THE GOVERNMENT MINUTE

IN RESPONSE TO

THE 20TH ANNUAL REPORT OF
THE OMBUDSMAN 2008

Government Secretariat
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Introduction

The Chief Secretary for Administration presented the 20th Annual Report of The Ombudsman to the Legislative Council at its sitting on 9 July 2008. This Government Minute sets out the Administration's response to the Annual Report.

ii. While The Ombudsman's Annual Report reveals that there is room for the Administration to improve in certain areas, our comprehensive responses in this Minute demonstrate our commitment to be an open and efficient government. We will continue our endeavour in this respect.

iii. This Minute comprises three parts – Part I responds generally to issues presented in the section *The Ombudsman's Review* of the Annual Report; Part II and Part III respond specifically to those cases with recommendations made through The Ombudsman's full investigation and direct investigation respectively.

Part I
– Responses to issues presented in the section *The Ombudsman's Review* of the Annual Report

Access to Government information

The Ombudsman comments that there is ignorance or a lack of understanding of the Code on Access to Information (the Code) among some civil servants and urges for promotion of awareness and more extensive training.

2. There has been a high degree of compliance with the Code within the Administration. In 2007/08, government bureaux/departments received a total of 2 102 requests for information held by them. 96% of these requests for information were met in full and 2% in part. In the same period, only 15 complaints were filed with The Ombudsman under the Code. Of the nine cases completed in the year (with two carried from the preceding year), only one was substantiated. In respect of the substantiated case, the bureau concerned adopted a prudent approach lest disclosure of the requested information might infringe the privacy of the individuals concerned. The bureau subsequently released the requested information in full to the complainant on the advice of The Ombudsman.

3. Measures have been taken by the Administration to enhance the awareness of and compliance with the Code. The Administration has stepped up compliance monitoring and, where necessary, instituted remedial actions, such as clarifying any misunderstanding/grey areas in the application of the Code. From time to time, training sessions are organised to enhance civil servants' understanding of the interpretation and application of the Code. The most recent training session was held in January 2008. More training sessions can be arranged when the need arises. In addition, a general circular has been issued to government bureaux and departments, which sets out clearly the major features and principles of the Code as well as special areas of attention, and will be re-circulated on an annual basis.

Circular Service by the Hongkong Post

4. The Ombudsman considers that measures should be taken to control the sending of non-electronic "junk" mails, similar to those applicable to electronic "junk" messages.

5. The Hongkong Post Circular Service was introduced in response to market demand, and is a popular service utilised by government departments, voluntary agencies and commercial enterprises alike to communicate with the public.

6. It must be noted that unaddressed circular mails are different from electronic junk messages in terms of cost, ease of sending and their impact on recipients. Hongkong Post has been closely monitoring the statistics in this regard. Its record shows that households on average received only 50 circular mails in 2007/08 (or around 1 item per week), and households in the most popular districts received only 14 circular mails per month. We believe such amounts of circular mail items should be acceptable. Hongkong Post will review the service and its effectiveness from time to time, and will consider means to improve it, taking into account the needs of users and recipients, as well as similar services in other economies.

Handling of illegal burials

7. The Ombudsman has conducted a full investigation into a complaint on failing to control illegal new graves on the hillside opposite to the complainant's residence and the Ombudsman has found the complaint unsubstantiated. Nevertheless, The Ombudsman notes that the authorities could have difficulty ascertaining whether a grave in the New Territories is new or illegally constructed or old but refurbished or reconstructed before a certain date as allowed under a Government policy.

8. The policy referred to by The Ombudsman was promulgated by the then Director of New Territories Services back in 1983. As no freezing survey was conducted at the cut-off date, there was no conclusive evidence to show whether a particular grave had pre-existed before the cut-off date. Whenever there is a complaint against an illegal grave in the New Territories, the authorities rely on the secondary evidence that could be made available such as the inscriptions of the grave stones, aerial photographs, the death certificate of the deceased, etc to ascertain whether the grave is allowed under the policy or not. The policy would have been better implemented if the Government had conducted a freezing survey or a reliable registration of graves arrangement before the cut-off date.

9. The Administration has taken note of The Ombudsman's comments on the importance of having a proper mechanism to monitor the implementation of a policy.

Coordination among Departments in water seepage complaints and street management

10. The Ombudsman criticises the lack of coordination among government departments in taking enforcement action, particularly in the abatement of environmental nuisances. In this regard, she has launched direct investigations on the handling of water seepage complaints and some street management issues.

11. The Administration fully recognises the importance of proper coordination among government departments, particularly on those issues which require joint actions by different parties. Our response on the specific case of "water seepage complaints" can be found in Part III of this Minute. On "street management", the departments concerned launched a pilot scheme to deal with on-street easy mount frames in Wan Chai and Yau Tsim Mong Districts in October 2008. The Food and Environmental Hygiene Department, with the assistance of the Hong Kong Police Force and the Home Affairs Department, will step up enforcement against easy mount frames in these districts. More detailed response to the subject of "street management" will be provided when The Ombudsman has completed her investigation and issued her report.

Quality of Service (notably telephone enquiry service)

12. The Ombudsman is concerned whether the quality of services provided to the public, notably telephone enquiry service, can be maintained given the resource limitation.

13. The Administration will continue to work to enhance the quality of services provided to the public. In particular, the Administration fully recognises the importance of addressing the public demand for telephone public enquiry service. We will make full use of technology where appropriate to improve the Government's overall responsiveness.

Jurisdictional Review of The Ombudsman

14. The Ombudsman has submitted Part 1 and Part 2 of its *Report on Review of Jurisdiction* to the Administration.

15. We are carefully examining the Review Report and aim to report our findings to the Legislative Council in early 2009.

Part II
– Responses to recommendations in full investigation cases

Department of Health

Case No. 2007/2123 : Abusing authority by intervening in the decision of the complainant's employer to extend his contract and unreasonably questioning his integrity

Background

In May 2006, the Department of Health (DH) received an anonymous complaint against a senior staff member in a non-governmental organisation (the organisation) subvented by Government through DH. As the allegations were serious, DH referred the complaint to the Chairman of the organisation for investigation. In December 2006, that senior staff member submitted to all Executive Committee (EC) members of the organisation a paper containing serious allegations against a senior staff member of DH.

2. In March 2007, that senior staff member of the organisation (the complainant) lodged a complaint with The Ombudsman against DH for –

(a) misleading the Chairman of the organisation into investigating an anonymous complaint against him, and attempting to pre-empt the outcome of the investigation;

(b) abusing its authority by intervening in the decision of the organisation's EC to extend his employment contract;

(c) unreasonably and improperly conducting an investigation into certain matters, being the subject of the paper prepared by him, and concluding in a query of his integrity; and

(d) misleading the EC in a case of the organisation's internal promotion by not providing full and correct facts.

The Ombudsman's observations

3. Regarding complaint (a), The Ombudsman considered that in view of the Director of Health's public duty and accountability for the use

of subvention, he was duty-bound to clear any doubt he might have on the administration of a subvented organisation. As the anonymous complaint concerned a senior staff member of the organisation, The Ombudsman considered DH's referral of the complaint to the Chairman for investigation proper and legitimate. The complainant also alleged that a staff member of DH had made a statement to an EC member attempting to pre-empt the outcome of the investigation. The Ombudsman found that his allegation was based on hearsay and conjecture only and the EC member concerned had denied having heard the alleged statement.

4. Regarding complaint (b), the complainant alleged that while the EC decided to extend his employment by two years beyond his normal retirement age without an open recruitment exercise, DH later intervened in the EC decision without justifications. Given the organisation's subvention on a deficiency grant basis, the precedents for open recruitment to the complainant's post over 16 years from 1982 to 1998 and the EC's own resolution on the need for DH's endorsement of the new contract for the complainant, The Ombudsman considered that DH had not abused its authority in not accepting the employment extension arrangement for government subvention.

5. Regarding complaint (c), The Ombudsman considered that DH's decision to investigate into the complainant's paper was prompted by the seriousness of the allegations against a senior staff member of DH. It would be irresponsible of the Director of Health not to ascertain the facts in these circumstances. As regards whether DH had concluded in a query of the complainant's integrity, The Ombudsman considered the relevant statement made by DH could be open to interpretation. That was a matter of DH's opinion based on the findings of its investigation. The Ombudsman did not comment on DH's opinion.

6. Regarding complaint (d), The Ombudsman noted that the central issue was whether DH had the authority to "allow" the organisation's promotion of a staff member, an apparently internal affair. As the promotion post at issue was subject to a set of new guidelines which came into force in 2003 for the effective control of the top three-tier executives in subvented organisations, The Ombudsman considered that being the Controlling Officer, DH was duty-bound to examine the justification for the continued need and ranking of the post, and the promotion at issue should not be viewed as an internal affair entirely. The EC's unilateral decision to promote the staff member was a disregard of DH's authority. The Ombudsman considered that DH was not misleading the EC by stating that it had "exceptionally allowed" the promotion when giving the final clearance.

7. Overall speaking, The Ombudsman found the complaint against DH unsubstantiated. Yet, The Ombudsman has made recommendations for DH to follow up.

Administration's response

8. DH has accepted all the recommendations and has taken / will take the following actions –

(a) DH has started discussions with the organisation on finalising a funding and service agreement within the current financial year of 2008-09. The need for changing the subvention to the organisation from a "deficiency grant" to a "discretionary grant" will also be examined;

(b) DH has also commissioned the Efficiency Unit to conduct a study on the corporate governance framework of the organisation, including the roles and responsibilities of Government representatives on the EC. DH and the organisation will take into account the study findings in clarifying whether the Government representatives on the EC should be full members with voting rights and examining the future role of the government representatives on the EC; and

(c) after reviewing DH's relationship with the organisation, DH will consider extending the same treatment, where appropriate, to other organisations subvented by DH.

Environmental Protection Department

Case No. 2006/4425 : Refusing to accept an application by email for opening an exemption account for disposal of construction waste

Background

9. The Construction Waste Disposal Charging Scheme (CWDCS) was implemented on 1 December 2005. Under the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (the Regulation) and starting from 20 January 2006, any person before using the waste disposal facilities prescribed under the Regulation has to apply for an account with Environment Protection Department (EPD). As a transitional arrangement for construction work contracts that were awarded or tenders of which were closed before the implementation of the CWDCS, the Regulation allowed exemption from paying the disposal charges through the opening of an "Exemption Account".

10. The complainant sent his application form (without digital signature) to EPD through e-mail and attached a copy of his HKID card (partly covered up), proof of his address (of a PO Box), copy of a quotation for some renovation works and some photos to support his application for an exemption account. The application could not be processed for the following reasons –

(a) the complainant was unable to provide EPD with sufficient documents to support that he had a construction work contract eligible for an exemption account;

(b) the complainant refused to complete and submit his application form with his original signature on it and to provide a copy of his HKID card in full; and

(c) the complainant refused to provide EPD with his residential address with documentary proof.

11. The first issue was resolved with the submission of further documentation by the complainant after several months of telephone conversations, e-mails and letters. On the second issue, EPD offered to arrange an inspection of the construction waste generated site. EPD would bring along the application form for the complainant to sign and at the same time verify the complainant's HKID card on site. (The complainant did not take up this offer and the site visit never took place.) The third issue could

not be resolved as the complainant insisted that the provision of his residential address should not be required.

12. There were two points in the complaint against EPD -

(a) maladministration in processing the complainant's application for an exemption account; and

(b) refusal to communicate with the complainant by e-mail.

The Ombudsman's observations

13. For the complaint point (a) above, The Ombudsman noted that in EPD's response to the complainant's e-mail messages querying the statutory authority of EPD to require him to submit his application in its original form and with his signature, EPD quoted Section 7 of the Regulation and Schedule 1 of the Electronic Transactions Ordinance (the Ordinance). The Ombudsman pointed out that according to Clause No. 10 in Schedule 1 of the Ordinance, if there is a statutory declaration in a document to be submitted, the document should be submitted in its original form and an e-mail submission should not be accepted. However, "Declaration of Applicant" in Section IV of Form 3 (i.e. the application form for applying for an exemption account) merely comprises statement that the applicant understands his or her liability in case of giving incorrect information, etc and it is clearly not a statutory declaration. In this light, The Ombudsman indicated that the complainant's e-mail application should have been accepted for processing if it had borne a digital signature in accordance with Sections 2 and 6(1A) of the Ordinance (Note: The complainant's application by e-mail did not bear a digital signature). In other words, EPD had misquoted to the complainant Schedule 1 instead of Sections 2 and 6(1A) of the Ordinance. In this context, The Ombudsman concluded that complaint point (a) was partially substantiated.

14. After investigation, The Ombudsman concluded that complaint point (b) was unsubstantiated.

15. As applications for an exemption account have financial and legal or law enforcement implications, The Ombudsman considered that it is reasonable for EPD to require applicants to provide their original signatures, copies of their identity cards in full and their residential/commercial addresses with documentary proof. Although the misquote to the complainant of Schedule 1 instead of Sections 2 and 6(1A) of the Ordinance has no direct effect, relevance or consequence to the processing of his application, it is the responsibility of EPD to ensure the

integrity of every exemption account opened under the Regulation, with the support of sufficient documents.

Administration's response

16. EPD has accepted The Ombudsman's recommendation and has put in place the arrangement of accepting e-mail application with digital signature.

Food and Environmental Hygiene Department and Lands Department

Case No. 2006/3188 (Food and Environmental Hygiene Department) ; Case No. 2006/2074 (Lands Department) : Failing to stop illegal discharge of waste water by complainant's neighbour into a drainage channel next to her house

Background

17. The complainant lodged a complaint in December 2003 to a District Lands Office (DLO) under the Lands Department (LandsD) on the discharge of waste water from her neighbour's house into a drainage channel next to her house. DLO later referred the complaint to the District Environmental Hygiene Office (DEHO) under the Food and Environmental Hygiene Department (FEHD) for follow-up. After investigation by FEHD staff and the carrying out of color water test at the unit under complaint in June 2004, neither was any environmental hygiene problem nor any defective waste water pipe detected. However, it was suspected that substandard waste water pipes from the unit under complaint had been connected to the drainage channel next to the complainant's house. FEHD referred the case to DLO for follow-up in accordance with land lease conditions in February 2005. FEHD staff also applied larvicidal oil in the vicinity of the complainant's house for several times to prevent the breeding of mosquitoes.

18. The complainant enquired of FEHD in June 2006 about the progress and noted that the case had been referred to DLO in February 2005. She contacted DLO but DLO could not trace the subject file. She then obtained the reference number of the case from FEHD in July 2006 and informed DLO of the information.

19. DLO replied to the complainant in July 2006 that the problem should be handled by the Drainage Services Department (DSD). The complainant then contacted FEHD to seek clarification. FEHD explained that DSD was only responsible for Government and public drainages, while DLO should deal with the problems concerning private drainages.

20. In July 2006, the complainant lodged a complaint with The Ombudsman that DLO had failed to handle the discharge of waste water by her neighbour into a drainage channel next to her house properly. She further complained that the waste water generated foul smell and bred mosquitoes that posed threats to the health of her family. Upon conducting

initial investigations with LandsD, The Ombudsman learnt that it had referred the case to FEHD to look into the environmental hygiene aspect of it. In order to understand better the roles of the two departments, The Ombudsman included FEHD as a department under complaint after obtaining the agreement of the complainant.

The Ombudsman's observations – FEHD

21. The Ombudsman noted that FEHD had conducted numerous investigations but did not detect any environmental hygiene problem. Also, FEHD had done its part in keeping the area clean and hygienic by applying larvicidal oil several times in the vicinity of the complainant's house.

22. Nevertheless, The Ombudsman considered DEHO's actions too slow as it only referred the case back to DLO for following up after a lapse of seven months upon completion of the colour water test. The complaint against FEHD was therefore partially substantiated.

Administration's response – FEHD

23. FEHD has accepted the recommendation of The Ombudsman and has since reminded all DEHOs that, when handling complaints in connection with drainage problems of village-type houses in New Territories, referrals to LandsD should be made as soon as possible. Also, all relevant information should be referred at the same time if possible to facilitate follow-up investigations by LandsD.

The Ombudsman's observations – LandsD

24. The dye tracer test conducted by FEHD in June 2004 showed that the G/F unit of the subject village house discharged wastewater into the nullah beside the complainant's house instead of the septic tank. That was in breach of the drainage works requirement as stipulated in the Certificate of Exemption in respect of drainage works issued by the DLO for the construction of village house.

25. In February 2005, FEHD asked the DLO to follow up the case but the DLO did not do so until the complainant lodged the complaint again in May 2006.

26. The Ombudsman considered that the DLO was not aware that completed village houses issued with Certificates of Compliance must continue to meet the drainage works requirements and that the DLO had the responsibility to timely monitor the situation and require the owners to rectify the breaches, if any. The Ombudsman concluded that the DLO indeed failed to handle the complainant's problem properly and therefore the complaint against LandsD was substantiated.

Administration's response – LandsD

27. The LandsD has accepted the recommendations and has taken the following actions -

(a) the DLO issued a warning letter to the owner of the subject village house on 20 December 2007 urging him to purge the breach. In addition, the DLO staff conducted a joint site meeting on 9 January 2008 in the presence of the complainant, the owner of the village house, the Indigenous Inhabitant Representative, Resident Representative, the Vice-chairman of the Village Office, representatives from FEHD and DO. The meeting was held with a view to mediating the dispute between the complainant and the owner of the village house. Eventually, DLO staff carried out an investigation on 26 February 2008 and found that the rectification works were completed whereas no wastewater was discharged from the subject village house. The complainant has been advised of the above rectification;

(b) the amendment to the Standard Inspection Report on Drainage Works has been issued. In the amended Inspection Report, the inspecting officer is specifically required to ensure that the pipes for the discharge of soil and wastewater are connected to a septic tank; and

(c) LandsD has reminded all DLOs in the New Territories to ensure that all village houses issued with Certificates of Compliance must continue to comply with the conditions for exemption including drainage works. LandsD will also exercise its right under the lease conditions and take enforcement action.

Government Secretariat - Transport and Housing Bureau[1]

Case No. 2007/1985(I) : Wrongly rejecting the complainant's request for information on suicide-related incidents on MTR tracks

Background

28. In June 2006, the complainant requested the Transport and Housing Bureau (THB) (then Environment, Transport and Works Bureau) to provide information on incidents of suicide and suspected suicide along the Mass Transit Railway (MTR) trackside between 1997 and 2006. Details sought included date, time and location of the incident; age and gender of the person involved; severity of the incident (i.e. no injury, serious or fatal); and duration of train service disruption.

29. In July 2006, THB simply referred the complainant to a former press release containing aggregate information on incidents involving passengers falling onto MTR tracks each year from 1997 to 2005. The complainant requested THB to reconsider his request, as it was impossible to extract the information he needed from the aggregate data.

30. In August 2006, THB replied that disclosure of the information requested might lead to identification of the deceased, the injured or their families. It did not consider the public interest in disclosure to outweigh the harm or prejudice that might result. It, therefore, refused the request under paragraph 2.15 of the Code on Access to Information (the Code).

31. In September 2006, the complainant complained to The Ombudsman. After due inquiries, The Ombudsman considered THB's refusal not justified, as the requested information on its own would not lead to identification of the deceased, the injured or their relatives.

32. In January 2007, the complainant revived his request for the information. In March 2007, THB refused his request on similar grounds. The complainant then complained again to The Ombudsman. In April 2007, The Ombudsman initiated a full investigation.

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[1] References to "Transport and Housing Bureau" in this response mean "Environment, Transport and Works Bureau" before the re-organisation of the Government Secretariat on 1 July 2007.

The Ombudsman's observations

33. The Ombudsman considered that the Code on Access to information enshrines Government policy to be transparent and accountable, thus making available as much Government-held information as possible to the public.

34. Paragraph 2.15.6 of the Guidelines to the Code provides that the restriction on disclosing personal information to third parties does not apply to information concerning an individual from which it is not reasonably practicable to identify the individual, e.g. anonymised statistical data. The complainant's request was for anonymised information. It would not be reasonably practicable to ascertain or deduce from such information alone the identity of the individuals concerned.

35. The Ombudsman, therefore, concluded that THB's approach was over-cautious and in breach of both the letter and the spirit of the Code. The complaint was substantiated.

Administration's response

36. THB accepted The Ombudsman's recommendation. The information was released to the complainant in August 2007.

Highways Department and Water Supplies Department

Case No. 2006/3327 (Highways Department); 2006/3328 (Water Supplies Department) : Failing to properly handle and follow up properly a complaint about reinstatement of bollard lights at a street refuge.

Background

37. The complainant discovered that a pair of bollard lights at a street refuge had been removed for some time and not reinstated, leaving two holes in the ground and posing a hazard to passers-by. He called the Integrated Call Centre (ICC) under Efficiency Unit (EU) many times to complain but to no avail. Feeling aggrieved, he lodged a complaint with The Ombudsman against EU, Highways Department (HyD), Water Supplies Department (WSD) and Electrical and Mechanical Services Department (EMSD)[2] for failing to handle and follow up his complaint properly.

38. A private development project needed to carry out improvement works at a road junction and that entailed the removal and subsequent reinstatement of the bollard lights at the refuge. Meanwhile, WSD also needed to lay water pipes at the road junction and the bollard lights had to be removed temporarily. As the works areas of WSD and the private development overlapped, WSD, the WSD contractor, the private development contractor and other departments responsible for road improvement held a meeting to discuss the works arrangements.

39. After discussion, WSD agreed to take up the responsibility to coordinate the reinstatement of the bollard lights, whilst the private development contractor undertook to build the cable duct and draw pit leading to the refuge. Nevertheless, due to poor coordination among the various parties, the bollard lights were never reinstated.

[2] The complaint against EMSD was found unsubstantiated and there were no relevant recommendations for it. The complaint against EU has triggered The Ombudsman to conduct a separate direct investigation, which had yet to be concluded in 2007-08. The part of case involving EMSD and EU is hence not featured in this issue of Government Minute.

The Ombudsman's observations – HyD

40. HyD learned from the WSD contractor earlier that the water works at the said location had already been completed. However, since the cable duct and its ancillary works were not yet completed, HyD could not direct its contractor to commence the power supply works. Nevertheless, The Ombudsman considered that HyD should be responsible for monitoring the other organisations in completing the maintenance and repairs of road facilities within a reasonable time span. It should have taken the initiative to urge WSD to take follow-up action promptly to avoid further delay.

41. In addition, The Ombudsman noted that EMSD had replied by email to ICC's referrals every time, with copies and telephone calls to HyD for the latter to follow up. However, HyD neither responded nor took any action. It would not follow up the case until ICC made a formal referral.

42. The Ombudsman considered that although HyD had entrusted EMSD with the responsibility for the daily inspection and maintenance of bollard lights, it was certainly improper for HyD not to take follow-up action when EMSD notified them of the situation.

43. In view of the above, the complaint against HyD was substantiated.

Administration's response – HyD

44. HyD has accepted The Ombudsman's recommendations and has taken the following actions -

(a) HyD has improved its traffic bollard inventory. It also keeps in view whether the organisations undertaking roadworks have reinstated the road facilities in time by conducting on-site checks to see if the time limit set in the Excavation Permit has been complied with. In case the traffic bollards cannot be reinstated within the time limit, HyD will follow up with the organisations concerned; and

(b) HyD and EMSD carried out a joint review on the procedures for patrolling, reinstatement and maintenance of traffic bollards and the reporting system in late 2006. Improvement measures have since been taken. EMSD now attends HyD's works progress meetings regularly to discuss issues regarding installation and maintenance of traffic bollards. To simplify the existing procedures and to provide one-stop service, HyD has been taking

back, in stages, the responsibility from EMSD for removal, installation and maintenance of traffic bollards since October 2007.

The Ombudsman's observations – WSD

45. The WSD contractor repaved the road surface before the cable duct was built rendering the HyD contractor unable to commence its power supply works at the site. The Ombudsman considered that WSD, being the coordinating department for all the works, should take the blame. The Ombudsman also considered WSD's failure to monitor the progress of its contractor effectively had resulted in the perpetuation of the problem.

46. Furthermore, when WSD learned about the problem, it did not liaise with the various contractors to take remedial measures. Nor did it liaise with HyD on this matter. On the contrary, it set the problem aside such that the matter was further delayed for more than three years.

47. The Ombudsman considered that although the private development contractor was not hired by WSD, the Department should still have taken the initiative to contact the persons responsible for the private development to solve the problem. WSD should never have allowed the cable duct laying works to be delayed without any control.

48. The Ombudsman's investigation revealed deficiency in WSD's file maintenance system. The documentary records were incomplete and the relevant reference data lacking. Improvement was thus required. Moreover, WSD obviously lacked an effective complaint management mechanism to monitor or follow up cases. As a result, complaints were not handled in a timely way.

49. In summary, WSD had failed to perform its coordinating role in monitoring and ensuring proper completion of the works. The complaint against WSD was, therefore, substantiated.

Administration's response – WSD

50. The WSD has accepted the recommendations and has taken the following actions –

(a) WSD has already improved its complaint management system which includes, inter alia, a complaint register to ensure effective handling of each and every complaint. The project engineer will

follow up every complaint to resolve any problems encountered. The Senior Engineer/Chief Engineer will monitor the progress of resolving complaints through regular review of the complaint register to ensure all cases are followed up properly. WSD has issued a new instruction to staff that when a complaint case referral to another department is made, a call must be made to the recipient to ensure that follow-up action by the recipient is in hand. Any disagreement in handling the complaint should be referred to a more senior officer for further action at a higher level;

(b) WSD has also improved the file management system. WSD has issued new instruction to staff to strengthen supervision of works when private organisation is involved. In particular, it is emphasised that the division of responsibilities between the private organisation and WSD should be clarified and confirmed as early as possible to avoid dispute in future; and

(c) WSD has already enhanced procedures for supervising contractors' work for complying with contract conditions. WSD has issued new instructions to require staff to strengthen the supervision of works of the contractors, including coordination with other parties for completion of the works and where public safety is involved, in particular.

Hong Kong Housing Authority

Case No. 2005/3974(A) : (a) Failing to return to the Lands Department a slope adjacent to an Home Ownership Scheme estate and unreasonably shifting responsibility for maintenance to owners of the estate; and (b) Not informing purchasers of such maintenance responsibility in sales brochure

Background

51. The Owners' Corporation (OC) of a Home Ownership Scheme (HOS) estate complained that Hong Kong Housing Authority (HKHA) had failed to return an adjacent slope on temporary lease from the Lands Department (LandsD) and shifted the responsibility for maintenance to the owners. Furthermore, the sales brochure for Phase II of the estate did not set out such responsibility, which was unfair to the purchasers.

52. The estate had been developed in two phases. A year or so after putting Phase I on sale, HKHA leased an adjacent slope from LandsD for use as a works area. The lease stated that the lessee shall be responsible for managing and maintaining that slope until further notice and that LandsD would resume the slope when necessary. The Deed of Mutual Covenant (DMC) prepared by HKHA came into effect when the first purchaser signed title deed of the estate. Phase II was put on sale about 18 months later and construction completed four months afterwards. However, LandsD refused to resume the slope despite HKHA's request. Two years later, LandsD wrote to ask the owners of the estate to clear the refuse on the slope. The OC claimed total ignorance of such responsibility.

53. Initially, HKHA assumed that the management and maintenance responsibility for the slope would be temporary, but included a provision in the DMC to ensure that the responsibility would be collectively borne by the owners after completion of the estate until resumption of the slope by LandsD. When LandsD refused to resume the slope, HKHA did not pursue the matter because LandsD was still studying the long-term land use of the slope.

54. In the sales brochures of both Phases I and II, purchasers were reminded to refer to the land lease and the DMC. When they chose their flats, they were also shown an outline of the DMC which indicated that owners would be responsible for maintaining "all slopes" and all purchasers signed a declaration that they had understood their

responsibility for managing and maintaining slopes. Moreover, solicitors had explained salient points of the DMC to the purchasers.

The Ombudsman's observations

55. The Ombudsman considered that although it was common practice to place the slope maintenance responsibility through the land lease with the lessee (HKHA in this case) who could then transfer the responsibility to the future owners of the estate, the lease in question had no time limit. This meant HKHA or the owners might have to assume permanent maintenance responsibility for a slope originally leased for temporary use. This was not reasonable. However, HKHA had not discussed nor negotiated with LandsD to protect its interests or those of the owners. The complaint point (a) was, therefore, partially substantiated.

56. Purchasers seldom have ample opportunity or sufficient knowledge to understand all the details in the land lease and the DMC. They generally rely on the developer to provide key information and the solicitors to highlight and explain their responsibilities. When Phase I was put on sale, the DMC of the estate was not yet operative. There was no way purchasers could know about the slope maintenance responsibility. When HKHA later decided to pass such responsibility to the future owners of the estate, it ought to have notified the purchasers as soon as possible, so that they could reconsider whether or not to proceed with the purchase. Information from HKHA could not ascertain that the solicitors had drawn the purchasers' attention to the added responsibility for slope maintenance.

57. When Phase II was put on sale, the DMC was already in effect. Nonetheless, the information given by HKHA to purchasers had not clearly spelt out the responsibility for maintaining this peculiar slope. The sales brochure, while showing a plan with some slopes for the owners' maintenance, actually did not cover the slope in question.

58. The Ombudsman found it improper of HKHA not to have made full and timely disclosure of all information to purchasers with regard to this significant issue affecting their interests. HKHA did not follow the recommendation by the Law Reform Commission to notify purchasers clearly in sales brochures of any actual or potential responsibility for maintaining slopes. The complaint point (b) was, therefore, substantiated.

Administration's response

59. HKHA has accepted The Ombudsman's recommendations and has taken the following actions -

(a) HKHA conducted a site inspection of the slope in question with the OC on 18 December 2007 and confirmed in writing to the OC on 7 January 2008 that HKHA would manage and maintain the slope directly until its resumption by LandsD;

(b) HKHA has issued internal guidelines to remind its staff to avoid accepting unreasonable terms and conditions when leasing Government land in future; and

(c) HKHA has reviewed the existing practice of disclosing important information when selling flats and has reminded its staff to spell out clearly any special responsibilities that the purchasers may have to bear in the sales brochures and to alert them to any new terms that may appear as soon as possible so as to safeguard their interests.

Housing Department

Case No. 2006/1735 : Delay in notifying the complainant of the policy on recovery of his public housing unit while he was in prison, thus making the rents he had paid undeserved

Background

60. The complainant was imprisoned from 20 December 2004 (he claimed that he had been detained since August 2004). Since the complainant, the only authorised resident on the tenancy of the public rental housing (PRH) flat concerned, had been imprisoned for more than three months and was thus temporarily absent from the flat, the Housing Department (HD), in order to optimise the use of public housing resources, wrote to the complainant on 1 June 2006, suggesting that he surrender his flat voluntarily according to the policy. HD undertook to issue a Letter of Assurance (LA) to the complainant upon the surrender of his flat with the guarantee of future rehousing provided that he had such housing needs in future and that he met the eligibility criteria for PRH application at the time.

61. The complainant accused HD of maladministration for notifying him of the recovery of his flat "22 months" after he had been imprisoned, thus making his rent payment a waste.

The Ombudsman's observations

62. The application for LA is on a voluntary basis. It is not a mandatory requirement for those who are temporarily absent (including those who are imprisoned) to surrender their flats.

63. Upon knowing the term of imprisonment of the complainant, HD staff contacted his wife, a mainlander, several times requesting her to convey to her husband the suggestion of surrendering the flat voluntarily, but all to no avail. HD then explained the LA policy to the complainant by letter and via the Correctional Services Department (CSD). It was obvious that HD's intention was to recover the flat by voluntary means and not by force.

64. Meanwhile, the complainant's wife, who was not an authorised resident on the tenancy, was allowed to live in the flat on compassionate grounds, and she paid the rent for the complainant voluntarily. Hence, it cannot be said that the rent payment was a waste.

65. While the surrender of a flat in circumstances like this case is on a voluntary basis according to the prevailing policy, HD should contact the tenant direct as soon as possible and persuade him to accept the LA arrangement in order to prevent the flat from being vacant for a long time, thus optimising the use of the valuable public housing resources.

66. Therefore, The Ombudsman considered that the complainant's complaint point was unsubstantiated but that there had been malpractice in HD staff's handling of the case.

Administration's response

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

(a) HD has issued guidelines to its frontline staff to remind them that they should take the initiative to promptly contact those single tenants who have been given a long prison sentence to persuade them to surrender their flats voluntarily by way of the LA arrangement in handling similar cases in future;

(b) HD will explain the rationale of the LA policy in detail in letters issued to the tenants concerned so as to relieve them of their worries for surrendering their flats; and

(c) HD has explored with CSD the possibility of putting in place a mechanism whereby CSD staff will enquire of those who have been given a long prison sentence whether they are living in PRH flats on their own. However, in view of the provisions under the Personal Data (Privacy) Ordinance, unless an imprisoned tenant seeks assistance of his own volition to deal with his personal or family problems, CSD staff cannot disclose his personal data to other people without his/her consent. Hence, there are practical difficulties and limitations for HD and CSD to establish the "notification mechanism".

Housing Department

Case No. 2006/2329 : Delay in recovering a public housing unit and effecting transfer of tenancy to the complainant, who had custody of her daughter after divorce and wrongly allowing her ex-husband to stay in the unit

Background

68. Upon divorce from her husband, the complainant was granted custody of her daughter. However, Housing Department (HD) did not follow its established policy to assign the tenancy of their public housing unit to her. Instead, her ex-husband was allowed to stay in the unit.

69. Under the Policy on Housing Arrangements for Divorced Couples in Public Rental Housing Flats, tenants would not be entitled to additional housing on grounds of divorce. They would have to make their own housing arrangements. If, upon divorce, a couple could not agree which party to take up the tenancy of the existing public housing unit, HD would normally grant the tenancy to the party having the custody of their child. The other party would then be required to move out.

70. In this case, HD did not follow the policy for the following reasons -

(a) the complainant had been staying elsewhere for some four years and was receiving Comprehensive Social Security Assistance from the Social Welfare Department (SWD) with a rent allowance for private housing. She was, therefore, not in urgent need of accommodation;

(b) the complainant's ex-husband was suffering from depression after the divorce. To prevent mishaps, SWD had advised HD not to remove him from his existing accommodation;

(c) the complainant's housing request was being followed up by a voluntary agency. Should the agency recommend compassionate rehousing, HD would separately arrange public housing for her; and

(d) notwithstanding the established policy, HD guidelines stated that staff should pay attention to special cases and submit them to their supervisors for consideration where necessary.

The Ombudsman's observations

71. Taking account of her ex-husband's mental condition and SWD's advice, The Ombudsman did not dispute HD's decision of not requiring him to move out immediately. However, under the policy, the complainant was entitled to public housing. HD should not have made her wait and separately apply for compassionate rehousing. If HD had difficulty in allocating the existing unit to her, it could simply have offered her another unit.

72. Meanwhile, in view of her ex-husband's condition, HD could have arranged for compassionate "rehousing" (in the existing unit) for him.

73. As HD had deprived the complainant of her entitlement under its established policy, the complaint was substantiated.

Administration's response

74. HD has accepted The Ombudsman's recommendation and issued a notice to remind frontline staff of the need to follow the relevant instructions when dealing with the housing problems of divorced tenants in order to implement the Policy on Housing Arrangements for Divorced Couples in Public Rental Housing Flats in an appropriate manner. To enhance staff's understanding of the policy and relevant instructions, a meeting on the above case was held to analyse and review the handling procedures in detail. Moreover, HD has uploaded the summary of the case onto the intranet for reference by the frontline staff so as to ensure that the housing needs of those who are entitled to the tenancy right will be met in a timely manner.

Housing Department

Case No. 2006/3350 : Unreasonably cancelling the complainant's application for a single-person flat after he and his family members were granted special transfer to another public housing unit

Background

75. The complainant used to live in a public rental housing (PRH) flat with his parents and four other family members. He made an application for a single-person PRH flat in May 2005. Later, his father (the Tenant) applied for special transfer on medical grounds, and approval was granted for his transfer with his family to two separate PRH flats. The complainant alleged that the Housing Department (HD)'s subsequent decision to cancel his PRH application in August 2006 was unreasonable.

76. According to HD's guidelines on handling applications for special transfer, all other PRH applications of an applicant and his family members will be cancelled if they are allocated a PRH flat as a result of the application for special transfer. The rationale behind the policy is that they may no longer need to apply for a PRH flat through other channels as their living environment has been improved. HD believes this can ensure the allocation of PRH resources to the people most in need. Those whose PRH applications have been cancelled, if eligible, still have the opportunity of being allocated other PRH flats through the Waiting List. However, they are required to submit their applications and wait on the List again to avoid unfairness to those who are on the Waiting List and still have not been allocated a flat.

77. When the complainant accompanied his father to HD to submit the Application Form for Special Transfer on 12 October 2005, the staff explained to them in detail the content of the application form, including the clause which stipulated that HD had the right to cancel all other PRH applications of the applicant and his family members upon flat allocation to them.

The Ombudsman's observations

78. Since public housing is a valuable social resource, The Ombudsman fully supports HD's basic principle of ensuring the equitable and effective allocation of public housing resources.

79. In this case, HD had arranged special transfer for the complainant and his family, which involved additional resources, and subsequently they enjoyed a much larger living area. The living environment of the whole family had been improved in comparison with the previous accommodation.

80. While each applicant may have different reasons for applying for a single-person PRH flat, the primary objective of the Government in providing PRH is to help the public meet their basic housing needs. HD is duty-bound to optimise the use of the limited resources in such a way that it can help more people to overcome their housing problems. Thus, HD's cancellation of the complainant's application for a single-person PRH flat upon the approval for the transfer of his whole family was considered reasonable.

81. The complainant should have known well in advance that his PRH application might be cancelled upon the approval of his family's application for transfer if he joined his family in applying for transfer. He still chose to do so, and thus he should have been prepared to face the consequences that might arise. However, since HD had never refuted his need for a single-person PRH flat, he could still re-apply any time.

82. The Ombudsman, therefore, considered this complaint unsubstantiated.

Administration's response

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

(a) HD has issued clear guidelines to ensure that the staff responsible for implementing the policy will handle the appeal cases carefully so that due consideration will be given to special situations;

(b) HD has revised the relevant clause in the Application Form for Special Transfer, specifying that if the applicant and his family members are allocated a PRH flat as a result of the application for special transfer, HD will cancel all their other PRH applications, including those which involve only some of the family members; and

(c) HD has amended the Application Form for Special Transfer accordingly to highlight the above clause. Applicants and all their family members are now required to sign on the application

form to ensure that the affected family members are well aware of the policy. The revised Application Form for Special Transfer has been in use in all HD's District Tenancy Management Offices and estate offices since 8 May 2008.

Housing Department

Case No. 2006/4378 : Failing to give prior warning on levy of surcharge for overstaying in a public housing unit

Background

84. The complainant, a public housing tenant, had applied to Housing Department (HD)'s property management office for a Certificate of Eligibility for Purchase of a Home Ownership Scheme (HOS) flat and later bought an HOS flat from the secondary market.

85. Five months later, HD informed her that she should have vacated her public housing unit within 60 days after purchasing her HOS flat. For overstaying in the unit, she was required to pay triple rent according to the policy. The complainant considered this unfair as she had never been informed of such policy.

86. The HOS purchase application form that the complainant had signed contained a statement that she would surrender her public housing unit within 60 days after completion of the assignment of the HOS flat. The complainant purchased an HOS flat but did not surrender her public housing unit. HD's tenancy management office later discovered her overstaying in the unit for three months. For the period overstayed, she had to pay a Use and Occupation Fee equivalent to three times the normal rent, plus rates. This is to avoid double subsidy to public housing tenants who own HOS flats. As the requirement to surrender public housing units was stated in the HOS purchase application form, HD did not inform the complainant separately of the requirement for triple rent.

The Ombudsman's observations

87. The Ombudsman acknowledged that the complainant had the obligation to surrender her public housing unit, as stipulated in the HOS purchase application form. The Ombudsman also agreed that HD should charge a higher rent in cases of overstaying to avoid double subsidy.

88. However, the policy of charging triple rent was not mentioned at all in the HOS purchase application form. The Ombudsman considered HD to have a duty to give tenants fair and clear warning of the consequences of overstaying, both at the time of HOS purchase application and close to the expiry of the 60-day limit.

89. Moreover, The Ombudsman questioned the lack of coordination or communication between the property management office and tenancy management office, both under HD. It was surprising that the latter office had not noticed the complainant's overstaying until after three months.

90. On balance, this complaint was partially substantiated.

Administration's response

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

(a) HD has incorporated clauses/notes into the Application Form for HOS Secondary Market Scheme and the Application Guide specifying that the tenants are required to pay an occupation fee equivalent to three times' net rent plus rates if they fail to return their rental flats to HD within the 60-day limit after the purchase of an HOS flat and apply for extended stay;

(b) HD has reminded the staff of its Property Management Units and District Tenancy Management Offices to maintain close communication and cooperation; and

(c) HD has considered The Ombudsman's recommendation of issuing reminder towards the expiry of the 60-day limit, and considered that the alternative measures below equally effective and will implement them instead –

(i) to specify the triple rent requirement on extended stay beyond the 60-day limit in the revised Application Form for HOS Secondary Market Scheme and the Application Guide;

(ii) to include the triple rent requirement in the application form for Notice to Quit (NTQ); and

(iii) to enhance the relevant Estate Management Division Instruction reminding the staff to maintain close communication with outgoing tenants to ensure timely submission of NTQs and surrender of flats.

Housing Department

Case No. 2007/0149 : Unfairly charging higher rent for a storeroom in a public housing estate

Background

92. In 2005, the complainant rented from Housing Department (HD) storeroom A in a public housing estate at $2,000 per month. Later, she discovered that the adjacent storeroom B of the same size had been leased out at only $330 per month. She asked HD to adjust the rent for storeroom A based on the 2006 valuation of $770 by the Rating and Valuation Department (RVD), but was refused.

93. HD explained that storerooms in public housing estates were leased out at either market rent or uniform rent. It charged market rent for those at a better location and of high commercial value. It normally reviews their rent every three years and tenants could renew their lease at the re-assessed market rent. For those storerooms less conveniently located and of low commercial value, uniform rent would be charged just to cover HD's management cost. It was also subject to review every three years. Lease renewal was automatic.

94. Storerooms A and B were located on the podium level. The complainant rented storeroom A through open application and was charged market rent. Storeroom B, on the other hand, had been leased out at uniform rent for more than ten years. HD indicated that it adopted different criteria for determining market rent from those used by RVD to assess the rateable value of property. Hence, it refused the complainant's request for rent adjustment based on RVD valuation.

The Ombudsman's observations

95. In principle, it was reasonable of HD to have a policy of charging rent differently based on the circumstances to avoid idling of premises. However, the commercial value of a storeroom would change from time to time. HD should have reviewed its arrangements regularly to avoid such unfairness as that between storerooms A and B in this case. There were deficiencies in HD's implementation of its policy.

96. The Ombudsman, therefore, considered this complaint substantiated.

Administration's response

97. HD has accepted The Ombudsman's recommendation and will review its policy to streamlining the fee-charging arrangements by re-assessing the rent upon the expiry of each lease and charging market rent, as and when appropriate, upon lease renewal.

Housing Department

Case No. 2007/1791 : Allocating a flat with structural problem to the complainant and refusing to compensate him for his loss

Background

98. Having lived in a public housing unit for barely a year, the complainant was asked by Housing Department (HD) to move temporarily, for repairs to the floor slab of the unit. He later learned that some other tenants in the building had already been asked to move for a similar reason. The complainant held that as the floor slabs in the building were generally defective, HD should not have allocated the unit to him. He further claimed that he had spent some $40,000 on renovating the unit and so demanded compensation. However, HD refused.

99. In accordance with policy, HD had refurbished the unit before allocating it to the complainant. HD's maintenance contractor had inspected the ceiling of the unit below and not found any seepage or spalling. However, spalling was found there a few months later, with serious corrosion of the reinforcing steel. The floor slab in his unit needed repairs. The complainant, therefore, had to move to another unit temporarily.

100. HD offered to waive the rents for both the unit and his temporary accommodation. Alternatively, the complainant could move to another unit within the estate permanently, with a rent-free period and removal allowance. HD would also "decorate" the unit and provide removal service.

The Ombudsman's observations

101. The Ombudsman noticed that there had been a total of 13 cases of ceiling spalling involving 26 units in the building within the three preceding years, in which the floor slabs between the upper and lower units had to be recast. The Ombudsman considered that HD should have taken this as an indication of a need for a thorough check of the entire building and not allocated that unit to the complainant. HD had made the complainant move out of his unit soon after moving in, resulting in his loss in renovation costs. HD should, therefore, provide due remedy by restoring the complainant to his former position, before occurrence of the problem.

102. HD's alternative offer basically served this purpose. However, HD should have made that offer at the outset, instead of acting on The Ombudsman's inquiry. Whilst it was difficult for The Ombudsman to ascertain whether HD had knowingly allocated a defective unit to the complainant, there had indeed been impropriety in its handling of the case.

103. The Ombudsman, therefore, considered this complaint partially substantiated.

Administration's response

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

(a) HD has negotiated the details with the complainant and granted him reasonable compensation, including a rent-free period, removal allowance and decoration allowance; and

(b) HD has arranged for the permanent transfer of the complainant to a suitable unit within the estate.

Labour Department

Case No. 2007/4378 : Employees' compensation insurance – failing to verify whether employer had taken out insurance policy for his employee when processing a work injury case

Background

105. In 2002, the complainant was hit by a tram on his way to deposit a cheque for his employer. The employer reported the case to Labour Department (LD) but denied responsibility, claiming that the complainant was on leave at the time of the accident.

106. The employer provided an insurance cover note to LD. It showed that the insurance policy took effect from the day of the accident. LD staff accepted the policy as valid without further verification.

107. In fact, the policy was taken out after the accident. The complainant came to know about this when he and the tram company had taken the case to court in 2007. The complainant complained to LD, which subsequently prosecuted the employer for failing to obtain compulsory insurance for its employees. The employer was finally convicted by the court of the offence charged.

The Ombudsman's observations

108. LD is the authority for enforcement of the Employees' Compensation Ordinance. Its staff ought to be well aware of employers' obligation to obtain compulsory insurance for employees and, in handling cases of injury at work, the need to ensure the insurance coverage for the entire period of employment.

109. The Ombudsman considered that the staff concerned should not have accepted the cover note and closed the file without checking the insurance policy. Had he checked, he would have found that the policy was purchased after the accident and therefore did not cover the period of employment before and at the time of the accident.

Administration's response

110. LD has accepted the recommendation of The Ombudsman and has

taken the following actions –

(a) the Operational Guidelines of Employees' Compensation Division (ECD) have been revised to assist staff to identify and process doubtful cases;

(b) the computer system of the ECD has been enhanced to facilitate staff in following up on doubtful cases;

(c) the ECD has organised experience sharing and other training courses to raise the sensitivity of staff and to ensure that cases are processed in accordance with latest Operational Guidelines. In addition, staff have been reminded to report to supervisor immediately in case they are faced with problems, so that appropriate follow-up action could be taken out by the supervisor;

(d) Operational Guidelines of ECD have been circulated regularly so that staff are acquainted with the procedure; and

(e) random checking of compensation cases by officers of supervisory ranks has been arranged to ensure that cases are processed properly.

Land Registry

Case No. 2007/0323 : (a) Impropriety in the registration of a charge document against the complainant's property; and (b) Failing to revoke the registration of an instrument with incorrect contents

Background

111. In April 2004, the Land Registry (LR) received a Memorandum of Charge (the subject Charge) lodged by the solicitors appointed by the Incorporated Owners (IO) of the building in which the complainant lives. It was claimed in the subject Charge that the complainant had failed to pay a sum payable to the IO. The instrument was then registered by the LR. In May 2005, the complainant lodged to LR a Memorandum of Discharge for registration. In July 2005, LR informed the complainant that the Discharge was withheld from registration as it was considered not affecting land. The instrument, together with a scrutineer's note, was returned to the complainant. In February 2007, LR received a Memorandum of Discharge lodged by the solicitors for the IO and registered the instrument. The complainant accused LR of the following -

(a) LR registered the subject Charge lodged by the solicitors appointed by the IO in which the claim that he had failed to pay a sum payable to the IO was untrue;

(b) LR registered the subject Charge without first verifying its content; and

(c) on the other hand, LR withheld the registration of the Memorandum of Discharge lodged by the complainant.

112. Subsequently, LR registered the Memorandum of Discharge lodged by the solicitors for the IO but did not at the same time remove the record of the subject Charge or ask the IO to add a remark in their Memorandum of Discharge clarifying that he had never owed the IO any sum.

The Ombudsman's observations

113. The Ombudsman found this case unsubstantiated on the following grounds -

(a) it was claimed in the subject Charge that since the complainant had failed to pay a sum payable to the IO, the complainant's property was charged pursuant to section 19 of the Building Management Ordinance and the Deed of Mutual Covenant (DMC) of the building. As the subject Charge was lodged for registration based on the Building Management Ordinance to protect the interests of the IO, LR considered that it was an instrument affecting land and had complied with the provisions of both the Land Registration Ordinance and the Land Registration Regulations. Therefore, LR had an obligation to register the instrument. Whether the content of the instrument is true or not would not affect LR's such obligation;

(b) LR does not have the statutory authority to verify the content of an instrument lodged for registration. As such, LR did not verify the authenticity of the claim about the outstanding payment before registering the subject Charge. Also, LR has no power to judge and is not required to verify if the sum claimed in the subject Charge was payable by the owner to the IO under the DMC. Provided that it was so claimed in the instrument, LR was statutorily obliged to register the instrument. If the complainant does not agree with the content of the instrument, he may check with the IO or consult a solicitor; and

(c) the Memorandum of Charge against the complainant's property was lodged for registration by the IO. For the release of the Charge, the Memorandum of Discharge must also be lodged by the same IO. LR could not register the Memorandum of Discharge lodged by the complainant himself. This is analogous to a mortgage of a property. Even after the borrower has paid off the mortgage, the instrument of release can only be lodged by the lender but not the borrower for an effective discharge of the property from the mortgage.

114. Under the Land Registration Ordinance, once an instrument is registered, it will become a public record. LR is not empowered to remove the record of any registered instrument. Therefore, when the subject Charge was later discharged by the Memorandum of Discharge lodged by the solicitors for the IO, such record was removed only from the "current land register" but is still shown in the "historical and current land register". Moreover, the law does not require the lodging party to state in the Memorandum of Discharge the reasons for the discharge. Hence, LR has no authority to request the IO to add a remark in their Memorandum of Discharge stating that the complainant did not owe the IO any sum.

Administration's response

115. LR has accepted The Ombudsman's recommendation and has taken the following actions -

(a) staff have been reminded to be more comprehensive and cautious when answering enquiries and, in particular, to explain clearly the reason why a Memorandum of Discharge must be lodged by the party who created the charge but not the owner of the charged property when handling similar cases in future;

(b) having reviewed the handling procedure, a guideline has been drawn up for staff observation to ensure that customers would be informed of all the essential information and staff have complied with all the necessary steps in relation to provision of the oath of administration and deeds lodgement service. In brief, the guideline highlights that -

(i) the administration of the oath/affirmation by the Land Registry does not constitute any representation on the part of the Land Registry the instrument is registrable and acceptable for registration by the Land Registry;

(ii) registration of any instruments under the present deeds registration system does not guarantee the validity or legal effect of the instruments; and

(iii) All the fees payable will not be refunded; and

(c) the procedure and the guideline will be reviewed regularly and updated as appropriate.

Post Office

Case No. 2006/3182 : Private posting boxes – installing a public posting box in a private estate rendering it not accessible to non-residents

Background

116. The complainant alleged that Post Office (PO) had installed a public posting box in a private estate near his residence instead of installing it on the street outside the estate, rendering it inaccessible to non-residents of the estate and people in the neighbourhood.

117. Property owners or management companies of private housing estates or lots may apply for installation of "private posting boxes" but have to bear the cost of their purchase, installation and maintenance. Prior approval must be obtained from PO before the boxes could be installed at the specific locations.

118. PO had received a letter from the management office of a private housing estate requesting installation of a posting box in its vicinity. PO staff inspected the postal facilities in the area. Since it took only six to eight minutes to walk from the estate to the nearest posting box, PO considered it unnecessary to install another one there. However, as the management office undertook to meet all the costs required, PO installed a "private posting box" in the estate for the exclusive use of its residents. Meanwhile, PO could save its expenditure on postal facilities.

119. The PO conditions for installation of "private posting boxes" required an applicant to affix a notice that it was private. However, due to the negligence of PO staff, the estate management office was not required to do so before collection services were provided. This caused the complainant to mistake it to be for public use. To avoid recurrence of such misunderstanding, PO subsequently arranged to affix the notice.

120. Moreover, PO had failed to record in its files the justification for approving the installation of an additional posting box in the estate. Such documentation was essential and omission inappropriate.

The Ombudsman's observations

121. The Ombudsman found that PO did not charge at all for collection from any of the "private posting boxes" in Hong Kong. Initially when there

were just a few such boxes, providing the collection services did not involve much extra finances. Nevertheless, the cost of purchase and installation was only a one-off capital expenditure, while maintenance would only be a small fraction of the total expenditure. In installing "private posting boxes", PO should have focused on the cost of collection services as recurrent operating expenditure borne solely by PO.

122. The Ombudsman noted that PO had considered there simply to be no need for an additional public posting box in the vicinity of the estate. The "private" posting box was provided in the estate only because the management office asked for it. In this context, although the recurrent expenditure might not have been a burden on PO, these boxes were undeniably an extra service for the convenience of the estate residents. If PO did not charge anything for the collection service, it would be tantamount to using public funds to subsidise the additional expenditure thus incurred. It was a deviation from the "user pays" principle and people would deem that as unfair.

123. PO had approved the installation of the posting box in accordance with the relevant guidelines and considerations. There was no impropriety in processing the application except for the recording and filing procedures which needed improvement. However, PO had failed to charge for the collection services for the "private posting box" for the exclusive use of the estate. PO lacked thorough planning and long-term consideration. Nor did it ensure the proper use of public funds.

124. Against this background, The Ombudsman considered this case partially substantiated.

Administration's response

125. PO has accepted The Ombudsman's recommendations and taken the following actions –

(a) PO has issued revised guidelines to staff responsible for handling applications for installation of posting boxes, reminding them to make a clear record of the key issues and justifications for decisions made when processing each and every application and ensure proper maintenance of file records so as to assess more accurately the feasibility of any addition or relocation of posting boxes. Besides, PO has arranged to conduct regular checks on the proper keeping of files and records to ensure the effective implementation of the above arrangements;

(b) after reviewing the policy on "private posting boxes", PO considers that to avoid giving a perception of unfairness in providing public postal service, PO would no longer provide mail collection services to posting boxes *not accessible to the general public* as part of its public postal service. Instead, the provision of such collection service would be considered on a case-by-case basis and charged in accordance with commercial principles. For existing "private posting boxes" not accessible to the general public, a grace period of one year would be given after which commercial charge would be levied. PO has notified the owners of these "private posting boxes" (17 in total) that PO will levy the charge with effect from 1 September 2008.

Subsequent to the notification and further discussions, five owners of these private posting boxes have made available their posting boxes for use by the general public. For the remaining 12 boxes, the mail collection services have been withdrawn.

PO has also reviewed the demand for posting boxes in the vicinity of these 12 boxes in accordance with the established criteria and the latest situation, including the service demand in the respective areas. The review concludes that new posting boxes would need to be installed for public use in ten of these areas. Temporary posting boxes are provided in these areas upon the withdrawal of mail collection services of the relevant private posting boxes, pending the completion of installation works for new posting boxes. New applications for setting up "private posting boxes" not accessible to the public would be considered on a case-by-case basis on commercial principles. PO will continue to conduct regular reviews on the effectiveness of the improvement measures to ensure proper use of public funds.

Social Welfare Department

Case No. 2006/4314 : Disability Allowance – (a) improper handling of the complainant's application for Disability Allowance and (b) poor service attitude

Background

126. In April 2006, the complainant, suffering from severe arthritis, applied for Disability Allowance (DA), which required medical assessment by a public hospital. Mr A of Social Welfare Department (SWD) Social Security Field Unit told her to take the Medical Assessment Form to the medical social worker at the Queen Elizabeth Hospital (QEH). However, the latter advised that the Field Unit should send the Form to QEH direct. The complainant then returned the Form to Mr A.

127. In July 2006, when the complainant twice asked Mr A for progress with her case, he was ill-mannered and unhelpful. After her repeated requests, he called the hospital and learnt that her application had not been processed as the doctor had forgotten to fill in the Form.

128. In early August 2006, SWD approved the application and advised the complainant to contact Mr B of the Field Unit in September to apply for renewal. She met and telephoned Mr B in September and November 2006 but he was also very unfriendly, giving her the cold shoulder when she greeted him and was impatient when she made enquiries. The complainant considered that both Messrs A and B had not followed up her application properly and their service attitude was poor.

129. DA applicants should normally hand the Medical Assessment Form to the medical social worker or doctor at the hospital. However, QEH was a unique case in that the Field Unit should send the Form to the hospital direct. SWD admitted that Mr A had been mistaken in telling the complainant to hand in the Form herself. Nevertheless, he had subsequently apologised and mailed the Form to the hospital. He had also enquired about the progress of her case several times on request and confirmed in early August 2006 her eligibility for DA.

130. Mr A said that there might have been some misunderstanding as he had never refused to help the complainant, nor had he been impolite. However, he agreed that he should be partly responsible for the complainant's unpleasant experience.

131. Mr B claimed that he had mailed the Form to QEH. When the doctor completed the assessment in late December 2006, he had even asked the hospital to fax him the report for follow-up. He completed processing the case in January 2007 and disbursed the DA to the complainant.

132. Mr B said that his manner of speech had always been "blunt" and the complainant might have misunderstood him. He also admitted partial responsibility for the incident and apologised.

The Ombudsman's observations

133. The Ombudsman considered that handling DA applications is a daily routine for the Field Unit and yet Mr A made the mistake on the procedures, thus causing the complainant unnecessary shuttling between the Field Unit and the hospital. Both Messrs A and B asked for progress of her case only on request. Such service attitude was unbecoming of a Government department committed to serving the disadvantaged.

134. Judging from the complainant's vivid account and the admission of partial responsibility of both Messrs A and B, The Ombudsman considered that even if there had been misunderstanding, their manners were unsatisfactory and therefore the complaint was substantiated.

Administration's response

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

(a) SWD has held a meeting with the Hospital Authority to explore different methods to improve the workflow in handling the Medical Assessment Forms (MAF). The Medical Social Service Units of SWD will continue to coordinate and communicate with related units of the hospitals to assist in the handling of MAF;

(b) the special arrangement in handling MAF for the Specialist Out-Patient Clinics of QEH has already been included in SWD's internal guidelines. SWD has followed up The Ombudsman's recommendation to add a note in another section of the guidelines to further highlight to frontline staff the arrangement with QEH;

(c) SWD has reminded frontline staff to serve customers in a positive, enthusiastic, polite and sympathetic manner at all times as they are serving the disadvantaged group; and

(d) the existing Computerised Social Security System of SWD already has the built-in "bring-up" function to remind supervising officers to monitor case processing. SWD has further reminded the supervising officers to make use of the workflow function to enhance the monitoring of the progress of the case processing so as to avoid any delay in payments to the eligible applicants.

Social Welfare Department

Case No. 2007/1289 : Disability Allowance – inconsistency in processing renewal of Normal Disability Allowance

Background

136. The complainant had lost four left-hand fingers, for which the Social Welfare Department (SWD) had granted Normal Disability Allowance (NDA) for over ten years. However, SWD suddenly notified her that the allowance would not be renewed. She could not understand the reason for such inconsistency.

The Ombudsman's observations

137. One of the criteria for NDA was that the applicant had to be certified by the Department of Health (DH) or the Hospital Authority (HA) as severely disabled for not less than six months (i.e. broadly equivalent to 100% loss of earning capacity such as loss of all ten fingers).

138. On this consideration, The Ombudsman observed that in the previous years, HA doctors concerned had wrongly assessed the complainant's condition to qualify her for NDA and SWD staff had each time indiscriminately approved her applications. However, SWD staff found some contradictions in her latest medical assessment report and sought clarification from the doctor. The latter subsequently corrected his report and indicated that the complainant did not qualify for NDA. SWD then notified the complainant that she would no longer be granted NDA. As she did not appeal, the case was closed.

139. It was clear that SWD had acted responsibly and reasonably in querying the doctor's assessment on the latest application and in discontinuing the NDA for the complainant. However, her previous applications had not been subject to the same good practice. In the past, SWD staff had simply rubber-stamped all the doctors' recommendations. This accounted for the inconsistency. As the approving authority for NDA, SWD has the responsibility to safeguard proper use of public funds. In making its decision, the Department should not rely solely upon the doctor's assessment and recommendation without its own analysis. The Ombudsman considered this complaint partially substantiated.

Administration's response

140. SWD has accepted The Ombudsman's recommendations and has taken the following actions –

(a) SWD has incorporated the concerned items including explicit elaboration of the definition of "severely disabled", the areas of attention in handling application of disability allowance and the Medical Assessment Forms (MAF) in the training programmes for all newly recruited and serving staff so as to strengthen their skills and knowledge. They are also reminded that they should clarify with the medical social workers or medical officers in case they have doubts about the information or the information is obviously self-contradictory and inconsistent;

(b) SWD has revised the Social Security Manual of Procedures to require all staff to examine medical assessment reports carefully and seek clarification from the doctor whenever in doubt; and

(c) SWD has revised the Social Security Manual of Procedures to require staff to study applicants' previous medical assessment reports when processing their applications for renewal of NDA and copy such reports to their assessing doctors for reference.

Television and Entertainment Licensing Authority

Case No. 2007/2900 : Complaints about indecent articles − adopting double standards in handling complaints

Background

141. In May 2007, Television and Entertainment Authority (TELA) received a complaint alleging indecent elements in the Bible. TELA concluded that the complaint was unsubstantiated and submission of the Bible to the Obscene Articles Tribunal (OAT) for classification was unjustified. The complainant then complained to The Ombudsman that TELA's refusal to submit the Bible to OAT was unreasonable and that it had adopted double standards as compared with its previous handling of a complaint about the *Chinese University Student Press* (Student Press).

142. Under the Control of Obscene and Indecent Articles Ordinance (COIAO), TELA may submit to OAT for classification any article suspected to contain obscene or indecent elements.

143. Upon receipt of a public complaint, TELA would examine the contents of the article. It would refer to the Guidance to Tribunal laid down in the Ordinance and OAT's previous classification results as well as court decisions in appeal cases, when considering whether the article should be submitted to OAT. TELA's criteria were similar to OAT's and in line with the standards of morality, decency and propriety generally accepted by the community. Personal preference of staff members would not be involved, nor would the background of complainants and the number of similar complaints affect TELA's judgement.

144. TELA stated that it had followed the same procedures and criteria in handling both complaints.

The Ombudsman's observations

145. Under the Ordinance, TELA may submit articles to OAT for classification. In other words, it has the authority to submit, or not.

146. In this case, TELA had examined the complaint in accordance with its procedures and, exercising the above authority, decided not to submit the Bible to OAT for classification.

147. Given that OAT is under the Judiciary, which is outside The Ombudsman's jurisdiction, and the dispute over its classification of the Student Press was under judicial review, The Ombudsman could not comment on how TELA had handled the Student Press case. Nevertheless, The Ombudsman found TELA's explanation regarding its handling of the Bible case consistent with its established criteria and procedures. There was nothing unreasonable or contradictory.

148. The Ombudsman, therefore, considered this complaint unsubstantiated.

Administration's response

149. TELA has accepted The Ombudsman's recommendation and has reviewed the complaint handling procedures, level of staff and overall assessment system. TELA has introduced the following improvement measures –

(a) TELA has stepped up training for staff responsible for handling complaints, including preparing responses to frequently asked questions. The handling officer will refer doubtful cases or cases which may attract public attention to the senior management for consideration;

(b) TELA has organised a series of seminars on western and oriental art appreciation for its enforcement staff and will organise more seminars in future to enhance their knowledge in this area. Moreover, the staff also discuss on a regular basis the OAT's classification rulings to enhance their understanding about the prevailing classification standards;

(c) if a complainant is not satisfied with TELA's decision, he will be informed of the procedures for review. If the complainant seeks a review, the case will be referred to senior officers for consideration. The case may be handled by directorate officers if necessary; and

(d) the Commerce and Economic Development Bureau and TELA have reviewed the provisions and operation of the COIAO and launched a public consultation in the latter part of 2008 on how to improve the existing mechanism.

Transport Department

Case No. 2006/3716 : Failing to curb illegal parking

Background

150. The complainant had repeatedly complained to the Transport Department (TD) about frequent illegal parking of vehicles at the garden of a building and on the adjoining pavement, but to no avail. The complainant alleged that TD had failed to curb illegal parking on the pavement, thereby affecting pedestrian safety.

151. TD had agreed to install railing to prevent vehicles from entering the pavement. However, soon after commencement of the works, TD received a letter from the owner of the garden claiming right of way of the pavement for vehicular access to the garden. TD thus removed the railing.

152. Having reviewed the matter, TD concluded that as only two cars could be parked at the garden and pedestrian traffic along the pavement was low, occasional occupation of the pavement by the cars was not a serious problem and could be handled by law enforcement action.

153. To cope with illegal parking by other vehicles on the pavement, the local District Council proposed the installation of railing along an adjacent section of the pavement. After consulting residents through the Home Affairs Department, TD started the works.

The Ombudsman's observations

154. The Ombudsman noted that while it was necessary for TD to handle the matter prudently, it had taken over 20 months from the commencement of the previous works to that of the latest. That was far too long and had affected pedestrian safety in the interim. The Ombudsman considered TD to have been indecisive and had procrastinated over this issue. In this light, the complaint against TD was substantiated.

Administration's response

155. TD has accepted The Ombudsman's recommendations and has taken following actions –

(a) TD had closely monitored the installation of railing. With the assistance of Highways Department, the works were completed in June 2007; and

(b) TD has continued to monitor the traffic condition of the neighbourhood and, when necessary, will request the Police to step up enforcement action.

Water Supplies Department

Case No. 2007/4417 : (a) Unreasonably refusing a request to adjust water charges; and (b) Delay in giving a substantive reply

Background

156. From June 2006 to December 2006, there were several incidents of temporary suspension of salt water supply to the housing estate where the complainant resided due to main burst or other routine system operation on maintenance in the district concerned. During these incidents, affected residents were required to use fresh water for flushing. The complainant viewed that this had led to an increase of water consumption and as a result, extra water charges and sewage charges. The complainant wrote to the Water Supplies Department (WSD) on 13 December 2006, 27 January 2007 and 15 March 2007 demanding fee adjustments.

157. WSD replied to the complainant's letters dated 13 December 2006 and 27 January 2007 on 25 January 2007 and 12 March 2007 respectively, informing him of a programme to rehabilitate water mains in the district and that no fee adjustment would be made. In response to the complainant's letter dated 15 March 2007, WSD issued an interim reply on 11 April 2007 and gave a substantive reply on 15 November 2007, despite the receipt of three reminders from the complainant on 27 June 2007, 19 July 2007 and 28 July 2007.

The Ombudsman's observations

158. During the concerned period, there were seven occasions (a total of about 50 hours) of temporary suspension of salt water supply due to main burst incidents or routine maintenance affecting the complainant's residence. The additional water consumption caused by the temporary suspension of salt water supply was minimal and there was no evidence to show that the water consumption of the complainant's residence had been substantially increased. The Ombudsman considered that WSD's decision not to adjust the water charges was fair and just and therefore complaint point (a) was unsubstantiated.

159. Regarding complaint point (b), WSD had not conformed to the performance pledge of issuing an interim reply to a correspondence from the public within ten calendar days when processing the complainant's letter dated 15 March 2007. In addition, WSD had only advised the

complainant of the development of the complaint in the course of another enquiry by the complainant about six months afterwards. The Ombudsman considered that WSD failed to adhere to the performance pledge, thus indicated the lack of proactiveness. The Ombudsman therefore considered this part of the complaint substantiated.

Administration's response

160. WSD has accepted The Ombudsman's recommendations and has taken the following actions –

(a) WSD has revised the dispute handling procedure on water charges. In particular, if there is doubt on whether the case should be treated other than a routine case of dispute on water charges, the case officer is required to seek advice from his/her supervisor on whether the case should be referred to an appropriate section to follow-up;

(b) WSD has reminded staff to act in accordance with the performance pledge on issuing interim replies and will re-circulate the guidelines on dispute handling procedure and complaint handling procedure at a regular interval to reinforce staff's awareness on the issue; and

(c) WSD has revised both the dispute handling procedure and complaint handling procedure. The case officer is henceforth required to advise the complainant of the progress of the case if the investigation cannot be completed in two months. He/she is to review the progress of the case at a monthly interval, till the case is resolved. He/she is also required to periodically bring the case to his/her supervisor's attention and discuss the progress to determine if further action is required.

Part III
– Responses to recommendations in direct investigation cases

Buildings Department
Food and Environmental Hygiene Department and
Water Supplies Department

Case No. DI/126 : Handling of Water Seepage Complaints

Background

Seepage is basically a matter of building management and maintenance for property owners. However, if it causes public health nuisance, building safety risks or wastage of water, Government has a statutory responsibility to intervene. The departments concerned are FEHD, BD, WSD and, since mid-2006, Joint Office (JO) comprising BD and FEHD staff. WSD is not a party to JO.

2. Seepage matters have been a perennial source for complaints. These complaints have continued even after establishment of JO intended to be a one-stop service for handling these complaints. Against this background, The Ombudsman initiated a direct investigation to examine the effectiveness of the JO scheme in handling seepage complaints.

Administration's response

3. The Administration agrees entirely with The Ombudsman that water seepage in private premises is primarily a matter of building management and maintenance for property owners, and the Government should intervene with available statutory powers only in defined circumstances. In fact, the JO has separately conducted an interim review of the three-year pilot programme with a view to further improving its service. One of the items in the review is the clarification of the JO's authority under the existing legislation administered by the three Departments. The nature of some water seepage complaints implied that they are not actionable by the Government under the concerned ordinances, such as seepage of rain water and leaking water pipes which do not cause any noticeable water wastage. These are building management problems that individual owners should be responsible for. In the future publicity actions, the JO will clarify the role and jurisdiction of the Office to the

public and stress the importance of proper building management in tackling water seepage problems.

4. The Administration recognises that there is room for further improvement in the handling of water seepage complaints by the JO. The Administration has accepted The Ombudsman's recommendations and has taken / will take the following actions –

(a) in 2003, BD commissioned a consultancy study to carry out a thorough research to explore technologies and testing methods for the investigation of water seepage. The recommended methods have been developed and introduced since the commencement of the pilot JO scheme. BD will review unsuccessful cases with a view to further improving the JO's investigative capability and consider the need to conduct another study;

(b) JO has established major internal milestones for monitoring progress for the three stages of investigations. JO has also set specific timeframes for completion of major tasks in respect of straightforward cases, such as on-site inspection; gaining entry; testing; and replying to complainants;

(c) since August 2007, in its "Notes to Owners", JO has set out the anticipated timeframe to complete an investigation, and the timeframe to notify complainants of investigation progress and follow-up action. BD and FEHD are collating data on past performance with a view to establishing and promulgating appropriate performance pledges;

(d) JO has clarified the interpretation of the requirements and has developed a standard checklist of requisite information and procedures to be followed by JO staff and consultants for exercising power of entry under the Public Health and Municipal Services Ordinance;

(e) FEHD has reviewed and revised its guidelines to ensure staff would take prompt and decisive action to gain entry in cases where the parties involved are uncooperative. The new guidelines were promulgated in September 2007;

(f) JO has established a system in monitoring the progress of work under items (d) and (e);

(g) the concerned departments have sought legal advice to clarify their scope of enforcement. They will communicate with one

another and discuss with their bureaux if necessary to clarify the responsibilities. JO will, in its publicity materials, clearly convey to the public its jurisdiction and authority, in particular the scope of cases that the Office can or cannot handle;

(h) FEHD is developing a clear definition of "nuisance";

(i) upon the development of the definition of "nuisance", FEHD will refine the practical guidelines for staff on the issue of nuisance notices;

(j) JO will take enforcement action against multiple owners in seepage cases that are within its jurisdiction arising from common parts of a building (except where the seepage is caused by rainwater or mains water);

(k) JO has been maintaining statistics on the outcome of successful investigations and execution of remedial or enforcement action;

(l) JO has established clearer guidelines, milestones, division of work and monitoring mechanism with a view to improving its efficiency. JO will continue to explore further improvement measures with more operational experience gained. In parallel, the Administration is reviewing the organisational set up of the JO, taking into account The Ombudsman's recommendations;

(m) WSD will continue to work closely with the JO and handle the cases referred to WSD promptly. In parallel, the Administration is reviewing the organisational set-up of the JO, taking into account The Ombudsman's recommendations;

(n) JO has -

(i) established for Stage III major milestones for progress monitoring of consultants' work;

(ii) set timeframes for consultants to submit major deliverables;

(iii) required consultants to submit standardised progress reports;

(iv) required consultants to submit standardised records of contacts/visits to premises during investigation;

(v) required consultants to make available their staff for inspection upon giving five working days' advance notice for

cases with access problems;

(vi) standardised the content of and set deadlines in reminders and warning letters to consultants to clearly draw the consultants' attention to their unsatisfactory performance; and

(vii) provided staff with additional guidelines, clearly setting out the procedures and timeframes to issue reminders and warning letters, including the responsible staff for action to enable effective handling of consultants with serious delay.

(o) JO is formulating criteria and guidelines for the Office to take over from consultants the investigation of cases with serious delay;

(p) JO is examining the feasibility of the proposal on contract duration and will explore other options to improve the effectiveness of outsourcing; and

(q) the Administration is examining the proposal of establishing a Buildings Affairs Tribunal, taking into account the diverse views expressed by various stakeholders as well as the legal and constitutional implications of the proposal.

Government Secretariat - Education Bureau and Hong Kong Examinations and Assessment Authority

Case No. DI/168 : Special Arrangements for Examinations for Students with Specific Learning Difficulties

Background

5. This is a follow-up to The Ombudsman's direct investigation into assessment of children with Specific Learning Difficulties (SpLD) in April 2007, to examine the support services for these students. As examinations are an integral part of the education system with considerable impact on the future of young people, The Ombudsman considered this a priority and thus initiated a direct investigation in this aspect.

Administration's response

6. The Administration has accepted The Ombudsman's recommendations in general and has taken the following actions -

Education Bureau (EDB)

(a) in an EDB circular on "The Principle of Equal Opportunities" which was issued in 2003 to all schools, it is stated explicitly that school administration should observe the principle of equal opportunity in formulating school policies and practices including special arrangements for students with special educational needs (SEN) in internal assessments. Similar contents are reiterated and elaborated in an Operation Guide on Whole School Approach to Integrated Education which is newly developed for schools' reference in June 2008, and a hyperlink to this circular is given in the Guide with a view to reminding schools that special examination arrangements (SEA) for students with SEN, including those with SpLD, in internal assessments are a requirement under the Disability Discrimination Ordinance; and

(b) EDB has put in place a School Development and Accountability Framework under which school-self-evaluation (SSE) complemented by External School Review (ESR) is advocated. While schools are accountable for providing SEA to their students, EDB officers conduct regular ESR, inspections and visits in which the implementation of SEA for internal examinations will be

covered as appropriate. To strengthen the monitoring and support role of EDB in this regard, in-house training for officers concerned has been stepped up;

(c) EDB had commissioned an overseas consultancy to review the educational psychology (EP) service in Hong Kong in the 2006/07 school year and subsequently developed a plan to strengthen its EP services. With effect from the 2008/09 school year, EDB has extended its school-based educational psychology service (SBEPS), which was highly recognised by the consultant for its comprehensive and integrated nature, to an additional 115 public sector primary and secondary schools, so that a total of 351 public sector schools are provided with this service. EDB will continue to identify resources for extending SBEPS by phase. To address the problem of EP shortage, EDB and the University Grants Committee (UGC) are exploring possible solutions;

(d) a survey to review the existing special arrangements for internal examinations in both primary and secondary schools will be conducted at the end of 2008;

Hong Kong Examinations and Assessment Authority (HKEAA)

(e) the time-frame for processing applications for special examination arrangements has been reviewed by HKEAA. With effect from the 2008/09 school year, candidates will be informed of the results of their applications at least one month earlier than before (i.e. by end of January instead of by end of February);

(f) with effect from the 2008/09 school year, candidates will be given 4 weeks (7 days were allowed in previous years) to submit an appeal against the results of their applications and the decisions of the appeal panel will be released in mid March;

(g) to make the "early application" a normal and common practice, schools were informed via an HKEAA circular in May 2008 about the new time-frame for processing applications. In the circular, schools are required to submit applications for their candidates in S4 (for HKCEE) or S6 (for HKALE). In addition, the leaflet on "Providing Services to Candidates with Special Needs" has been updated to include the new time-frame;

(h) with effect from the 2007/08 school year, candidates whose applications are not accepted by the HKEAA Task Group on Specific Learning Disabilities are given specific views / reasons;

(i) at the 14th meeting held in May 2008, the HKEAA Task Group decided to review the guidelines for provision of computers to candidates with SpLD in the HKCEE / HKALE. An initial study is being conducted by the HKEAA with a view to making recommendations to the Task Group for consideration at its next meeting;

(j) with effect from the 2008/09 school year, two parent members will be included in the composition of the HKEAA Task Group;

(k) with effect from the 2007/08 school year, the Secretariat of the HKEAA records the main points of consideration in respect of special cases or those cases not supported by the Task Group. (Note: Reasons for approved cases are usually similar. Furthermore, individual cases are considered in great detail at the HKEAA Task Group meetings. Therefore, it is considered not practicable to document the deliberations of each case.) For all cases considered by the Appeal Panel, the deliberations are recorded in detail;

(l) standing procedures have been put in place to ensure the correct special examination arrangements are made for candidates. The HKEAA will also strengthen the training for staff in order to avoid possible human errors in administration;

(m) the HKEAA has been reviewing its resource allocation and exploring different funding possibilities to meet the resource requirements of the increasing applications for SEA;

EDB and HKEAA

(n) a leaflet on Parent-School Coordination and Mediation Mechanism is available on the EDB website for information by the public. In the two newly developed guides on Whole School Approach to Integrated Education for schools and parents, EDB's available assistance is explained in detail. In addition, EDB from time to time holds meetings with parent associations to address issues of their concern, and to alert them of the various channels for parents to seek EDB assistance;

(o) regarding SEA for internal assessments in schools, relevant information has been included in the Operation Guide on Whole School Approach to Integrated Education, which has been uploaded on the EDB website. Similar information has also been

included in the Guide on Whole School Approach to Integrated Education for Parents, which was uploaded on the EDB website in September 2008. Pending results from the survey on SEA to be conducted at the end of 2008, EDB will revise the leaflet on "A Whole School Approach – Principles and Strategies for Assessment" and arrange distribution in schools as well as at various service outlets of Department of Health and NGOs for access by the general public by 2009;

With regard to public examinations, the HKEAA leaflets on "Providing Services to Candidates with Special Needs" and "Providing Services to Candidates with Specific Learning Disabilities" have been published since the 2003/04 school year and distributed to schools and uploaded on the HKEAA website. Seminars for schools and parents have been organised as an annual event to disseminate the information on special arrangements in public examinations and the application procedures. For the 2008/09 school year, the seminars for schools and parents were conducted in September 2008;

(p) EDB maintains close liaison with relevant professional organisations, NGOs as well as parents' organisations for consultation and collaboration in respect of catering for the needs of students with SpLD. In recent months, EDB officers delivered a number of talks to NGOs and parents' organisations to keep them informed of latest developments on the subject and will continue to do so. Subsequent to EDB's liaison with the Hong Kong Council of Social Services, many NGOs now regularly upload relevant information on SpLD to the HKEdCity Parents' Site for sharing with the public; and

(q) the HKEAA will continue to maintain close liaison with the stakeholders and enlist the assistance of NGOs and interest groups as appropriate. With effect from the 2008/09 school year, two parent members, nominated respectively by the HKASLD and the Committee on Home-School Co-operation, are included in the Task Group.

Leisure and Cultural Services Department and Government Secretariat - Home Affairs Bureau

Case No. DI/156 : Mechanism for Handling Conflict of Interests in Organisations Subvented by the Leisure and Cultural Services Department

Background

7. In March 2006, the media reported that the Hong Kong Amateur Athletic Association (HKAAA) had awarded a service contract to a company owned by its Chairman. As HKAAA receives subvention from the Leisure and Cultural Services Department (LCSD), The Ombudsman was concerned whether LCSD had appropriate mechanism to monitor its subvented organisations for conflict of interests and therefore initiated a direct investigation.

Administration's response

8. LCSD and the Home Affairs Bureau (HAB) (for the case of performing arts groups) have accepted the recommendations of The Ombudsman and have taken the following actions –

Proper Management of Conflict of Interests

(a) LCSD has all along been working closely with the Independent Commission Against Corruption (ICAC) to enhance the monitoring mechanism of subvented organisations. ICAC completed the Assignment Studies on Administration of the Sports Subvention Scheme in 2007 which covers a review of the existing monitoring system and conflict of interest issues. LCSD has adopted the recommendations made by ICAC. The terms of the Agreement entered between LCSD and the National Sports Associations (NSAs) for 2008-09 have also been revised in consultation with ICAC and Department of Justice to avoid conflict of interests and manage conflict of interest more closely.

The new Agreement requires NSAs to -

(i) comply with the Code of Conduct and Procurement Guidelines, in particular the approval mechanism and

declaration system to avoid conflict of interest and other internal administrative procedures in all work practices and decision-making processes;

(ii) account for any complaint, allegation or suspicion of breach of or non-compliance with the Code of Conduct, Procurement Guidelines and all internal guidelines and procedures committed to by the NSAs, and provide relevant information, documents and materials to the satisfaction of the Government;

(iii) advise the Government from time to time and within one month upon effect of any changes or amendment to the Code of Conduct, Procurement Guidelines, accounting and payment procedures, selection procedures for the recruitment and employment of staff, and all internal guidelines and procedures;

(iv) advise the Government on the declaration of interests made by all their office-bearers and employees, and provide the Government with all the official records including but not limited to notes of discussion, minutes of meeting, and management decision, etc. for compliance with Code of Conduct, Procurement Guidelines, and all internal guidelines and procedures; and

(v) accept and implement the Government's advice with regard to improving the NSAs' internal control and monitoring mechanism, Code of Conduct, Procurement Guidelines and procedures for the recruitment and employment of staff to ensure public transparency and accountability in the use of the Subvention and the Reserve Fund.

Where information on possible conflict of interests comes to knowledge, LCSD will consult ICAC for taking follow-up action as appropriate.

As regards performing arts groups, HAB consulted the ICAC in late 2007. It has revised the relevant clauses in the 2008-09 Funding and Service Agreements with the major performing arts groups and included new clauses/Annexes to enable the Government to prescribe mandatory requirements on avoiding conflict of interest in all the work processes and decision-making processes of the groups.

Under the clauses, the groups undertake to avoid conflict of interest, misuse of official position in all work practices and decision-making processes by adopting the sample Code of Conduct and sample pro-forma for declaration of conflict of interest.

Code of Conduct and Procurement Guidelines

(b) *Subvented holiday camp* – LCSD has consulted ICAC and proposed a draft code of conduct and procurement guidelines for subvented holiday camps and sea activity centres. LCSD is in the process of seeking views from the relevant bureaux and departments.

On Green Subsidy Scheme, LCSD has sought endorsement of its proposed code of conduct and procurement guidelines from ICAC and Department of Justice. In this connection, LCSD has since April 2008 announced the new granting criteria. Members of the public are now using the new form to apply for subsidies in organising greening activities.

(c) *Hong Kong Archaeological Society* – LCSD has reviewed the existing code and procurement procedures of the Hong Kong Archaeological Society (HKAS) and considered that sufficient monitoring has been put in place. Subvention to HKAS is granted on project base only. Each year, HKAS is required to submit project proposal(s) to the Antiquities and Monuments Office (AMO) of LCSD for approval for securing the subvention amount earmarked for it (e.g. $150,000 for 2008/09). HKAS is required to submit detailed proposal with budget breakdown to justify the expenditure for each archaeological project submitted to AMO for consideration.

HKAS is formed by a group of archaeology experts and scholars. Most of its archaeology projects are carried out by its own team but some may involve archaeology experts and scholars from the Mainland. In general, most of the budget items incur spending on engagement of manual labour to conduct excavation works. Given the special and unique nature of the archaeological project and the expertise involved, it is considered impracticable for HKAS to procure the services through normal procurement procedures in accordance with the provisions of the Stores and Procurement Regulations (SPR).

AMO has been closely monitoring the way how HKAS procures

the specialist services by vetting its proposed budgets, conducting regular archaeological site visits and vetting the excavation report.

(d) In May 2008, LCSD requested NSAs to re-circulate at half-yearly intervals the latest Code of Conduct and Procurement Guidelines to their officials and staff to ensure compliance.

(e) *Performing arts groups* – After consulting ICAC in late 2007, HAB has revised the relevant clauses in the 2008-09 Funding and Service Agreements with the major performing arts groups and included new clauses/Annexes to enable Government to review the groups' existing Code of Conduct and procurement procedures with a view to achieving uniform standards, controls and safeguards for all of them.

Under the clauses, the groups undertake to ensure that all the procurement of goods and services shall be conducted on a fair and competitive bidding basis through a tendering process. The groups shall review their existing Code of Conduct and procurement procedures with reference to a sample procurement policy and guidelines.

HAB has also included a clause, under which the major performing arts groups undertake to circulate the groups' latest procurement procedures to their governing body, officials and staff periodically and whenever amended.

Quality Audit

(f) LCSD has consulted ICAC and the Department of Justice on exercising the contractual right to request NSAs to account for any suspected breach of Code and instituting such contractual rights more explicitly in the Agreement for 2008-09.

The new Agreement requires NSAs to –

(i) account for any complaint, allegation or suspicion of breach of or non-compliance with the Code of Conduct, Procurement Guidelines, and all internal guidelines and procedures, and provide relevant information, documents and materials upon the Government's request to the Government's satisfaction. Any failure to account for such non-compliance with the Code of Conduct and Procurement Guidelines shall be treated as NSAs' breach of the terms and conditions of the Agreement;

(ii) answer all enquiries made by the Government about the performances or acts of NSAs in all work practices and decision-making processes within 14 days in writing to the Government's satisfaction; and

(iii) ensure the strict compliance with the Code of Conduct, Procurement Guidelines, and all internal guidelines and procedures of the NSAs in the conduct of all affairs involving the NSAs, and any breach of or non-compliance shall be treated as the NSAs' breach of the terms and conditions of the Agreement.

To facilitate compliance checking, LCSD has included in the 2008-09 Subvention Agreement the requirement for NSAs to advise the Government on the declaration of interests made by all their office-bearers and employees, and to provide the Government with all the official records including but not limited to notes of discussion, minutes of meeting, and management decision, etc. for compliance with Code of Conduct, Procurement Guidelines, and all internal guidelines and procedures.

As regards performing arts groups, HAB has revised the 2008-09 Funding and Service Agreements with the major performing arts groups to include a new clause to enable Government to exercise its contractual right to request the subvented organisations to account for any suspected breach of the Code.

Under the clauses, the groups undertake to adopt proper internal controls to ensure that the subvention is used in an accountable and cost effective manner and in case of any suspected breach of the Code of Conduct, to forward a full report with results of the investigations and actions taken to rectify the situation and to prevent recurrence of the irregularities to the Government.

HAB has also included new clauses/Annexes in the 2008-09 Funding and Service Agreements to enable Government to specify the forms to record declaration on conflict of interest and to require full reports in cases of suspected breach.

Sanctions for Non-compliance

(g) LCSD has prepared a draft sanction clause for subvented holiday camps and sea activity centres to deter conflict of interests. LCSD is in the process of seeking views from the relevant bureaux and

departments.

LCSD has drafted a new Subvention Agreement for subvented holiday camps and sea activity centres. Relevant monitoring mechanism and sanction clauses have been included in the draft. LCSD is in the process of seeking views and comments from the relevant bureaux and departments. LCSD will formulate procedures on handling possible breach of the Code or the Agreement revealed during good-will visit, internal audit inspection, or upon receiving complaint, etc.

HAB has tightened the wording of the relevant clause in the 2008-09 Funding and Service Agreement with the major performing arts groups on termination of Agreement in case of breach of any terms, conditions or undertakings of the Agreement.

Water Supplies Department

Case No. DI/165 : Alleged Overcharging of Water Bills

Background

9. Complaints against the Water Supplies Department (WSD) about overcharging have continued to surface over the years. Some water bills involved huge sums and WSD was criticised for not handling complaints satisfactorily. The Ombudsman thus initiated a direct investigation to examine the alleged overcharging of water bills.

Administration's response

10. WSD has accepted The Ombudsman's recommendations and has taken / is taking the following actions -

(a) relevant guidelines and complaint/dispute handling procedures have been re-circulated to concerned staff on a regular basis to reinforce staff awareness on the issue and remind them of the importance of taking prompt follow-up action on cases detected by the fault checking procedures. Experience sharing sessions on "billing and complaints/disputes handling" and "prevention of misread of meters" will be organised for staff of the Billing Team and Meter Reading Section respectively. WSD will continuously promulgate the importance of meter reading accuracy with the meter readers. Meter reading accuracy will be included as one of the core elements of the induction training to newly recruited meter readers. Annual refresher training on meter reading techniques and the importance of meter reading accuracy, which demands compulsory attendance, will be provided to all meter readers. Meter readers' performance in meter reading accuracy has also been reflected in their annual performance appraisals and actions against poor performers would be taken as appropriate. In addition, WSD will increase the frequency of random spot checks on routine meter readings taken;

(b) WSD has completed a comparative study and concluded that more resources should be put on taking special readings with a view to reducing overcharging cases. WSD is accelerating the filling of vacancies in the meter reader grade. For the recruitment of Meter Reader II, interviews have just completed in mid-July 2008. More

special meter reading activities (especially for account termination) will be conducted with the intake of newly recruited meter readers;

(c) WSD has reviewed the classification of established cases of overcharging. WSD considered the existing classification of the causes appropriate to meet operational needs;

(d) WSD has reviewed the estimation mechanism and found that most of the excessive estimation happened (i) if the trend data of the relevant trade were used for estimation for those accounts without consumption pattern, or (ii) if the final bill was estimated based on the past consumption pattern of the account as consumers tend to consume less in the final billing cycle than in the normal ones.

Since more information has been gathered over the past two years as basis for formulating the trend data, the trend estimation was found more reasonable and reliable during an assessment conducted in February 2008. It is believed that the possibility of having an excessive estimation based on application of the trade trend has been greatly reduced.

WSD has deployed meter readers for more special meter readings. WSD has also reviewed the current handling procedures of account termination applications in order to identify possible ways to shorten the advance notice period and conduct more actual readings. Currently, once account termination applications have been received, relevant information will be passed both to the Meter Reading Section for arranging special meter readings and to the Customer Account Section for further processing;

(e) to promote reporting meter readings by users, WSD has ensured that the "Notice of Inaccessible Meter", which contains instructions on self-read and report meter readings is issued on site by meter readers to the customers whose meters cannot be accessed for taking readings. In addition, WSD is amending the "Application for Change of Consumership" form such that customers are able to report the initial meter readings at the time of taking up consumership. An E-function for accepting self-reading will be launched by end 2008 for convenience of customers and to reduce the number of estimation bills as far as practicable;

(f) WSD is exploring means to invite new account holders whose first bill was estimated by using the trend data to provide information that might facilitate a more accurate estimation;

(g) WSD has reviewed the manpower resources of the billing team in December 2006 and a special unit was formed in February 2007 to strengthen the capability and enhance the efficiency in following up on cases caught by fault checking procedures. Since then, all the cases identified by the fault checking procedures have been properly followed up without delay;

(h) system capacity planning has been conducted annually and, up till now, system capacity is adequate for operational requirements; and

(i) currently, meter readers are distributing pamphlets about water charge calculation and channels for enquiries and complaints at the frontline upon request by consumers. These pamphlets are also kept at WSD's Customer Enquiry Centres and made available upon customers' request via the customer hotline. Where necessary, new promotional materials/press release about water charge calculation and channels for enquiries and complaints will be made.