THE GOVERNMENT MINUTE

IN RESPONSE TO

THE 22nd ANNUAL REPORT OF
THE OMBUDSMAN 2010

Government Secretariat
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Introduction

The Chief Secretary for Administration presented the 22nd Annual Report of The Ombudsman to the Legislative Council at its sitting on 7 July 2010. This Government Minute sets out the Administration's response to the Annual Report.

ii. The Ombudsman's Annual Report reveals that there is room for the Administration to improve in certain areas. We hope that through the comprehensive responses in this Minute, the Administration can 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

The Government has taken note of The Ombudsman's remarks. We appreciate the efforts of The Ombudsman in raising the quality of service and standard of administration in the public sector over the years. The Administration welcomes the recommendations made by The Ombudsman. These recommendations, including those concerning more than one department, have generally been accepted. We will sustain a positive and proactive attitude in enhancing the quality of public services across bureaux and departments.

Street Management and District Administration

2. The Ombudsman considers that there are issues requiring inter-departmental action and could be effectively tackled by joint action under District Administration. The Ombudsman points out the need for greater empowerment of District Councils and District Offices, so as to reinforce their mandate for resolving local problems, such as roadside skips, illegal parking of bicycles and on-street promotional activities.

3. Street management is an issue which involves different departments. The concerned departments would take appropriate actions according to the statutory powers vested with them. Taking into account the extent and seriousness of street obstruction as well as the nuisances caused, departments concerned would discuss appropriate control measures at the District Management Committees (DMCs) and where necessary, conduct joint operations through the coordination of DMCs. District Officers, as chairmen of DMCs, play a coordinating role to ensure resolution of street management problems through consultation and cooperation among departments concerned. Where necessary, support from District Councils is sought for inter-departmental clearance operations in tackling the problems at the district level.

4. In addition, a General Circular was issued in March 2008 requiring policy bureaux and departments to render District Officers full support by according high priority and channelling necessary resources to district issues concerning people's livelihood. District Officers may convene District Inter-departmental Committee meetings to facilitate cooperation in addressing interdepartmental district matters and to

expedite resolution of district problems. Where necessary, District Officers may escalate inter-departmental issues to the Steering Committee on District Administration chaired by the Permanent Secretary for Home Affairs with members comprising the relevant Heads of Departments for a steer.

Water Seepage and Staffing at Joint Offices

5. The Ombudsman considers that the shortage and frequent turnover of short-term contract staff problematic, in particular, the Joint Offices (JO) which are manned by the Buildings Department (BD) and the Food and Environmental Hygiene Department (FEHD). The Ombudsman opines that investigation of seepage complaints suffers delays and disruption for this reason.

6. The Administration has been making progress in improving the modus operandi of JO to handle water seepage complaints. We are continuing our efforts to introduce new measures. For example, BD has recently been awarding longer term contracts for its consultants to reduce the turnover frequency. FEHD will increase the number of civil service staff in the Joint Office in 2011.

7. The Administration is also undertaking a comprehensive review on its overall building safety strategy for Hong Kong, and water seepage is one of the issues under consideration. We aim to complete the review before the end of 2010. The review covers the role of the Government in handling water seepage complaints, how to further streamline the modus operandi of JO to optimise use of the available resources and the feasibility of promoting mediation in settling disputes.

Part II
– Responses to recommendations in full investigation cases

Agriculture, Fisheries and Conservation Department

Case No. 2008/5307 : Providing incorrect information and advice to the complainant in connection with her application for adoption of two stray kittens

Background

The complainant's friend went to the Agriculture, Fisheries and Conservation Department (AFCD)'s New Territories North Animal Management Centre (the Centre) to reclaim some lost animals on 27 September 2008. While there, she spotted one big and one small grey tabby cats. As requested by her friend, the complainant went to the Centre on 29 September and told the staff the above situation. She provided an AFCD staff member with the colour and characteristics of the cats and hoped to adopt them for her friend. The staff member told her that AFCD did not provide rehoming services and since the complainant was not the owner of the cats, AFCD could not and would not arrange adoption for her.

2. After the complainant's repeated requests, the AFCD staff suggested that she obtain a Police Lost Report so that AFCD could arrange the reclaim procedure for her. The complainant then reported loss of the two tabby cats at Sheung Shui Police Station and provided relevant information to AFCD in the afternoon on the same day.

3. However, when the complainant provided the staff member with the relevant information, the staff member questioned her because the location in which the cats were lost did not match AFCD's record. Her application was thus declined. On 30 September 2008, the complainant called the Police for assistance and with the help of the Police, she finally succeeded in obtaining the cats.

4. On 13 November 2008, the complainant was informed by the Police to assist in a case in which she was suspected to have provided false information to AFCD to feign as the owner of the cats. The complainant was shocked and upset that the AFCD staff member accused her in order to

cover up his dereliction of duty. She then lodged a complaint to The Ombudsman on 8 December 2008.

The Ombudsman's observations

5. Regarding the complaint against AFCD for not being able to provide a clear explanation to the complainant on stray cats' adoption procedure, The Ombudsman considered that a deficiency and was of the view that AFCD should make available copies of the relevant guidelines for public reference.

6. The Ombudsman pointed out that before assessing the animals' suitability for rehoming, it was not appropriate to accept the complainant's rehoming request at discretion. In this case, the staff had adhered to the established procedures in refusing to allow the complainant to rehome the cats through animal welfare organisations (i.e. AFCD animal rehome partners) before them being assessed. It was considered that the staff had handled the matter appropriately.

7. However, the Ombudsman considered that there were certain deficiencies in AFCD's procedure in handling the complaint because the process of lodging a complaint was not expedited even though the complainant was present on the scene. AFCD should provide efficient channels for the complainant to lodge a complaint on the scene such as providing the complainant with the phone number of the alleged staff's supervisor or allow the complainant to meet the supervisor in person.

8. In this case, details of the cats in the Police Lost Report submitted by the complainant did not match the characteristics of the cats as specified in the Register of Stray Animals. Therefore, AFCD staff had grounds to refuse her reclaiming of the cats. The Ombudsman was therefore of the view that there was insufficient evidence to draw a conclusion on this point.

9. The Ombudsman considered that since the complainant had repeatedly admitted that she was not the keeper of the cats but had assumed the identity of the keeper and submitted a lost report to the Police, she should therefore be fully aware that she was assuming the identity of the keeper when signing the Reclaim Form.

10. In view of the above, The Ombudsman concluded that the complaint against AFCD was partially substantiated.

Administration's response

11. AFCD has accepted The Ombudsman's recommendations and taken the following actions –

(a) AFCD has drawn up an education and publicity plan for 2010-11, including the launching of various activities to enhance public awareness of animal rehoming procedures. The plan is being implemented progressively. Copies of the related procedures and guidelines are also made available in the Animal Management Centres for public reference;

(b) AFCD has organized a workshop on effective ways of handling complaints for frontline staff to enhance their practical knowledge and skill in communication, so that better customer services can be provided to the public. Staff are reminded to seek further instructions from their supervisors should they come across any special or difficult cases in performing their duties;

(c) a clear warning has been inserted into the Reclaim Form to warn the claimant of possible legal liabilities should he/she provide a false or incorrect statement; and

(d) AFCD has reminded its staff to strictly follow the departmental guidelines and rules on visitors. Visitors of the Animal Management Centres should have visitor identification and claimants should not be allowed to enter the kennel for reclaiming animals.

Case No. 2009/0718 : Mishandling of a complaint about illegal breeding of pigeons

Background

12. On 12 February 2009, the complainant lodged a complaint to the Agriculture, Fisheries and Conservation Department (AFCD) through the 1823 Call Centre (the Call Centre) regarding a suspected case of illegal breeding of pigeons by his neighbour that might adversely affect environmental hygiene, and suggested AFCD inspect the location under complaint at 10 a.m. on that day. Acting in accordance with the information provided by the Call Centre, AFCD sent staff to conduct site inspection at Garden A in Yuen Long and to collect environmental swab samples on 12 and 14 February 2009 respectively. However, the location inspected was actually the complainant's residence but not the location being complained about. Only until 16 February 2009 did AFCD's staff confirm that the location under complaint should have been the roof of the building opposite the complainant's residence, but not the roof of complainant's residence.

13. The complainant was not satisfied with the investigation progress and telephoned AFCD's officer-in-charge on 17 February 2009. The officer told him that AFCD had inspected the location under complaint on 13 February 2009, and that due to manpower constraint in the follow-up process, the inspection could not be conducted after 10 p.m. (the time should be 10 a.m., but it was wrongly recorded by the Call Centre as 10 p.m.) as requested by the complainant. As the date of inspection verbally reported by AFCD's officer was inconsistent with the actual date of inspection and the inspection time suggested by the complainant was mistakenly recorded as 10 p.m. instead of 10 a.m., the complainant was dissatisfied and subsequently lodged a complaint with The Ombudsman on 21 February against the AFCD staff for making multiple mistakes in handling his complaint and for providing contradictory information on investigation records in response to his enquiries in an attempt to cover up the mistakes.

The Ombudsman's observation

14. The Ombudsman noted that AFCD had responded actively in handling the complaint. Unfortunately, the wrong information recorded

by the Call Centre had led to the inspection of an incorrect location. This is excusable under the circumstances.

15. The Ombudsman was pleased to note that, after learning the lesson, the Call Centre had taken corresponding improvement and remedial measures in order to minimise the chance of repeating the mistake.

16. Although the fault was initially caused by the Call Centre, The Ombudsman, with regard to the AFCD's response that the referral documents did not contain any mandatory requirement for AFCD staff to first contact the complainant before initiating the investigation, considered that irrespective of whether the referral documents mentioned the question of prior contact, as the investigation body, AFCD should be responsible and possess the professional knowledge to analyse and assess the need to contact the complainant on its own. Therefore, The Ombudsman was of the view that this could not be an excuse for not making any prior contact with the complainant. Furthermore, if AFCD had already had an established position over the method for investigating the illegal breeding of pigeons and would not conduct the inspection at the time specified by the complainant, it should have made this clear to the complainant, so as to avoid the possibility of disputes in future.

17. In addition, AFCD indicated that it would not normally inform the complainant of the progress of the case during the course of investigation. The Ombudsman considered that this practice should not be confused with the fact that AFCD did not seek clarification with the complainant on the substance of the complaint and the suggested time of inspection.

18. As regards the complaint about the poor attitude of the AFCD officer, since both sides stuck to their own version and in the absence of any independent evidence, The Ombudsman could not determine who was right or wrong in this case.

19. After considering AFCD's response to and comments on the investigation report, The Ombudsman was of the view that AFCD's explanation was generally reasonable. As such, The Ombudsman considered this complaint not substantiated. Yet, The Ombudsman has made some recommendations for AFCD to follow up.

Administration's response

20. AFCD has accepted The Ombudsman's recommendations. It revised the departmental complaints handling procedures and informed all AFCD staff by issuing a Departmental Standing Circular in November 2009.

Buildings Department

Case No. 2009/1229 : Failing to follow up a complaint about illegal structures which blocked the escape route in a building

Background

21. In December 2008, the complainant, being one of the owners of a building (the building) in Causeway Bay, reported to the Fire Services Department (FSD) that a wall stall had blocked a means of escape of the building. After an inspection, FSD informed the complainant that the blockage was outside the building and thus should be dealt with by the Food and Environmental Hygiene Department (FEHD).

22. In January 2009, FEHD conducted an inspection and found that the blockage was in a private alley belonging to the building and there were suspected illegal structures. FEHD claimed that they had no authority over the matter and referred it to the Buildings Department (BD), the Lands Department (LandsD) and also back to FSD for follow-up action.

23. The complainant considered FSD and FEHD to be shirking their responsibility in handling the complaint. The complainant was also dissatisfied with BD and LandsD for failing to take any follow-up action[1].

The Ombudsman's observations

24. After investigation, The Ombudsman considered that FSD, FEHD, BD and District Land Office/Hong Kong East (DLO), had duly discharged their duty and taken the necessary steps to investigate and follow up the case. BD, in particular, had decided to take enforcement action against the unauthorised structures in question by serving a statutory order under Section 24(1) of the Buildings Ordinance (Cap. 123) on the owner(s) of the land for removal of the unauthorised structures which affected the effective width of the means of escape of the building and were in a dilapidated condition.

[1] The complaint against FSD, FEHD and LandsD was found not substantiated and there was no relevant recommendation for these departments. The part of the case involving these departments is hence not covered in this Government Minute.

25. The Ombudsman also considered that as the case did not fall within the purview of FSD, FEHD and DLO, no enforcement action could be taken by them.

26. Besides, The Ombudsman saw no problem in FSD referring the case to FEHD and other possibly relevant departments. On the contrary, they had been responsive. Their cross referral was indicative of their sense of responsibility, a helpful attitude and a thorough approach among the departments to address the situation. Accordingly, The Ombudsman considered the complaint against FSD, FEHD, BD and LandsD unsubstantiated.

27. However, The Ombudsman noted that both BD and DLO had taken a long time to inform the complainant of their investigation results. BD should have tried to contact the complainant promptly.

28. On 29 June 2009, The Ombudsman's staff conducted a site visit and found some of the unauthorised structures still there. The Ombudsman urged BD to expedite its enforcement action.

Administration's response

29. BD has accepted The Ombudsman's recommendations and taken the following actions –

(a) BD has reviewed the existing procedures on handling complaints. It considered that the present arrangement is appropriate, i.e. staffs are required to follow the Department's performance pledge, and has also reminded its staff of the requirement for giving timely replies to complainants and exercising diligence in handling complaints; and

(b) On 24 July 2009, BD issued a statutory order under Section 24(1) of the Buildings Ordinance to the Incorporated Owners (IO) of the building. IO of the building had eventually removed the concerned unauthorised structures. BD issued a compliance letter to IO of the building on 3 February 2010.

Buildings Department and Food and Environmental Hygiene Department

Case No. 2008/1362 (Buildings Department) and 2008/1363 (Food and Environmental Hygiene Department) : Shirking responsibility in handling a report on leakage of communal drainage pipes

Background

30. In December 2006, a property management company complained to the Food and Environmental Hygiene Department (FEHD) about leakage of the communal drainage pipes located at a car park space in an estate under its management. Upon investigation, FEHD considered the leakage to be caused by defective external drainage pipes of a unit (Unit A) above the car park space and so referred it to the Buildings Department (BD) for follow-up action. However, apart from sending advisory letters to the owner concerned and the Incorporated Owners of the relevant buildings, BD took no further action to abate the environmental nuisance.

31. The complainant thus lodged a complaint with The Ombudsman in March 2008 against BD and FEHD for shirking responsibility in handling its report of leakage.

The Ombudsman's observations

32. The Joint Office (JO) has been set up by Government with staff from FEHD and BD to provide a "one-stop service" to handle public complaints of seepage. However, in handling complaints concerning defective drainage pipes, BD is confined to its departmental role and not as a partner in the JO system. Where abnormality of any communal drainage pipes is noted, JO would refer the case to BD Headquarters for necessary action. If the investigation result confirms the existence of defects in the pipes, BD would issue a repair order to the owner concerned. Separately, FEHD is also responsible for investigating complaints connected with drainage pipes problems, albeit for the different purpose of dealing with related environmental hygiene problems.

33. After a site inspection, FEHD initially decided to treat the case as one involving defective drainage pipes and so referred the case to BD

for action. Despite BD's site inspections at different times, assessment results showed no reliable evidence of the existence of a defective external drainage pipe in the location or any issue relating to structural safety. Thus, no action could be taken by BD. Nevertheless, it informed FEHD of its findings and suggested FEHD take up the case again. With BD's professional advice that the source of seepage might be linked to other causes apart from the drainage pipes, FEHD agreed to follow up the case again.

34. However, its action was hampered by a long spell of wet weather, which made accurate readings of moisture content impossible. Moreover, as the occupier of Unit A did not fully cooperate, it took FEHD longer to complete the initial investigation. As the initial investigation by FEHD had come up with no positive results, BD staff in JO then outsourced the subsequent investigation to a private consultant.

35. The Ombudsman's investigation showed that both FEHD and BD had followed established procedures in processing the case within their specific purview. Their referral to each other had been in accordance with internal procedures and guidelines.

36. However, it was unfortunate that the two departments held different views on the analysis and assessment of the condition of the communal drainage pipe. This might have given the complainant an impression that the two departments lacked coordination and attempted to pass the buck.

37. The Ombudsman concluded that the complaint against BD and FEHD for shirking responsibility was unsubstantiated. Nevertheless, The Ombudsman noted other administrative deficiencies on their parts –

(a) there was considerable delay on the part of BD's consultant in initiating action. There was a lapse of five months from case assignment before site inspection, which was most unsatisfactory;

(b) the complainant and BD's consultant were both subsidiaries of the same business group. The Ombudsman considered that BD should have avoided any situation of potential conflict of interests, whether actual or perceived;

(c) FEHD had confused complaints by different parties over the same matter. There was a misleading reply to the complainant

(i.e. property management company) that its complaint was referred to BD for action. In fact, FEHD had referred another similar complaint lodged by an occupant of Unit A to BD for investigation. In other words, although the problem was referred to BD, the complainant's case was not; and

(d) FEHD made an immature referral. FEHD found colour water around a section of pipe that seemed to be leaking. FEHD also took a sample of colour water to the Government Laboratory (GL) for analysis and made prompt referral on the suspected defective pipe to BD for investigation with a view to abating the nuisance earlier. However, the result from GL revealed that no colour dye was found. BD's follow-up inspection also revealed that no defect of the pipe was observed.

38. In view of the above, The Ombudsman concluded that the complaint against BD and FEHD substantiated other than alleged.

Administration's response

39. BD and FEHD have accepted The Ombudsman's recommendations and taken the following actions –

(a) BD has drawn up specific departmental guidelines and requirements on avoidance of conflict of interest and distributed such guidelines to BD's staff for them to follow;

(b) in respect of monitoring the performance of private consultants, JO has introduced "milestones" and target time for completion of the investigation task since May 2008. This is stated in the contract document specifying that the consultant should contact the occupier concerned to arrange investigation and testing within three weeks after receiving assignment from JO, and submit an investigation report within two weeks upon completion of investigation. To monitor the progress of investigation, JO holds bi-weekly meetings with the consultant to review the progress of investigation cases. JO would request immediate explanation and improvement from the consultant once slow progress or poor performance of individual cases is revealed. If no improvement is observed, JO would issue a warning letter to the consultant which would be recorded in the quarterly performance appraisal report. The consultant's

previous performance appraisal reports would be taken into consideration when assessing their tenders for BD's contracts in future. If there is any case of serious delay, JO would take the case back from the consultant and arrange in-house staff to investigate the seepage complaint and keep the complainant informed of progress; and

(c) FEHD has reminded the staff concerned to exercise greater caution and adhere strictly to the departmental procedures in handling seepage complaints and departmental procedures for abatement of nuisance of choked or defective drains in private properties. Besides, FEHD has reminded its staff to avoid making immature referral to other department(s). In case samples have been collected for analysis by GL, the case officer should wait for the laboratory test result before referring the case to the relevant department(s) for action.

Case No. 2008/3209 (Buildings Department) and 2008/3210 (Food and Environmental Hygiene Department) : Failing to properly handle a seepage complaint

Background

40. On 7 September 2007, the complainant lodged a complaint with the 1823 Call Center regarding water seepage at his premises.

41. On 17 September, staff of the Food and Environmental Hygiene Department (FEHD) in the Joint Office (JO) inspected the complainant's premises, and found water seepage at the ceiling of the master bathroom. On the next day, FEHD conducted a test at the upper floor (U/F) premises. Since the result of the test could not ascertain the source of water seepage, FEHD referred the case to the Buildings Department (BD) in JO on 11 October for carrying out a professional investigation.

42. A consultant was assigned by BD to follow up the case on 23 October 2007 and inspected the complainant's premises on 6 November. Tests were conducted at the master bathroom in the U/F premises on 14 November. On 4 December 2007, the consultant found, at the ceiling of the master bathroom in the complainant's premises, the colour dye used in the test at the floor slab of the shower tray of the master bathroom in the U/F premises.

43. BD received the investigation report submitted by the consultant on 24 January 2008, and issued an advisory letter on 1 February requesting the owner of the U/F premises to carry out checking and repair works as soon as possible. Subsequently, BD referred the case to FEHD on 27 February to follow up with the repair works at the U/F premises. On 26 March 2008, FEHD found that the consultant's investigation report and the advisory letter issued by BD to the owner of the U/F premises did not indicate which bathroom was the source of seepage. BD confirmed on the same day that the source of seepage came from the master bathroom in the U/F premises, and issued an advisory letter to the owner of the U/F premises superseding the previous one.

44. On 2 April 2008, FEHD issued "Nuisance Notice" to the owner of the U/F premises, requesting the owner to repair the shower tray and its enclosing wall in the master bathroom in 14 days. On 14 April, staff of FEHD was notified that the U/F premises had been sold and no repair works would be carried out. On 23 April, FEHD contacted the new owner,

requesting him to carry out repair works as soon as possible. However, the new owner expressed that the premises was vacant and should not cause water seepage. In view of this, FEHD referred the case file to BD on 23 May 2008 for review.

45. Since the new owner did not express any intention to proceed with repair works while the water seepage at the complainant's premises persisted, BD suspected that there might be multiple water seepage sources at the U/F premises. Hence, BD referred the case to FEHD on 4 June 2008, recommending the issuance of "Nuisance Notice" to the new owner and the conducting of other tests to find out other seepage sources.

46. As FEHD disagreed with BD's recommended course of action, FEHD passed the case file back to BD on 13 June 2008 and recommended BD to seek legal advice prior to FEHD's consideration to issue "Nuisance Notice".

47. On 26 June 2008, a Head Professional Officer of BD sent an email to a Superintendent of FEHD for advice. The Superintendent of FEHD replied and asked BD to consider a joint inspection at the complainant's premises with staff of FEHD if necessary. However, when staff of BD in JO requested staff of FEHD in JO to have a joint inspection on 14 July, the latter stated that their investigation work had been completed and queried their role in the joint inspection. Eventually, staff of BD decided to inspect the complainant's premises on their own, and contacted the complainant from 18 July 2008 onwards for appointment but to no avail.

48. In August 2008, the complainant lodged a complaint with The Ombudsman against JO formed by BD and FEHD that the water seepage problem at his premises was not properly handled.

49. From 28 July to 18 September 2008, BD had contacted the management office of the complainant's estate many times to check the progress of repair works at the U/F premises. However, no reply was received from the management office. On 10 October 2008, staff of BD visited the U/F premises but no one answered the door.

50. On 16 October 2008, staff of FEHD successfully contacted the complainant and was informed that the seepage at his premises had ceased for the time being. Therefore he refused further inspection by JO at his premises, but requested JO contact him a month later. On the same day, BD sent an email to FEHD and proposed the latter to check the moisture

content at the complainant's premises a month later. On 17 October 2008, FEHD replied to BD via email that as the case was still under stage III investigation, the checking should be conducted by BD.

51. Finally, BD was informed on 10 December 2008 that the repair works at the U/F premises were completed. After that, BD inspected the complainant's premises on 13 December 2008 and found no water seepage. BD issued a letter to the complainant on 15 December 2008 informing him that the water seepage had stopped and the investigation work would cease.

The Ombudsman's observations

52. From mid-October 2007 to February 2008, BD was responsible for stage III investigation in this case. For each month during that period, with the exception of January 2008 when BD did not contact the complainant, BD either issued letters to the complainant informing him of the progress of investigation or sent its consultant to visit the complainant's premises.

53. After that, BD and FEHD held divergent opinions regarding the re-issuance of "Nuisance Notice" to the new owner. Except by making repeated telephone calls to the complainant in June and July 2008, BD had not actively liaised with the complainant to inform him of the progress of investigation.

54. Finally, BD contacted the complainant in December 2008 and visited his premises. After confirming that there was no water seepage, BD issued a letter to the complainant to close the case. The time required for stage III investigation by BD was reasonable and without delay.

55. Nevertheless, the consultant's report and BD's advisory letter to the owner of the U/F premises had not indicated which bathroom was the source of seepage. Although BD clarified the situation subsequently without causing any delay, this showed the negligence of the consultant and staff of BD. Moreover, since the ownership change of the U/F premises, the two departments insisted on their own opinions on the re-issuance of "Nuisance Notice" to the new owner, lasting for seven months.

56. Upon establishment of JO, it was agreed that FEHD would be responsible for enforcing the Public Health and Municipal Services Ordinance (Cap. 132), including the issuance of "Nuisance Notice".

FEHD had also issued instructions to its frontline staff reminding them of this agreement. However, on holding different opinions in re-issuance of "Nuisance Notice" to the new owner and transferring the file back and forth, the departments were seriously delaying the progress of the case.

57. Besides, both departments lacked coordination and adequate communication in proceeding with the case, as a result, the case was delayed again without making any progress. From the point of view of the complainant, the departments should communicate proactively and seek compromise as far as possible to help the public to solve the problem. The frontline staff should consult their supervisors when necessary to find solution to the problem as soon as possible.

58. In view of the above, The Ombudsman concluded that the complaint against BD and FEHD substantiated.

Administration's response

59. BD and FEHD have generally accepted The Ombudsman's recommendations and taken the following actions –

(a) BD and FEHD had issued new internal guidelines in February 2009 and August 2009 respectively regarding the issuance of interim replies to complainants informing them of the progress of investigation regularly. BD and FEHD staff will issue interim replies to complainants every 60 working days on the progress of investigation of cases being conducted by them;

(b) regarding the quality of work, BD has been regularly reminding its staff in JO to handle information and records carefully to avoid delay due to unclear data and information. FEHD had also reminded its staff of similar matters in October 2009;

(c) BD and FEHD have clear demarcation of duties regarding investigation and law enforcement by JO. The seepage investigation work in JO is empowered under the Public Health and Municipal Services Ordinance (Cap. 132), and FEHD is the enforcement body of the provisions under the Ordinance. BD is responsible for assisting in the identification of the seepage sources so as to facilitate FEHD to take enforcement action. Although staff of BD is empowered to issue "Nuisance Notice", FEHD is responsible for such enforcement work according to

the current arrangement and BD will assist in providing the investigation result, related information and evidence to assist FEHD to issue "Nuisance Notice". BD will strive to strengthen internal communication continuously in order to enhance the efficiency of handling seepage complaints. The Administration is reviewing the Government's long-term role and arrangements in handling water seepage problems. The Ombudsman's recommendation will be taken into account in the review; and

(d) FEHD had issued relevant internal guidelines in October 2009 that any interface problems encountered in dealing with seepage cases that could not be settled with BD at the district level should be brought to the attention of the Headquarters, which would then liaise with BD counterparts. Upon agreement reached, the Headquarters will inform district staff of the way forward and the respective district management should closely supervise FEHD staff in JO in handling the case as instructed.

Case No. 2008/4569 (Buildings Department) and 2008/4570 (Food and Environmental Hygiene Department) : Delay in handling a seepage complaint

Background

60. On 21 July 2007, the Joint Office (JO) received a water seepage complaint. Staff of the Food and Environmental Hygiene Department (FEHD) in JO inspected the complainant's premises on 31 July 2007 for stage I investigation.

61. Since the complainant revealed that the seepage appeared after rain and there was no drainage pipe in the vicinity of the affected area, FEHD opined after evaluation that the water seepage was related to defective building structure. In order to speed up the investigation, FEHD decided to skip stage II investigation and referred the case file to the staff of the Buildings Department (BD) in JO for stage III investigation on 30 August 2007. However, since the record showed that the moisture content at the ceiling of the complainant's premises was below 35 which was the threshold to necessitate follow-up action, and the file contained no information of the layout of the upper floor (U/F) premises, BD passed the file back to FEHD for further action.

62. On 27 September 2007, having visited again the complainant's premises and confirmed that the moisture content at the ceiling reached the highest level of 100, FEHD referred the case to BD for stage III investigation for the second time based on the same reasons, without successfully contacting the occupant of the U/F premises for stage II investigation. On 18 October 2007, BD reiterated to FEHD that they would not commence stage III investigation prior to the completion of stage II investigation.

63. After measuring the moisture content of the ceiling, comparing the moisture change before and after rain, and also comparing the layout plan of the upper and lower floors, FEHD confirmed that there was no drainage pipe at the balcony of the U/F premises and maintained its previous view that the seepage was due to defective building structure. Therefore, FEHD passed the file to BD for the third time on 9 April 2008. Eventually, BD agreed to appoint a consultant to visit the U/F premises in May 2008, and conducted a ponding test at the balcony using colour dye. After conducting post-test inspection, it was confirmed that the seepage was due to the defective floor slab of the balcony. In June 2008, while JO

was investigating another seepage complaint, it was found that comprehensive repair works were being carried out to the balcony of the U/F premises.

64. After checking the investigation report submitted by the consultant, BD agreed that the seepage was due to defective joints between the external wall and floor slab of the balcony of the U/F premises. BD thus passed the file to FEHD in mid-July 2008 for issuance of "Nuisance Notice" to the owner of the U/F premises. However, FEHD opined that BD had not informed the owner of the U/F premises of the investigation result in accordance with the procedure. Therefore, FEHD passed back the file to BD on 25 July 2008.

65. Since the U/F premises was sold, BD could not ascertain the details of the new owner for contact. As the source of seepage had been ascertained and in order to speed up the enforcement and prosecution proceedings, BD passed the file to FEHD for issue of "Nuisance Notice" to the owner concerned directly without issuing an advisory letter beforehand, in accordance with a new procedure issued on 1 April 2008. However, FEHD insisted that BD should inform the owner of the U/F premises of the investigation result before they would take any further action. The case was finally passed back to BD on 4 September 2008.

66. Although the seepage had ceased after completion of repair works at the U/F premises, the wife of the complainant phoned FEHD in September 2008 and questioned the reasons for JO not informing the owner of the U/F premises of the stage III investigation result and not issuing "Nuisance Notice" to the owner to request repair works to the defective building structure. In October 2008, the complainant lodged a complaint with The Ombudsman against JO regarding the delay in handling his water seepage complaint.

67. On 6 October 2008, BD replied FEHD that it would not issue an advisory letter to the owner of the U/F premises and requested FEHD to follow up. FEHD arranged its staff to inspect the complainant's premises and found that the seepage had ceased. JO thus closed the case and sent a written reply to the complainant about the decision on 26 November 2008.

The Ombudsman's observations

68. BD had largely followed up the case in line with the established procedure and guidelines. However, regarding FEHD's proposal to skip

stage II investigation and request to proceed with stage III investigation directly, BD indeed knew the reasons but did not agree. Nevertheless, in the two returns of file to FEHD, BD did not communicate beforehand with FEHD. In the letter to FEHD, BD simply stated that because of the lack of information on the layout of the U/F premises and that stage II investigation was not yet conducted, BD would not proceed with stage III investigation. In fact, later on, FEHD only relied on a comparison of the layout plan of the lower and upper floors of the premises in order to prove that there was no drainage pipe at the balcony of the U/F premises. The building professionals in BD had insisted on following the procedure instead of checking the layout plan for investigation, disregarding the complainant's troubles and inconvenience. The Ombudsman, therefore, considered that the complaint against BD and FEHD substantiated.

Administration's response

69. BD and FEHD have generally accepted The Ombudsman's recommendations and taken the following actions –

(a) BD has finalised the detailed arrangements for giving verbal notices to the owners of the flats concerned, including the way to handle cases in which the flats had been sold but contact could not be made with the new owners;

(b) BD and FEHD have clear demarcation of duties regarding investigation and law enforcement by the JO. The seepage investigation work in JO is empowered under the Public Health and Municipal Services Ordinance (Cap. 132), and FEHD is the enforcement body of the provisions under the Ordinance. BD is responsible for assisting in the identification of the seepage sources so as to facilitate FEHD to take enforcement action. Although staff of BD is empowered to issue "Nuisance Notice", FEHD is responsible for such enforcement work according to the current arrangement and BD will assist in providing the investigation result, related information and evidence to assist FEHD to issue "Nuisance Notice". BD will strive to strengthen internal communication continuously in order to enhance the efficiency of handling seepage complaints. The Administration is reviewing the Government's long-term role and arrangements in handling water seepage problems. The Ombudsman's recommendation will be taken into account in the review; and

(c) regarding the skipping of stage II investigation and proceeding with stage III investigation directly, the relevant guidelines agreeable to both BD and FEHD have been put into practice since August 2009.

Civil Aid Service and Immigration Department

Case No. 2008/3237 (Civil Aid Service) and 2008/3238 (Immigration Department) : Irregularities in action against a visitor who was going through immigration clearance

Background

70. Mr A's wife is a Mainland citizen. On 7 May 2008, Mr A arrived with Mrs A and their child at Lo Wu Control Point (LWCP) from the Mainland. At the upper footbridge of LWCP, a Civil Aid Service (CAS) member, through visual screening, suspected Mrs A to be pregnant. He asked Mrs A to produce her travel document for ascertaining whether she had previously been examined and granted the special landing endorsement. Mr and Mrs A ignored his request and proceeded to the Visitor Clearance Hall.

71. After A's family had gone through the formalities for immigration clearance, Immigration Department (ImmD)'s Officer Mr B asked Mrs A to undergo a pregnancy test. Mr A demanded an explanation, but Mr B threatened to deny Mrs A's entry to Hong Kong. Eventually, Mrs A underwent the pregnancy test and the result was negative.

72. Mr A complained against CAS and ImmD of the following –

(a) the CAS member concerned had acted ultra vires in requiring Mrs A to present her travel document for inspection;

(b) Mr B of ImmD had abused his power in asking Mrs A to attend a pregnancy test in a medical cubicle; and

(c) Mrs A had been improperly placed under a surveillance camera in the medical cubicle.

The Ombudsman's observations

73. In August 2009, The Ombudsman found points (a) to (c) above unsubstantiated.

74. For point (a), The Ombudsman considered that both ImmD and CAS should have anticipated public queries on CAS members' authority for inspecting travel documents and taken whatever measures possible to avoid such queries. Nevertheless, strictly speaking, the CAS member in this case had not "required" Mrs A to present her travel document for inspection. Mrs A was free not to accede to the request.

75. For point (b), The Ombudsman had reviewed the CCTV recording of the Visitor Clearance Hall and found that Mrs A had walked away from coverage of the CCTV camera for about two minutes. There was no evidence of what really happened during those two minutes or so when Mrs A went out of CCTV coverage. However, The Ombudsman had been advised by the Department of Health (DH) that Mrs A was not among the cases seen by its staff that day. It was, therefore, evident that Mrs A had not attended a pregnancy test that day.

76. As regards point (c), the fact was that the medical cubicles were not equipped with any surveillance camera. In any case, Mrs A did not attend a pregnancy test in a medical cubicle.

77. Subsequently, Mr A requested The Ombudsman to review the case. In August 2010, The Ombudsman found point (a) substantiated other than alleged, but points (b) and (c) unsubstantiated.

78. For point (a), The Ombudsman maintained that the CAS member concerned had not "required" Mrs A to present her travel document for inspection. Accordingly, the CAS member had not acted ultra vires. Nevertheless, The Ombudsman considered that the distinction between "require" and "request" was fine and not easy at all for non-local pregnant visitors (NLPV) or front-line staff to appreciate. The following key issues reflected inadequacies on the part of ImmD and CAS in implementing arrangements of asking CAS members to check NLPVs' travel documents –

(a) no prior notice had been given to NLPVs about the pre-screening arrangements;

(b) NLPVs had not been informed of their right to decline presenting their travel documents to CAS members; and

(c) ImmD had not clearly briefed CAS that its members had no authority to require NLPVs to present their travel documents for inspection.

79. For points (b) and (c) of the complaint, The Ombudsman maintained that it was evident that Mrs A had not been to a place for medical examination or pregnancy test with a surveillance camera.

Administration's response

80. ImmD has accepted The Ombudsman's recommendations and taken the following actions –

(a) as a law enforcement agency, ImmD is always mindful of the issue of legality. When requiring assistance from other organizations, ImmD would, as in the past, continue to provide clear and sufficient briefing and guidelines to such organizations to strive for excellence;

(b) ImmD would liaise with DH for consideration in drawing up a standard script for the Health Surveillance Assistants (HSAs) on what to say to NLPVs; and

(c) ImmD would consider promulgating the pre-screening of NLPVs by HSAs at prominent positions of the footbridge at Lo Wu by posters. The Department of Justice would be duly consulted on the message for the posters beforehand.

Electrical and Mechanical Services Department

Case No. 2009/3479 : (a) Mishandling a complaint; and (b) Providing contradictory replies

Background

81. On 17 May 2009, a worker who claimed to possess a certificate of Grade A Registered Electrical Worker (REW) carried out checking and cleaning work on the air-conditioner at the complainant's flat. After that, several tripping on the electricity supply for that flat occurred when the air-conditioner was switched on. The worker carried out further repairing work at the complainant's flat but was unsuccessful. The worker then refused to follow up.

82. The complainant was dissatisfied with the worker on his lack of professional knowledge and ethics. The complainant then lodged a complaint to the Electrical and Mechanical Services Department (EMSD) through 1823 Call Centre on 23 June so as to check whether EMSD would consider not renewing the concerned worker's certificate.

83. Three EMSD officers contacted the complainant to understand the details of the case. The complainant had indicated the purpose of the complaint to the said EMSD officers. The complainant would like to know whether EMSD would consider not renewing the concerned worker's certificate resulting from the above case.

84. On 14 July, EMSD officer carried out inspection and took statement at the complainant's flat. At that time, the EMSD officer indicated that the concerned worker was a Grade A REW and the chance of taking disciplinary action against that worker was not high due to insufficient evidence.

85. On 1 September, the same EMSD officer indicated that the air-conditioner was supplied with electricity through the socket outlet instead of directly connected to the distribution board, the concerned cleaning work did not involve any electrical work. Thus, the case was not under EMSD's jurisdiction. The supervisor of the said EMSD officer also indicated that the concerned worker was in fact not a Grade A REW and hence no follow-up enforcement action could be taken against that worker.

86. The complainant opined that EMSD provided contradictory replies to her. Besides, EMSD did not carry out checking on whether the concerned worker was REW or not in the first instance. As a result, EMSD followed up for about two months' time and finally indicated that the case was not processed. The complainant then lodged a complaint with The Ombudsman on 3 September 2009.

The Ombudsman's observations

87. The Ombudsman considered that although EMSD had proactively followed up the complainant's case, EMSD had neglected the main concern of the complainant and therefore could not provide a direct response to the complaint, which was not satisfactory. Besides, The Ombudsman opined that the explanations provided by some of the officers were questionable. The Ombudsman, therefore, considered this complaint substantiated.

Administration's response

88. EMSD has accepted The Ombudsman's recommendations and taken the following actions –

(a) EMSD had issued advisory letters to the concerned officers reminding them to ascertain the complainant's main concern first before providing a direct response to the complainant in future; and

(b) EMSD had liaised with the Civil Service Training and Development Institute of the Civil Service Bureau to arrange a training course on handling public complaints for concerned officers with the aim to enhancing their complaint handling and communication skills.

Environmental Protection Department

Case No. 2009/2349 : Failing to eradicate the odour nuisance caused by a landfill in Tseung Kwan O

Background

89. The complainant lived in the Tseung Kwan O District. She claimed that residents in the area had suffered the odour nuisance from a landfill in Tseung Kwan O since 2005. She had lodged many complaints to the Environmental Protection Department (EPD) and suggested many improvement measures, including closing the landfill or stopping the landfill extension; developing landfills at other areas such as Hong Kong Island South, Repulse Bay, the Lantau Island and Yuen Long; shortening the operation hours of the landfill to 8 p.m. and temporarily closing the landfill from June to September every year. However, EPD refused to accept them, while the odour problem had not improved.

90. The complainant considered that the concerned landfill affected the nearby air quality, but EPD still considered extending the landfill, ignoring the health of the residents. EPD should, similar to the closure of Sai Tso Wan Landfill and Shuen Wan Landfill, immediately close the concerned landfill, and to search for another suitable area for developing new landfill, so as to solve the odour problem in the Tseung Kwan O District.

91. The Ombudsman completed the investigation report on 22 December 2009.

The Ombudsman's observations

92. The Ombudsman was of the view that EPD had actively handled the odour complaints from the complainant and other residents, and had implemented a number of improvement measures, to minimise the odour emission during the waste disposal. EPD had also worked with other Government departments to deal with the odour problem. Having said that, The Ombudsman requested EPD to continue to conduct close inspections so as to explore long-term solutions to the odour problem.

93. As regards closing or stopping extension of the concerned

landfill, Environment Bureau and EPD had explained the need for this kind of facility in Hong Kong. The Administration should not close any landfill nor stop any landfill extension incautiously, while the site search for developing another landfill needed serious planning considerations. The Ombudsman agreed that EPD should consider other odour improvement measures. Although EPD could not accept all suggestions from the complainant, it agreed to study the shortening of operation hours of the concerned landfill.

94. In summary, The Ombudsman considered this complaint unsubstantiated.

Administration's response

95. EPD has accepted The Ombudsman's recommendation and has started discussion with the trade on the feasibility of shortening the operation hours of the South East New Territories Landfill. EPD is now collecting the comments and concerns from the trade. After reviewing the views from the trade and assessing the impacts on operation of the landfill, EPD will inform The Ombudsman of the results accordingly.

Case No. 2009/2719 : (a) Unfairness in arranging waste collection contractors in using a re-opened refuse transfer station after a fire; and (b) Inefficient delivery of an exhaust ventilation system from overseas

Background

96. The complainant was a contractor of the Food and Environmental Hygiene Department (FEHD) responsible for waste collection services of the allocated district catchments. The collected wastes would be disposed of at the designated refuse transfer station (RTS) managed by the Environmental Protection Department (EPD).

97. On 3 April 2009, the RTS was temporarily closed due to an outbreak of a No. 3 Alarm Fire. All users of this RTS were arranged to temporarily divert the wastes to other designated disposal facilities. After that, the users of this RTS were arranged to divert the wastes back to the partially re-opened RTS in phases. The complainant was the last party to use the RTS. As such, he had to bear the extra cost of having to divert the wastes to other temporary disposal facilities. The complainant opined that the waste arrangement was not fair to him.

98. Since the fire incident at this RTS, the exhaust ventilation system required replacement with new parts from overseas. The EPD had arranged shipment by sea which took about one month . The long delivery time had led to the late re-opening of RTS. The complainant considered that shipment by sea was inefficient.

99. On 26 August 2009, the complainant requested The Ombudsman to investigate the case. Having considered the complexity of the complaint, The Ombudsman conducted a full investigation of the case on 27 January 2010.

100. The Ombudsman completed the investigation report on 22 February 2010.

The Ombudsman's observations

101. The Ombudsman considered that EPD had not accorded priority for FEHD's contractors in using the re-opened RTS. Although FEHD had included the contractual provision to require their contractors to divert the

wastes to other designated waste facilities at their own costs under special situations, EPD should not exercise such contractual clause unnecessarily which had caused FEHD's contractors to suffer a great loss. The Ombudsman considered that the aforementioned arrangement was not fair to FEHD's contractors.

102. Based on the meeting record with the trade association, EPD expressed that the private waste collectors were scheduled to use the re-opened RTS in the first phase. As for the phased reception of the waste collected by FEHD and their contractors, EPD only informed that the re-opening schedule of the RTS for receiving the waste from FEHD and their contractors would be announced through the Internet at a later stage after assessing the environmental performance of RTS. Since EPD did not mention the basic principles and the definite sequence for reception of waste from the district catchments which had been subsequently supplemented by EPD at a later stage, the trade was not informed of EPD's arrangement and was therefore unable to express their opinions at that time. The Ombudsman considered that the meeting was not regarded as consultation with the trade.

103. The Ombudsman considered that EPD had only allowed a few days notice to FEHD before accepting the wastes from allocated districts back to RTS. The overall schedule for reception of waste from the district catchments was put in place on 28 August 2009 which was just three days before the formal re-opening of RTS. In other words, the complainant did not know that he was the last party to use RTS until the re-opening schedule was finalised. As such, the complainant might have suffered a great loss. The Ombudsman opined that the complaint (a) was substantiated.

104. As regards the inefficient delivery of an exhaust ventilation system from overseas, EPD explained that the new units were required to be manufactured from the supplier in Singapore. Based on the size consideration, the new parts were arranged for delivery by sea, which was only three days behind air freight delivery.

105. In fact, The Ombudsman considered that the time was actually spent on the manufacturing process from the overseas supplier and the fabrication at RTS, and not on the shipment time. As such, The Ombudsman opined that the complaint (b) was not substantiated.

106. The Ombudsman found this complaint partially substantiated.

Administration's response

107. EPD attaches great importance to communicating with the trade. Since the fire incident of RTS, EPD arranged a meeting on 3 June 2009 in response to the trade's request to follow up on the repairing and re-opening progress of RTS. At the meeting, EPD presented the re-opening arrangements of RTS and invited the trade to keep the waste collectors informed of the progress. EPD had arranged the re-opening of RTS with regard to environmental impact assessment, even distribution, waste treatment capacity and operation management. No complaint or dissenting views were expressed at the meeting. EPD noted that the complainant attended the meeting. EPD understood that the temporary waste diversion due to the fire incident might have affected the waste collection contract of the complainant. If the complainant had made known his concerns on the re-opening arrangements to EPD, EPD would have followed up and could have explored other alternatives to minimize the effect on his business.

108. Nevertheless, EPD has accepted The Ombudsman's recommendation. Should there be a need to make the operational adjustments of RTS in a similar incident in future, EPD would inform FEHD and the other stakeholders at the earliest time so that they could express their opinions on the operational changes at RTS.

Food and Environmental Hygiene Department

Case No. 2008/5141(I) : Unreasonable refusal to disclose the amount of melamine in food samples tested satisfactory

Background

109. In September 2008, the Food and Environmental Hygiene Department (FEHD) began to test for melamine in food samples and announce the results on its website. However, only the amount found in unsatisfactory samples would be disclosed, while samples passing the test would all be classified as "satisfactory" without specifying the amount of melamine found.

110. In October 2008, the complainant filled in a form in accordance with the Code on Access to Information (the Code) for FEHD to provide information on the amount of melamine found in food samples that had been tested satisfactory during a certain period. FEHD rejected the request to "avoid public confusion and unnecessary worries". In November 2008, the complainant lodged a complaint with The Ombudsman against FEHD for not releasing the requested information and breaching the Code.

111. FEHD explained that disclosing the amount of melamine in satisfactory food samples might cause concern and mislead the public that those foods were also unsafe because they contained melamine. The food industry might thus be affected unnecessarily and sue the Government for compensation. As the information "relates to investigations which resulted in or may have resulted in proceedings", access to such information could be refused under paragraph 2.6(c) of the Code.

The Ombudsman's observations

112. The Ombudsman considered that when the amount of melamine found in food products was made known, consumers could make an informed choice. Food manufacturers might adjust their production methods or prices to attract customers and avoid decline in sales. FEHD should not have kept the community in the dark for fear of causing public concern or disruption to the market.

113. The Ombudsman opined that FEHD's worry that disclosure might lead to legal liability was also unnecessary, so long as it could state clearly on its website that the food samples had passed the test and that the results were based on evidence. Regarding the interpretation of paragraph 2.6(c) of the Code, as FEHD would not even consider prosecuting the manufacturers of satisfactory food products, its citation of this provision was far-fetched and hardly convincing.

114. The Ombudsman considered this complaint substantiated, and that the case reflected a lack of understanding of the Code among FEHD staff.

Administration's response

115. FEHD has accepted The Ombudsman's recommendations and taken the following actions –

(a) FEHD provided the requested information to the complainant on 27 July 2009 after receiving The Ombudsman's investigation report on 23 July 2009; and

(b) at FEHD's request, the Constitutional and Mainland Affairs Bureau (CMAB) gave a talk to staff of the Centre for Food Safety (CFS) under FEHD on 20 October 2009 to enhance their understanding of the interpretation and application of the Code. CFS staffs have also attended other workshops on the Code organised by CMAB.

Food and Environmental Hygiene Department and Home Affairs Department

Case No. 2007/5219 (Food and Environmental Hygiene Department) : Failing to discover that a restaurant in the clubhouse of a private estate had been operating unlicensed for years and not replying to enquiries

Case No. 2007/5804 (Home Affairs Department) : Failing to ascertain whether the clubhouse of a private estate continued to operate without a Certificate of Compliance

Background

116. The residents' club of a private residential estate has been providing the owners and residents with catering and other recreational services since 1997. The overall management of the estate has been undertaken by management company A appointed by the Owners' Corporation (OC), while the management of the residents' club has been contracted out by management company A to management company B.

117. OC held a re-election in March 2007. As most of the serving OC members resigned simultaneously, almost all the newly elected members were new and not familiar with the operation and business of OC in the past. After the handover, the new members learned from management company A that the restaurant in the residents' club had been operating without a restaurant licence.

118. The Food and Environmental Hygiene Department (FEHD) received a complaint from the public on 27 April 2007 regarding the suspected unlicensed operation of the restaurant at the residents' club. FEHD officers therefore conducted a surprise inspection at the club. Though no food business was found, management company B was warned to stop offering catering services in the club immediately.

119. When the new OC learned of the actions taken by FEHD, they doubted that the restaurant in the residents' club had ever been found operating without a licence during the previous periodic inspections. The OC made three written enquiries to FEHD on this matter between September and October 2007, but no response had ever been received.

120. Separately, management company A applied to the Home Affairs Department (HAD) on 18 March 1997 for a Certificate of Compliance (CoC) for legal operation of the residents' club. On the grounds of non-compliance with certain building and fire services requirements, HAD rejected the application, and, in its reply on 9 July 1998, warned management company A to stop all clubhouse business immediately. In discussion with the then OC, management company A decided to withdraw the application. The OC alleged that HAD did not take any subsequent follow-up action to check whether management company A continued to operate the club without a licence after the withdrawal of application.

121. According to the Clubs (Safety of Premises) Ordinance (Clubs Ordinance) (Cap. 376), a "club" operates on a membership system. Moreover, the Food Business Regulation (FB Regulation) stipulates that food businesses such as restaurants should be issued a licence by FEHD to operate. Clubs, however, are not included under the interpretation of "food business" in the FB Regulation.

122. Residents' clubs of private estates not operating on a membership system are not "clubs". They are, therefore, outside the ambit of the Clubs Ordinance. Such residents' clubs need not apply to HAD for a CoC. If their catering service is for owners/residents of the estate and their accompanied guests only, such service is also exempted from a restaurant licence.

123. On 26 October 2007, the OC lodged a complaint with The Ombudsman against HAD and FEHD as follows –

(a) FEHD had failed to discover the operation of an unlicensed restaurant in the club during periodic inspections over the years;

(b) FEHD had failed to reply to the OC's written enquiries about its inspection results; and

(c) HAD had failed to ascertain whether the club continued to operate without a CoC after the application for a CoC by the club was withdrawn.

The Ombudsman's observations – FEHD

124. The Ombudsman pointed out that while FEHD noticed that there were a kitchen and seating accommodation at the residents' club as early as in 2002, it failed to pay heed to the strong possibility of an unlicensed food business being operated on the premises. Of the more than 60 inspections made, none were conducted at weekends or during holidays and busy hours in the evening. Moreover, as inspection results had not been properly documented by the subject officers, it was doubtful whether the inspection records were true. The Ombudsman noted that FEHD had already completed its investigation into the conduct of its officers in question and taken appropriate action.

125. As for the several enquiries in respect of the inspection results made by the OC, FEHD admitted negligence and omission on its part. Upon the intervention of The Ombudsman, FEHD gave a reply to the OC on 1 February 2008 and an explanation of the delay with an apology on 8 September 2009.

126. The Ombudsman also noted that FEHD initially did not have a clear idea whether the catering service of a club without a CoC could be exempted from licensing as a restaurant. However, FEHD had twice warned that the residents' club should not operate an unlicensed restaurant, only to clarify eventually that a licence was not required. In other words, years of FEHD inspections to ascertain whether there was an unlicensed restaurant were but a waste of efforts and a nuisance to the operator. The Ombudsman commented that FEHD had been enforcing a law it did not really understand.

127. The legal advice obtained by FEHD was that clubs that offer catering services but do not operate on a membership system (such as the clubhouse in question) are not "clubs" as defined in the Clubs Ordinance and, therefore, need not apply for a CoC. Furthermore, as these clubs operate in the same manner as those with a membership system, a restaurant licence from FEHD is not required for their catering service. It means that these clubhouses can evade regulation by both HAD and FEHD. The Ombudsman was of the opinion that such total absence of law enforcement is a potential risk to food safety.

128. The Ombudsman, therefore, considered the complaint against FEHD substantiated.

The Ombudsman's observations – HAD

129. HAD conducted a site inspection at the clubhouse on both occasions when the application for a CoC was withdrawn. It considered no action to be necessary as it had been ascertained that the clubhouse was not bound by the Clubs Ordinance. The Ombudsman considered the complaint against HAD unsubstantiated.

Administration's response

130. FEHD and HAD have accepted The Ombudsman's recommendations and taken the following actions –

(a) According to the legal advice obtained by FEHD, there is no statutory provision specifying that the "corporation or association of persons" as mentioned in the interpretation of a "club" in Section 2 of the Clubs Ordinance is also applicable to the "club" as referred to in Section 4 of the FB Regulation. As no interpretation of the term "club" is provided in the FB Regulation, it should be given its ordinary meaning.

Therefore, the "club" referred to in Section 4 of the FB Regulation covers but is not limited to the "club" as defined in Section 2 of the Clubs Ordinance;

(b) FEHD had issued guidelines to its district offices on 5 February 2010 concerning the scope and powers of enforcement against "clubs" and the handling of reports or complaints about unlicensed restaurants;

(c) When conducting investigation on complaints against a "club" suspected of operating "unlicensed" food business, FEHD officers will take appropriate actions based on information collected at the scene. If there is sufficient evidence to prove that the "club", though holding a CoC issued by HAD, is in fact receiving non-members and/or people not accompanied by its members, FEHD will prosecute the operator for operating a food business without a licence under the FB Regulation. It will also coordinate with HAD for joint enforcement action as necessary according to the existing mechanism. If it is proven that the "club" is not issued with a CoC and is serving the general public, FEHD will prosecute the operator for operating a food business

without a licence under the FB Regulation. If the "club" is found operating without a CoC but receiving only its members and their accompanied guests, it is not in contravention of the FB Regulation. In this case, FEHD will not take enforcement action, but it will notify HAD to follow up on the case; and

(d) under Section 4 of the FB Regulation, a "club" providing catering services is exempted from food business licensing. Therefore, an operator of such a "club" and FEHD are not in a relationship of licensee and licensing authority. Nevertheless, FEHD has conferred with HAD as to how the premises providing catering services which fall outside the ambit of the Clubs Ordinance would be inspected so as to ensure food safety and environmental hygiene. FEHD, as a department overseeing food safety and environmental hygiene, conducts inspection to such a "club" once every ten weeks to provide the operator with advice on food safety and hygiene, subject to availability of resources and manpower. If FEHD is aware of any "club" or residents' club operating in the above manner, then with agreement of its operator, the club will be included in FEHD's inspection.

HAD advised FEHD to conduct inspections to premises (including residents' clubs) offering catering services regardless of whether the premises are holding a CoC to ensure food safety and environmental hygiene. FEHD has confirmed with HAD that the above arrangements are in place.

Government Property Agency

Case No. 2008/3649 : Mishandling a complaint about street sleepers at a Government complex

Background

131. In July 2008, the complainant lodged a complaint with The Ombudsman against the Transport Department (TD), Home Affairs Department (HAD)[2] and Government Property Agency (GPA) for not properly handling the issue of the continuous occupation of the podium and mezzanine of the Tsuen Wan Transport Complex (TWTC) in Tai Ho Road, Tsuen Wan by street sleepers, thus resulting in lasting environment nuisances to pedestrians and residents in the vicinity.

The Ombudsman's observations

132. The Ombudsman considered that GPA had been slow in following up on the problem of street sleepers dwelling in TWTC, and that its actions have not been effective in solving the problem.

133. TWTC was basically a transport facility. Being specifically responsible for traffic and transport matters and as the major user of the TWTC, TD is apparently the appropriate department to bear the management responsibility for the complex. However, discussion among relevant policy branches and departments in 1984 on whether TD should be responsible for managing the complex yielded no consensus. In 1986, TD arranged for the car park management company to make inspection throughout the complex, but the arrangement was limited to maintenance and repair purposes only and was not sufficient for concluding that TD had assumed the overall management responsibility. In fact, the management responsibility for the complex has all along remained uncertain.

134. GPA assumed the tenancy management duty for the canteen and refreshment kiosk in the complex in 1990 and accepted the land allocation of TWTC site in 1994. While GPA considered that the responsibility for managing this kind of specialist buildings should rest with the user

[2] The complaint against HAD and TD was found not substantiated and there was no relevant recommendation for these departments. The part of the case involving these departments is hence not covered in this Government Minute.

departments, TD indicated its disagreement. As such, The Ombudsman considered that GPA, upon accepting the land allocation of TWTC, should have clarified the issue with TD rather than allowing TWTC to continue to operate despite the uncertain management responsibility.

135. Furthermore, as GPA was specifically responsible for the drawing up and enforcement of the Accommodation Regulations, it should have brought up the issue for discussion at bureau level after failing to reach a consensus in its discussion with TD. Given that TD has indicated clearly its disagreement with GPA's view, GPA should not have only kept clamouring unilaterally over the years that TD should assume the overall management responsibility for the complex.

136. The complaint was about environment nuisances caused by street sleepers dwelling in the complex. The Ombudsman pointed out that the failure to effectively solve the problem was indeed rooted in the prolonged uncertainty about the overall management responsibility. In such circumstances, any follow-up action by relevant departments could hardly be thorough.

137. Given that it was GPA's practice to hand over the management responsibility for this kind of Government properties to the major user departments, it should have completed all the necessary procedures and transferred the management responsibility to TD as soon as possible upon accepting the land allocation of TWTC from Lands Department (LandsD). However, GPA had never completed the transfer of responsibility or sought a solution to the issue. With the public and the District Council expressing grave dissatisfaction in recent years, the problem had become all the more pressing. Yet, GPA was still arguing with TD, without taking practical steps to tackle the issue.

138. As the management responsibility for the complex had never been formally transferred, GPA should continue to be the responsible department and be held accountable for matters including any mismanagement.

139. TD, while disagreeing that it should bear the management responsibility for the entire complex, had for many times shouldered the duty of orchestrating clean-up operations for the building, and had explored with the Architectural Services Department (ArchSD) ways to deter street sleepers from occupying the planters there. The Ombudsman noted that at least TD had not turned a blind eye to the problems arising from street sleepers.

140. The Ombudsman considered that HAD had also appropriately followed up the complaints concerning the street sleepers.

141. The Ombudsman took the view that a proper solution for this issue has long been elusive because GPA had failed to resolve the management responsibility for the TWTC. As such, The Ombudsman considered that the complaint against GPA substantiated, while those against TD and HAD not substantiated.

Administration's response

142. GPA has accepted The Ombudsman's recommendations and taken / will take the following actions –

(a) under the co-ordination of the Financial Services and the Treasury Bureau (FSTB), agreement was reached on 26 March 2010 among TD, the Food and Environmental Hygiene Department (FEHD) and GPA to set up a co-ordination committee (the committee) to jointly deal with the management matters of the complex until the handing over of the site to a private developer for property development.

With the committee playing a liaison role, the departments concerned conducted joint clearance operations on 29 April and 20 August 2010 to cleanse the podium and mezzanine and remove the belongings left by street sleepers. Immediately after the August operation, the committee arranged for round-the-clock security guard service to prevent re-occupation of the premises by the street sleepers in future; and

(b) GPA issued Accommodation Circular No. 2/2010 on Management of Specialist/Departmental Buildings on 12 October 2010 to clarify the management responsibility for departmental specialist buildings and clearly set out the roles and obligations of the proponent departments, the user departments and the works agent departments in this regard.

Government Secretariat –
Commerce and Economic Development Bureau

Case No. 2006/3082 : Impropriety in processing an application for funding support under the Patent Application Grant scheme

Background

143. In July 2005, the complainant applied to the Innovation and Technology Commission (ITC) of the Commerce and Economic Development Bureau (CEDB) for funding support under Patent Application Grant (PAG) scheme for patent application of the company's invention.

144. The PAG scheme provided financial assistance to inventors in their first application for patent registration. Although ITC appointed the Hong Kong Productivity Council (HKPC) to help implement the scheme, it was responsible for the final approval of applications.

145. In April 2006, ITC declined the complainant's application as the patentability of its invention could not be ascertained. In August 2006, the complainant complained to The Ombudsman about maladministration by HKPC and ITC in handling its application.

146. The Ombudsman's preliminary inquiries showed that –

(a) ITC had been closely supervising the PAG scheme through the issuance of guidelines, periodic reporting and regular meetings;

(b) ITC had taken due action in response to the complainant's complaint and carefully scrutinised HKPC's processing of the company's application; and

(c) ITC had clearly explained its rationale for rejecting the application.

In May 2007, The Ombudsman informed the complainant of the above findings.

147. At the complainant's request, The Ombudsman reviewed the case.

148. In March 2008, The Ombudsman maintained its stance of May 2007. On 24 June and 24 July 2008, the complainant raised new arguments. On careful consideration of those points, The Ombudsman decided on 9 January 2009 to further review the complainant's case by way of a full investigation into the following points –

(a) HKPC, acting on behalf of ITC, had failed to process properly the complainant's application for PAG;

(b) ITC had failed to monitor properly HKPC's handling of the complainant's case; and

(c) ITC had appointed an unqualified body, HKPC, as its agent for implementing the PAG scheme.

The Ombudsman's observations

149. The Ombudsman had examined the steps taken by HKPC in processing the complainant's application and accepted that, as an agent for implementing the PAG scheme, HKPC had generally followed ITC's operation guidelines and the established procedures.

150. Regarding point (a) in paragraph 148 above, The Ombudsman considered that the complainant had clearly indicated in its application form that its first preference was to file its patent registration application with "China". Given the question of time lag between State Intellectual Property Office's (SIPO's) own records of patent registration in China and the information in international database, the choice of patent office between SIPO and Australian Patent Office (APO) in this case was not insignificant. SIPO's records of patent registrations in China are more up-to-date than those in an international database. In this context, HKPC should have explained to the complainant, at the outset, the full implications of obtaining a patent search report from APO vis-à-vis SIPO, to enable the complainant to make an informed choice. Thus, The Ombudsman considered point (a) partially substantiated.

151. As for point (b), while ITC had in place a system for regularly monitoring the work of HKPC in general and had duly acted on the complainant's complaint of 6 January 2006, The Ombudsman noted that ITC had not focused on and hence had not reviewed HKPC's failure to offer a choice of patent office. In fact, the complainant had written to ITC in July 2005 querying the patent search fee. ITC could, and should, have

taken the opportunity to explain to the complainant the implications of obtaining a patent search report from APO instead of SIPO. The Ombudsman considered point (b) partially substantiated.

152. As regard point (c), The Ombudsman found it too far-fetched to relate this single case to ITC's decision for appointment of HKPC as its implementation agent. In particular, it was not evident at all from this case that HKPC was not qualified to implement the PAG scheme. Nor could The Ombudsman ascertain or determine whether there were better qualified candidates than HKPC way back in the 1990's. The Ombudsman considered point (c) not substantiated.

Administration's response

153. ITC has accepted The Ombudsman's recommendation to conduct a full review of the PAG scheme, probably in 2011, to take into account the feedback from the recent increase in the maximum funding PAG support from $100,000 to $150,000 per application.

Government Secretariat - Development Bureau,
Civil Engineering and Development Department,
Drainage Services Department, and Lands Department

Case No. 2008/6047 (Government Secretariat - Development Bureau), 2009/1034 (Civil Engineering and Development Department), 2009/1035 (Drainage Services Department), and 2009/1037 (Lands Department) : Failing to properly handle complaints since 2000 regarding flooding at a private estate and the safety problem of a slope nearby, resulting in a landside in June 2008

Background

154. The owners' corporation (OC) of a private estate lodged a complaint with The Ombudsman on 18 December 2008 and the main points were as follows –

(a) since 2000, the OC had lodged several complaints about the flooding problem of the estate to relevant Government departments. The problem, however, had not been handled properly by these departments and remained unresolved; and

(b) the OC had lodged several complaints about the safety of a slope behind the estate. The departments concerned, however, failed to take follow-up actions or maintain the slope, resulting in a landslide on 7 June 2008, damaging the facilities of the estate and incurring losses to the OC.

The Ombudsman's observations

Point (a) - Flooding Problem

155. It was provided under the lease of the estate that its owners were responsible for the maintenance and repair of the drainage system of the estate to ensure its normal operation. Hence, it was understandable for the relevant departments, especially the Drainage Services Department (DSD) and the Lands Department (LandsD), to initially ask the OC to clear the drainage system upon their receipt of the flooding complaints.

156. Since the completion of the estate in 1983, however, there had been changes over the years in Hong Kong climate and the development of the district. In the reply letter to the OC in January 2007, LandsD clearly pointed out that the annual amounts of rainfall in the territory and in the district, according to the Hong Kong Observatory, had both increased as compared with ten years before, and the heavy summer rains could also have a serious impact, resulting in flooding from time to time, as the drainage system of the estate did not have adequate capacity to cope.

157. As the frequent flooding could be a result of the changes in external environment, The Ombudsman opined that while asking the OC to improve the estate's drainage system in compliance with the lease conditions, the relevant departments should also have made serious efforts themselves to inspect thoroughly the adequacy and soundness of the Government drainage system both near the estate and in its district as a whole. However, when the Development Bureau (DEVB) received a complaint from the OC in June 2008, though it had immediately asked the concerned departments for details about the incident and DSD to explore possible improvement works, DEVB initially still maintained that the OC should be responsible for rectifying the flooding problem. It was not until early 2009 that DSD, in view of the new development needs of the areas in the vicinity and its plan to enhance their flood prevention capacity, implemented in March the same year a drainage diversion scheme in the areas that tied in with the slope upgrading works behind the estate. Upon completion of the drainage works, the discharge capacity of the district would be enhanced and the rain waters to be channelled into the drainage system of the estate would be reduced by about 50%.

158. Whether the frequent flooding of the estate over the years was the result of OC's improper maintenance and repair of the drainage system, or the inadequacy of the Government drainage system or whether both were partially responsible, was entirely a matter of professional judgment on technical aspects and not a matter of administration. The Ombudsman, therefore, could not make any definitive conclusion on it. However, from the perspective of administrative procedure, The Ombudsman was of the view that instead of just asking the OC to maintain the drainage system as required under the land lease, there should have been a timely cross-departmental study and collaboration to review the adequacy of the drainage system in the areas and to see if there was a need to develop improvement plans.

159. The Ombudsman therefore concluded that point (a) against DEVB, DSD and LandsD was partially substantiated.

Point (b) - Safety Problem of a Slope

160. OC alleged that they had lodged several verbal complaints to relevant departments against the safety problem of a hill slope behind the estate. However, the departments concerned claimed that they had never received any complaints from OC before the landslide in June 2008. The location referred to in the written complaint from OC in January 2000 was at a lower part of the slope which had nothing to do with the landslide. In the absence of any other evidence, The Ombudsman could not make any comments. The Ombudsman, therefore, concluded that point (b) was unsubstantiated

161. However, after the landslide, the Civil Engineering and Development Department (CEDD) had commissioned an engineering consultancy to carry out a technical investigation and according to its findings, the landslide mainly occurred at the fill below the road concerned in the district.

162. CEDD alleged that before the landslide, the fill, which was small in size, was covered by dense vegetation and blended in with the natural slope, making it hard to be detected by visual inspection. Before the landslide, CEDD had no information on the fill which had not been registered in the Catalogue of Slopes. As such, no maintenance works had been carried out for the fill slope. Since the fill had not undergone any proper geotechnical treatment, it was not up to the existing slope safety standard. In June 2008, probably due to heavy rains that seeped into the fill which caused a transient elevated water pressure underground, a landslide thus occurred. The consultancy's findings could not ascertain when and why the fill was formed, or the department(s) to be responsible for it.

163. Having considered all the circumstances surrounding the case and consulted the Department of Justice, DEVB came to the view that the Administration did not have to bear any legal responsibility for the landslide. Nevertheless, it was willing to talk with the OC to resolve the dispute.

164. The Ombudsman took the view that since CEDD had confirmed the location of the landslide was a fill slope and not a natural slope, and notwithstanding the fact that it had not been discovered until then due to technical limitations, the occurrence of a landslide per se was a serious threat to public safety and the Administration, therefore, should learn from the incident and review the existing techniques and procedures for slope

identification and the registration mechanism to see if they were adequate so as to avoid the occurrence of a similar incident.

Administration's response

165. CEDD, DEVB, DSD and LandsD have accepted The Ombudsman's recommendations and have taken the following actions –

(a) the departments concerned have reviewed their complaint handling mechanism and procedures and issued instructions requiring their staff to observe the same when they handle cross-departmental complaints. In gist, the departments involved should liaise among themselves to identify a lead party to coordinate the response to the complaint. If the lead party cannot be identified or actions to be taken cannot be agreed on, the case should be brought to the attention of the heads of the relevant departments. DEVB would render advice and assistance where necessary;

(b) DSD completed the drainage diversion works in April 2010;

(c) CEDD has carried out a review of the existing mechanism and procedures for slope registration, particularly for identification of "missed slopes".

CEDD undertook a major project in mid-1990s to systematically identify and register sizeable man-made slopes in Hong Kong, in which a total of some 50 000 slopes were identified and registered in the Government's Catalogue of Slopes. However, a small percentage of registrable slopes which were concealed by dense vegetation, buildings and other structures were not identified for registration and such features are referred to as "missed slopes". After the completion of that major cataloguing exercise, CEDD has continued to identify and register slopes in order to update the Catalogue of Slopes on an on-going basis. These newly registered slopes include newly formed or upgraded slopes, as well as "missed slopes". About 60 000 slopes are now registered in the Catalogue of Slopes.

While there are well-established procedures to register properly formed new slopes, there are difficulties in identifying those slopes arising from unauthorised site formation works or illegal

dumping since such slopes were formed without construction records and are often concealed by dense vegetation to blend in with the surrounding natural terrain. Effective measures have been put in place to identify "missed slopes" with the aim to keeping their number to the minimum. The measures are as follows -

(i) there are about 40 000 registered Government slopes in the territory. Maintenance departments are required to carry out regular inspections and maintenance works on those slopes under their responsibility. During such inspections and works, maintenance departments are required to look for any "missed slopes" in the vicinity of the subject slopes and, if found, to report them to CEDD for registration;

(ii) "missed slopes" arising from illegal dumping or unauthorized slope works may be spotted by members of the public or relevant departments and reported to CEDD for necessary follow-up action to ensure public safety. Such "missed slopes" will be registered in the Catalogue of Slopes as a result; and

(iii) engineering consultants involved in public civil engineering projects or private building developments may come across "missed slopes" within or adjacent to their project boundaries during the implementation of the projects. They are required under the relevant administrative guidance notes and practice notes to report such "missed slopes" to CEDD for registration.

As regards illegal dumping, CEDD has produced and broadcast a new series of radio and TV Announcement of Public Interest (API) to solicit community cooperation to discourage illegal dumping and report such illegal activities in order to prevent further increase in the number of "missed slopes". Furthermore, CEDD will continue to explore new technology (e.g. Airborne LiDAR Survey) to enhance the ability to identify "missed slopes" concealed by dense vegetation; and

(d) the maintenance responsibility of the concerned slope features had already been assigned to the Highways Department (HyD).

Government Secretariat – Education Bureau

Case No. 2007/4317 : Impropriety in handling the complainant's application for an incentive grant

Background

166. On 3 October 2007, the Education Bureau (EDB) received a case from The Ombudsman concerning an English language teacher who lodged a complaint against EDB for mishandling his application under the Professional Development Incentive Grant Scheme for Language Teachers (PDIGS).

167. In 2004, EDB's Standing Committee on Language Education and Research (SCOLAR) approved the complainant's application for a grant under PDIGS to pursue a postgraduate programme in a United Kingdom University so that he could meet SCOLAR requirements for English language teachers.

168. In late 2006, after completing the programme and having obtained a Postgraduate Diploma in English Language (DipEng), the complainant applied to EDB for an assessment under SCOLAR requirements and for the release of the grant. The complainant stated that an officer of EDB asked him for information on his degree and Graduate Diploma in Education (DipEd) qualifications and advised that the assessment result would be known in April 2007.

169. However, it was not until 17 May 2007 that the complainant received EDB's reply refusing to recognise his attainment as meeting SCOLAR requirements for release of the grant. The assessment result was made by a Vetting Committee that was responsible for assessing PDIGS applications involving degree qualifications. In response to his queries, EDB stated that there was a discrepancy between his programme as stated in his PDIGS application form and his final attainment.

170. In this regard, the complainant complained against EDB for the following –

(a) EDB did not provide applicants with the assessment criteria for PDIGS. As a result, he was not aware that EDB would not accept the DipEng that he eventually attained;

(b) EDB's statement that there was a discrepancy between the programme as stated in his PDIGS application form and his final attainment was untrue;

(c) EDB had unreasonably asked him for information on his other qualifications, e.g. DipEd, which was irrelevant to the assessment of his PDIGS application;

(d) EDB had failed to provide clear reasons for rejecting his application; and

(e) the officer of EDB (mentioned in paragraph 168 above) had lied in stating that she had not told the complainant that the assessment result would be available by April 2007.

The Ombudsman's observations

171. Regarding point (a) above, EDB had indicated that the eligibility criteria of applicants, the application procedures and other information on the eligibility of programmes under PDIGS were specified in the Notes to Applicants for PDIGS (the Notes). A copy of the Notes had been given to the complainant when he made the application. Moreover, a list of recognised local programmes (the List) was also available on the SCOLAR website.

172. However, The Ombudsman noted that for applicants who wished to pursue a programme outside the List, the Notes only stated that *"eligibility of degree or above programmes outside the List will be considered on a case by case basis by a Vetting Committee … after the programme is completed."*

173. The Ombudsman pointed out that applicants could have no clue whatsoever as to what kinds of programmes might be eligible. The withholding of key information was unfair to applicants and the risk they had to bear was substantial, the maximum grant being $30,000. Furthermore, as assessment was not until they had completed their programmes, they would have put in not just money for fees but also time for studies. As the aim of PDIGS was to encourage teachers to upgrade their qualifications to meet SCOLAR requirements, EDB had a duty to help applicants make an informed decision in pursuing a programme outside the List. The Ombudsman considered it necessary for EDB to

guide applicants and disclose to them the assessment criteria at the application stage, at least in general terms, for example, through the Notes.

174. Nevertheless, in this particular case, The Ombudsman pointed out that EDB had explained clearly at the outset that the eligibility of the complainant's programme would be assessed only after he had completed it. The complainant decided to take the risk, notwithstanding, and went ahead with his studies. In this light, it could not be said that the complainant was not aware that the programme might not be accepted.

175. Regarding point (b), based on available records, The Ombudsman found EDB's statement to be true, i.e. there was a discrepancy between the complainant's programme (for a Master degree) as stated in the application form and his final attainment (of a Diploma).

176. As for point (c), The Ombudsman accepted EDB's request for the complainant's information on his qualifications had been made with good intent. By doing so, EDB was facilitating the Vetting Committee's work and trying to enhance the complainant's chance for securing a grant. No maladministration was involved. Moreover, EDB's assessment of the complainant's teacher training was considered proper and EDB was evidently trying to be helpful.

177. As regards point (d), The Ombudsman considered that the complainant's application had been assessed by the Vetting Committee, an independent professional body. The Vetting Committee had followed the guiding principles in assessing the relevance of his programme. This ensured an impartial and objective judgment in the assessment.

178. The Ombudsman considered that EDB's reply letter to the complainant did not explain clearly why the complainant's application had been rejected. From the limited information provided in the letter, he could not ascertain whether his attainment had been assessed without bias or misjudgment. EDB should have given the complainant a more detailed explanation on rejection of his application. Nevertheless, The Ombudsman accepted that the guiding principles for assessment and the Vetting Committee minutes were internal documents and contained confidential information. It was, therefore, in order for EDB not to provide them to applicants.

179. Regarding point (e), The Ombudsman found no evidence that the officer of EDB had told the complainant that the assessment result would be available in April 2007. In any case, EDB did inform him of the

result on 9 May 2007, which was not far from some date in April 2007 that he had in mind.

180. In view of the above, The Ombudsman concluded that the complaint against EDB partially substantiated.

Administration's response

181. EDB has accepted The Ombudsman's recommendations and taken the following actions –

(a) the "Professional Development Incentive Grant Scheme for Language Teacher – Notes to Applicants" has been revised. For better reference, the Notes also includes a suggested list of core areas of study relating to the Chinese/ English Language Subject Knowledge. The above mentioned documents are available at the SCOLAR website; and

(b) for applicants whose qualifications are considered not meeting the SCOLAR requirements, EDB will provide the reasons in the replies to them. EDB will also advise them to refer to the list of the suggested core areas of study in the revised Notes.

Home Affairs Department

Case No. 2008/4710 : Inappropriate repavement of a hiking trail

Background

182. In early 2006, Central and Western District Office (C&WDO) of the Home Affairs Department (HAD) received a report of broken granite slabs and waterlogging at some sections of Pik Shan Path (the Path). The Path is a historical trail formed by paving granite slabs on top of the water conduit of Pokfulam Reservoir. In March 2006, C&WDO suggested re-paving works and consulted Central and Western District Working Group on Urban Minors Works (WG), but not the District Councillor of the area and other users of the Path. Works began in July 2007 and involved laying concrete slabs on top of the original granite slabs.

183. In late 2007, the complainant complained to C&WDO and the Antiquities and Monuments Office (AMO) of the Leisure and Cultural Services Department that the works had turned the Path "at various places into a concrete mess". It also requested C&WDO to remove the concrete slabs and reinstate the old granite slabs "to resume the nature and beauty of this stone road". After the completion of the works, the complainant found no improvement to the waterlogging problem and the works had caused waterlogging elsewhere along the Path as well.

184. The complainant complained on the following points –

(a) by not objecting to the works, AMO had abdicated its responsibility of protecting Hong Kong's heritage;

(b) C&WDO had not conducted proper consultation on the works;

(c) by placing concrete slabs on the original granite slabs, C&WDO had created waterlogging and safety problems and ruined the natural beauty of the area; and

(d) C&WDO had failed to supervise the contractor of the works.

The Ombudsman's observations

185. Regarding point (a) above, AMO noted that according to C&WDO's Schedule of Works and Drawings, the Path would be divided into nine sites. Most of the original granite slabs were at Sites 3 and 4 and they would be taken up and reused after the Path was raised. Hence, AMO considered the proposal acceptable from a heritage preservation viewpoint. AMO was of the view that the proposal would have no adverse impact on the old granite slabs or the water conduit. Thus, AMO raised no objection to the Schedule of Works. The heritage value of the Path and the compatibility of the works were issues of professional judgment, not administrative matters within the purview of The Ombudsman. From an administrative angle, however, The Ombudsman considered that AMO had arrived at its stance after a properly conducted study. The Ombudsman, therefore, found this point not substantiated.

186. Regarding point (b), in line with the procedures for other urban minor works projects, C&WDO had consulted WG and obtained its approval before commencing the works. WG comprised seven District Councillors, various local personalities including the Chairmen of the three Area Committees of the district, as well as the chairman of a morning walkers' association. HAD considered WG sufficiently representative in reflecting local views on the works.

187. While C&WDO had indeed not consulted the District Councillor of the area and the public at large, it had sought the views of WG, a representative local body which happened to include the chairman of the morning walkers' association, as well as AMO on heritage concern. The Ombudsman did not find such consultation inadequate for a project of this magnitude. Nevertheless, The Ombudsman noted that the design for the works was revised in May 2007 and C&WDO should have consulted AMO again on possible heritage impact of the revised design. In view of this deficiency in C&WDO's consultation, The Ombudsman considered point (b) partially substantiated.

188. As regards point (c), C&WDO was mindful of the need to preserve the natural beauty of the environment. New granite slabs (not concrete slabs), which were similar to the original slabs, were used. In order to reduce the height difference between some re-paved sections and the embankment, backfilling with earth was carried out, that would blend well with the environment. Indeed, the aforementioned morning walkers' association had commended the works which, in particular, had enhanced public safety.

189. Whether the works had affected the natural beauty of the area was an aesthetic issue not for The Ombudsman's Office to judge. There were different accounts from HAD and the complainant on whether the works had caused waterlogging and safety problems. During a site visit after a rainy day, staff of The Ombudsman's Office noted no waterlogging or safety problem at the re-paved sections. The Ombudsman found point (c) unsubstantiated.

190. As for point (d), HAD's Works Section was responsible for supervising the works contractor. During site visits, staff of the section found that the contractor had not properly disposed of the construction debris. They had demanded remedial action and issued a written warning to the contractor. Furthermore, the contractor's poor performance had been reflected in its appraisal report, which would be considered when new contracts were awarded.

191. It could be seen that HAD had taken appropriate action on the contractor's poor performance. The Ombudsman found point (d) unsubstantiated.

192. Overall speaking, The Ombudsman found the complaint against HAD partially substantiated.

Administration's response

193. HAD has accepted The Ombudsman's recommendation. All Districts Offices were reminded that depending on the circumstances of each case, they should consider consulting the stakeholders (e.g. local community, DC members) and seeking technical and/or professional advice from relevant Government departments before proceeding with the works projects if there are considerable changes to the original design or scope.

Case No. 2009/3604 : Failing to open a public toilet for public use since its completion in 2003

Background

194. The public toilet concerned was built by a developer under a village development programme to replace an old public toilet planned for demolition in 2005. The Planning Department (PlanD) had since December 1996 passed the papers on the programme, including the master layout plan and land use plan, to the District Office (DO) concerned for comments. DO had then verbally consulted the Rural Committee (RC) and interested parties. No opposing views were received in relation to the proposed toilet.

195. In January 2003, the developer started the construction of the toilet. In March and April 2003, PlanD circulated the revised plans of the developer to the relevant Government departments. Following this, DO received opposing views that the toilet would pose hygiene problems to the residents nearby. The views were reflected to PlanD, which then requested the works consultant of the developer to review the project, including the location of the toilet, having regard to the comments from the departments concerned. In June 2003, PlanD circulated the further revised plans to the relevant departments. DO repeated that village representative(s) maintained their request to demolish the toilet.

196. Upon the completion of the toilet in September 2003, the developer requested the District Lands Office [3] (DLO) and other departments concerned to arrange for inspection and handover of the toilet. In view of the opposing views, PlanD asked DO to liaise with RC in November 2003 for the developer to finalise the plans. DO reported that according to RC, the villagers failed to reach a consensus on the location of the toilet. Later, DO, DLO and other relevant departments held a number of discussions with RC on the opening of the toilet. At a meeting held in September 2004, there were criticisms that no consultation was made prior to the construction of the toilet and there were calls for its demolition. Since the villagers had failed to reach a consensus on opening the toilet over the years, the Food and Environmental Hygiene Department (FEHD) had not taken over the toilet and opened it for public use.

[3] The complaint against Lands Department was found not substantiated and there was no relevant recommendation for it. The part of the case involving Lands Department is hence not covered in this Government Minute.

197. In February and March 2007, DLO suggested that public consultation be conducted by DO to confirm local demand for public toilet. If there was no such demand, consideration should be made to change the land use according to local needs. If views were diverse, the issue may be referred to the District Management Committee (DMC) under the District Council for discussion. DO considered it inadvisable to refer the issue to DMC and proposed that it would be more effective for DO and relevant departments to arrange meetings with the parties concerned to discuss the issue when new members of the Executive Committee of RC took office in April 2007. In April 2007, DO carried out public consultation and the majority of the views were against the opening of the toilet.

198. In February 2009, a complainant lodged a complaint against FEHD that the public toilet had not been open long after completion. FEHD referred the complaint to DLO which sought DO's advice. DO called a meeting attended by various parties, including DC members, FEHD, DLO, RC, village representative(s) and villagers, to discuss the issue.

The Ombudsman's observations

199. The public toilet was completed in 2003 but remained closed to the public because of strong opposition from some villagers. The Ombudsman pointed out that differences among the various parties must first be resolved.

200. The villagers claimed that one of the reasons for objection was that no consultation was made before the construction of the toilet. However, DO pointed out that various parties had been consulted verbally a number of times before works began. As the public consultation covered the whole village development programme which consisted of many project items, it was probable that DO might not be able to consult the various parties on each and every project item or the interested parties might not be aware of the project on the toilet.

201. The Ombudsman was particularly concerned that the consultation was not conducted in writing and that there was no detailed record on the verbal consultation. It indicated that there were inadequacies in how DO handled the consultation.

202. Moreover, The Ombudsman noticed that DO considered it inadvisable to raise the issue for discussion by the DMC and also the issue

was not put forward to DC for discussion. However, The Ombudsman was of the view that as a general rule, the Administration would consult DCs on district affairs. The construction and opening of the toilet were district issues, especially when there were local residents expressing concern over the matter. The fact that DO did not put forward the issue to DC for discussion obviously deviated from the normal practice. The Ombudsman was perplexed at the way the matter was handled.

203. When the problem first arose, DO actively acted as a mediator and repeatedly attempted to facilitate communication between the relevant departments and the parties and organisations concerned with a view to resolving their differences. Regrettably, no results had been achieved after so many years. Subsequently, DO proposed in March 2007 to convene a meeting to discuss the issue after the re-election of the RC in April that year. However, no active follow-up actions were taken in the following two years. It was not until May 2009 that DO arranged a meeting after a complaint was lodged earlier that year. The Ombudsman considered that the delay in mediation on the part of DO puzzling.

204. In view of the above, The Ombudsman concluded that DO should be held partly responsible that the problem remained unresolved for years.

205. Regarding DLO, The Ombudsman noted that it was in a rather passive position as it was mainly responsible for receiving the land where the toilet was located from the developer and handing it over to FEHD. As a matter of fact, DLO had the relevant documents ready back in 2004 so that FEHD may take over the toilet at any time. Even if DLO had received the land from the developer, it would not have helped resolve the issue of opening the toilet if the villagers still held different views and failed to reach a consensus.

Administration's response

206. HAD has accepted The Ombudsman's recommendations and taken / is taking the following actions –

(a) DO, DLO and FEHD had held a meeting to consult local residents and DC members but those who attended did not support the opening of the toilet and agreed to change the use of the structure. The relevant Government departments are following up on this; and

(b) HAD has reminded all DOs that they should take into account individual circumstances in considering the way public consultations are to be conducted and that views collected from verbal consultations should be clearly recorded.

Home Affairs Department, Lands Department and Rating and Valuation Department

Case No. 2008/2229 (Home Affairs Department), 2008/4650 (Lands Department) and 2008/4651 (Rating and Valuation Department) : Delay in processing an application for rates exemption

Background

207. The Director of Home Affairs is authorised by the Chief Executive under Section 36(3) of the Rating Ordinance (Cap. 116) to exempt village houses located beyond designated village areas in the New Territories (NT) from the payment of rates, wholly or in part. The Rates Exemption Section (RxS) of the Home Affairs Department (HAD) is the responsible authority which has a final say on the approval of rates exemption applications while the Rating and Valuation Department (RVD) and the concerned District Lands Office (DLO) of the Lands Department (LandsD) gives respective professional advice to HAD. The internal guidelines of HAD stipulate that village houses exempted from payment of rates should meet prescribed building specifications, without any unauthorized structures, and must be occupied by the indigenous NT villager or his immediate family member(s) for domestic purpose. Moreover, each indigenous NT resident can be exempted from payment of rates for only one self-occupied village house.

208. The three complainants were indigenous NT residents and co-owners of the subject three-storey village house. By the side of the village house was a piece of leased Government land, the licensee of which was the former owner of the village house, i.e. the deceased father of the three complainants. The licence of the land provided that one toilet and two kitchens complying with specified building specifications were allowed to be erected for the use of the licensee.

Processing the First Application

209. In May 2004, RxS of HAD received an application from one of the complainants (the Applicant) in respect of rates exemption for the above village house. RxS informed the complainant in April 2007 that his application had been rejected on the grounds that there were an unauthorised and enclosed balcony on the first floor of the village house and structures consisting of a canopy and an external hut (Hut A), which

were in contravention of the conditions of the Government land licence. It took approximately 35 months to process this first application.

Processing the Second Application

210. In May 2007, the Applicant informed RxS that the illegal structures had been removed. In May 2009, RxS rejected his application again on the grounds that the enclosed open space in front of the house had encroached on Government land. It took approximately 24 months to process this second application.

Processing the Third Application

211. On knowing the result of the second application, the Applicant forthwith submitted an index map to RxS to prove that the open space in front of the house was within the boundary of his private land. In June 2009, the concerned DLO of LandsD confirmed that what the Applicant said was true. In December 2009, RxS wrote to inform the Applicant that his application was approved with retrospective effect from May 2007, i.e. the day on which the Applicant informed DLO that the illegal structures had been removed. It took approximately seven months to complete this third application.

The Ombudsman's observations

212. The Ombudsman considered that the departments concerned mishandled the application in the following ways –

Processing the First Application

213. In July 2004, RVD informed RxS that the village house had unauthorised structures consisting of one canopy and three huts (External Huts A, B and C). In August 2004, RxS consulted DLO to see if the canopy and the external huts could be tolerated. After making a site visit, DLO confirmed in September 2004 that the canopy on the ground floor of the village house and Hut A had extended to an adjoining piece of leased Government land. But, in reply to RxS in October 2004, DLO only mentioned that there was a piece of leased Government land by the house. The answer was obviously irrelevant as DLO failed to address RxS's question regarding the canopy and the external huts.

214. In November 2004, RxS wrote to DLO again and asked whether

the canopy and the external huts were still there and whether they were unauthorised structures. In December 2004, DLO replied to RxS and confirmed that the canopy still existed. Likewise, DLO provided an incomplete reply as the question about the external huts was unanswered.

215. In January 2005, RxS wrote to DLO for the third time and made the same enquiry. DLO was asked to indicate clearly if the canopy and the external huts were unauthorised structures. However, it was not until March 2007 that DLO finally replied. About 31 months after the first enquiry was made, DLO finally confirmed that the canopy and Hut A could not be tolerated. The time taken for the reply far exceeded the three months' pledge made by LandsD regarding general enquiries. Serious delay was caused to the first application, which is hardly acceptable. As the principal department responsible for handling rates exemption applications, RxS ought to have taken a more active role in following up with the case during the 31 months mentioned above. However, without any sense of urgency, it only sent routine reminders to DLO.

Processing the Second Application

216. In April 2008, RxS obtained RVD's advice and asked DLO to clarify whether part of the main house, part of the enclosed open space in front of the house, part of External Hut B and the whole of External Hut C had encroached on Government land. In May 2008, DLO replied to RxS that the enclosure of open space in front of the house did not relate to the structure of the house and there was no breach of lease conditions. It involved only land control matters and had nothing to do with rates exemption. DLO also said that it had approached the Survey and Mapping Office (SMO) of LandsD to check the land boundary record of the leased land and would respond to RxS after receiving information from SMO.

217. In October 2008, DLO informed RVD (with a copy to RxS) that the main house was situated within the boundary of the land as leased. In December 2008, the relevant district Squatter Control Office (SCO) of the LandsD, in a reply to RxS, confirmed that External Huts B and C had squatter survey numbers but the open space (including the fence) in front of the house had not. However, after the three complainants had enquired about the progress of the application, RxS, without having first confirmed with DLO and based only on the information then available, rejected the application in May 2009, giving the reason that the open space had encroached on Government land. In June 2009, less than a month after RxS had rejected the application, DLO informed RxS that the open space in front of the house was within the boundary of the lease and did not

occupy any Government land.

218. In The Ombudsman's view, the way RxS handled the case was careless and unjustified. Though the complainants were demanding speedier processing, it should not reject the application before the facts had been established.

219. The Ombudsman also observed that RVD had mentioned the shelter and the outhouse in its reply to the RxS dated 12 July 2004, and in the reply dated 24 April 2008, RVD brought up the issue of Government land encroached by the front yard and outhouse. The Ombudsman believed that if RVD had referred to the digital land boundary map of LandsD before advising RxS on 12 July 2004, it should have noted the occupation of Government land much earlier, thus allowing RxS to take earlier follow-up actions. The Ombudsman also found that RVD did not copy the memo to DLO to take follow up action when it wrote to RxS on 24 April 2008 raising the said issues.

Processing the Third Application

220. RxS wrote to RVD twice in October 2007 and May 2008, asking for a re-assessment of the application. However, it took RVD over six months and nearly four months respectively to respond. The Ombudsman took the view that although RVD had barely met the pledge of responding within six months' time, it should have noticed that the application had already been under review and that the case, having taken more than three years to process, required a quicker response.

221. The Ombudsman observed that various departments had been careless and inefficient in handling enquiries and making replies. Given that RxS had to clarify whether the subject premises satisfied building specifications, whether there were any unauthorised structures or extensions attached to it, whether any squatter control item was involved and whether the premises should be treated as a single residence from the rates exemption perspective, etc., before approval for rates exemption could be given, RxS should have consulted RVD, DLO and SCO concurrently once the application was received. Furthermore, as collaboration of different departments was required during the approval process, in order to monitor closely the progress of each application and clarify doubts as soon as possible, it would be better for RxS to conduct regular inter-departmental meetings so that the applicants concerned may know the results of their applications at an early date.

222. The Ombudsman pointed out that the rates exemption application took a long time to process partly because the village house had unauthorised structures and did not satisfy the exemption conditions. However, the main reason for the delay was the sloppy attitude and passive working style of the departments concerned, which showed no concern for the interests of the applicants. Although the application was finally approved with retrospective effect, the anxiety suffered by the Applicants and their family members during the long process could not be compensated. The Ombudsman, therefore, considered this complaint substantiated.

Administration's response

223. HAD, LandsD and RVD have accepted The Ombudsman's recommendations and taken / will take the following actions –

(a) HAD has reviewed the vetting mechanism and advised its staff to strengthen communication with RVD, DLO and SCO, by means of, among others, consulting all relevant departments in parallel, taking the initiative to check with departments concerned of the progress of application and hold meetings with the departments to discuss complex cases whenever necessary. HAD also plans to renew the existing computer system of RxS, and will explore with the service provider to build in an alerting mechanism to help monitor progress;

(b) HAD has already formulated a time frame for vetting rates exemption applications. At present, upon receipt of rates exemption application by RxS, if the information submitted by the applicants is complete, the vetting of the applications will normally be completed within six months. RxS would inform applicants in writing that vetting of the application will take about six months to complete. HAD has also reviewed its internal work flow to enhance the efficiency of the vetting process;

(c) HAD has instructed its staff that they should copy the questions and answers to all the departments concerned for follow-up actions as appropriate. HAD has also reviewed its internal workflow to enhance the efficiency of vetting procedure. RVD has instructed its staff to send copies of correspondence to DLOs for action in similar cases in the future. Besides, RVD has

deployed additional manpower to speed up the processing of enquiries from RxS, and strengthened the monitoring process; and

(d) LandsD has also implemented the following improvement measures –

(i) guidelines have been issued to remind frontline staff that replies to general enquiries on rates exemption must be given within three months and that accurate and appropriate replies must be given to RxS as soon as possible; and

(ii) a Rates Exemption Case Progress Registration System for better monitoring of case progress has been set up in DLOs to ensure proper completion of each case in accordance with departmental guidelines and to facilitate speedier processing by RxS.

Case No. 2008/3128 (Home Affairs Department), 2008/5332 (Lands Department) and 2008/5333 (Rating and Valuation Department) : Delay in processing an application for rates exemption

Background

224. The complainant was an indigenous New Territories (NT) villager living in a structure composed of two adjoining single-storey squatters in NT.

225. In January 2007, the complainant made an application for rates exemption to the concerned District Office (DO) of the Home Affairs Department (HAD). DO and the Rates Exemption Section (RxS) of HAD proceeded to consult the Rating and Valuation Department (RVD) and the concerned District Lands Office (DLO) and Squatter Control Office (SCO) of the Lands Department (LandsD). However, the application had yet to be approved by mid-January 2008. The complainant therefore made an enquiry to RxS, and was informed in June 2008 that the application was still being processed. The complainant was dissatisfied that the departments involved had failed to properly handle the application, thus affecting the vetting progress. In November 2009, RxS informed the complainant in writing that his application was approved, effective from the date of his structure being included into the Valuation List (i.e. 29 September 2004).

226. The Director of Home Affairs is authorised by the Chief Executive under Section 36(3) of the Rating Ordinance (Cap. 116) to exempt village houses located outside designated village areas in the New Territories (NT) from the payment of rates, wholly or in part. The internal guidelines of HAD stipulate that village houses exempted from payment of rates should meet prescribed building specifications, without any unauthorized structures, and must be occupied by the indigenous NT villager or his immediate family member(s) for domestic purpose. Moreover, each indigenous NT resident can be exempted from payment of rates for only one self-occupied village house.

The Ombudsman's observations

227. HAD, being the responsible department for handling applications for rates exemption, has the authority to make the final decision on the granting of rates exemption while RVD and the relevant

DLO give respective professional advice to HAD. In the case, the complainant submitted his application in January 2007 and was informed of the result in November 2009. It took 34 months for the case to be processed by HAD, far exceeding the "reasonable time frame".

228. The Ombudsman considered that the main causes of delay were as follows –

(a) RxS kept questioning whether the subject squatter was a "single tenement"

RxS had been skeptical as to whether the subject squatter should be regarded as a "single tenement". The doubt arose from the replies of RVD and DLO in October 2007 and November 2007 respectively. While RVD said the structure in question was a single-storey house, DLO said it was a structure composed of two squatters. In response to RxS's request for clarification, RVD made it clear in June 2008 that the two squatters, one being the "main house" and the other the "kitchen", should be regarded as a "single tenement" from the rates assessment perspective. However, RxS still repeatedly wrote to RVD and DLO in August and September 2008 to enquire about the same issue. They even gave an advance notice to the complainant in end-November 2008 that he might need to nominate an immediate family member to apply for rates exemption for one of the squatters.

The Ombudsman took the view that RxS should have accepted RVD's confirmation that the subject squatters were a "single tenement" rather than repeatedly checking with various departments. The advance notice given to the complainant, on the other hand, would only give rise to unnecessary speculation.

(b) Communication problem between RxS and SCO

As early as in March 2008, RxS already received SCO's confirmation that the subject squatter had a squatter survey number. Holding the view that village houses on private land should not be given a squatter survey number, RxS wrote to SCO to seek clarification in November 2008. In December 2008, SCO replied that although the squatter survey was generally not applicable to squatters on private land, Survey Officers could make the final decision under special circumstances. And in this

case, the squatter in question had been given a squatter survey number.

Since SCO did not explain in the reply what "special circumstances" were, RxS wrote to them again in December 2008 for further clarification. SCO explained in its reply in January 2009 that a squatter on private land was a "temporary structure" and could/might be given a squatter survey number. SCO further confirmed that the subject squatter was given such a number in 1982 and its area and user tallied with those in the record of the squatter survey.

RxS had displayed a responsible attitude in its effort to check whether the subject squatter should have been given a squatter survey number. However, as both RxS and SCO had failed to get to the point in their questions and answers, it took months before the matter could eventually be clarified. The Ombudsman considered that both parties should be held partly responsible in this respect.

(c) Slow action of RVD and HAD

RVD received DO's enquiry in February 2007 but it was not until October 2007 that a reply was given. The Ombudsman considered that RVD should be held responsible for the delay. In May 2009, HAD accepted that the subject structure was eligible for rates exemption but it was not until November 2009 that approval was given. The Ombudsman was of the view that the time span of six months was too long.

229. The Ombudsman considered that -

(a) HAD had not handled matters efficiently. Without bearing the interest of the applicant in mind, they had repeatedly queried the case. Moreover, it had failed to communicate clearly and effectively with other departments;

(b) RVD did not give a timely reply to HAD and should be held partly responsible for the delay; and

(c) SCO failed to answer the queries of RxS fully and thoroughly and had consequently caused delay to a certain extent.

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

Administration's response

231. HAD, LandsD and RVD have accepted The Ombudsman's recommendations and taken / are taking the following actions –

(a) HAD currently approves, in accordance with the guidelines, rates exemption applications of village houses which meet the prescribed building specifications, without unauthorised structures, and occupied by indigenous villagers or their immediate family members for dwelling purpose. Although the guidelines do not explicitly set out the types of exempted village houses, under the existing policy, squatter huts with survey numbers and meeting the relevant criteria are regarded as being eligible for rates exemption. HAD is updating the guidelines to reflect this existing policy;

(b) HAD has already formulated a time frame for vetting rates exemption applications. At present, upon receipt of rates exemption application by RxS, if the information submitted by the applicants is complete, the vetting of the applications will normally be completed within six months. RxS would inform applicants in writing that vetting of the application will take about six months to complete. HAD has also reviewed its internal work flow to enhance the efficiency of the vetting process;

(c) RVD has set a time frame for replying HAD's enquiries. Except for complex cases, RVD will provide rates exemption recommendation to HAD within six months upon receiving HAD's request. A monitoring mechanism has also been set up to ensure compliance;

(d) HAD has advised its staff to strengthen communication with RVD, DLO and SCO. For example, they should take the initiative to check with the departments concerned of the progress of a case and hold meeting with the departments to discuss complex cases whenever necessary; and

(e) HAD and LandsD have also issued instruction to RxS, DLO and SCO staff that communications between Government departments should be in a clear, efficient and thorough manner so as to save time and enhance effectiveness.

Home Affairs Department and Transport Department

Case No. 2008/1516 (Home Affairs Department) : Failure to conduct proper public consultation on a footbridge project and to reply to the complaint

Case No. 2008/2684 (Transport Department) : Poor planning of a footbridge and failure to respond to the complainant's request to retain a pedestrian crossing

Background

232. The complainants were the owner of a commercial building (Building A) and the owners' corporation of an industrial building (Building B). They learned that a footbridge would be built by the developer of a new Building C. The footbridge would cross over Street D nearby, but without any landing points near Buildings A and B. The complainants, therefore, complained to the local District Office (DO) under the Home Affairs Department (HAD) in 2007. However, they never got a reply.

233. The complainants were dissatisfied with the planning of the footbridge by the Planning Department[4] (PlanD)and Transport Department (TD). The latter had also ignored their request to retain the pedestrian crossing on Street D. They also alleged that DO had failed to conduct proper public consultation on the footbridge proposal and had not replied to their complaint.

234. Planning approval for Building C and the footbridge had been granted some years ago by the Town Planning Board (TPB). The land lease thus drawn up stipulated that the design of the footbridge (including its landing points and connections to nearby streets and buildings) was subject to the Director of Lands' approval. Accordingly, the Lands Department consulted relevant departments, including TD and DO. TD raised no objection against the proposed alignment of the footbridge, nor had DO received any adverse comments from locals.

235. HAD explained that DO had merely collected the views of some District Councillors and local personalities on the footbridge proposal

[4] The complaint against PlanD was found not substantiated and there was no relevant recommendation for it. The part of the case involving PlanD is hence not covered in this Government Minute.

because the development was private and the departments concerned had not requested public consultation. After receiving the complainants' letter, DO immediately referred it to TD for reply direct to the complainants. However, DO did not inform the complainants of its referral.

236. PlanD had, prior to TPB's planning approval, consulted other departments concerned on the development of Building C and the footbridge. No objection was received from TD or DO.

237. TD had accepted the developer's proposal to construct the footbridge at its own cost to cater for the additional pedestrian flow to and from Building C. TD was in favour of more landing points, subject to the availability of space. It had subsequently suggested that the developer should incorporate into the design of footbridge sufficient space and loading capacity for future connection by the complainants to Buildings A and B. TD clarified that it had no plan to remove the pedestrian crossing on Street D. It had telephoned the complainants on their complaint, but out of misunderstanding had not replied to their letter.

The Ombudsman's observations

238. While public consultation was not a statutory requirement in those days, The Ombudsman considered that DO should have been mindful of the need to maximise the benefits of the proposed footbridge to the neighbourhood. It should thus have conducted public consultation to duly engage the public in the scrutiny of the project.

239. As regards the complaint letters, it would have been better if DO had notified complainants of its referral to TD, so that they would know whom to contact. The Ombudsman, therefore, found the complaint against HAD partially substantiated.

240. The Ombudsman noted that PlanD had consulted other departments concerned when processing the planning application for the footbridge. The complaint against PlanD was, therefore, unsubstantiated.

241. The Ombudsman considered that TD had all along focused on the extra pedestrian flow that Building C would bring about, without considering how to fully utilise the footbridge to improve overall pedestrian movement in the neighbourhood. Nor had it examined carefully enough the need for more landing points or connections to buildings nearby and made appropriate recommendations. TD had also failed to read

the complainants' letters carefully and reply to them. The complaint against TD was, therefore, substantiated.

Administration's response

242. HAD and TD have accepted The Ombudsman's recommendations and taken the following actions –

(a) HAD has reminded DOs to consider extending the targets of consultation according to different circumstances;

(b) HAD has reminded its staff to inform the complainant when referring a complaint to another department;

(c) TD conducted an experience sharing session for engineers and staff of transport officer grade in June 2009 with a case study similar to the case concerned to alert them of the need to carefully consider all development proposals from different perspectives in order to benefit more members of the public;

(d) TD also reminded staff to carefully handle complaints and reply to the complainants in good time during the experience sharing session mentioned in (c) above. In addition, the departmental circular no. 1.1.6 "Complaint Handling Procedures and Guidelines" is circulated to TD staff at quarterly intervals to further remind staff of the proper procedures for handling complaints; and

(e) TD has counselled the engineer concerned, advising him of his deficiency and the need to seek further improvement.

Hong Kong Examinations and Assessment Authority

Case No. 2008/4096 : Unreasonably refusing the complainant's requests to – (a) see her daughter's remarked examination scripts; and (b) inform her of the cut scores for certain subjects

Background

243. The complainant's daughter sat for the 2008 Hong Kong Certificate of Education Examination (HKCEE) and appealed on her results for three subjects. The Hong Kong Examinations and Assessment Authority (HKEAA) replied that after rechecking and re-marking, the results stood. The complainant then asked to see her daughter's re-marked examinations scripts.

244. HKEAA gave qualitative feedback on her daughter's performance in those three subjects and showed her daughter's unmarked examination scripts, but not the re-marked scripts.

245. The complainant subsequently wrote to HKEAA, requesting again to see the re-marked scripts and asking for the cut scores for the three subjects. However, HKEAA refused.

The Ombudsman's observations

246. HKEAA conceded that it was obliged under the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) to provide marked scripts in response to valid data access requests. The Ombudsman considered that the re-marked scripts, with markers' markings, should be deemed to contain the personal data of the complainant's daughter. HKEAA was, therefore, obliged to provide a copy of the re-marked scripts to the complainant's daughter upon receipt of a data access request made under PDPO.

247. Technically speaking, the complainant's daughter had not made such a formal data access request. Hence, HKEAA had not contravened PDPO in refusing the complainant's requests for the re-marked scripts. However, in essence, the complainant's requests constituted a request made on behalf of her daughter for the latter's personal data. Furthermore, her repeated requests clearly indicated their determination to secure those

pieces of information. HKEAA should have acceded to the request, or at least advised the complainant to submit a formal data access request (DAR) using the prescribed form under PDPO but HKEAA had done neither. The Ombudsman considered HKEAA's attitude passive and unhelpful. The complaint against HKEAA for unreasonably refusing the complainant's request to see her daughter's re-marked examination scripts was found substantiated.

248. In view of the complicated and variable nature of cut scores, The Ombudsman agreed with HKEAA that releasing the cut scores would only cause confusion and generate unnecessary argument. The complaint against HKEAA for unreasonably refusing the complainant's request to inform her of the cut scores for certain subjects was found unsubstantiated.

249. Overall speaking, the complaint was found partially substantiated.

Administration's response

250. HKEAA has accepted The Ombudsman's recommendations and taken the following actions –

(a) candidates were provided with their marked examination scripts after the rechecking and re-marking process upon submission of DAR with effect from the 2009 examinations. To facilitate candidates' understanding of DAR, HKEAA has updated the information related to DAR on its website. Candidates would be directed to the appropriate information should they enquire for access to scripts via any communication channels, either formal or informal; and

(b) the Privacy Commissioner for Personal Data advised that HKCEE and Hong Kong Advanced Level Examinations (HKALE) fell under the definition of "academic qualification" under Section 55 of PDPO; and the rechecking and re-marking process met the requirement of appeals based on merits and hence the interpretation of "relevant process". The above information was forwarded to The Ombudsman in October 2009, and was accepted.

Case No. 2008/4830 : Unreasonably rejecting a candidate's application for using computer in an examination and asking the candidate to pay an exceedingly high fee when it later agreed to provide a computer for the purpose

Background

251. The complainant had registered for a translation examination administered by the Hong Kong Examinations and Assessment Authority (HKEAA) on behalf of a certain linguistics institution. On learning from the institution's Handbook for Candidates that use of a computer in the examination was permitted, he called HKEAA to make an application. However, his application was rejected outright by HKEAA staff on the grounds that "there was no such practice". He demanded further explanation from HKEAA and indicated that he would file a complaint.

252. HKEAA later replied that it could provide the complainant with a computer but he would have to pay an exorbitant fee. He considered HKEAA to have handled his application unfairly.

253. That was the first time a candidate had applied for use of computer in the examination. The staff member concerned of HKEAA only knew that candidates had always had to prepare their scripts by handwriting and so he rejected the complainant's application without hesitation.

254. HKEAA could entertain the complainant's application, but that would necessitate fitting-out an existing computer, providing a reserve computer and deploying a technician to the examination venue. HKEAA had already waived some of its costs when proposing the fee to the complainant.

The Ombudsman's observations

255. The Ombudsman considered that HKEAA should have expected and prepared itself to receive applications for use of a computer in the examination, since it was an option clearly stated in the Handbook for Candidates issued by the linguistics institutions. The case showed that HKEAA had adhered to its own established practice with little flexibility. Had HKEAA prepared for giving all candidates the option to use computer and prorated the costs among the likely users, it would have saved itself the

embarrassment of "first rejecting but later allowing" the complainant's application. Furthermore, it would have managed to make the necessary arrangements more easily and charge a more reasonable rate for using the computer vis-à-vis the examination fee itself.

256. The Ombudsman considered HKEAA to have failed to handle the complainant's request properly. The complaint was, therefore, substantiated.

Administration's response

257. HKEAA has accepted The Ombudsman's recommendation and made available relevant facilities for use as an alternative by candidates who choose to use computers for their written examinations. HKEAA has also contacted the relevant examination boards that have commissioned HKEAA to conduct their examinations, informing them that HKEAA has equipped itself with the facilities that enable the candidates to choose to use computers for taking examinations.

Hong Kong Housing Society

Case No. 2009/2659 : Failing to take enforcement action against tenants who installed air-conditioners and laundry supports on external walls

Background

258. The complainant lodged complaints to The Ombudsman in March 2004 and February 2005 respectively against tenants breaching the tenancy agreements of an Estate managed by the Hong Kong Housing Society (HKHS) in installing the heat dissipaters for split air-conditioners and laundry supports on planters and external walls. After investigations, The Ombudsman noted that HKHS intended to take a hard line on tenants in breach of the tenancy agreements by requiring them to remove all illegitimate installations from the external walls after HKHS had completed the repair works on the external walls of the Estate by the end of 2004. On the basis of this understanding, The Ombudsman informed the complainant of the proposed follow up actions of HKHS. Also, The Ombudsman closed the complaint cases upon confirmation from HKHS that it would carry out the enforcement actions.

259. After years of observation, the complainant found that the situation had not improved but had worsened. The complainant lodged another complaint to The Ombudsman against HKHS for not following up the matter diligently.

The Ombudsman's observations

260. Upon receipt of the complaint from the complainant in July 2009, The Ombudsman followed up the complaint with HKHS. The Ombudsman found that when HKHS carried out the large scale repair works on the external walls of the Estate in 2004/05, HKHS had only ordered tenants in breach of the tenancy agreements to remove 50 laundry supports and the support frames for five heat dissipaters from the external walls, but had not required tenants to remove the other heat dissipaters in question.

261. The Ombudsman was of the view that HKHS had, when responding to The Ombudsman's full investigation, mixed up the

illegitimate installations on the external walls with the installations on planters. HKHS had failed to admit that it had not been actively following up on the illegitimate installations on planters. Rather, it insisted that it had already done what it had committed earlier on. On this, The Ombudsman considered that HKHS had only partially, but not fully, honoured its commitment.

262. The Ombudsman considered that the complaint stemmed from HKHS's toleration and non-action on tenants in breach of the tenancy agreements. This had rendered the situation unmanageable and put HKHS in a predicament. Also, HKHS had failed to make use of the opportunity of its large-scale external wall repair works to eradicate the problem. As a result, the situation had further deteriorated. If the complainant was not persistent, the actual situation might not have been known. The Ombudsman, therefore, considered this complaint substantiated.

Administration's response

263. HKHS has accepted The Ombudsman's recommendations and has taken / will take the following actions –

(a) on publicity and education, the Estate Office issued four notices from 29 October 2009 to 2 March 2010, requiring tenants to remove illegitimate installations and advising tenants on the proper locations of installing heat dissipaters. Over the past few months, the Estate Office carried out various activities, including signature campaign, green carnivals and the display of slogans on banners, to promote the proper installation of heat dissipaters. Also, the Estate Office encouraged tenants to remove improper installations through the estate newsletters;

(b) according to HKHS's record, as at January 2010, there were 865 households which had illegitimately installed heat dissipaters. As at 30 June 2010, the Estate Office had inspected the heat dissipaters so installed in 813 households. The installation in one of the households was considered to be having imminent danger and the tenant had relocated the heat dissipater inside the flat promptly on the advice of the Estate Office's staff. Among those households whose heat dissipater installations were considered not having imminent danger, 112 households had removed the heat dissipaters from the planters or external walls under the close follow-up of the Estate Office. The Estate Office

would continue to convince the remaining tenants concerned to remove the illegitimate installations as soon as possible.

There were about 52 flats which the Estate Office had yet to conduct inspections. This was mainly due to the fact that the tenants could not spare time for the Estate Office to carry out the inspections. The Estate Office would continue to liaise with the tenants and arrange the inspections at time slots convenient to the tenants as far as possible, with a view to completing all the inspections;

(c) to encourage tenants to relocate the heat dissipaters inside the flats, the Estate Office was providing aluminum support frames free of charge for installing heat dissipaters at the proper locations. 71 tenants had used such service and another 80 tenants had agreed to install the support frames. The Estate Office is arranging for the works; and

(d) if tenants fail to comply with the requirement within the one year stipulated period, HKHS would consider terminating their tenancies in accordance with the terms and conditions of the tenancy agreements.

Housing Department

Case No. 2008/1009 : Refusing, without good reasons, to compensate a tenant for damage to his property from a flush water pipe bursting

Background

264. The complainant was a public housing tenant. A communal flush water pipe inside his flat suddenly burst, resulting in flooding and damage to his property. He sought compensation from the Housing Department (HD), the executive arm of the Hong Kong Housing Authority (HA), but in vain.

265. The loss adjuster of HA's insurer recommended against compensation for the following reasons –

(a) under the tenancy agreement, the landlord (i.e. HA) is not liable for any damage to the property of the tenant due to overflow of water or drainage; and

(b) the bursting of the flush water pipe was believed to be due to natural wear and tear, thus purely accidental and not involving negligence. HD had not received any request for repairs and similar incident had not occurred before.

266. Accordingly, HD rejected the complainant's claim.

267. HD contended that the pipe was of international standard and it had regularly inspected the buildings and external communal facilities. The communal flush water system of the complainant's building had earlier been found to be in order. HD had also urged tenants to check the fixtures and fittings inside their flats regularly. The onus of reporting any need for repairs was on the tenants.

The Ombudsman's observations

268. The Ombudsman considered that it was wrong for the loss adjuster and HD to cite the tenancy agreement as this was a case of a water pipe bursting, not of "overflow".

269. HD claimed that the pipe was of international standard, fit to serve for 50 years but had been in use for only 14 years. However, The Ombudsman considered that it should not preclude the possibility that the pipe might have had some other problems. Furthermore, given that the pipe had only been in use for a time period, which is shorter than its expectancy, this should bring the loss adjuster's belief that the bursting of the pipe was due to "natural wear and tear" into question.

270. While HD had regularly inspected the external communal facilities and found the overall flush water system in order, this did not necessarily show that it had duly maintained the pipe in question, which was located within the complainant's flat. Nor could the complainant be expected to inspect the pipe regularly or to report any need for repairs, as HD had hidden it from view with a fixed board.

271. In sum, The Ombudsman considered that HD had not fully examined its own responsibility before deciding to reject the complainant's claim for compensation. Thus, the complaint was found substantiated.

Administration's response

272. The Subsidised Housing Committee (SHC) of HA discussed in detail the responsibilities and compensation concerning drainage backflow and water pipe bursting in public rental housing (PRH) flats at its meeting on 18 January 2010. HA has insured its operations against public liability for accidental bodily injury or property damage to the public. Members of SHC were concerned that as HA has a property portfolio of more than 700,000 PRH flats in some 160 estates, there would be wide and serious implications arising from offering compensation to the affected tenants in cases where HA is not responsible for the occurrence of the incident. In the lack of an acceptable definition of "justified cases", all tenants who have suffered loss/damage and failed to get compensation from the public liability insurance or contractors will demand HA/HD for other forms of financial assistance, thereby creating various problems including the abuse of resources. SHC has therefore decided that at the present stage, services in kind should continue to be provided to the affected tenants and other forms of financial assistance apart from rent abatement should not be pursued.

273. As the executive arm of HA, HD has accepted The Ombudsman's recommendation by reviewing the subject case in

accordance with the above decision. Whilst it is regretted that the complainant has suffered losses as a result of the bursting of the water pipe, it should be emphasized that the incident was not caused by the negligence of HA in the execution of its duties. Being a Government department, HD has to exercise prudence to ensure the proper use of public money. Therefore, HD considered making some kind of compensation to the complainant not appropriate.

274. Under the current practice, if PRH flat or part thereof is rendered unfit for occupation by any cause not attributable to the negligence or default of the tenant, rent abatement will be granted on a pro rata basis according to the seriousness of damage. However, as the complainant's flat was not rendered unfit for occupation upon the bursting of pipe and his family had not been required to move to another flat for a period of time, HD therefore cannot grant abatement of rent to the complainant. As a caring landlord, HA takes a proactive approach in rendering assistance to tenants where their flats are flooded for whatever reasons. Upon knowing the incident at the material time, HD's frontline staff had arranged to turn off the water valve immediately and deployed workers to assist in clearing the water in the flat with a view to mitigating the effects as far as possible on the complainant.

275. HD has also kept the complainant's family informed of the relevant policy decision made by the Committee after the above meeting and the family showed understanding of the situation.

Case No. 2008/1816 : (a) Failing to take up responsibility to maintain the common facilities owned; and (b) Delay in delineating the responsibility for maintaining the common facilities

Background

276. Court A is located on the Aberdeen Inland Lot (AIL) No. 393. By the Deed Poll dated 24 June 1978, the AIL No. 393 was divided into Section A and the Remaining Portion (RP). According to the Deed of Mutual Covenant (DMC) signed on 20 September 1978, the domestic portion of Court A was built on RP, while a public car park, a market and a game hall were erected on Section A and partly on RP. The above non-domestic premises have been let to the Transport Department, Food and Environmental Hygiene Department, and Leisure and Cultural Services Department respectively. Structurally, the podium spans over both RP and Section A in the lot.

277. The public car park, market and game hall are owned by the Hong Kong Housing Authority (HA), while the properties on RP are owned by HA and owners of the domestic flats (flat owners).

278. In accordance with the DMC, HA was responsible for the management and maintenance of Court A at the expenses of the domestic management fund (i.e. management fees of owners). HA as the DMC Manager collected supervision fee from the owners on cost recovery basis. In 2000, the Incorporated Owners of Court A (IO) was formed, and they took over the management of the domestic portion of Court A on 1 September 2000.

279. At the end of 2006, the IO prepared to carry out an extensive maintenance programme for Court A. In early 2008, the IO discovered that the maintenance responsibility of common facilities was ambiguous and they sought clarification from the Housing Department (HD) in March 2008. In April 2008, the IO complained HD for the following –

(a) failing to take up responsibility to maintain the common facilities owned by HA; and

(b) delay in delineating the responsibility for maintaining the common facilities.

The Ombudsman's observations

280. Regarding point (a), it was the fact that part of the common facilities in Court A are jointly serving HA's properties (such as the market and public car park) and the domestic portion. In principle, maintenance expenses of relevant common facilities shall be shared by HA and flat owners according to the undivided shares allotted to them. For individual communal facilities linking HA's properties and the domestic portion, HD's proposal of adopting 'user-to-pay' principle to share the maintenance expenses was considered reasonable. It also proved that HA or HD had not intended to refuse to share the expenses.

281. In the past, HD had misunderstood that the Section A podium was the common area owned by IO. After the Estate Surveyor of HD clarified the ownership of the Section A podium in 2008, HD immediately resumed its management responsibility of the podium and informed the IO of the above in June of the same year. It therefore proved that the maintenance expenses for HA's property had been wrongly charged to the domestic management fund of Court A. In view of the above, the first allegation was considered substantiated.

282. HD had proactively carried out the investigation and arranged partial reimbursement to the IO, such actions show that HD had misunderstood the ownership of the Section A podium and not intended to use the management fund purposely.

283. Regarding point (b), in March 2008, the IO began to request HD to demarcate the maintenance responsibility of the common facilities. In May 2008, HD wrote to the IO and proposed the principle to share the maintenance expenses of the common facilities. A series of action including negotiations with the IO were also taken thereafter.

284. Given that common facilities comprise numerous items, and some of them lack of drawings, HD needed time for verification and negotiations with the IO Furthermore, HD should deal with the IO's claims prudently and carefully as it involved public money. In view of the above, point (b) was found unsubstantiated.

285. Overall speaking, this complaint was partially substantiated.

Administration's response

286. HD has accepted The Ombudsman's recommendations and taken / is taking the following actions –

(a) during the period from April to December 2009, the IO had submitted five 'Claim Tables' listing out the management and maintenance expenses previously spent on the Section A Podium for the past 29 years. HD had reimbursed the amounts of $533,512.04 and $26,379.93 to the IO for the confirmed work items and previous electricity charges plus fuel adjustment for the HA's external lightings. For those claim items with doubt, HD had requested IO for supporting documents and further clarification;

(b) in the second working group meeting with the IO on 2 July 2009, HD had made a suggestion to the IO that mediation, but not legal proceedings, should be adopted to settle the case if no agreement could be reached by the end of 2009. HD also reminded the IO that adoption of mediation to solve the problem should be passed by resolution in Annual General Meeting of Court A. However, IO replied HD on 29 January 2010 that they would not consider the mediation approach and requested HD to counter-propose the reimbursement amount / proposal for their consideration; and

(c) at present, HD is working on the counter-proposal. If the counter-proposed reimbursement amount could not meet the IO's demand, mediation / arbitration would be adopted to solve the problem.

Case No. 2008/6052 : Unreasonably refusing to compensate the complainant whose range hood was damaged by a burst communal flush water pipe

Background

287. The complainant is a public housing tenant. As a result of the bursting of a flush water pipe at 1/F at the block he lives, flushing water splashed inside his kitchen and his range hood was subsequently out of order. He subsequently claimed for damages. However, the Housing Department (HD) relied upon relevant clause in the tenancy agreement that it should not be under liability for any damage sustained due to the overflow of water or drainage and refused to accede to the complainant's claim for compensation.

The Ombudsman's observations

288. HD's argument is that the condition of the subject flush pipe was good as it had been in use for only two years. Besides, there was no repair or servicing work during the material time. The incident was purely accidental. The Ombudsman considered that as such, HD should study further to explore the cause of the "accident" and the burst pipe should be kept to facilitate the investigation. Unfortunately, the burst pipe was not kept for that purpose.

289. Nevertheless, the loss adjuster applied the "overflow" clause in the tenancy agreement and put forward that the Hong Kong Housing Authority (HA) should not be liable for any damage sustained due to the overflow of water or drainage. The Ombudsman considered that generally, overflow would mean the backflow of fresh or flush water due to chokage of pipe or drainage. The complainant's range hood was out of order as a result of bursting of flush water pipe and splash of flush water into his kitchen, which had no relation to "overflow". It was unreasonable for HD to accept the ground put forward by the loss adjuster that it should not be liable for the damage. As HD applied the wrong "overflow" clause in the tenancy agreement when refusing the complainant's claim for damages, The Ombudsman considered the complaint to be partially substantiated.

Administration's response

290. HD has accepted The Ombudsman's recommendations and taken the following actions –

(a) HD subsequently conducted a study on whether HA should assume moral responsibility for similar cases of drainage backflow and water pipe bursting in public rental housing flats and the report was tabled at the Subsidised Housing Committee (SHC) of HA for discussion. SHC approved that –

(i) services in kind should continue to be provided to the affected tenants at the present stage but offering of other forms of financial assistance apart from rent abatement should be refrained; and

(ii) enhanced monitoring mechanism on drainage backflow and water pipe bursting in public rental housing flats should continue to be implemented.

(b) Pursuant to SHC's decision, HD has reviewed the complaint case. Currently, if the public rental housing flat or part thereof is rendered unfit for occupation by any cause not attributable to the negligence or default of the tenant, rent abatement will be granted on a pro rata basis according to the seriousness of damage. The complainant's flat was, however, not rendered unfit for occupation upon the bursting of pipe and his family was not required to move to another flat for a period of time. As such, HD could not grant abatement of rent to the complainant.

Case No. 2008/6229 : Failure to resolve for the complainant the long-standing problem of noise nuisance caused by the unit upstairs

Background

291. The complainant, who had to work on shift, was living with his parents and three siblings in an estate. Given his irregular working hours, he sometimes had to take a rest in daytime. The family living in the upper floor is a family of five persons, including the tenant couple and three children at the age of two to ten years. The elder son was suffering from specific learning disorder while the younger son suffering from hyperactivity disorder.

292. The complainant claimed that since August 2007, he had been disturbed by the noise nuisance coming from his upper floor all the time. The source of noise nuisance was mainly generated from dropping of heavy objects and bouncing. He had promptly lodged complaints with the Housing Department (HD) but HD only tendered verbal cautioning or warning but not allotting penalty scores under the Marking Scheme for Estate Management Enforcement in Public Housing Estate (MS) to the tenant of his upper floor flat for causing noise nuisance. HD also refused his application for transfer to another flat.

The Ombudsman's observations

293. The Ombudsman pointed out that the complainant complained noise coming from his upper floor on a number of times. The noise was generated from construction or decoration at an earlier stage, while at a later stage after March 2008, the noise was mainly created by dropping of heavy objects and bouncing of children.

294. The Ombudsman pointed out that according to Tenancy Agreement, tenant should not cause any noise nuisance between 11 p.m. and 7 a.m.. HD adopted a reasonable man approach in handling noise complaint cases. HD's site staff would go in a pair to the scene upon receiving a complaint to ascertain whether the noise was unacceptable. If the noise was beyond a reasonable man's forbearance, they would give a verbal warning on the spot and would call upon at least another household in the neighbourhood to substantiate the complaint before a written warning was given to the offending tenant. In addition, penalty scores would be given on all substantiated cases under MS. If the situation

warranted, HD would refer the case to the Police for enforcement action with the consent of the complainant.

295. The Ombudsman considered that whilst HD might have limitation to deter the children from playing and running in an environment of a densely populated public rental housing (PRH), the right of PRH tenants for a quiet and peaceful enjoyment inside their premises should not be deprived of. Nevertheless, The Ombudsman considered that HD had already closely monitored this noise complaint case and attempted possible means to resolve the problem. The Ombudsman, therefore, considered the complaint not substantiated.

Administration's response

296. HD has generally accepted The Ombudsman's recommendations and taken the following actions –

(a) HD approved on 17 July 2009 the complainant's application for a transfer within the same estate. However, the complainant's mother also sought assistance from the school and local social worker for her youngest son's behavioral problem. With the recommendation from Social Welfare Department, the application for transfer to Kwai Chung District was approved. HD had allocated suitable flats for three times, but the family rejected all offers. The latest offer was rejected on 29 July 2010. Under normal circumstances, each application may have a maximum of three offers. Applications with a record of three unreasonable refusals will be cancelled. Due to their special circumstances, the complainant's family has submitted an application for an extra offer on 13 August 2010. The application is now under processing; and

(b) as the Environmental Protection Department and the Police have adopted the "Reasonable Man" approach and made reference to the Noise Control Ordinance (Cap. 400) in dealing with noise nuisance complaints, HD considered that consistent approach should be adopted among various Government departments Since 1 January 2007, HD has included the misdeed "Causing Noise Nuisance" into MS which proved to be an effective mechanism with wide publicity. PRH residents are generally familiar with its operation and welcome its implementation. The Ombudsman has **accepted** HD's explanation of not engaging an

independent consultant, but requested HD to continue to explore effective and feasible measures to abate noise nuisance in PRH estates.

Case No. 2009/0914 : (a) Unreasonably querying whether the complainant's teenage children should continue to live with their grandparents in a public housing unit; and (b) Delay in processing the complainant's application for deletion of himself and his wife from public housing tenancy

Background

297. The complainant originally lived with his parents, wife and two teenage children in two adjoining public housing units. In 2008, the complainant's father, the registered tenant, surrendered one of the units to the Housing Department (HD) and applied for deletion of the complainant and his wife from the tenancy.

298. When processing the application, HD considered that children under 18 should live with their parents and so queried whether the two children should be left with their grandparents in the unit. The complainant questioned the legal basis for HD's stance and was dissatisfied with its delay with the application.

299. HD considered that it should always have regard to children's welfare and prevent possible abuse of public housing.

300. On the alleged delay, as the complainant refused to provide proof of his new address, HD had to conduct unannounced visits to his father's unit to ascertain whether the complainant and his wife had actually moved out. Furthermore, since the application involved the well-being of his teenage children, HD had taken time to consult social workers and seek legal advice. Having cleared doubts, HD eventually approved the application.

The Ombudsman's observations

301. Despite its good intentions, HD had no legal basis to take into account the welfare of the children in processing the complainant's application. The law does not require children to live with parents. Nor did HD staff have the expertise or responsibility to assess the welfare of minors.

302. To prevent possible abuse of public housing, it was necessary for HD to verify that the complainant and his wife had moved out. HD's delay

in processing the application was largely due to the complainant's refusal to provide proof of his new address.

303. In sum, The Ombudsman considered the complaint partially substantiated.

Administration's response

304. HD has accepted The Ombudsman's recommendations and reviewed the procedures and practices for processing applications for deletion of family members from tenancy. The supplementary guidelines on handling special deletion applications have been provided for estate management staffs' compliance through issuance of Estate Management Division Instruction on 17 November 2009. The case summary has also been uploaded to the HD intranet in December 2009 as a case study for reference by all frontline management staff.

Case No. 2009/1104 : Unreasonably rejecting the complainants' public housing application, thereby delaying their registration on the public housing waiting list

Background

305. The complainants, a married couple, applied for public housing. They submitted an application to the Housing Department (HD), together with their bankruptcy petitions, indicating that they owned Company A but were unable to settle the debts. However, HD returned their application and asked for a copy of the business registration certificate of Company A and a statement of its average monthly profit or income over the previous six months.

306. Subsequently, HD rejected their application on the grounds that they did not provide a copy of the business registration certificate. Consequently, they had to apply afresh, which meant a delay in their registration on the public housing waiting list.

307. HD explained that since the complainants had submitted only their bankruptcy petitions without a bankruptcy order from the Court, it required other documentary evidence of their assets and the status of their business.

308. The complainants told HD that as Company A had ceased operation, they did not have any business registration certificate. Nor could they provide other documentary evidence. On HD's further request for proof, the complainants each made a separate statement confirming that Company A had ceased operation years ago and had no asset. HD accepted their statements and registered them on the waiting list.

The Ombudsman's observations

309. As public housing is a valuable public resource, HD must be prudent in processing applications and checking the eligibility of applicants. It was proper for HD staff to require applicants to provide further documentary evidence in case of doubt.

310. Nevertheless, the complainants had indeed provided HD with all available information. It was unreasonable of HD to require them to apply afresh. As a result, they suffered a delay in their registration on the public

housing waiting list.

311. On balance, The Ombudsman considered this complaint partially substantiated.

Administration's response

312. The material point of this case is the obvious inconsistency and discrepancy between the information submitted in the application form for public rental housing (PRH) at the beginning and the particulars attached therewith, including the court order which was not available when the complainants lodged the bankruptcy petition. In the bankruptcy petition, it was mentioned that they owned Company A. But no such reference was made in the application form or any other information attached therewith for vetting by HD. Therefore HD could not check the application or ascertain the complainants' eligibility for PRH application. It was necessary to request the complainants to provide documentary proof such as the Notification of Cessation of Business by the Companies Registry in order to confirm their eligibility for completion of the vetting procedure.

313. However, HD had handled the application with flexibility when the complainants insisted that they had no documentary evidence to prove their case. Taking into account the actual situation of the complainants, HD had allowed them to submit a signed written declaration, in lieu of the documentary evidence, stating that their company had been wound up and they had no assets at all so that the vetting procedure could be continued and completed. When the application was admitted and registered on the waiting list, HD had backdated the complainants with the time caused by delay in mailing. The Ombudsman's recommendation of advancing the date of the complainants' registration on the waiting list will in effect mean that applications which have not passed the vetting process be allowed to be registered on the waiting list. This will cause unfairness to other applicants. HD did not accept the recommendation as it must maintain the overall fairness and rationality of the waiting list. This position has been explained in HD's reply to The Ombudsman. The Ombudsman subsequently informed HD that the case was closed.

314. According to the registration date on the PRH Waiting List and the district listed in the application, the PRH application of the complainants reached the allocation stage at the end of 2009. They were allocated a flat with the tenancy taking effect from early 2010.

Case No. 2009/1121 : (a) Failing to update the List of Permitted Trades in Housing Authority Factory Buildings; and (b) Giving misleading information on the tenancy period of factory units on the Department's website

Background

315. There are six Hong Kong Housing Authority's (HA) factory estates which are managed by the Housing Department (HD). Currently, vacant units in HA's factory estates are normally let through Open Instant Rental Tender. Interested tenderer participating in the tendering exercise is required to register the trade intended to be operated which should be one of the permitted trades on the Permitted Trade List (the List). The List originated years ago when squatter factories occupying Government land were relocated. There was no major change of the List over the years as land resumption diminished. It consists of 269 trade types. As specified in page one of the list, other trades not specified on the List may also be considered subject to prior approval obtained from the Labour Department, Fire Services Department, HD and other relevant licensing authorities.

316. In early 2009, the complainant wanted to operate a trade for Fire Services Installation and Equipment in a factory unit other than those contained in the List. He alleged that HD should update the List to cater for the changes and the need of the factory operators.

317. The complainant was also dissatisfied because HD had informed him through e-mail on 13 March 2009 that after the expiry of the three years' tenancy period, HD would renew the tenancy with the factory tenant. However, at the HA's website, it was stated that the tenancy term was for a fixed period of three years.

The Ombudsman's observations

318. The existing trade list is for reference only. Tenderers intending to operate a trade not on the List (including the complainant) in fact can apply to join the tender exercise for factory units. There is no evidence to show the new trades in the market were being neglected. However, The Ombudsman noted that HD requested the tenderer to provide information for operating the trades not on the List, which was not simple. The verbal explanation given by HD staff could easily cause confusion. There was room for improvement.

319. Besides, the List should also be updated including new trades. The Ombudsman understood that HD had decided to review the List.

320. HD's old website contained misleading information that a fixed term three-year tenancy would not be renewed upon expiry. HD has updated the website to draw an applicant's attention that in the tenancy agreement for a three-year term, there is a clause stipulating that there is no option for tenancy renewal.

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

Administration's response

322. HD has accepted The Ombudsman's recommendation and taken the following actions –

(a) HD has published an Application Guide in January 2010 to remind tenderers who intend to operate any non-scheduled trade in a factory unit the application process of Open Instant Tender and how to apply; and

(b) HD has issued guidelines to the frontline staff to further enhance their efficiency in processing the applications for operating the trades not in the factory trade lists.

Case No. 2009/3224 : Mishandling a flooding incident in a public housing unit

Background

323. The complainant was a public housing tenant. Foul water overflowed from the toilet bowl inside her toilet. However, staff of the Property Services Agent (PSA) was alleged not to have rendered assistance during the incident and not turning off the flush water main valve a timely manner, resulting in damages to her furniture and belongings.

The Ombudsman's observations

324. The Ombudsman considered that though there were no substantial evidence proving that there was maladministration on the part of the Housing Department (HD) and the PSA on the handling of the incident, HD was found to have maladministrated on its follow-up handling after the incident and its supervision of the PSA in the following aspects –

(a) the PSA's records and the report on the emergency incident were incomplete and contradictory;

(b) HD had been deficient in monitoring the PSA's work in handling the emergency. Records and the report in relation with the incident furnished to The Ombudsman were not detailed. They were also incomplete and contradictory;

(c) when being enquired on (b) above, HD responded that the deficiency was due to the low educational level of the security guards which was far-fetched and could not facilitate review and improvement in future;

(d) in response to the enquiries from The Ombudsman, HD has recklessly accepted the explanation given by the PSA; and

(e) HD has not exercised a close supervision over the PSA. After the incident, HD did not conduct an in-depth study to the explanation given by the PSA.

325. The Ombudsman, therefore, considered this complaint substantiated other than alleged.

Administration's response

326. HD has accepted The Ombudsman's recommendations and taken the following actions –

(a) HD has issued a new "Best Practice Notes" (BPN) directing all PSAs to keep a comprehensive record of incidents, including the time, personnel involved, venue, course of event and follow-up action. Photos with "date" and "time" function would be made for record purpose. Simultaneously, same management instruction was also issued for the compliance of HD staff;

(b) pursuant to the new BPN, HD's supervisory team would check the records of major incidents kept by PSAs to ensure the requirements under BPN are complied with during their routine and surprise checks and to make appropriate assessment; and

(c) regarding the PSA's deficiency in the subject issue, relevant adjustment of marks to the PSA has been made. A written warning has also been served to the PSA so as to remind it to keep accurate and detailed records in future. The PSA responded positively and pledged that it would enhance the training of its staff members in the dealing of similar incidents in future.

Case No. 2009/3532 : Delay and impropriety in handling a seepage complaint

Background

327. The complainant is a unit owner of a Tenants Purchase Scheme estate and the upper floor is a rental flat. The complainant had repeatedly complained ceiling seepage since March 2008. The Housing Department (HD) had carried out chemical injections in the ceiling of the toilet and balcony of the complainant's unit. Tanking was also applied and pipes were replaced in the toilet and balcony at the complainant's upper unit. It had been observed that due to the denial of repair by tenant (upper unit), tanking at the complainant's upper unit was only carried out after the chemical injection at the complainant's flat failed. The course of repair works deferred the rectification and caused nuisance to the complainant. After the lengthy follow-up, traces of seepage still persisted. Though HD had carried out site inspections and flooding test, the complainant and HD held different views about the occurrence of seepage, the causes for the fatal colour of ceiling, etc. Without further development, the complainant thus lodged a complaint with The Ombudsman on 7 September 2009.

The Ombudsman's observations

328. The Ombudsman observed that HD had attended to the complaints proactively and promptly. Due to seepage at different locations and the un-cooperative attitude of the tenant in the upper floor, the remedial works had been delayed. The Ombudsman had no comment on the technical aspects of the application of chemical injection due to the inaccessibility for repairs. In assessing HD's guideline for handling repair for water seepage defect, The Ombudsman commented that the existing procedure emphasized on the repair method, while a more scientific approach and strategy for seepage diagnosis should be introduced to speed up the repairs and to enhance customer service.

329. In this case, HD and the complainant held different views about the occurrence of seepage. Moreover, the Property Services Agent only put forth a more advanced method to test the moisture effect at a later stage which had affected the progress of the remedial works. Besides, HD's adoption of visual observation to the source of seepage was another reason leading to a standstill that the case could only be closed at a later stage.

330. The delay of this case is partly attributable to the complainant's refusal of conducting a leaking test by moisture meter or referring the case to the Joint Offices of Buildings Department, Water Supplies Department and the Food and Environmental Hygiene Department for investigation. The result could only be confirmed by an independent laboratory. In view of the above, The Ombudsman considered the case as partially substantiated.

Administration's response

331. HD has accepted The Ombudsman's recommendations and has taken / is taking the following actions –

(a) HD is now working on the procedure in handling seepage repair. A new instruction would be formulated upon the selection of appropriate equipment/tools, and scientific tracing the seepage causes. Interim report(s) will be forwarded to The Ombudsman about the progress of research and the finalization of new instruction; and

(b) HD has reminded the relevant staff to strictly follow the management instructions to resolve seepage cases as early as possible.

Case No. 2009/3695 : Delay in refunding public housing rent deposit

Background

332. The complainant, previously a public housing tenant, had purchased a flat in the Home Ownership Scheme (HOS) Secondary Market. In this connection, she surrendered her unit to the Housing Department (HD) and requested refund of rent overpaid and rent deposit. However, HD took eight months to do so. She considered this a delay by HD.

333. Upon receipt of the complainant's request in February 2009, the PMA of the estate referred it to the District Tenancy Management Office (DTMO) for action. HD staff responsible created a Payment Instruction in the Estate Management and Maintenance System and issued a Refund Certificate for submission to the Finance Section for arrangement of refund.

334. The matter was later returned to DTMO because the Finance Section found that the rent deposit receipt number in the System did not match that on the receipt itself. DTMO then advised PMA to correct the number on the receipt but the latter had no such authority.

335. Subsequently, DTMO staff tried to make the correction and create a new Payment Instruction but in vain. In March 2009, the DTMO staff concerned consulted the Finance Section and was advised to seek help from the Help Desk managed by HD's contractor. The Help Desk staff replied that it was beyond their scope of service and referred his enquiry to the support unit for the Estate Management and Maintenance System. With the latter's advice, DTMO staff completed the necessary procedures and succeeded in correcting the number on the receipt that month.

336. As the DTMO staff concerned was new to the post and was not familiar with the computer operations, his attempt to create a new Payment Instruction was unsuccessful. However, he did not further consult his supervisor or colleagues, resulting in the refund being delayed.

337. HD noted that in addition to the work left by his predecessor, the staff concerned had to deal with a considerable volume of work and so gave this case lower priority. In September, he completed all the necessary procedures with the assistance of a colleague. HD then issued a letter to the complainant refunding the rent deposit in October 2009. Meanwhile, HD also offered an explanation and apology to the complainant's family.

338. When handling requests for refund of rent deposit by tenants who terminated tenancy after purchasing HOS flats, HD would follow the relevant instructions under the Tenants Purchase Scheme (TPS), i.e. to refund within one month. To ensure timely refund, there was internal monitoring requiring staff concerned to monitor outstanding cases.

339. HD stressed that it had always attached great importance to staff training. When the staff concerned took up the post, training on estate management had been arranged for him. However, he missed the training course on computer system operations for handling refund requests. Consequently, he had to wait for the next round for this training. HD subsequently arranged him to undergo the relevant training.

340. HD held that this was just an isolated case, but agreed to review its internal monitoring mechanism.

The Ombudsman's observations

341. The Ombudsman could not accept HD's argument that this was an isolated case. HD had received the complainant's request in February but did not effect the refund until October. This was a serious delay. In fact, HD had no performance pledge for refund of rent deposits to tenants who purchased HOS units. HD had simply adopted the practice under TPS when handling such requests. The internal monitoring mechanism was also not effective.

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

Administration's response

343. HD has accepted The Ombudsman's recommendations and taken the following actions –

(a) HD has promulgated a new instruction in April 2010 to advise its staff on the procedures and performance pledge for handling of refund requests. According to the new performance pledge, HD will refund domestic rental deposit and overpaid rent to ex-tenants within two weeks upon receipt of application if adequate information is provided and no outstanding debt is

owed to the Housing Authority (HA). This performance pledge is applicable for all HA ex-PRH tenants who have moved out, including those who have purchased a flat in the HOS Secondary Market; and

(b) to assist those Housing Officers who are transferred from "non-estate management" posts to "estate management" posts to grasp the practical knowledge of daily estate management and updated housing policy, a checklist of the training need for them and the timeframe for completing such training have been compiled.

Immigration Department

Case No. 2008/4492 : (a) Failing to curb irregular activities; and (b) Failing to entertain booking of appointment by telephone and online

Background

344. Early one morning, the complainant went to one of the births registries under Immigration Department (ImmD) to queue for his newborn's birth registration. Each person in the queue was given a serial number. However, with touting of the number tags and jumping of queue, the complainant had to wait until noon for registration.

345. He was dissatisfied that ImmD had failed to curb such irregular activities and did not entertain booking of appointment by telephone and online.

The Ombudsman's observations

346. The Ombudsman pointed out that there was heavy public demand for birth registration at the registry. In response to complaints about touting and jumping of queue, ImmD decided to introduce the following measures –

(a) staff would distribute number tags to parents only and write down their particulars. During registration, staff would check these against the information furnished by the hospitals where the babies were born;

(b) any suspected touting activities would be reported to the Police; and

(c) ImmD would seek to install closed circuit television cameras at the main entrance of the registry to deter irregular activities.

347. The Ombudsman noted that ImmD had, in fact, planned to accept bookings by telephone or online for birth registration.

348. In sum, The Ombudsman considered the complaint partially substantiated.

Administration's response

349. ImmD has accepted The Ombudsman's recommendation and taken the following actions –

(a) maintained close liaison with the Police to curb touting activities;

(b) further enhanced the appointment booking system in November 2009 to allow cross-district registration, such that when the quota for appointment booking at a registry designated for a baby is full within the 42-day free registration period, the parents may choose to make an appointment for birth registration at General Register Office at Queensway Government Offices; and

(c) implemented full appointment booking for birth registration at all births registries since 9 March 2010 to meet the growing demand for appointment booking at births registries. The new initiative has been welcome by applicants who turn up on time in an orderly manner. Queue management problems outside births registries have ceased since then.

Case No. 2009/1677 : (a) Issuing two erroneous certified copies of an entry in the Deaths Register; and (b) Refusing to exercise discretion to make a correction on the same day when the complainant submitted an application for correction of error

Background

350. The complainant's relative had passed away. To facilitate the probate application and other formalities, she went to the Births and Deaths General Register Office (GRO) of the Immigration Department (ImmD) to apply for the deceased a "Certified Copy of an Entry in a Register of Deaths" (commonly called "death certificate"). Thereafter, another member of the complainant's family went to another births registry of ImmD to apply for an extra death certificate. However, the respective staff of the two offices didn't notice that the date of death shown on both death certificates they issued was incomplete.

351. The complainant went to the Probate Registry for probate application. Due to the incomplete date of death on the death certificate produced, the application was unsuccessful. The Probate Registry advised the complainant that she was not required to fix another appointment for the application if she managed to submit a rectified death certificate on the same day. The complainant went to GRO immediately and requested the staff to correct the error on the death certificate on the same day. However, her request was refused. The probate application was eventually postponed.

The Ombudsman's observations

352. Regarding point (a), The Ombudsman noted that the complainant's relative died of unnatural causes. For death registration of such cases, the Registrar will be informed to register the death after the Coroner's determination of the cause of death. The registration officer will then input the data shown on the death return into the computer, and print the relevant computer record as the deceased's death entry. After checking the information on the death entry against that on the death return to confirm accuracy, the registration officer will sign to complete the registration.

353. For application of a death certificate, an applicant is required to submit an application form and supporting documents. The registration

officer will print the death certificate from the computer and cross check the data against those provided in the application form and supporting documents to confirm accuracy before issuing the death certificate.

354. Complete date of death was shown on the death return in respect of the complainant's relative. However, staff A who was responsible for the related death registration only entered the "month" and "year" of the death, and omitted to enter the "day" upon performing data input. The incomplete information so entered was thus inconsistent with the data on the death return.

355. The complainant obtained a death certificate issued by staff B from GRO. Her family member obtained another copy issued by staff C in another births registry. Both the complainant and the family member furnished a complete date of death on the application form. However, only the month and year of death was shown on the two computer generated death certificates. Upon issuing the death certificates, neither staff spotted or corrected the clerical error.

356. The daily number of death registrations and death certificates issued by ImmD are numerous. The Ombudsman was of the view that staff concerned should be conversant with the relevant procedures and guidelines. However, none of the said three staff noticed the incomplete date of death on the record, resulting in the issue of two erroneous death certificates. The complainant had to apply for correction of error, which caused a consequential delay to the probate application.

357. The Ombudsman considered that the above negligence was rather serious. The incident reflected the following procedural and handling problems –

(a) there was no auto-detection or alert function in the relevant computer system of ImmD to ensure staff have entered all data before the registration process could be completed; and

(b) the three staff involved had not been cautious enough to check the correctness of the data in accordance with procedures in place, and performed the death registration procedures and the death certificates issuance rashly.

358. The Ombudsman considered point (a) substantiated.

359. Regarding point (b), where an applicant wishes to correct any

death entry, he/she is required to submit an application form with supporting documents. The application will normally take about two weeks. If he/she is satisfied that there is a clerical error, the registry staff will correct the error as soon as possible. The application will be processed on the same day when the case merits special consideration.

360. The complainant and her family member went to GRO to apply for a correction of error on the relative's death entry. Staff D explained to them that a file would be opened for the case and search of records would be conducted. The death entry would be corrected after being endorsed by the Officer. The whole process would take about two weeks. After knowing that the complainant needed the death certificate urgently for probate application, staff D promised to expedite the application, and advised the complainant to wait for the telephone notification from the registry.

361. According to ImmD's records, neither the complainant nor her mother had clearly requested to have the corrected death certificate issued on the same day. Otherwise, staff D would have referred the case to her supervisor for same day processing. After two days, ImmD issued a corrected death certificate to the complainant.

362. The Ombudsman contacted the complainant again to verify whether she had made on the material day any specific request to the staff for correction of the error on the same day. The complainant clearly recalled that she and her family member spotted the incomplete date of death on the death certificate at the Probate Registry that morning. They went to a GRO nearby immediately at noon on the same day and spoke to two staff requesting for immediate amendment on the death certificate so that they could return to the Probate Registry in the afternoon for follow up processing. However, her request was refused for the reason that it took several days for correction of error. The complainant requested the staff to expedite the correction exceptionally on the same day, but the request was turned down again. They then rescheduled for another appointment with the Probate Registry.

363. Judging from circumstances of the case, it sounded insensible if the complainant and her family had not requested registry staff for immediate correction of error on the same day when they knew the furnishing of a corrected certificate that day could help save them for more than a month for yet another appointment for probate formalities. The Ombudsman tended to believe what the complainant had stated in their case.

364. In all, the error on the death entry was caused by the ImmD staff. Having learnt about the complainant's situation, GRO staff should have accorded help proactively and refer the case to a supervisor for immediate correction of error on the day. The Ombudsman considered the incident reflected that the staff concerned had failed to exercise flexibility, and had not served the public wholeheartedly. Point (b) was found substantiated.

365. Overall, The Ombudsman considered the complaint against ImmD substantiated.

Administration's response

366. ImmD has accepted The Ombudsman's recommendations and taken the following actions –

(a) ImmD is actively exploring enhancement of the computer system by installing auto-detection and alert function to guard against incomplete input of death data during death registration. The enhancement of the system is under study and ImmD will work closely with the existing contractor of the relevant systems on the enhancement work;

(b) ImmD has enhanced training and briefing sessions provided to frontline staff to step up the vigilance, strict observance of data input procedures, and cautiousness of the frontline staff in data input. To equip the staff with the necessary work knowledge, on-the-job training / mentorship are provided. In addition, supervisors would keep staff abreast of the latest job know-hows, and remind them regularly on proper / revised procedures. The frontline staff are also given relevant guidelines, monthly or ad hoc briefings, and sharing sessions;

(c) spot checks are conducted periodically to ensure the factual accuracy of data input; and

(d) ImmD briefed registries staff to be more proactive and positive in handling requests from the public. As mentioned in (b) above, the frontline staff are given guidelines, monthly or ad hoc briefings, and sharing sessions.

Case No. 2009/2113 : Forcing a patient to affix his fingerprints on documents regarding his repatriation and recognizance despite that he could not understand the officer's explanation in Cantonese, nor was he mentally fit for such procedures

Background

367. The complainant is a Hong Kong resident. On 19 February 2006, the complainant's father entered the HKSAR from the Mainland and was permitted to remain as a visitor till 20 May 2006. Afterwards, he applied to the Immigration Department (ImmD) for an extension of stay on four occasions and was last permitted to remain until 24 August 2006. However, he did not depart and return to the Mainland after the expiry of his limit of stay.

368. On 14 January 2009, the complainant made a call to ImmD informing that her father had decided to surrender to ImmD for fear of not being able to return to the Mainland if he overstayed for too long.

369. On 19 January, immigration officers attended the complainant's residence to interview the complainant's father and take statement from him with the assistance of an interpreter for Amoy dialect. The complainant's father expressed that he had problem in grasping a pen and requested an Immigration officer to write down his statement for him. He impressed his thumbprint to confirm the content of the statement afterwards.

370. ImmD subsequently decided to prosecute the complainant's father for his breach of condition of stay. On 18 February, the complainant's father was convicted by a Court and was sentenced to six weeks' imprisonment. While being imprisoned, the complainant's father was transferred by the Correctional Services Department (CSD) to a hospital for medical treatment.

371. On 19 March, ImmD was informed by CSD that the complainant's father would be discharged from imprisonment on the following day, but he would likely need continuous hospitalisation.

372. In accordance with law and the standing procedures, ImmD would detain overstayers having been discharged from imprisonment pending the making of removal orders and the subsequent removal to their places of domicile. Depending on the circumstances of the individual case,

ImmD might consider allowing such detainee to be released on recognizance in lieu of detention. Factors to be considered would include that the detainee being an elderly; requiring close attention or medical care etc.

373. Taking into consideration that the complainant's father was still hospitalized after his discharge from imprisonment, ImmD allowed him to be released on recognizance in lieu of detention pending his removal arrangements. On 19 March, ImmD called the complainant to inform the proposed recognizance formalities to be proceeded on the following day, so that her father could continue his hospital treatment without being detained pending removal. The complainant was also invited to attend the hospital and act as her father's guarantor but she refused. ImmD eventually decided to allow the complainant's father to be released on recognizance on self-surety.

374. On 20 March, an immigration officer proceeded to the custodial ward and explained to the complainant's father the relevant recognizance formalities and removal procedures upon CSD's completion of his discharge formalities. In accordance with the procedures, the immigration officer requested him to acknowledge the receipt of the following documents by impressing his thumbprint for his recognizance on self-surety –

(a) Notice on Detention Policy (「羈留政策通告」);
(b) Notice to Persons in Custody (「給在羈留人士通告」);
(c) Notice of Review of Detention (「羈留個案覆檢通知書」);
(d) Declaration of Treatment Received under Supervision/ Enquiry (「監管/查詢期間待遇申報表格」); and
(e) Interview Report (「會晤報告」).

375. On 25 March, the complainant wrote to ImmD, accusing the immigration officer for having forced her father to impress his thumbprint while he was unconscious. On 29 March, the complainant's father passed away.

376. On 9 May, ImmD replied to the complainant in writing stating that after inquiries into the case, it was found that the complainant's father was conscious during the recognizance formalities and even nodded to indicate understanding to the immigration officer's explanation. He had also consented to impress his thumbprint in lieu of signature to acknowledge the relevant documents.

The Ombudsman's observations

377. The Ombudsman considered that ImmD had taken into full consideration the special circumstances of the complainant's father, including his being 60 years old, his express intention to return to the Mainland, and his continual hospitalization even after discharge from imprisonment, in allowing his release on recognizance to facilitate his recovery in hospital without being detained pending removal. Such decision of ImmD was legitimate, reasonable and empathetic as well as the most suitable arrangement with regard to the father's circumstances.

378. The Ombudsman also pointed out that it was unfortunate that the complainant had refused to attend the hospital and act as her father's guarantor, as all problems pertaining to this complaint might not have happened had she been present in the first place.

379. As regards whether the father was on the material day fit for going through the recognizance formalities, The Ombudsman observed that –

(a) the father was already seriously sick at the material time as certified by the medical doctor. Yet the immigration officer had only relied on apparent sight to determine that the father was conscious and could understand what he said; and

(b) in the first interview with the father, immigration officers had employed the translation of the Amoy dialect interpreter throughout their conversations. Similar arrangement should have been made in the second interview to ensure that the father would be able to understand the relevant removal procedures and recognizance formalities.

380. The Ombudsman remarked that while ImmD had not in fact ascertained the father's mental condition, and in the absence of an Amoy dialect interpreter, to persist with the recognizance formalities by self-surety of the father was after all not appropriate. The Ombudsman, therefore, considered the complaint partially substantiated.

Administration's response

381. ImmD has accepted The Ombudsman's recommendations and taken the following actions –

(a) an internal instruction was issued on 26 January 2010 to specifically instruct all front-line staff to adhere to the guidelines in conducting interviews with sick or injured persons. Apart from ensuring that the interviewees are fit for interviews before any removal and recognizance formalities are conducted, interpretation service has to be arranged where necessary so as to ensure that the interviewees have a clear understanding of their rights and the procedural details. If necessary, medical advice should be sought as well; and

(b) in a bid to strengthen the coordination with CSD, ImmD has agreed with CSD in March 2010 that the information in respect of discharged prisoners still under hospitalization could be obtained through established channels in the computer system of CSD one to two weeks in advance. Under the new arrangement, ImmD has immediately started to retrieve the relevant information through the computer system two weeks in advance. The result is satisfactory.

Lands Department

Case No. 2007/2864 : Failing to handle properly a request to correct land registration records

Background

382. The complainant had purchased a lot in the New Territories in 1963 and never assigned it to anyone. However, in 1975, staff of the Counter Conveyancing Service of a District Office under the then New Territories Administration (NTA) (land administration work has come under the Lands Department (LandsD) since the reorganisation), wrongly included the lot in an Assignment as Gift and in its Memorial. This lot was then recorded in the Land Register as being owned by four other persons.

383. In 2000, after discovering that the land title for the lot had been altered, the complainant filed an enquiry with a District Lands Office (DLO) under LandsD. He was advised to seek legal advice. In 2004, through his lawyer, the complainant requested DLO to take action and asked the Lands Registry (LR)[5] to correct the records. It was not until 2007 that DLO indicated to the complainant that it could not do so and that the complainant should take legal action himself. Meanwhile, LR advised the complainant that the Land Registration Ordinance (Cap. 128) did not empower it to delete or amend land registration records. The complainant was dissatisfied with LandsD and LR for failing to help him.

The Ombudsman's observations

384. It had taken DLO some three years to respond to the request from the complainant's lawyer. The Ombudsman considered that this was an inordinate delay. Moreover, the lot in fact belonged to the complainant but the land title had been altered without his knowledge. The Ombudsman found it unreasonable of DLO to ask the complainant to take legal action himself to have the records rectified. The Ombudsman was of the view that the Administration should be responsible for rectifying the error made by NTA staff. LandsD ought to have acted promptly and positively to assist the complainant in finding a solution with LR.

[5] The complaint against LR was found not substantiated and there was no relevant recommendation for it. The part of the case involving LR is hence not covered in this Government Minute.

Administration's response

385. LandsD has accepted The Ombudsman's recommendations and taken the following actions –

(a) a number of measures have been implemented at DLOs to further strengthen the current mechanism for file tracking and case monitoring;

(b) LandsD has advised DLO staff that public enquiries should be handled expeditiously and proactively, and legal advice should be sought at an early stage on matters where legal issues are involved; and

(c) LandsD has contacted LR and suggested that for all similar cases to be handled in the future, the two offices should liaise closely with each other.

Case No. 2008/3841 : Irregularities in handling an application for redevelopment of agricultural structures

Background

386. In 1972, the complainant bought the land (Lot A) in the New Territories. In 1976, he was issued a Modification of Tenancy Permit (the Permit) by the then District Office (DO) which permitted him to build a domestic house at the subject lot. In 1977, he was further issued a Letter of Approval for Agricultural Structure (Letter of Approval) which permitted him to build two agricultural store rooms and one pigsty at the subject lot. In late 1980s, for the sake of environmental protection, the Government offered to eligible farmers who agreed to cease farming business an ex-gratia allowance. In 1992, the complainant decided to cease business and was granted an allowance under the Livestock Waste Control Scheme. He was only required to cease business but was not required to demolish the related structures. The concerned District Lands Office (DLO) under the Lands Department (LandsD) wrote to the complainant in 1994 to advise him that the agricultural structures in Lot A could remain only if no change was made to the permitted use.

387. In January 2007, the complainant applied to DLO for rebuilding the domestic house. In its reply, DLO said that regardless of whether the house he applied for rebuilding was the one governed by the Permit, if the structures governed by the Letter of Approval were not for agricultural storage or had been converted, the Letter of Approval would be cancelled. He was asked to demolish any such illegal structure. The complainant was of the view that DLO, in so doing, was allegedly overturning the Government's original decision to allow him to preserve the relevant structures. After some unsuccessful negotiations with several DLO officers and with the help of a District Council Member in early 2007, the complainant was finally told that vetting procedures of his application would be completed in nine to 18 months. However, 18 months had passed and the vetting had yet to be completed.

388. In January 2008, DLO suddenly sent some officers to Lot A to conduct a site inspection. During the inspection, the complainant was told that part of his structure fell on an adjacent lot (Lot B) and that he should not have changed the construction materials of the structure. The complainant explained that his structure had always been there and had never been converted or moved. As for the change of construction materials, it was because seepage and cracks were found in the structure,

and so cement was used to replace the rotten wood. Nonetheless, DLO officers said that it was unlawful that he rebuilt or converted the original structure without permission.

389. In December 2008, DLO wrote to the complainant to reiterate the above position, pointing out that the structure being partly situated at Lot B was "a result of the revision of the lot boundary after correlation". Since consideration would only be given to the complainant's application for redevelopment within Lot A, DLO asked him to submit another redevelopment proposal.

390. The salient points of the complaint were as follows –

(a) DLO failed to comply with the Livestock Waste Control Scheme and forced him to demolish a structure originally used for agricultural purposes without lawful justifications. It also claimed that the use of cement to fix the structure was a kind of unauthorized reconstruction or conversion;

(b) it was after a lapse of 30 years that DLO suddenly claimed that part of his structure was on another lot; and

(c) DLO initially informed him through a District Council Member that the vetting of his application for redevelopment would be completed within 18 months. But it was not so.

The Ombudsman's observations

391. The Ombudsman took the view that DLO's letter of January 2007 conveyed the same message as that of its letter of 1994. In fact, DLO has not "overturned the Government's original decision that the complainant was allowed to preserve the structures concerned." Given that only agricultural structures were permitted under the Letter of Approval, it was justifiable for DLO to require the complainant to demolish the structure where it "was not used for agricultural storage or had been converted". As the structure must be demolished, "to fix it with cement" was of course unacceptable. The Ombudsman considered point (a) above not substantiated.

392. It was after 30 years that the Government suddenly discovered that the boundary shown in the Permit was not accurate, hence the Government should be held responsible for the fault. If an accurate plan

was adopted when issuing the Permit, the problem today would not have arisen. The then DO, which issued the Permit covering inaccurate lot boundaries, should be the department to blame. However, as LandsD had taken over the duty of issuing land permits from the then DO after government reorganization, it had no choice but to take the blame. The Ombudsman therefore considered point (b) above substantiated.

393. A DLO officer indeed attended the Town Planning and Development Committee (TP&DC) meeting of the concerned District Council in January 2007. But he only briefed the meeting on the time required for processing applications for rebuilding village houses on private land, which was generally about 18 months for straightforward cases and longer time for complicated cases. The complainant's application fell under the category of in situ redevelopment of a temporary house governed by a Modification of Tenancy Permit. LandsD's performance pledge for this kind of application was "vetting and approval to be completed within 48 weeks". However, if there were a large number of applications, DLO would have to process them in sequence. The complainant's case also involved boundary problems, which made in situ redevelopment not possible. Hence, it was not a straightforward case and more time was needed for vetting and approval. As such, The Ombudsman considered point (c) above not substantiated.

Administration's response

394. LandsD has accepted The Ombudsman's recommendation and taken the following actions –

(a) DLO called the complainant in October 2009 to discuss how to solve the problem. The complainant said that he would not take the initiative to contact the owner of the adjacent lot to sort out the lot boundary issue. DLO indicated that as the boundaries in question involved the owner of the adjacent lot, it was beyond the authority of the LandsD to resolve the issue on its own. However, DLO would be pleased to arrange a meeting for the owners of the lots so that they would start discussion with each other; and

(b) DLO subsequently sought legal advice on the matter. Government Counsel advised that DLO could help the complainant seek the consent of the owner of the adjacent lot so that permission could be granted for the in situ redevelopment.

DLO officers had a meeting in April 2010 with the complainant, who expressed no objection to DLO's discussing with the owner of the adjacent lot to seek permission for the in situ redevelopment. In April 2010, DLO successfully contacted the owner of the adjacent lot who gave his verbal consent for the in situ redevelopment and indicated also his willingness to sign a letter of consent. DLO arranged for the owner of the adjacent lot to sign the letter of consent, scrutinised by the Legal Advisory and Conveyancing Office under LandsD. However, in August 2010, the owner of the adjacent lot suddenly changed his mind and refused to sign the letter of consent. DLO is now liaising with the complainant to resolve the redevelopment issue.

Case No. 2008/4797 : Shirking responsibility for maintaining a slope to the owners of a building

Background

395. In October 1982, the developer of a building (the building) applied to the concerned District Lands Office (DLO) under the Lands Department (LandsD) for entry to the slope section within Government land (pink area) in order to carry out formation works and slope strengthening works for the safety of the building and the scavenging lane. In March 1983, DLO issued a Permission Letter to approve the application, subject to compliance of nine conditions by the developer.

396. In November 2006, DLO received a complaint from the Incorporated Owners (IO) of the building (the complainant) about a toppled tree on the slope, which posed a threat to residents. In December 2006, DLO asked the complainant to remove the tree in question but was rejected. In July 2007, LandsD wrote to tell the complainant that under Special Condition No. 16 of the Conditions of Exchange, the owners of the building (the owners) should be responsible for the repair/maintenance of the slope at sub-division number 1 of the concerned slope feature (Slope A). Slope A (yellow area) is partly the same as the pink area. The tree in question was situated on Slope A, as well as within the pink area.

397. In September 2007, the complainant wrote to DLO, saying that as the green area mentioned in the Conditions of Exchange had been reverted to the Government and turned into a public scavenging lane, the owners should no longer be responsible for the repair/maintenance under Special Condition No. 16 of the Conditions of Exchange. In December 2007, internal legal advice was given to DLO that if it was certain that the subject tree was situated at Slope A, and if there was proof that Slope A had been cut and levelled for developing the relevant lot, DLO would have stronger justification to require the owners to take on the repair/maintenance responsibility in connection with the tree. If the tree was not in the pink area, then DLO could not ask the owners to take maintenance responsibility for the tree by invoking the conditions in the "Permission Letter".

398. In January 2008, after a site inspection, DLO pointed out that the subject tree fell within the pink area rather than the green area mentioned in Special Condition No. 16, but in accordance with the Permission Letter, the complainant had the responsibility to clear the tree and take remedial

measures as appropriate. The complainant took the view that the conditions in the Permission Letter were applicable to the construction period of the Building only, whereas under the Special Conditions of the above Conditions of Exchange, the owners should only be responsible for issues arising from the improper repair/maintenance of the retaining walls, but not the daily repair/maintenance of the subject slope.

The Ombudsman's observations

399. Having examined and studied the response of LandsD, The Ombudsman found that LandsD had given different explanations regarding the repair/maintenance responsibility of the slope behind the building.

400. The Ombudsman noted that in LandsD's interim reply, it was said that under Condition No. 4 in the Permission Letter, the developer should maintain the pink area to the satisfaction of the Department at all times. It was LandsD's understanding that although under Condition No. 8 in the Permission Letter, the "permission" should be deemed null and void upon completion of the works, it actually meant that the slope works had to be completed on or before a specified date in February 1984, and not that upon completion of the works the owners could pass back the repair/maintenance responsibility of the pink area to the Government.

401. LandsD subsequently reversed the above argument, agreeing with The Ombudsman that the Permission Letter was null and void upon completion of the works. The repair/maintenance responsibility mentioned in the Letter was therefore irrelevant to this case. LandsD also took the view that the repair/maintenance responsibility involved in this case should be considered in accordance with the Conditions of Exchange pertaining to the lot. Under Special Condition No. 16 of the Conditions of Exchange, as Slope A had been cut, the owners should be responsible for its repair/maintenance.

402. The Ombudsman considered that LandsD had in fact stopped short of admitting that their invoking in January 2008 the conditions in the Permission Letter to require the owners to take on the repair/maintenance responsibility of the pink area was based on a wrong interpretation of the conditions. The Ombudsman considered it extremely improper for DLO to have acted carelessly at the time and for LandsD to have insisted on the wrongs afterwards.

403. LandsD eventually invoked Special Condition No. 16 of the Conditions of Exchange to require the owners to take on future repair/maintenance responsibility of Slope A. However, DLO should first prove that Slope A had been cut and levelled for developing the lot concerned before it could require the owners to take on the repair/maintenance responsibility of the slope. Moreover, it seems that under the above condition, the "repair/maintenance responsibility" confined only to the "retaining walls or other support" on the slope. Whether it also included clearing the toppled tree on the slope had yet to be clarified.

Administration's response

404. LandsD has accepted The Ombudsman's recommendation and taken the following actions –

(a) pursuant to The Ombudsman's recommendation, LandsD had sought legal advice, which reconfirmed that the owners' maintenance responsibility of Slope A was still valid;

(b) LandsD had consulted the Civil Engineering and Development Department (CEDD) and the Buildings Department (BD). The advice of CEDD was that according to the Guide to Slope Maintenance (Geoguide 5) published in December 2003, maintenance of planted and natural vegetation including existing trees was part of the maintenance works of the slopes and retaining walls whereas BD's advice was that the Buildings Ordinance (Cap. 123) might not be relevant to the subject issue;

(c) DLO had met the representatives of IO of the building in December 2009 and explained that the owners were responsible for the maintenance of the slope including the trees thereon; and

(d) insofar as the maintenance responsibility of the slope including the trees thereon was concerned, IO of the building had no opposing view. Nonetheless, one representative was of the view that IO of the building was only responsible for maintaining the retaining wall and he indicated that IO of the building would seek advice from its legal consultant on the interpretation of the "Cutting Away Clause". However, DLO has yet to receive follow-up representation on the said issue from IO of the building.

Case No. 2008/5258 : (a) Unreasonably demanding the complainant to pay mesne profits; and (b) Failing to respond to the complainant's application for a short term tenancy

Background

405. In April 1992, a landslip occurred on the slope near the Government land (the subject site) adjoining the complainant's property (Property A). Upon site inspection by the then Buildings and Lands Department, it was found that the verandah of Property A had been erected illegally on the slope crest. Also in April, the complainant wrote to the District Lands Office (DLO) under the Lands Department (LandsD), noting that part of the verandah might have encroached on Government land. He alleged that the verandah had existed before he became the owner of Property A in April 1969 and applied for regularisation by way of a Short Term Tenancy (STT). In May 1992, DLO conducted a site investigation on Property A and found that the complainant's garage and garden had also encroached on the subject site. In August, DLO consulted the relevant departments on the complainant's STT application regarding the regularisation of the garage and garden on the subject site. However, not all of the departments consulted supported the application.

406. In February 1993, DLO wrote to inform the complainant that his application was rejected and warned him that the Government might demolish the illegal structures on the site under the Buildings Ordinance (Cap. 123).

407. In April 1998, DLO issued a warning letter to the complainant asking him to demolish all the illegal structures. In May, the complainant applied again for an STT and admitted in writing that he had occupied the Government land for over 30 years. In October, DLO consulted the relevant departments on the matter again. As the application was not supported by all these departments, DLO considered that the case should be submitted to the District Lands Conference (DLC) for deliberation. DLO consulted the Buildings Department (BD) in June 2000, May 2001 and April 2003 on the STT application. However, BD maintained that it would not support the application.

408. In March 2005, DLO issued another warning letter to the complainant requiring him to demolish all the illegal structures. The complainant was also asked to inform DLO whether he would consider applying for an STT or extension of the leased land for the regularisation of

the illegal structures. In February 2006, the complainant applied for an STT and lease modification. It was not until September 2006 that DLC finally approved the STT application. But one of the conditions of approval was payment of "mesne profits" to the Government as calculated from 1 April 1969. In May 2007, DLC confirmed that there should be a payment of "mesne profits" together with interests thereon.

409. In November 2007, DLO issued the basic terms offer letter (the offer letter) to the complainant, agreeing to regularise his garage and garden on condition that he demolished the verandah and paid the "mesne profits" together with interests thereon. From November 2007 to September 2008, the complainant and his representative(s) met with the Lands Department Headquarters (LandsD HQ) and DLO staff on several occasions to negotiate the terms in the offer letter. At a meeting in March 2008, LandsD explained to the complainant that it was because he had illegally occupied Government land since 1969 that he had to pay the "mesne profits". In July, DLO issued a revised offer letter requiring the complainant to pay only the "mesne profits" but not any interests.

410. In September 2008, DLO first met with the consultant company representing the complainant. According to the company, it was unreasonable for the Government to ask the complainant after so many years to pay the "mesne profits" without ever asking him to cease occupation of the subject Government land. DLO then explained again the reasons for the payment of "mesne profits". Four days later, the company informed DLO in writing that the complainant objected to the payment of "mesne profits". It also alleged that it was unfair for DLO not to ask for payment of "mesne profits" from the ex-owner of Property A, who had once occupied the subject site. In October 2008, DLO replied that as the complainant would not accept DLO's offer of July 2008 and had not made any counter-offer, DLO would take action according to the law. DLO and the consultant company met again in October and November 2008 to discuss the "mesne profits". Since no consensus could be reached, DLO posted a notice in accordance with Section 6(1) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) in November, requiring the complainant to cease the illegal occupation of Government land.

411. In November 2008, the consultant company wrote to LandsD complaining about the unreasonable demand for "mesne profits". LandsD replied that as the complainant had illegally occupied Government land and refused to accept the conditions in the offer letter, LandsD had to take action according to the law. In November, DLO discussed the matter with the company again. The company wrote to LandsD again and questioned

the amount of "mesne profits". LandsD replied in December, explaining how the amount was arrived at. Also in December 2008, LandsD wrote again to the consultant company, demanding the complainant to pay the "mesne profits" on or before a specified date, otherwise DLO would take legal action on the day following the due date. Subsequently, DLO took land control action by fencing off the subject site. The next day, the complainant paid the "mesne profits".

412. In January 2009, LandsD issued a revised offer letter. The complainant acknowledged its content in writing and demolished the verandah. DLO then arranged for the signing of the STT.

The Ombudsman's observations

413. The complainant's dissatisfaction could be summarised as follows –

(a) In 2007, DLO alleged that the complainant had illegally occupied the Government land adjoining Property A since 1969, and therefore required him to pay "mesne profits". The complainant resented that DLO asked him to pay "mesne profits" after a lapse of 30-odd years, during which he was never accused of occupying Government land. He also pointed out that the ex-owner of Property A had also occupied the subject site, but was not required to pay "mesne profits"; and

(b) the complainant had proposed renting the subject site by way of STT since 1998 but DLO made no response.

414. The Ombudsman considered that judging from the above, it was not the case, as alleged by the complainant, that Government departments had never accused him of occupying Government land during the period from 1969 to 2007.

415. Regarding the complainant's complaint that DLO did not similarly require the ex-owner of Property A to pay "mesne profits", The Ombudsman was of the view that although LandsD should ideally have tackled illegal occupation of Government land on all fronts, the approach taken was understandable and unavoidable given limited resources. However, failure to take concrete enforcement action after years of non-compliance would seem to be encouraging illegal activities.

416. Although the complainant was unhappy that DLO asked for the payment of "mesne profits", he in fact admitted that he had illegally occupied the Government land since 1969. It was not until 1992 that he applied for regularisation of the illegal structures by way of STT. Eventually, when LandsD granted the STT at their discretion in 2006, it was only reasonable that the payment of "mesne profits" was made one of the conditions.

417. On the basis of the above, The Ombudsman considered point (a) in paragraph 413 above unsubstantiated.

418. As to point (b), The Ombudsman considered that when the complainant applied for an STT for the second time in 1998, DLO considered that the case should be submitted to DLC for deliberation but did not do so until after eight years. During that time no decision on the application was made, nor was the complainant informed of the progress of his case. It was not until March 2005 when DLO issued a warning letter to the complainant that he was asked to consider applying for an STT, but not a word was mentioned about his application in 1998. This was beyond comprehension. In any case, The Ombudsman considered that DLO had acted in a careless manner and the serious delay in handling the complainant's application was highly improper.

419. As such, The Ombudsman considered point (b) substantiated.

Administration's response

420. LandsD has accepted The Ombudsman's recommendations and taken the following actions –

(a) the District Lands Officer concerned has reminded his staff to avoid unnecessary delay when handling applications from members of the public and to hand over the outstanding cases to his/her successor(s) upon posting/transfer; and

(b) LandsD HQ has issued a memo to all DLOs informing them of the two recommendations by The Ombudsman, and reminding them to monitor the progress of STT applications, keep the applicants duly informed, as well as pay attention to the Technical Circulars concerning STTs.

Case No. 2009/0711 : (a) Failing to explain to the complainant clearly why a pre-clearance survey had to be conducted; and (b) Trespassing on the complainant's garden

Background

421. The complainant was a villager. In November 2008, the villagers of the subject village were informed by the Lands Department (LandsD) that their village would be cleared before November 2010 for a development project. However, the Transport and Housing Bureau[6] (THB) had not consulted the villagers on the clearance of the village beforehand.

422. When carrying out a survey at the village in November 2008, LandsD staff requested entry into the villagers' houses on the pretext of conducting routine inspections without telling them what actually happened. White markings were painted both inside and outside their houses, causing nuisance to the villagers.

423. In February 2009, staff members of LandsD entered the garden area of the complainant's house without her permission.

424. Under Section 13 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) (the Ordinance), officers may be deployed to enter and inspect the land and the structures concerned at any reasonable time, and affix numbers on the structures for the purpose of establishing eligibility of persons for public housing and computing compensation and allowances.

425. In November 2008, staff of the Clearance Unit of LandsD (CU) posted a Survey Notice (the Notice) and conducted a survey at the village. As in the usual practice, they marked a clearance number on each of the structures affected, registered the particulars of the occupiers and took photographs for record to make sure that all structures affected by the clearance had been properly recorded and that the numbers of residents and commercial tenants affected had been frozen. The purpose of the survey was to determine the eligibility of the occupiers for rehousing and ex-gratia allowance. In the case that the staff were refused entry or no one answered the door, notices would be left behind and paint markings made on the Government land in front of their houses for record. In order to ensure proper utilisation of Government resources and prevent people from

[6] The complaint against THB was found not substantiated and there was no relevant recommendation for it. The part of the case involving THB is hence not covered in this Government Minute.

impersonating the villagers to acquire public housing eligibility by moving into the village before the survey, the exact date and scope of the survey had to be kept confidential and the survey had to be carried out before gazettal of the scheme. Therefore, no prior notice would be given to the affected residents or village representatives.

The Ombudsman's observations

426. The Ombudsman recognised that LandsD only conducted a survey in November 2008. There was not yet a conclusion on the clearance of the village and consultation with various parties, including the villagers was still going on.

427. Regarding whether LandsD staff had requested entry into the houses on the pretext of conducting routine inspections without telling the villagers what actually happened on the day of the survey, The Ombudsman opined that he could not come to a definite conclusion in the absence of independent evidence. As regards the painting of white markings on the structures, this was done in accordance with the regulations though it might cause uneasy feelings to the residents. Painting clearance numbers on the affected structures was only for record purpose and there is nothing inappropriate about this.

428. Notwithstanding this, The Ombudsman had the following comments on LandsD's "unannounced" survey. Although LandsD claimed that its staff entered the houses of the villagers to conduct the survey only after obtaining their verbal consent, The Ombudsman believed that the villagers (especially the elderly) might feel surprised and scared at the unexpected pre-clearance survey (PCS), in particular under the perceived threat of becoming homeless. Judging from common sense, it would also be difficult for LandsD staff to explain clearly the reasons for conducting the survey and the relevant details to the villagers on the spot.

429. Therefore, The Ombudsman considered that LandsD should place special emphasis on enhancing the communication skills of its staff at the briefing held before PCS. It should remind its staff to explain clearly to the villagers the background of the development project, the reasons for clearing the village and other related details. It should also remind its staff to be patient when answering questions from the villagers so that the intention of the visit and the objective of the survey were well comprehended by the villagers. Efforts should be made to alleviate the anxiety of the villagers and avoid disputes. The feelings of the villagers

should not be neglected for the sake of administrative convenience or for the purpose of completing the survey at an earlier time.

430. Whilst Survey Notices were posted and distributed in the village on that day, the Notices gave only the project title and date of the clearance and such information as the resumption of land for permanent development. The reasons for the planned clearance of the village and the arrangements for gazetting and collecting public views on the project were not given. Without such details, the Notices apparently failed to effectively help LandsD's staff to explain the details of the clearance and relieve the anxiety of the villagers.

431. Given the different submissions of the complainant and LandsD with regard to the course of events of the incident of February 2009, it was difficult for The Ombudsman to ascertain what actually happened on that day. However, according to LandsD, the private garden area as referred to by the complainant is in fact Government land.

432. In view of the above, The Ombudsman found the complaint unsubstantiated. Yet, The Ombudsman has made recommendations for LandsD to follow up.

Administration's response

433. LandsD has accepted The Ombudsman's recommendations and will take the following actions –

(a) LandsD will strive to enhance the communication skills of the staff at the briefing session before carrying out a PCS; and

(b) LandsD will provide more details in the Notice of Registration to allow people affected to have a better understanding of PCS.

Case No. 2009/2408(I) : Unreasonable refusal of the complainant's request for copies of documents signed by his father on the assignment of a land licence and a building licence

Background

434. The complainant asked the Lands Department (LandsD) for copies of the following documents but was refused –

(a) the land licence of his father;

(b) the subsequent land licence of Mr A, who had been assigned the land; and

(c) the undertaking for assignment of temporary building licence signed by the above two persons.

The Ombudsman's observations

435. LandsD refused to provide the complainant with a copy of his father's land licence on the grounds that "the document had been cancelled and annulled". As this is not a valid reason for refusal set out in Part 2 of the Code on Access to Information (the Code), The Ombudsman considered that LandsD's decision was inappropriate. Subsequently, LandsD learned that "personal data" apply only to living individuals. Since his father had passed away, the complainant, as his next-of-kin, was the "appropriate person" to have access to the document. LandsD finally decided to give a copy to the complainant.

436. The Ombudsman was of the view that it was not inappropriate for LandsD to refuse to provide the complainant with a copy of Mr A's land licence on grounds of privacy. However, LandsD failed to explain in detail, as required by the Code. In this light, The Ombudsman considered that there was room for improvement.

437. The undertaking for assignment contained the personal data of both the complainant's father and Mr A. Out of concern for privacy, LandsD initially refused to provide the complainant with a copy. However, as "personal data" should apply only to living individuals and the two signatories had both passed away, such information ceased to be "personal data". Moreover, the limited information about Mr A in the undertaking

meant that its disclosure would not infringe upon the privacy of his next-of-kin. LandsD, therefore, decided to provide a copy to the complainant. It is clear that LandsD had not examined the complainant's request carefully at the outset.

438. The Ombudsman considered that this incident pointed to LandsD's misunderstanding of the Code. Though LandsD eventually decided to provide the complainant with copies of his father's land licence and the undertaking, there was already delay. Moreover, LandsD had failed to give the complainant proper explanation when initially rejecting his request.

Administration's response

439. LandsD has accepted The Ombudsman's recommendation. It has organised and will organise seminars on the subject of the Code for staff to reinforce their knowledge and training in this regard.

Leisure and Cultural Services Department

Case No. 2008/4875 : Failing to handle properly books returned via book drop and unreasonably demanding compensation for a book returned and found damaged

Background

440. The complainant went to a public library under the Leisure and Cultural Services Department (LCSD) one evening to return some books and magazines. As the library was then closed, he returned the items, which were in good condition, through the book drop outside the library.

441. Later, he went to another public library to borrow some books. However, the staff advised that he had not returned one magazine. The complainant learned that since the magazine was damaged, the library had classified it as "not yet returned". Meanwhile, as he was unable to provide evidence that the magazine was complete and undamaged when it was returned, he had to compensate LCSD for that. Although the complainant eventually agreed to pay for the full cost of the magazine, he considered the way LCSD handled his case as improper. He, therefore, lodged a complaint with The Ombudsman.

The Ombudsman's observations

442. Under the Libraries Regulations, a charge will be made for any library material lost or damaged and it will be of such sum as the Librarian considers to be full compensation for the loss or damage, plus a 20% surcharge.

443. When the library staff found the cover of the magazine missing, he reported immediately to the duty officer and tried his best to look for it. Meanwhile, the duty officer also quickly instructed a colleague to assist in the search to ascertain whether the missing cover had been left in the book drop or mixed with the other library materials. However, since the barcode and call number of the magazine were affixed to the missing cover, the staff could not identify the borrower, hence, could not telephone the complainant immediately to discuss the damage to the library material and to find out the cause. Subsequently, the complainant's identity as the original borrower of the material was established when he borrowed other

items. At the complainant's request, the staff conducted a further search for the missing cover but still to no avail.

444. The Ombudsman considered that LCSD staff upon receipt of the complaint, had carefully examined and analysed the situation before and after the magazine was returned. It had also explained in detail to the complainant the reason for seeking compensation. There was no evidence that LCSD had unreasonably demanded compensation for the damaged magazine. In fact, when the cover of the magazine was found missing, the complainant had once indicated willingness to pay compensation. However, he later alleged that the staff had intentionally tricked him and so changed his mind and refused to do so.

445. The Ombudsman considered LCSD to have followed its established policy and guidelines in handling this case. There was no impropriety and the complaint was unsubstantiated.

Administration's response

446. LCSD has accepted The Ombudsman's recommendation. A summary of the Libraries Regulations has been posted on all bookdrops for users' reference.

Post Office

Case No. 2007/2760 : Causing nuisance by sending the complainant unaddressed circular mail and refusing his request to opt out of the service

Background

447. The Hongkong Post Circular Service allows bulk sending of unaddressed mail to a large number of people at discounted postage.

448. The complainant was annoyed by frequent delivery of such unwanted mail. He did not want to receive such mail but found the "Mandatory Opt Out Scheme" of Post Office (PO) ineffective. He proposed a "sticker scheme" instead, whereby households could label their mailboxes to indicate their wish not to receive circular mail.

The Ombudsman's observations

449. The Ombudsman considered that the law vests in PO considerable discretion.

450. Unsolicited circular mail clearly constitutes a nuisance to those who do not want to receive such mail. It is no defence that the activity is justifiable by the benefits that the service provides to others.

451. The "Mandatory Opt Out Scheme" places an unreasonable burden on recipients to instruct each and every sender to stop sending circular mail to them. Lack of sanction against senders for non-compliance also renders the Scheme ineffective.

452. The proposed "sticker scheme" is worth consideration. The Ombudsman suggested that PO could make it simple - a postman should not put any circular mail into a mailbox with the prescribed sticker. Registration and maintaining a database for the scheme is unnecessary.

453. In light of the above, The Ombudsman considered the complaint substantiated.

Administration's response

454. PO has accepted The Ombudsman's recommendation and taken the following actions –

(a) conducted an in-depth research on prevailing practices adopted by 28 postal administrations;

(b) evaluated the relative merits of different options and consulted a wide cross-section of stakeholders; and

(c) launched the new sticker scheme in September 2010 for citizens to opt out from receiving unaddressed circular mail.

Privacy Commissioner for Personal Data

Case No. 2008/2114 : Failing to give a fair opportunity to be heard

Background

455. On behalf of his employer, the complainant had responded to initial questions from the Office of the Privacy Commissioner for Personal Data (PCPD) during the latter's investigation into a case of contravention of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) in which the employer was suspected to have improperly transferred the personal data of its customers to a third party.

456. The complainant lodged a complaint with The Ombudsman, alleging that PCPD had, without giving him a fair opportunity to defend or clarify, stated categorically in the Result of Investigation (the Result) sent directly to his employer that the complainant had misled the Privacy Commissioner for Personal Data (the Commissioner).

457. PCPD's investigation discovered that the personal data which the employer had disclosed to the third party were in fact more substantial than what the complainant had affirmed. The employer explained that the discrepancy was mainly due to internal miscommunication and there had been no intention to mislead PCPD. Nevertheless, in the Result, PCPD indicated that it would issue a warning to the complainant for his misleading representation.

458. Subsequent to the complainant's complaint to The Ombudsman, PCPD accepted that the complainant had indeed no intention to mislead the Commissioner. PCPD, therefore, withdrew from the Result the statement about the warning.

459. PCPD maintained that the information it had received from the complainant was inaccurate or untrue. Hence, the statement in the Result that the Commissioner had been misled was a matter of fact rather than a criticism. Accordingly, the question whether PCPD should have offered the complainant an opportunity to be heard should not arise.

460. Besides, PCPD had no legal obligation to give the complainant an opportunity to be heard as such an opportunity shall be given only when a "report" is to be published under the Ordinance. In the complainant's

case, only the Result had been issued to the employer. No "report" was involved.

The Ombudsman's observations

461. The crux of the matter was whether the Result contained any comments that had criticised or adversely affected the complainant to warrant his being given a fair hearing. The Ombudsman does not question PCPD's prerogative to comment on the truthfulness or accuracy of the information it receives from respondents. Nevertheless, the comments in the Result in this case were clear expressions of disapproval of the complainant.

462. As a public organisation, PCPD has a responsibility to be fair and open to citizens, not just under certain conditions, but at all times. Although strictly speaking, it had no legal obligation to give the complainant an opportunity to be heard, it was still unfair to have issued the Result to his employer without giving him an opportunity to explain or clarify the comments relating to him personally. Moreover, PCPD's assumption that the employer had given the complainant a chance to explain or clarify reflected its lack of consideration for someone affected by its action or decision.

463. In this light, The Ombudsman considered the complaint substantiated.

Administration's response

464. PCPD has accepted The Ombudsman's recommendations and taken the following actions –

(a) PCPD has invited the complainant to state his case on the comments made by the Commissioner in the Result but the complainant had not responded to the invitation; and

(b) PCPD has issued guidance to all officers handling complaints or conducting inspections that where there are sufficient grounds to include in the result of an investigation or an inspection criticism or adverse comments on any person, a fair opportunity is to be given to such person to be heard.

Social Welfare Department

Case No. 2009/0706 : (a) Unreasonably issuing a licence to a residential care home for the elderly with a name very similar to that of the care home operated by the complainant ; and (b) Delay in handling a complaint

Background

465. In April 2005, the "AB Home for the Aged" phoned to the Social Welfare Department (SWD) to complain that the name of a nearby new residential care home for the elderly (RCHE), the "AB Nursing Home", was similar to its home name. SWD considered that though the two names were similar, the "AB Home for the Aged" which started operation first was neither widely known nor a non-profit-making non governmental organization. So, a licence was granted to "AB Nursing Home" in June 2005.

466. In October and December 2005, "AB Home for the Aged" through its lawyer and itself lodged complaint again. In October 2005, SWD started mediation work and advised "AB Nursing Home" to change its name, but the latter all along refused to do so.

467. In December 2005, based on the complaint from "AB Home for the Aged", SWD wrote to the Department of Justice (DoJ) for advice and DoJ's advice were listed below –

(a) the names of the two homes were similar; and

(b) issue of licence to "AB Nursing Home" by SWD could be criticized as having failed to take the relevant provisions in the ordinance into consideration thoroughly.

468. In February 2006, SWD replied to "AB Home for the Aged" that SWD would continue the mediation work. In March 2006, SWD wrote to DoJ to seek further advice. DoJ's advice included: "XY Care & Attention Home" was not similar to "New XY Nursing Home" because the key words "XY" and "New XY" were not the same.

469. In April 2006, "AB Nursing Home" submitted application to SWD to rename as "Chun AB Nursing Home". With reference to the

advice of DoJ as mentioned in the previous paragraph, SWD considered that "AB" was different from "Chun AB". Therefore, a licence was issued to "Chun AB Nursing Home" in June 2006. Yet, according to the file records, SWD had not contacted "AB Home for the Aged" any further to update them the latest position.

470. Since April 2005, the "AB Home for the Aged" had repeatedly lodged complaints to SWD that the name of the "AB Nursing Home" in the vicinity was similar to its home name, and asked for SWD's intervention. However, SWD had not taken concrete action to deal with the problem. The "AB Nursing Home" was subsequently renamed as "Chun AB Nursing Home". Despite that this name might mislead the general public, the renaming was approved by SWD.

471. The "AB Home for the Aged" also accused SWD of delaying the complaint handling.

The Ombudsman's observations

472. Regarding point (a), since the full operation of the licensing system in June 1996, SWD had never refused an application for licence by virtue of Section 8(3)(d)(ii) of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459).

473. According to the advice of DoJ, it was not proper for SWD to approve the home name of the "AB Nursing Home" in April 2005. However, the subsequent remedial actions taken by SWD were considered appropriate. The final approval of SWD for "AB Nursing Home" to be renamed as "Chun AB Nursing Home" was also considered in compliance with the advice of DoJ.

474. The Ombudsman, taking into account the above analysis, considered point (a) partially substantiated.

475. As for point (b), in response to the complaint lodged by the "AB Home for the Aged", SWD had taken appropriate follow-up actions, including advising the "AB Nursing Home" to change its home name, attempting to mediate between the two homes and seeking legal advice. Although these follow-up actions took half a year, procrastination by SWD was not seen. Nevertheless, after approving the renaming of the "AB Nursing Home" to the "Chun AB Nursing Home", SWD failed to keep the complainant informed about the latest position.

476. As such, The Ombudsman considered point (b) partially substantiated.

477. On balance, this complaint was partially substantiated.

Administration's response

478. SWD has accepted The Ombudsman's recommendations and revised the "Internal Guideline on Handling RCHEs with the Same or Similar Home Names" to provide staff with a set of clear and standardised assessment criteria for processing of licence applications, including whether the proposed names of RCHEs are the same as or similar to the name(s) of any existing RCHEs or RCHEs with licences being cancelled.

479. The said revised guidelines were passed to The Ombudsman on 8 December 2009. Since there was no need for further follow-up action, The Ombudsman had closed the case.

Case No. 2009/1728 : (a) Unreasonably refusing to provide the complainant with a clinical psychologist's report on her daughter; and (b) Unreasonably refusing to allow recording of the clinical psychologist's verbal explanation on the content of the report to the complainant

Background

480. The Social Welfare Department (SWD) has assigned a clinical psychologist (CP), Mr A, to handle the case of the daughter of the complainant. In response to the request by the Juvenile Court, Mr A had compiled a psychological report on the daughter and submitted it to the Court on 16 August 2008. Before the hearing, the lawyer arranged by the Court has explained in Chinese the content of the psychological report which was written in English to the complainant. After listening to the explanation, the complainant felt that there were misrepresentations in the report and demanded SWD to provide a Chinese translation or summary of the report so that she could follow up.

481. The complainant made the following complaints against Mr A and SWD –

(a) SWD has unreasonably refused to provide the Chinese translation or summary of the report;

(b) while Mr A of SWD was willing to verbally explain the psychological report to the complainant, he created difficulty for the latter by asking her to type or write notes as the complainant has injured her right hand before at work;

(c) Mr B, a Senior Social Work Officer of SWD had suggested bringing in an additional CP to provide counseling for the daughter. However, this suggestion was turned down by Mr A unreasonably; and

(d) in 2007, Mr A had unreasonably turned down the request of the complainant to provide her with psychological assessment or psychological treatment.

The Ombudsman's observations

482. Although on the surface, point (a) of the above paragraph was about the unreasonable refusal of SWD to provide the Chinese translation or summary of the psychological report to the complainant, both sides had arguments over the provision of the English report. The Ombudsman's investigation of this complaint was focused on whether it was reasonable for SWD to provide the report.

483. SWD had initially based on the legal advice from the Department of Justice (DoJ) refused the release of the report to the complainant. The Ombudsman opined that this was correct in principle. Although the views of DoJ might not be correct, SWD could not refuse its views in the absence of other legal basis.

484. However, things took a turn on 9 April 2009 when the Court clearly indicated that it had no objection to the release of the report by SWD to the complainant and queried the views of DoJ in respect of the control of the report by the Court. The Ombudsman was of the view that under such circumstances, SWD should follow the suggestion of the Court and seek further advice from DoJ. However, SWD still replied to the complainant to refuse her request until she complained to the Personal Date (Privacy) Commissioner. SWD then sought further advice from DoJ and DoJ eventually over-ruled its original legal advice.

485. Regarding point (b), The Ombudsman observed that Mr A was not verbally translating the psychological report for the complainant. Instead, he was trying to explain the content of the report as part of the process of counseling to the complainant. There was obviously a misunderstanding on the part of the complainant.

486. The Ombudsman also noted that although the complainant requested to record Mr A's explanation on tape, or to have other staff of SWD to assist her to take notes, the request was denied. SWD was of the view that such arrangement would only lead the complainant to argue word by word against what Mr A wrote, instead of reflecting on the problems between the complainant and her daughter. The Ombudsman accepted the explanation of SWD that taking audio-recording during psychological counseling may affect the effect of counseling.

487. As regards point (c), The Ombudsman noted that the Senior Social Work Officer, Mr B, had denied that he had made such a suggestion. Other than this, there was no other evidence to corroborate this allegation.

488. On (d), The Ombudsman opined that the decision to provide assessment for the complainant was a professional judgment and it was not an administrative matter. Mr A opined that there was no need for the complainant to receive psychological assessment, and The Ombudsman was not in a position to comment on this. Moreover, SWD had already indicated that it was prepared to provide psychological counseling to the complainant.

489. On balance, this complaint was found partially substantiated.

Administration's response

490. SWD has accepted The Ombudsman's recommendations and will take the following actions –

(a) issue departmental guidelines on the application of section 20(3)(d) of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) in handling data access requests; and

(b) issue departmental directives for handling service recipients' requests for audio-recording during the course of handling their access to information requests.

Student Financial Assistance Agency

Case No. 2008/3235 : Mishandling an application under a financial assistance scheme and failure to answer an enquiry by the applicant's father

Background

491. The complainant submitted an application for the Tertiary Student Finance Scheme – Publicly-funded Programmes (TSFS) to the Student Financial Assistance Agency (SFAA) on 26 September 2007. TSFS is a means-tested financial assistance scheme which provides grants and loan to eligible students to meet tuition fee, academic expenses and living expenses. Applicants have to undergo family income and asset tests and provide supporting documents for vetting by SFAA.

492. The complainant claimed that his father had been unemployed since 1998. As he could not provide documentary proof on his father's unemployment status, SFAA made reference to the statistics/information provided by the Census and Statistics Department (benchmark figure) and other information on his family incomes and assets, and assessed the level of assistance to the complainant in accordance with established procedures.

493. The complainant was dissatisfied with the assessment result and applied for a review on 4 April 2008. SFAA requested the complainant again for documentary proof on his father's unemployment status and provided him with examples of such proofs, such as termination letter, proof of searching for jobs, proof of further studies or medical proof to show one's inability to work, etc.

494. The complainant reaffirmed on 20 June 2008 that his father was unemployed but could not provide documentary proof. He enclosed a written statement signed by him and his father, stating that they had declared all their assets and would be criminally liable should any false information be found. SFAA informed the complainant on 30 June 2008 that upon review, the level of financial assistance would remain unchanged.

495. In early July 2008, the complainant's father called SFAA and expressed dissatisfaction over the review result. SFAA staff explained to

him about the practice of applying benchmark figure in calculating the level of assistance and provided examples of documentary proofs on unemployment. The complainant's father did not accept the staff's explanation and sought advice on how to prove his unemployment. He also considered that the staff was making things difficult for him by requiring such proofs.

496. The complainant lodged a complaint against SFAA on the following –

(a) assessing his father's income in the relevant financial year by making reference to the benchmark figure because he was unable to produce documentary proofs on his father's unemployment status when he submitted the application for 2007/08 academic year. As a result, he was granted a lower level of assistance. It was unreasonable for SFAA not to accept his father's self declaration on unemployment and to insist on documentary proof; and

(b) not providing a proper answer to his father's enquiry on how he could prove his unemployment status.

The Ombudsman's observations

497. Regarding point (a) above, The Ombudsman considered that it was reasonable and fair for SFAA to meticulously vet all applications for financial assistance, including requesting applicants to report in detail their financial situation and provide relevant documentary proofs.

498. The Ombudsman also agreed with SFAA that most applicants were able to provide the required documentary proofs. However, for those few applicants who were unable to produce unemployment proofs on his/her family member, The Ombudsman considered that SFAA was unreasonable and inflexible to insist to refer to the benchmark figure and assume that the particular family member had income. The Ombudsman considered that it was entirely an individual's choice whether or not to seek employment. It was unfair for SFAA to ignore the circumstances of those who were unemployed and could not provide documentary proofs and assume that they had income, hence affecting the level of assistance.

499. The Ombudsman suggested that SFAA could make reference to the practices of the Housing Department (HD) and the Social Welfare Department (SWD) in handling similar applications. For example, HD would conduct multi-faceted investigation on the person's unemployed situation, including checking his bank books/monthly statements, asking for explanation on the financial source for maintaining his/her living and if no false information had been found, the report on unemployment could be accepted. SWD generally would accept the applicant's representation on being unemployed and conduct an in-depth investigation into the case if anything doubtful was found during the subsequent counter-checking.

500. The Ombudsman suggested that SFAA could conduct additional investigations into cases of reported unemployment but without documentary proofs, such as, verifying with the Inland Revenue Department on his income status with the unemployed person's consent, examining details of income and expenditure of the family or compulsorily counter-checking the application etc.

501. Based on the above observations, The Ombudsman considered that although SFAA had handled the complainant's application in line with established policy guidelines, it showed a lack of flexibility and ignored the actual circumstances of the applicant when processing the application. The Ombudsman, therefore, considered point (a) partially substantiated.

502. Regarding point (b), The Ombudsman considered that the staff concerned had rendered his best effort to answer the enquiry on how to produce documentary proofs. Though SFAA stated that the complainant's father should voluntarily provide more information on his situation before and after his unemployment so that SFAA could consider whether or not to accept his claim, the complainant and his father did not receive such message during the telephone conversation or in written correspondence with SFAA.

503. The Ombudsman considered that the crux of the problem was the inflexibility of SFAA's policy and procedures. As the staff had acted in line with the relevant policies and procedures by reiterating the requirement of documentary proofs on unemployment, The Ombudsman considered point (b) not substantiated.

504. Overall speaking, this complaint was partially substantiated.

Administration's response

505. SFAA has accepted The Ombudsman's recommendations and taken the following actions –

(a) after reviewing the vetting mechanism, SFAA has revised the form that requires the applicant to report the unemployment status of his/her family members at the vetting stage. The applicant could provide relevant information or make representation on his/her family circumstances when no documentary proof on unemployment can be produced. If the applicant's representation reveals that there are special family circumstances, SFAA staff would review the case in detail, such as, examining the applicant's family income and expenditure statements and consider accepting the report of unemployment; and

(b) SFAA has revised its internal Operation Manual for handling applications for review. It is specified in the Operation Manual that the first letter to applicants requesting for documentary proof on unemployment should state clearly that if the applicant is unable to produce such proof due to difficult circumstances or other special reasons, he/she may provide relevant explanation. The internal Operation Manual also reminds SFAA staff that they should examine the applicant's family financial situation in addition to considering the reasonableness of the explanation provided and could exercise discretion in accepting the unemployment status of the person concerned after considering all relevant information.

Case No. 2008/6025 : Delay in processing an application under a financial assistance scheme

Background

506. The complainant submitted her applications for the Financial Assistance Scheme for Post-secondary Students (FASP) and the Non-means-tested Loan Scheme for Post-Secondary Students (NLSPS) through her institution on 17 September 2008, but had not received any reply from the Student Financial Assistance Agency (SFAA). As tuition fees had to be paid before 30 December 2008, she rang SFAA for enquiry and was informed that her application would only be processed in the second half of December 2008. She was dissatisfied with SFAA's delay in processing her application.

507. FASP was a means-tested financial assistance scheme which provided grants to eligible students to meet tuition fees and academic expenses. Applicants had to undergo family income and asset tests. NLSPS provided non-means-tested loans to eligible students to meet their tuition fees, academic expenses and living expenses. Applicants could apply for assistance under FASP and NLSPS at the same time.

508. Improvement measures to FASP and NLSPS were approved by the Finance Committee of the Legislative Council in end May 2008 to provide means-tested loans to students under FASP to cover their living expenses and to extend both schemes to cover sub-degree graduates studying full-time locally accredited self-financing degree or top-up degree programmes in Hong Kong.

509. To implement the above measures in the 2008/09 academic year, SFAA introduced a new FASP application form, upgraded and enhanced its computer system and engaged additional staff to cope with the new work procedures and disbursement of the additional loans approved.

510. According to SFAA's performance pledges, 90% of FASP applicants with complete information would be issued a "Notification of Result" within 60 days from the date of SFAA's "Acknowledgement of Receipt of Application". The time pledged for processing an application was counted from the issuing date of the "Acknowledgement of Receipt of Application" and not the date of receipt of application from the institution. The purpose of this was to ensure that the basic information provided by the applicant had passed the initial checking.

511. For joint applications of FASP and NLSPS, SFAA would issue the "Acknowledgement of Receipt of Application" to the applicants and if the information provided was complete, the notification of NLSPS results would be issued within three weeks from the date of the "Acknowledgement of Receipt of Application".

512. In this case, SFAA received the complainant's applications for FASP and NLSPS through her institution on 30 September 2008. The "Acknowledgement of Receipt of Application" and the "Notification of NLSPS Result" were issued to the complainant on 12 December 2008 and 17 December 2008 respectively. As for her FASP application, the "Notification of Result" was issued on 23 January 2009. After receiving all the necessary documents from the complainant on 25 February 2009, the grant and loan were released to her on 4 March 2009.

The Ombudsman's observations

513. SFAA admitted that it was highly undesirable to take more than two months to issue an acknowledgement of receipt of application to the complainant. The delay was attributed to the introduction of the improvement measures to FASP and NLSPS in the 2008/09 academic year which involved additional vetting procedures in respect of the new form for use by sub-degree graduates pursuing degree/top-up degree programmes and the necessary upgrading of the computer system which was complicated and required a lot of testing and enhancement work. SFAA was unable to complete all the supporting work for implementing the improvement measures in time and regretted that it could not issue an earlier notice to acknowledge receipt of the complainant's application.

514. The Ombudsman considered that the proposed improvement measures should have been under preparation for a considerable period of time and SFAA should have made an early anticipation for the smooth implementation of the new measures. At least, SFAA should issue a special notification to inform the affected applicants that there might be delay in the processing time of application.

515. SFAA's performance pledges in relation to FASP also appeared to be nominal. Firstly, applicants would have no idea when they would be informed of the application results after they had submitted the application form and before the issue of the "Acknowledgement of Receipt of Application" by SFAA. Secondly, the performance pledges only covered a part of the application process and were not effective in monitoring the

service quality of SFAA or enhancing its work efficiency.

516. The fact that SFAA took about three and four months to complete the processing of the complainant's NLSPS and FASP applications respectively could in no way be considered reasonable compared to its performance pledges. Therefore, The Ombudsman considered that the complaint was substantiated.

Administration's response

517. Regarding The Ombudsman's recommendation to SFAA amending the performance pledges by counting the processing time from the date of receipt of the application so that the standard of service can be effectively monitored, and applicants can expect when they will be informed of the application results, SFAA proposed the following alternative improvement measures to address The Ombudsman's concern, which were **accepted** by The Ombudsman –

(a) starting from 2010/11 academic year, SFAA has specified in the FASP Guidance Notes that it will issue an "Acknowledgement of Receipt of Application" to applicants within two to three weeks upon receipt of the applications submitted by institutions. Applicants will then know when to expect an "Acknowledgement of Receipt of Application" from SFAA and be informed of the application results; and

(b) SFAA will collect relevant data for conducting an internal review on whether the target of its service performance can be reached to enhance work efficiency. At the same time, SFAA is planning to set up an integrated computer system to respond to applicants' enquiries on the processing progress and their application results.

518. SFAA has accepted The Ombudsman's other recommendation to issue an acknowledgement letter to applicants upon receipt of their applications, as indication of the date on which the processing time will start counting as set out in the performance pledges. Starting from 2010/11 academic year, a "Receipt of Application" is enclosed with the application form. SFAA will return the "Receipt of Application" to applicants to confirm receipt of their applications. The "Receipt of Application" will help notify applicants that SFAA will conduct initial checking of their information and will issue an "Acknowledgement of Receipt of

Application" within two to three weeks. Applicants can then expect when the application results will be available according to SFAA's performance pledges.

Transport Department

Case No. 2008/4632 : Shirking responsibility for dealing with illegal parking of bicycles at a public transport interchange

Background

519. The owners' committee of a private building had, since the end of 2007, repeatedly complained to the District Office (DO) and Transport Department (TD) about illegal parking of bicycles at the public transport interchange (PTI) underneath the building. Allegedly, the problem persisted because the departments concerned did not take action.

520. The PTI was built by the developer of the building. Upon its completion in the mid-1990s, the title of the PTI was transferred to the Government. TD then signed the Building Hand Over Certificate (Certificate) and took over the property as the "User Department" from the Government Property Agency (GPA). Section 344 of the Accommodation Regulations provides that the "User Department" shall manage the property and monitor its operation and utilisation.

521. DO had, as early as February 2007, through a Working Group on Tackling Illegal Bicycle Parking, liaised with relevant departments on how to solve the problem at the PTI. Owing to TD's denial of responsibility, the problem remained. In the event, DO initiated joint action with the Police, TD and the Food and Environmental Hygiene Department to remove the illegally parked bicycles on an ad hoc basis.

The Ombudsman's observations

522. The Ombudsman was of the view that as TD had signed the Certificate and taken over the PTI as the "User Department", it should be responsible for managing the PTI in accordance with the Accommodation Regulations. TD should not have used the Maintenance Schedule as an excuse to shirk its management responsibility, since the schedule merely set out the responsibilities of various departments for the maintenance of the PTI. Indeed, the problem of illegal parking of bicycles at the PTI persisted mainly because TD refused to take up its managing/ coordinating role. Its concern over manpower constraints and the lack of statutory powers might be legitimate but those issues should be resolved, not evaded.

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

Administration's response

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

(a) TD has ascertained from GPA the number and locations of PTIs taken over by the Government. TD has played a more positive and proactive role in the clearance operations of illegally parked bicycles at PTIs;

(b) TD has been coordinating with relevant departments and participating in the clearance operation of illegally parked bicycles. In 2009, in conjunction with other departments with the required resources and legal authority, TD had participated in 6 joint clearance operations to clean up the illegally parked bicycles at the concerned PTI. From August 2010 onwards, TD led the relevant departments to conduct the clearance operation at other PTIs with illegal parking of bicycles;

(c) TD has drawn up Operation Guidelines in consultation with the relevant departments. These guidelines have been issued and form the basis for conducting clearance operations of illegally parked bicycles at the PTIs;

(d) TD will continue to deploy staff for the timely inspection of the PTIs for appropriate follow up action on illegal parking of bicycles;

(e) TD will continue to discuss with the relevant departments on the priority of PTIs to clear the illegally parked bicycles with due regard to the allocation of manpower and resources;

(f) TD has been working closely with the Department of Justice and the Police in the past few months to examine the principles, legal basis as well as the relevant procedures (including operational details and prosecution procedures) of the clearance operations, with consensus reached. TD has already sought the legal authority to delegate the statutory power to

take enforcement actions against the illegally parked bicycles. TD started to conduct inter-departmental clearance operation of illegally parked bicycles at PTIs with effect from August 2010.

(g) To facilitate the parking of bicycles, TD has been providing bicycle parking spaces at suitable locations. In 2008 and 2009, TD provided an addition of 4,728 parking spaces in different districts, and will continue to identify suitable locations for provision of more bicycle parking spaces in the vicinity of PTIs. In addition, TD has put on trial the installation of transparent plastic plates on railings, without prejudice to drivers' sightline, to prevent cyclists from chaining their bicycles to the railings at the concerned PTI. TD will review the effectiveness of this measure. On the other hand, TD has commissioned the "Traffic and Transport Consultancy Study on Cycling Networks and Parking Facilities in Existing New Towns in Hong Kong" to explore the provision of different kinds of bicycle parking facilities to meet the need of the public;

(h) TD will continue to liaise closely with the management offices or mutual aid committees of the developments above the PTIs with serious illegal parking problem via District Offices to advise residents not to park their bicycles illegally; and

(i) TD is arranging the appropriate signs to be displayed at the PTIs to dissuade illegal parking of bicycles.

Water Supplies Department

Case No. 2008/4817 : Causing nuisance to the complainant by repeatedly sending to his address the final bill and reminders for the former tenant

Background

525. The complainant alleged that since moving into his public housing unit, he had been receiving from Water Supplies Department (WSD) the final bill and reminders addressed to the former tenant Ms A. The staff at WSD's Customer Telephone Enquiry Centre (CTEC) advised him to mark on the envelope that "the addressee had moved out" and send the bill back to the Department. Upon receipt, WSD would stop sending the bill to his address.

526. The complainant acted accordingly but, much to his annoyance, still received payment reminders. He was also worried that water supply to his unit might be disconnected because of the outstanding charge, or that his family member might just pay the bill by mistake.

The Ombudsman's observations

527. The Ombudsman considered that the staff at CTEC had failed to explain clearly to the complainant that WSD might not be able to stop sending to his address the bill for Ms A at once upon receiving the returned bills. The case should have been referred to the responsible section promptly for follow-up action.

528. The Ombudsman considered that changing the address of Ms A to WSD headquarters showed its inflexible procedures. It was a waste of resources and could not solve the problem completely. WSD had been informed in advance by the Housing Department (HD) that the complainant would move into the unit. In other words, the nuisance to him could have been avoided if WSD had updated its computer records in time.

529. Overall, The Ombudsman considered the complaint substantiated.

Administration's response

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

(a) WSD has issued guidelines to remind its staff at CTEC to listen to the callers' problem carefully so that appropriate assistance may be offered to them. If a caller indicates that he has received water bills addressed to the previous registered consumer at the address and the account is not related to him, irrespective of whether the caller has requested, staff at CTEC should refer the case to the responsible section promptly for follow-up action;

(b) WSD has formulated guidelines on the handling of returned water bills;

(c) WSD is discussing with the contractor of its computer billing system the feasibility of suppressing the issue of final bill reminders when necessary. The contractor is preparing a detailed proposal;

(d) WSD is formulating a standardised written notification form for terminating water accounts for use by tenants of public housing units in collaboration with HD. The notification form requires the tenant concerned to provide the forwarding addresses; and

(e) WSD has apologised to the complainant in writing.

Case No. 2008/4832 : (a) Wrongly assuming loss of the complainant's water meter and deducting its cost from her deposit without prior notice; (b) Trying to cover up staff negligence with the excuse that the meter had been blocked from sight; and (c) Failing to take prompt remedial action upon receipt of the complaint

Background

531. The complainant received a final bill from Water Supplies Department (WSD) stating that her account had been cancelled and that the cost of her water meter, which was allegedly found missing, had been deducted from her deposit. The complainant called WSD and was told that a Meter Reader had been to the roof of her building for meter reading but could not find her meter. A subsequent site visit by a field staff had also been to no avail.

532. The complainant indicated that she had lived in the premises for many years and had never relocated her water meter. Moreover, on the day she called WSD, she had asked the building management staff to check the meter on the roof and it was there intact.

533. Subsequently, WSD wrote to her that the meter had once been blocked by some planks from view so that the Meter Reader could not see it. The complainant considered WSD's explanation unreasonable, as the Meter Reader should have contacted her or the building management office immediately when the meter was found missing. She was also dissatisfied that WSD had deducted the cost of the meter from her deposit without prior notice.

534. The complainant considered WSD staff lax in service attitude, not trying their best to help resolve her problem and shirking responsibility among themselves. She was unhappy that WSD had not apologised to her.

The Ombudsman's observations

535. The Ombudsman accepted WSD's explanation that the Meter Reader concerned might have been inexperienced and so had not noticed that the complainant's meter had been installed elsewhere. Yet, the Meter Reader should have tried to contact the complainant or notify the building management when leaving the building.

536. The Ombudsman believed that had the field staff been more careful in subsequent verification of the meter, he should have found it. However, he had not searched thoroughly enough. Nor had he attempted to check with the building management or the customer.

537. Noting WSD's confirmation that the planks had not concealed the water meter but had been placed next to it, The Ombudsman considered that WSD's staff should not have assumed that the meter might have been blocked by the planks as an excuse for their repeated failure to find it.

538. The Ombudsman observed that upon receipt of the complaint, WSD did promptly send staff to inspect the site. The day after the water meter was confirmed to be intact, a Meter Reader was sent to take the reading and within one week, WSD completed the investigation and issued a written reply to the complainant. However, WSD's reply only focused on defending its staff's error without a thorough investigation into the causes behind. Until the complaint was lodged, WSD staff had never contacted the complainant or the building management office to get first-hand information. Having regard to these observations, The Ombudsman considered that the issue had arisen from the negligence and laxity of WSD staff. As a result, the complainant had to spend much time and efforts on this incident. WSD had also failed to explain clearly the sequence of events as requested by the complainant. That was unfair to the complainant.

539. In this light, The Ombudsman considered the complaint substantiated.

Administration's response

540. WSD has accepted The Ombudsman's recommendations. WSD has drawn up guidelines on the handling of water meter-related work based on The Ombudsman's recommendations and promulgated them to field staff and Meter Readers for compliance with effect from 26 February 2010.

Case No. 2009/0031 : (a) Delay in notifying the complainant of adjustment in water charge; (b) Failing to indicate in its letter to the complainant the period of zero water consumption; and (c) Failing to give a substantive reply to the complainant's enquiry

Background

541. The complainant's water meter did not record any consumption during three routine readings in 2006 (i.e. 25 January 2006, 30 May 2006 and 21 September 2006). The Meter Readers reported the premises to be vacant (Meter Reader Remark Code: V). On 24 January 2007, the complainant's water meter was found to be faulty (Meter Reader Remark Code: NR) during a routine meter reading. The meter was replaced on 2 February 2007.

542. Water Supplies Department (WSD) issued a letter to the complainant in November 2008 enquiring about the substantial decrease in the water consumption of his premises. The period concerned however was not specified in the letter.

543. In December 2008, WSD informed the complainant that adjustment had to be made to the water consumption during the period of defective meter, i.e. 21 September 2006 to 2 February 2007. Due to the adjustment in water charges, the complainant was required to pay the difference between the original bill and the adjusted bill amounting to $800.

544. Subsequently, the complainant enquired in person to WSD's Mongkok Customer Enquiry Centre and requested a written reply for his enquiry. WSD replied the complainant in late December 2008. The complainant was dissatisfied that WSD had not addressed his enquiry fully. Feeling aggrieved, he lodged the complaint.

The Ombudsman's observations

545. The Ombudsman agreed that in order to determine the period the meter was defective, it was reasonable for WSD to observe the water consumption pattern after the meter in question had been replaced. However, in this case, The Ombudsman noted that the consumption observation period had lasted for 20 months, and considered that there was a delay.

546. Moreover, The Ombudsman opined that WSD had failed to provide the Meter Readers with clear guidelines on determining whether an observed zero consumption was due to vacant premises or defective meter. Furthermore, the Meter Readers were also not required to record their observations in details.

547. In addition, WSD had failed to indicate in its letter to the complainant the period the meter was defective and give a substantive reply to the complainant's enquiries. The Ombudsman, therefore, considered this complaint substantiated.

Administration's response

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

(a) WSD has reviewed and clearly defined the length of the consumption observation period in relevant guidelines;

(b) WSD has refined the Meter Reader Remark Codes and drawn up guidelines for Meter Readers to provide clearer definition of objective criteria in the Meter Reader Remark Codes. The Remark Code on vacant premises has also been subdivided; and

(c) WSD is reviewing the relevant guidelines having regard to current operational needs and work flow.

Case No. 2009/2135 : Unreasonably issuing a repair notice on water supply facilities

Background

549. On 1 June 2009, Water Supplies Department (WSD) issued a repair notice to the complainant requesting him to repair or replace the defective stopcock in front of the water meter of his premises and to install a long screw connector after the meter position within a prescribed period. Failing that, the water supply to the premises would be disconnected. The complainant enquired and WSD informed him that its staff had attempted to replace the concerned meter in May 2009 but to no avail due to the defective stopcock. As such, WSD issued a repair notice to him in accordance with the relevant Departmental Instruction.

550. Upon the complainant's request, WSD staff carried out a site inspection at the concerned premises on 5 June 2009. The staff confirmed with the complainant then that it was unnecessary to replace the stopcock but maintained that he should install a long screw connector after the meter position. The complainant queried the basis of issuing the above-mentioned repair notice and enquired if any other units of the building had yet to install a long screw connector after the meter position. Further, another staff of WSD also verbally advised the complainant that he needed not to replace the stopcock as required by the repair notice. The complainant considered WSD irresponsible to issue the repair notice without due consideration.

551. The complainant was also dissatisfied that WSD had failed to assist the Owners' Committee to find out the number of units which had not installed a long screw connector after the meter position. He considered WSD shirking its responsibility.

The Ombudsman's observations

552. The Ombudsman was of the view that had the staff concerned been more careful and acted prudently when trying to replace the complainant's water meter in May 2009, he should have been able to close the stopcock and it would then not be necessary to issue the repair notice to the complainant.

553. Furthermore, on deciding to withhold action as required by the repair notice issued to the complainant, WSD only provided a verbal advice to the complainant that valve replacement was no longer required but not in writing, which The Ombudsman considered improper.

554. Nevertheless, The Ombudsman accepted that WSD had positively assisted the Owners' Committee to find out the number of units which had yet to install a long screw connector after the meter position. Ultimately, the Owners' Committee and the building management office would need to reach a consensus on how to resolve the issue completely and systematically.

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

Administration's response

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

(a) WSD has reminded its staff to familiarise themselves with relevant guidelines and instructions. Experience-sharing sessions will also be conducted periodically;

(b) WSD has reminded its staff to observe the practice of issuing a new repair notice to replace the former one or notify the customer concerned in writing when items of required repair works listed in a repair notice are subsequently cancelled or altered; and

(c) WSD has reminded its staff to exercise due care in inspecting related water supply system(s) during their investigation relating to water metering work and to share their experience upon completion of difficult or special cases through debriefing sessions with relevant staff.

Part III
– Responses to recommendations in direct investigation cases

Electrical and Mechanical Services Department

Case No. DI/188 : Regulatory System of Lifts

Background

557. This direct investigation on the regulatory system of lifts was conducted in the light of public concern over a series of lift incidents since October 2008.

558. The Electrical and Mechanical Services Department (EMSD)'s regulatory framework of lifts rests on three legs –

(a) a statutory certification system whereby a lift owner is to ensure that the lift is examined regularly and that there is a safety certificate, signed by a registered lift engineer (RE) and endorsed by EMSD, conspicuously displayed in the lift;

(b) registration of contractors (RC) and engineers for repair and maintenance works, underpinned by the Performance Monitoring Points System (PMPS) for awarding administrative demerit points; and

(c) direct inspection and enforcement action where EMSD inspects lifts and issues warning letters for breach found under the Points System.

Administration's response

559. EMSD has accepted The Ombudsman's recommendations and taken the following actions –

Shared Responsibility and User Surveillance

(a) In order to promote the principles of "Shared Responsibility" and "User Surveillance" of lift safety, a number of publicity

activities on "Lift Safety and Maintenance Management" has been launched since January 2009. These include –

(i) 29 seminars on "Lift Safety and Maintenance Management" have been conducted for over 2,500 lift owners, members of the incorporated owners, and staff of building management companies;

(ii) 11 presentations to various District Councils;

(iii) over 18,000 copies of "Lift Owners' Guidebook", leaflets titled "Lift Owners' Responsibility" and leaflets titled "Contractors' Performance Rating" scheme have been distributed to members of the public. These publicity materials are also available in the EMSD Website for public access;

(iv) an article titled "Owner Responsibility" was published in the November 2009 issue of the E&M Safety Newsletter, which has been widely distributed to various trade sectors and members of the public;

(v) technical seminars titled "Lift Safety and Shared Responsibility" have been delivered to members of the professional bodies, viz, The Institution of Engineering and Technology (IET), The Institution of Mechanical Engineers (IMechE) (Hong Kong Branch) and The Hong Kong Institution of Engineers (HKIE) on 5 June, 4 August and 17 September 2009 respectively;

(vi) one technical seminar titled "Lift Safety and Shared Responsibility" has been delivered to the Lift and Escalator Contractors Association (LECA) on 15 October 2009; and

(vii) the principle "Shared Responsibility of Lift Safety" was promoted during the E&M Safety Carnival at the Victoria Park on 17 and 18 October 2009 organised jointly by EMSD and the trade sectors.

(b) EMSD is committed to continually promote the above principle as on-going publicity activities. The publicity plan for year 2010 included a new TV Announcement in the Public Interest (API) on "Shared Responsibility of Lift Safety" and a two-day safety

carnival for members of the public.

(c) EMSD has launched the new format of the lift certificate (Form 11) and other types of certificates by way of a circular letter. All certificates submitted after 1 February 2010 are in the new format. In the new Form 11, the date for the next periodic examination and testing of the lift is entered by RE.

(d) Meanwhile, EMSD has stepped up enforcement action on the proper display of the lift certificates at conspicuous position in the lift. EMSD has issued guidelines to RC and RE regarding the proper display of the lift certificates. In the event of non-compliance, EMSD will issue advisory letters to lift owners for rectification.

Registration of RC and RE

(e) EMSD has reviewed PMPS which records and monitors the performance of RC by giving demerit points to non-compliances revealed during EMSD's inspections. Based on the review with the trade, EMSD launched a modified scheme, the "Contractor Performance Rating" (CPR) scheme, on 1 June 2009. The results of this scheme have been provided to the public for information and reference. EMSD has announced the first quarterly results of the CPR scheme through the EMSD website on 1 September 2009. The latest results up to 31 August 2010 have been uploaded to EMSD website on 3 September 2010.

(f) EMSD has distributed a new leaflet providing details of the CPR scheme to the public since September 2009. EMSD has introduced the CPR scheme to the Hong Kong Federation of Insurers by an email on 3 September 2009.

Standards, Statistics, Monitoring and Analysis of Trends

(g) To ensure EMSD's advice will be given in a timely manner after each inspection, an internal guideline has been established such that advisory letters will be issued by the subject officer within five working days following the respective inspections. A computer database system holding the record of the advisory letter has also been employed for officers to follow up all the cases.

(h) EMSD has upgraded the information system and enhanced the procedures to closely monitor the submission of lift certificates. Statutory order (Form 9) will be served to the owners to urge for timely submission of certificates, and in the event of failing to comply with the statutory timeline for submission, a prohibition order (Form 16) would be issued to ban the lift from operation. The owners are receptive to EMSD's action and responded positively to submit the certificates within the prescribed time frame. During the period from 1 August 2009 to 30 September 2010, no Form 16 has been issued as a result of owners' failure to comply with the statutory requirement.

(i) EMSD has reviewed the effectiveness of the new procedures. The number of overdue submission of lift certificates cases has been rapidly decreasing. The performance of the new procedures is considered effective. EMSD will nevertheless continue to monitor the mechanism on a regular basis.

(j) On 10 August 2009, EMSD issued a circular to RC to remind them to countersign the certificates within the statutory time-frame after the lifts' examination. Subsequent to the issuance of the circular and up to 31 July 2010, there has been no non-compliance case reported.

(k) On 4 September 2009, EMSD issued a circular to RC and RE stating the requirements of keeping their own records on the dates of issuing certificates to lift owners. To ensure that EMSD can have access to those records for monitoring purpose, RC and RE have been also required to inform EMSD such dates through a web-based information system Subsequent to the issuance of the circular and up to 31 July 2010, there has been no non-compliance case reported.

(l) In May 2009, EMSD implemented a new procedure for issuing advisory and warning letters to RC for repeated late examination of lifts. Up to 31 July 2010, 16 advisory letters have been issued to RC for late examination of lifts and six warning letters have been subsequently issued to those RC who failed to comply.

(m) On 10 August 2009, EMSD issued a circular to RE advising them to correctly fill in the date of signing the lift certificates. Subsequent to the issuance of the circular and up to 31 July 2010, there has been no non-compliance case reported.

Disciplinary Action

(n) EMSD has implemented a new procedure on the level of authority in recommending and approving disciplinary action to be taken against RC and RE since 2 November 2009. The procedure now forms part of the ISO 9000 Quality Management System. Subsequently, for all cases where contractors have received three or more warning letters during the preceding twelve-month period, the performance of the contractors are reviewed and disciplinary actions are taken accordingly.

(o) The procedures and criteria for issuing warning letters under PMPS have been reviewed with LECA and the Registered Elevator & Escalator Contractors Association (REECAL). The criteria of instituting sanctions and new assessment requirements have been agreed with the trade and incorporated in the new CPR scheme which was launched by way of a circular on 9 December 2009.

(p) EMSD regularly uploads on the website a list of Registered Lift Contractors who have received warning letters for public information.

Government Secretariat – Constitutional and Mainland Affairs Bureau and Government Secretariat – Home Affairs Bureau

Case No. DI/189 : Effectiveness of Administration of Code on Access to Information

Background

560. It is Government policy to be as open and transparent as possible. Since 1995, the Code on Access to Information (the Code) has authorised, and required, civil servants to provide Government-held information to the public unless there are specific reasons under the Code for not doing so. Until 30 June 2007, the Home Affairs Bureau was responsible for administration of the Code. Since then, the Constitutional and Mainland Affairs Bureau (CMAB) has taken charge.

561. The Ombudsman's investigation examined Government measures to ensure understanding of and compliance with the Code among departments and officers and to promote public awareness.

Administration's response

562. CMAB has accepted The Ombudsman's recommendations and has taken / is taking the following actions –

(a) CMAB has been organising small group briefings to new Access to Information Officers (AIOs) since February 2010 upon their assumption of post. So far, four small group briefings have been held. Further briefings will be conducted subject to the turnover of AIOs. A refresher training workshop for AIOs was also conducted in early June 2010.

As regards the provision of appropriate guidelines for AIOs to assist their implementation of the Code, bureaux/departments have in place internal circulars and guidelines to facilitate the implementation of the Code. At CMAB's request, all bureaux/departments have reviewed and updated their internal circulars and guidelines. Advice has been provided to bureaux/departments upon receipt of their enquiries during the

process of updating departmental circulars and guidelines on the Code. CMAB will continue to provide advice as and when required;

(b) starting from the first quarter of 2010, bureaux/departments are required to report on a quarterly basis details on in-house training sessions conducted on the Code. As at the end of the third quarter of 2010, 40 departments conducted a total of about 250 training sessions on the Code for over 10 000 staff members;

(c) in respect of publicity for the Code, in 2010-11, CMAB has earmarked about $0.8 million for promoting public awareness of the Code. CMAB will continue to broadcast announcements in the public interest (APIs) on television, radio and the Internet, broadcast the TV API on buses and railways, and post advertisements at railway stations and posters in various Government premises and public venues;

(d) the Chinese version of the Guidelines was uploaded to the Government webpage on the Code in May 2010;

(e) all bureaux/departments have added an introductory note on the Code on their homepages and arranged a hyperlink to the Government webpage on the Code;

(f) findings of The Ombudsman's complaint cases have been used as training materials for AIOs since February 2010. Results of review cases have also been referred to in the training sessions for AIOs where appropriate since June 2010;

(g) the updated General Circular on the Code was issued in May 2010. Bureaux/departments are reminded to provide the AIOs with appropriate guidelines, including the internal circulars of the bureaux/departments on the Code and detailed guidelines for implementation of the Code to facilitate the AIOs in discharging his/her duties. Bureaux/departments are required to re-circulate the General Circular on an annual basis to all officers involved in implementing the Code;

(h) the lists of frequently asked questions and precedent cases on the Code were last updated in January and March 2010 respectively. They will be updated regularly taking into account the development of complaint cases lodged with The Ombudsman

and enquiries received from bureaux/departments on the implementation of the Code;

(i) the format for reporting quarterly statistics has been reviewed and a new proforma has been in use starting from the second quarter of 2010 to capture more information about partially met or refusal cases; and

(j) as regards the follow up with public bodies within The Ombudsman's purview on adoption of the Code or some similar guide, the following six public bodies were mentioned in the direct investigation report as not yet adopted the Code or a similar guide -

(i) Employee Retraining Board (ERB);
(ii) Legislative Council (LegCo) Secretariat;
(iii) Vocational Training Council (VTC);
(iv) Financial Reporting Council (FRC);
(v) Kowloon-Canton Railway Corporation (KCRC); and
(vi) West Kowloon Cultural District Authority (WKCDA).

The ERB, KCRC and FRC have adopted a similar guide with effect from September 2009, January and February 2010 respectively, while VTC is developing a similar guide. Subject to its finalisation, the guide will be issued shortly.

As regards LegCo Secretariat and the WKCDA, LegCo Secretariat will formulate an access policy on archival records and detailed access rules on classified Council records in consultation with the Clerks to the Council and its committees, while the WKCDA has planned to adopt the Code or a similar guide.

Upon the commencement of The Ombudsman Ordinance (Amendment of Schedule 1) Order 2009 on 2 July 2010, four public bodies, namely, the Auxiliary Medical Service (AMS), the Civil Aid Service (CAS), the Consumer Council (CC) and the Estate Agents Authority (EAA) have come under the purview of The Ombudsman with effect from the same date. At CMAB's request, AMS and CAS have adopted the Code with effect from 2 July 2010, while EAA and CC have adopted a similar code since September 2010. If, in future, other bodies are brought under the purview of The Ombudsman, CMAB will

urge them to adopt the Code or a similar guide.

Government Secretariat – Food and Health Bureau, Hospital Authority and Department of Health

Case No. DI/170 : Checking of Eligibility for Subsidised Medical Services

Background

563. It has been established public policy to provide public hospital and health care services at subsidised rates for Hong Kong residents only. Non-residents have to pay the full cost.

564. In implementing this policy, it has been the practice of the Hospital Authority (HA) and Department of Health (DH) to accept holders of Hong Kong Identity Card (HKIC) as having resident status and hence, eligible for subsidised medical services. This does not distinguish HKIC-holders whose permission to remain in Hong Kong has lapsed, such as over-stayers and returning visitors. In May 2009, The Ombudsman initiated a direct investigation into this practice to draw to the attention of the organisations concerned the need for remedial action.

Administration's response

565. The Food and Health Bureau (FHB), HA and DH have accepted The Ombudsman's recommendations and have taken / will take the following actions –

(a) since the end of 2008, together with the relevant bureaux, departments and HA, FHB has been exploring possible options to tackle the problem. After discussion, FHB, together with DH, Security Bureau, Immigration Department and HA, have now planned to implement an electronic checking system to check the eligibility of non-permanent HKIC holders for subsidised public healthcare services as the long term solution to the problem (please also see (d) below);

(b) FHB has reconsidered the feasibility of performing manual checking of the travel documents of non-permanent HKIC-holders in the interim before the electronic system is put in place. Any measure for manual checking would need to be a

full-scale implementation covering all the 74 general out-patient clinics, 48 specialist out-patient clinics and 39 public hospitals run by HA and 140 centres/clinics run by DH, involving over 1000 service counters for registration with patients. This would entail a very large scale of preparatory work including publicity arrangements, provision of additional manpower and training for frontline staff. Taking into account the lead time of at least six months for all preparatory work for manual checking and our target for putting in place the electronic checking system before the end of 2012, any interim measure of manual checking would last for a relatively limited period of time. More importantly, any measure for manual checking would inevitably lengthen the registration for patients and increase the waiting time for all patients including the permanent residents, given the huge volume of attendance in our public hospitals and clinics. After balancing all relevant considerations, the Government will not introduce manual checking as an interim measure;

(c) before an electronic system is in place for online checking as the long term solution to the problem, FHB will continue to explore with HA and DH possible arrangement to educate staff and the public on the eligibility requirement for access to our subsidized public healthcare services; and

(d) together with relevant bureaux, departments and HA, FHB has worked out the detailed technical arrangements for putting in place an electronic system for on-line checking of the resident status of non-permanent HKIC-holders who seek healthcare services in our public hospitals and clinics. Through this checking, FHB would be able to ascertain their eligibility or otherwise for subsidised healthcare services. FHB will put the proposal through relevant procedures and seek necessary funding for implementation.

Hong Kong Examinations and Assessment Authority

Case No. DI/182 : System for Development of Question Papers in Public Examinations

Background

566. As public examinations have far-reaching implications on the future of young people in Hong Kong and our reputation for education and examinations elsewhere, the community expects the highest standards in the setting of question papers. However, despite the Hong Kong Examinations and Assessment Authority (HKEAA)'s efforts to develop a culture of continuous improvement, The Ombudsman found significant errors in some question papers in 2008 stemming from deficiencies in HKEAA procedures and processes and the mindset among some staff.

Administration's response

567. HKEAA has accepted The Ombudsman's recommendations and taken / will take the following actions –

(a) the manuals and guidelines for all personnel involved in the development of question papers were updated in September 2009, with the duties and responsibilities of different parties clearly specified;

(b) the roles and responsibilities of Manager-Assessment Development (M-AD) have been clearly stipulated in their job descriptions, role clarification forms and through staff induction;

(c) more detailed guidelines have been developed to deal with the occasional but necessary cases when an M-AD acts as a setter. The revised guidelines have been effective since 1 September 2009;

(d) the proofreading and assessing guidelines have been revised and adopted in the 2009 examinations. The checking and proofreading process will be reviewed annually for further improvement. Training courses on proofreading skills will also

be conducted for relevant staff and examination personnel;

(e) the principle of applying disincentives and penalties is accepted and has already been applied before The Ombudsman made the recommendation. For full-time HKEAA staff, a performance appraisal system is in place, under which poor levels of performance are recorded. Unsatisfactory performance will result in disciplinary actions such as verbal or written warning, stoppage or deferment of increment, termination of service and dismissal, depending on the seriousness of the situation. For part-time examination personnel, a performance record system was adopted with effect from the 2009 examinations and those with unsatisfactory performance would not be re-appointed. Reports on marking reliability are generated after the completion of marking. Reductions in payment are imposed for late submission of scripts and excessive addition errors for manually marked papers. Only markers with satisfactory performance will be re-appointed;

(f) the proofreading guidelines and checklists focus on both details and principles, and include the checking of all aspects of the question paper, such as the syllabus coverage, the content of the questions, the clarity of the instructions and the layout. The proofreading process will be further reviewed to improve the effectiveness;

(g) enhanced measures on record keeping were implemented in the 2009 examinations. M-ADs will consult the Chief Examiner whenever significant changes have to be made to the question paper during the proofreading stage and a complete record will be kept;

(h) with effect from the 2009 examinations, revision of marking schemes due to mistakes or ambiguities in question papers requires the approval from the Director of Public Examinations of HKEAA, and any revision of marking schemes resulting from errors will be reported to the HKEAA Council and the Public Examinations Board under it with full details as well as an action plan for improvement;

(i) starting from the 2009 examinations, errors and ambiguities in question papers are rectified and explained in Examination Report and Question Papers (ERQPs);

(j) mechanisms are in place to solicit external feedback at various levels of operations. Various seminars were held in 2009 to review and solicit teachers' feedback on the examinations. HKEAA will continue to explore further channels for obtaining feedback from relevant stakeholders;

(k) HKEAA established an Examination Administration Policy and Procedure Review Task Group (the Task Group) in March 2008, as part of its ongoing examination administration review to improve services to candidates. The Task Group has reviewed the detailed procedures for handling complaints. The guiding principles for handling complaint cases are made explicit. The relevant decision making process and complaint handling procedures have also been streamlined, with clear internal guidelines provided to staff on classification and processing of different complaint cases. A summary of the Task Group's report on "Review of Complaint/Examination Irregularities Handling Process" and the updated Guidelines on Handling Complaints were sent to The Ombudsman on 28 April 2009. Separately, the online "Examination Irregularities Management System" has been enhanced to ensure timely processing of complaint cases; and

(l) a mechanism is in place for frequent reviews of the system to further improve HKEAA's service.

Housing Department

Case No. DI/178 : Handling of Complaints Involving Claims

Background

568. The Housing Department (HD) has clear procedures for handling complaints that involve claims for damages, but was often found not complying with them.

569. Where a complaint involves a claim for damages, HD should itself process the complaint following prescribed steps and timelines, to rectify problems, if any. Simultaneously:

(a) if the claim is made against HD, it will refer the claim to the loss adjuster of its insurer for processing under HD's insurance arrangement; and

(b) if the claim is made against a contractor, HD will refer it to the contractor for handling direct.

Administration's response

570. HD has accepted The Ombudsman's recommendations and taken / is taking the following actions –

(a) staff would be reminded regularly to follow the prescribed procedures for handling complaints that include claims for damages;

(b) HD will conduct parallel investigations to find out the root cause(s) of the incidents or complaints and then take prompt corrective, preventive and improvement action, as appropriate;

(c) a Public Liability Insurance (PLI) Claims Review Sub-group (the Sub-group) has been established to centrally monitor the progress of PLI claims;

(d) the procedures for handling claims or damages related complaints were revised and promulgated in a new instruction issued in February 2010;

(e) the Housing Authority (HA)'s insurer and its appointed loss adjuster are required to attend the Sub-group's quarterly meetings. Long outstanding claim cases will be critically examined. The insurer and its appointed loss adjuster are required to follow an agreed set of claims service standard for timely acknowledgement, regular update to the claimant, and prompt reply to the claimant upon completion of investigation;

(f) a comprehensive claim monitoring computer system has been developed to provide a common web-platform for HD staff to monitor claims handled by the loss adjuster and contractors;

(g) by the promulgation of new guidelines and provision of regular training, consistent monitoring by HD frontline staff of claims handling by contractors is ensured;

(h) for claims against the contractors' self-procured insurance, the contractors should submit to the Contract Managers (CM) a standard claim monthly report for CM's monitoring;

(i) upon receiving a claim against HA or its contractors, a case file will be opened for each claim to record and monitor the progress of investigation and settlement of claim. An e-checklist has been uploaded on the HD intranet for use by HD staff to ensure the consistency of the filing format;

(j) all relevant information will be supplied to the loss adjuster to enable it to arrive at well-reasoned conclusions on claims; and

(k) without prejudice to the PLI policy, relevant information may be released to the PLI claimants, if requested. A helpful, caring and considerate approach to assist the claimant will be adopted to lessen his/her suffering whether or not it is due to HA's negligence or faults. Services in kind will be provided to the affected tenants when required.

Social Welfare Department

Case No. DI/167 : Granting of Disability Allowance and Processing of Appeals by Social Welfare Department

Background

571. The Disability Allowance (DA) scheme under the Social Welfare Department (SWD) provides non-means-tested and non-contributory financial assistance to severely disabled persons, irrespective of their employment status.

Administration's response

572. SWD has generally accepted The Ombudsman's recommendations and set up, at the end of 2009, an inter-departmental Working Group on Review of the Mechanism for Implementing the DA Scheme (the Working Group) comprising representatives from the Labour and Welfare Bureau, Hospital Authority, Department of Health, etc. to review the implementation of the DA scheme. As at the end of August 2010, the Working Group was continuing with its work on the review. The review aims at enhancing the objectivity, consistency and transparency of medical assessments for applicants, and strengthening co-ordination among relevant departments in processing applications.

573. A former DA applicant has been granted leave for a judicial review (JR) against the Director of Social Welfare and the Social Security Appeal Board for refusing to grant DA to him. As the JR challenges, *inter alia*, the mechanism for implementing the DA scheme, SWD has informed The Ombudsman in its report of 30 July 2010 that the process for reviewing the DA implementation mechanism has been held in abeyance pending the court judgment in this JR case.

Transport Department

Case No. DI/187 : System for Processing Applications for Multiple Transfer/Retention of Vehicle Registration Marks

Background

574. While handling a complaint, The Ombudsman found possible loopholes in the Transport Department (TD)'s system processing applications for multiple transfer/retention of vehicle registration marks (VRMs).

575. A vehicle owner may apply to TD to transfer VRM of one vehicle to another or hold VRM in abeyance for a period not exceeding 12 months. Where two or more vehicles and owners are involved, multiple transfer/retention of VRMs would be processed sequentially.

576. When one makes a single application and opts to accept a VRM randomly assigned by TD's computer instead of keeping the original VRM, one would not be allowed to see that VRM until after the procedure is completed and the fee paid. This is to forestall applicants seeking reallocation when dissatisfied with the computer-assigned VRM. With multiple transfer/retention of VRMs, an interim VRM will also be generated by the computer, to be cancelled upon transfer of the original VRM. The applicant will not be allowed sight of the interim VRM, unless he/she decides before transfer is completed to accept it instead of the original VRM.

577. Mr A and Ms B applied for multiple transfers and retention of VRMs at a Licensing Office of TD. After completing all the procedures, they saw the interim VRM and wanted it instead of the original VRM. As their application had already been processed, TD's officer refused their request.

578. They then complained against TD for depriving them of the right to take the interim VRM. In response, when repeating the procedures, TD exceptionally let them take the new interim VRM if it suited them.

Administration's response

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

(a) the counter staff of Licensing Offices will no longer write down the interim VRMs on the relevant application forms, and will check the interim VRMs from the computer record as and when necessary; and

(b) all staff of Licensing Offices have been reminded to be fair and careful when handling applications, and to consult their supervisors as and when necessary.