's quota for different prosecution units. This will provide a basis for the FEHD to seek ad hoc court sessions or an increase in quota from the Judiciary as necessary.

Extension of Time Limit

(j) the FEHD is making preparations for initiating legislative amendment to extend the existing statutory time limit for prosecuting offences in relation to unauthorised alteration of premises licensed by the FEHD.

Withdrawal of Prosecution

(k) the FEHD has reviewed the working procedures for handling prosecution cases with a view to involving directorate staff. The following improvement measures have been implemented since April 2007 -

(i) the withdrawal of prosecution, including cases withdrawn because the bar date has expired (time-barred cases), must be personally reviewed and handled by an officer at the Assistant Director (AD) level. For cases which do not exceed the bar date but which cannot proceed due to reasons such as insufficient evidence or complainants' subsequent refusal to testify in court, the approval level for not to proceed further has also been escalated to the Superintendent/Senior Superintendent levels;

(ii) any written reply to complainants of time-barred cases must be personally reviewed and handled by an officer at AD level; and

(iii) Districts / sections are required to submit quarterly returns on withdrawal of prosecution cases by summons to an officer at AD level for information.

Communication with the Public

(l) the FEHD reminded its staff by e-mail in June 2007 to attend to accuracy as well as transparency in communicating with complainants; and

(m) the Director of Food and Environmental Hygiene issued a letter personally to all Section Heads in March 2007 to highlight the FEHD's corporate values of integrity and honesty. He urged all staff to discharge their duties not only effectively but also with integrity. The FEHD further reminded its staff in June 2007 the

importance of disclosing full and accurate information in communications with the public.

Classification of Cases

(n) at present, in classifying all prosecution cases dropped, the FEHD defines time-barred cases as "cases where the decision of not proceeding to prosecution stage is made after the bar date".

Co-ordination with Government Laboratory

(o) the Centre for Food Safety of the FEHD has implemented a revised procedure since June 2005 under which weekly reminders will be issued to the Government Laboratory (GL) in case test results are not received from the GL either three months after the date of complaint or three months before the expiry of the statutory time limit, whichever is the earlier. Upon review, the FEHD considers this procedure adequate and will continue to apply it.

Monitoring by Headquarters

(p) the Summons Tracking Facility generates monthly returns on completed prosecution cases (with information on the time spent) for scrutiny by Headquarters.

Legal Advice

(q) after a careful review, the FEHD has decided to continue the dissemination of information to staff through e-mails and memoranda, and will upload important information such as legal advice obtained, and new or revised guidelines or procedures onto its Bulletin Board on Lotus Notes for handy reference by frontline staff. Where appropriate, such information will also be incorporated into the relevant Operational Manuals; and

(r) the FEHD has reviewed the procedures and since April 2007 has required staff to seek legal advice, where necessary, as early as possible and in any event no later than one month before the bar date in relation to prosecution cases. Exceptional cases for which legal advice is sought with less than one month's time from the bar date must be drawn to the attention of an officer at the AD level; and

Operational Manual

(s) The FEHD consolidated and incorporated major improvement measures into the Operational Manual for Hygiene Services in September 2007 for observance and easy reference of staff.

Social Welfare Department

Case No. OMB/DI/151：System for Processing Applications for Disability Allowances

207. In the wake of media reports about certain cases of overpayment, The Ombudsman initiated a direct investigation on 20 October 2005 to examine the Social Welfare Department (SWD)'s System for processing applications for Disability Allowance (DA) relating to:

(a) dissemination of information to DA applicants regarding eligibility criteria and restrictions;

(b) arrangements for checking and approving applications; and

(c) mechanism for preventing and deterring abuse, monitoring and detecting mistakes.

208. The SWD has generally accepted The Ombudsman's recommendations. It has put in place various cross-checking mechanisms, periodic case reviews and random checks to detect unreported changes to minimise chances of overpayment. In fact, the Higher Disability Allowance (HDA) overpayment cases were detected as a result of the SWD's effort to step up cross-checking by matching data with the then Education and Manpower Bureau. The SWD wishes to point out that DA applicants/recipients have the responsibility to provide the SWD with accurate information to make timely reports on changes to information provided. As DA is paid in advance, overpayment is in certain circumstances unavoidable due to unreported cases or cases of late reporting of change of information, e.g. cases involving hospitalization of severely disabled person who understandably could not report promptly to the SWD. However, the SWD will continue its efforts to keep under review its services to DA recipients including the processing and handling procedures as well as internal work flow.

209. The SWD is pleased to note that The Ombudsman in principle endorses its determination to safeguard the public purse and to seek reimbursement in overpayment cases. Of the HDA cases involving overpayment studied by The Ombudsman, most recipients have agreed with the SWD on repayment schedules. We shall continue to review the circumstances of the outstanding cases where repayment schedules have not yet been drawn up with a view to working out fair and equitable arrangements with them without causing them undue financial hardship.

210. The SWD's comments and implementation progress in respect of the Ombudsman's recommendations are as follows -

(a) Publication of the conditions of the scheme:

(i) the SWD has all along set out the eligibility criteria in respect of individual allowance in the Social Security Allowance (SSA) Scheme pamphlet and explicitly stated therein that obtaining social security allowance by deception or providing false information is a criminal offence;

(ii) on the definition of 'government or subvented residential institution' under the HDA, the SWD has since June 2005 specifically stated in the SSA Scheme pamphlet and the Notice to DA applicants that boarding in a special school under the Education Bureau (EDB) (formerly known as the Education and Manpower Bureau) does not fulfil the eligibility criteria for HDA. Similar improvements have also been made to the SSA Application/Review Forms since August 2005;

(iii) starting from October 2005, SSA applicants are required to fill in the Application Form by themselves to strengthen their sense of accountability in making the application. The guidance note, which is specifically designed to assist the SSA applicants to complete the Application Form by themselves, has also included a section entitled 'Responsibility of the Applicant/Guardian/Appointee' to remind them of their obligation to provide full and truthful information and the legal consequences of providing false information;

(iv) moreover, under its current practice in processing an application or reviewing a case, the SWD reminds the SSA applicant/recipient during the interviews of his/her obligation to give true statements to the SWD and that any person who knowingly or wilfully gives false statements or withholds any information for the purpose of obtaining welfare benefits is liable to prosecution. It is a standard practice that all successful applicants are given an information package which includes, among other things, an SSA Scheme pamphlet and a Notice to DA Applicants which reminds applicants/guardians/appointees of their obligation to report changes in circumstances and the possible consequence of deliberate non-disclosure or making false statement; and

(v) to step up publicity, information boards displaying anti-fraud materials (which include the number and outcome of prosecutions on fraud cases) have been set up in all Social Security Field Units (SSFUs). These also emphasize the obligations of the applicant/guardian/appointee to make timely reports on changes and the serious consequence of obtaining welfare benefits by deception.

(b) Guidelines on the Definition of "Government or subvented residential institution":

(i) internal guidelines have been laid down in the Social Security Manual of Procedures (SSMPs) - SSA ever since the introduction of HDA that persons residing in an educational establishment with residential services are not eligible for HDA. The staff are required to verify such status of the applicant/recipient and, in doing so, they would have to explain this to the applicant/recipient/appointee before asking them to sign the declaration in the application/review form;

(ii) to improve the monitoring system, starting from June 2005, the SWD has established a regular cross-checking mechanism between the EDB and SWD to follow up cases where the DA applicants are newly approved to have boarding placement in special school under the EDB. Internal guidelines have been issued to SSFUs on how to handle the matched cases; and

(iii) the SWD has further refined its internal guidelines by explicitly setting out the definition of 'government or subvented residential institution'. The Checklist for staff has correspondingly been revised to remind staff of the requirement to explain the definition of 'government or subvented residential institution' as stipulated in the internal guidelines. To facilitate staff in doing the job, a list of special schools with boarding placement under the EDB has also been incorporated into the internal guidelines.

(c) Communications with applicants and recipients:

(i) as set out above, adequate internal guidelines have been prepared for staff on their responsibility to explain the eligibility criteria and restrictions to DA applicants/recipients during application interviews or case reviews. In addition to the internal guidelines and checklist which provide detailed instructions to staff in processing the cases, there is currently a built-in column

in the Application/Review Form for HDA case which specifically enquires whether or not the applicant/recipient has been admitted into a government or subvented residential institution. Since August 2005, the SWD has improved the presentation in the SSA Application/Review Form to specifically state that government or subvented residential institution include boarding special schools under the EDB; and

(ii) in April 2007, the SWD made further amendments to the 'Declaration & Undertaking' column of the computer-generated SSA Application/Review Form by including a pre-printed clause to the effect that an HDA applicant/recipient undertakes to report immediately to the SWD admission to a government or subvented residential institution or medical residential institution under the Hospital Authority or boarding placement in a special school under the the EDB. As a standard practice, Investigation Officers (IOs) are required to read out the 'Declaration & Undertaking' column to each and every applicant/recipient to ensure that each of them understands the contents of the declaration before signing the Application/Review Form. In signing the form, the applicant/recipient also acknowledges his/her responsibility in the declaration and undertaking. These improvement measures can largely serve the purpose of recording in a standardized form of detailed information explained to the applicant/recipient or his/her guardian/appointee. As a standard practice, Authorizing Officers must check the work of the Investigating Officers and the relevant supporting documents, including interview records, to ensure adequate investigation/verification and accurate assessment have been made before giving approval for payment.

(d) Availability of updated information on Government or subvented residential institutions:

(i) the SWD has uploaded the list of 20 special schools with boarding section under the EDB onto its Computerised Social Security System for easy reference by the SSFU staff. It has also incorporated the list into the internal guidelines, which will be updated each school year with the EDB; and

(ii) SSFU staff can search for information of the government or subvented residential institutions from the websites owned by other branches of the SWD or government departments. In case of doubt, Investigating Officers should verify the status of the residential institutions with the institutions concerned directly.

(e) Changes in recipients' eligibility:

(i) as mentioned above, the SWD has laid down in the SSMPs-SSA that staff are duty-bound to verify the applicant's status and explain to them the criteria of eligibility for DA before asking them to sign the declaration and undertaking in the application/review form; and

(ii) the SWD has already refined its internal guidelines by explicitly setting out the definition of 'government or subvented residential institution'. The Checklist for staff has also been correspondingly revised to remind staff to make follow-up enquiries for ascertaining any changes of circumstances affecting the recipient's eligibility, as well as to explain the definition of 'government or subvented residential institution' as stipulated in the internal guidelines. To facilitate staff in doing their job, a list of special schools with boarding placement under the EDB has also been incorporated into the internal guidelines.

(f) Publication of the cross-checking mechanisms:

(i) the Pamphlet on the SSA Scheme has clearly set out that the SWD conducts data matching with other government departments and organisations to cross-check the information provided by the applicant/recipient/appointee. The responsibilities of the applicant/guardian/appointee to provide true, correct and complete information to the SWD for the purpose of application are also emphasized; and

(ii) from time to time, the SWD mounts publicity to increase public awareness of the consequences of fraudulent abuse of social security, and to actively appeal to the public to participate in combating welfare fraud. General information on the SSA Scheme, including the SWD's measures of prevention and detection of fraud by the Special Investigation Section, is available on the departmental homepage and hotline services.

(g) Random checking:

(i) the SWD adopt a risk management approach in the administration of social security schemes. In the case of NDA recipients with permanent disabilities, as recipients will become ineligible only if they pass away, or are absent from Hong Kong for a prolonged period or imprisoned, such information can be verified with the Immigration Department or Correctional Services Department through data-matching. Considering the low risk found in these cases, the SWD only conducts random checks;

(ii) for HDA cases with permanent disability, they are covered by data-matching including checking with EDB, apart from regular case reviews once every three years;

(iii) for HDA and NDA cases which are not permanently disabled, periodic medical reviews are conducted for all cases to ascertain their continued eligibility; and

(iv) the SWD has carefully re-examined the existing review cycle of SSA cases and will increase the random check on NDA cases with permanent disability to 2% of recipients of all ages.

(h) Causes of overpayment:

(i) the SWD has refined its internal guidelines to guide SSFU staff to determine the cause and classification of overpayment correctly. Follow-up action will continue to re-examine the methodology currently adopted for classification of overpayment cases.

(i) Recovery of overpayment:

(i) as DA payments are public money funded entirely by general revenue, the SWD must seek to recover the overpaid amount when cases of overpayment come to light. Internal guidelines have been put in place to remind frontline staff that in negotiation with a debtor to draw up a repayment plan, regard must be made to the financial situation of the recipient concerned to ensure that the repayment would not lead to undue financial hardship;

(ii) for the six cases with outstanding overpayment, the SWD is still negotiating with the guardians concerned with a view to

reaching a mutual agreement on a fair and equitable repayment arrangement, having regard to individual circumstances. In case no repayment plan can be agreed, the SWD will consider instituting civil action against these debtors in consultation with the Department of Justice.