

**THE GOVERNMENT MINUTE**

**IN RESPONSE TO**

**THE THIRTEENTH ANNUAL REPORT OF  
THE OMBUDSMAN**

**ISSUED IN JUNE 2001**

**Government Secretariat**

**28 November 2001**

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**Introduction**

The Chief Secretary for Administration presented the Thirteenth Annual Report of The Ombudsman to the Legislative Council at its sitting on 27 June 2001. The Administration undertook to prepare a Government Minute in response to The Ombudsman's Annual Report.

2. This Minute sets out the actions that the Administration has taken or proposes to take in response to the cases on which The Ombudsman has made recommendations in her investigation reports. The cases referred to in Parts I and II of this Minute are those contained in Annexes 6 and 10 of the Annual Report respectively.

**Part I**  
**Investigated Cases**

**Architectural Services Department (ASD)**

**Case No. 2000/0659 : Delay in converting an aqua privy in the New Territories into a flushed toilet.**

3. The sanitary condition of the aqua privy in question was poor and residents in the vicinity had been pressing for conversion of the aqua privy into a flushed toilet since 1994. The response of the former Regional Services Department (RSD) (the functions in respect of this complaint have subsequently been taken over by the Food and Environmental Hygiene Department (FEHD)) to their request was that the aqua privy would be converted into a flushed toilet after sewers were laid.

4. The complainant said that the sewer-laying works in the village where the aqua privy was located were completed in mid-1998. However, when he wrote to RSD and urged the Department to carry out the conversion works, the reply he received from RSD every time was that it was asking the Architectural Services Department (ASD) to carry out a study on the matter. Feeling aggrieved that ASD had spent more than a year to carry out the study, the progress of which was slow, and that FEHD and ASD had delayed in converting the aqua privy into a flushed toilet in disregard of the health of the residents, the complainant lodged a written complaint with The Ombudsman in March 2000.

5. In December 1997, RSD requested ASD to carry out a feasibility study on the conversion works. However, in the 14-odd months that followed, it had not inquired about the progress of the study. It was not until February 1999 when the villagers wrote to RSD again to lodge a complaint that reminders were issued to ASD to urge for the early commencement of the works. Arrangements were also made for its registry to bring up the subject file every one or two months from April 1999 onwards so as to keep track of the progress of the matter.

6. Investigation indicated that as there was no salt water in the vicinity of the site, application was submitted to the Water Supplies Department (WSD) in October 1998 to use fresh water for flushing purposes. After several revision of the submission, approval from WSD was received in March 2000. ASD then completed the feasibility study in April 2000. Conversion works were commenced in June 2000 and completed in November 2000.

7. The Ombudsman opined that the failure of RSD to follow up the matter in the 14 months after requesting ASD to carry out the feasibility study had indirectly contributed to the delay of the conversion works. If RSD had issued a reminder to ASD every two or three months after making the request in December 1997, the feasibility study might have been completed earlier. Besides, The Ombudsman also considered that although RSD had not set a target completion date for the feasibility study of the conversion works, the study had not been duly carried out owing to delay by the project officer of ASD. On the whole, The Ombudsman concluded that the complaint against ASD was substantiated and FEHD partially substantiated.

8. ASD and FEHD have accepted The Ombudsman's recommendations and taken the following actions :

- (a) FEHD in future will specify the expected date of completion of the study when requesting another department to carry out a feasibility study or other ad-hoc studies, so that the departments concerned can draw up a work schedule systematically and make suitable staff deployment for the task. Besides, it will also actively follow up the progress of every study and set a date for the subject file to be brought up lest some work might be left out. Internal guidelines have been issued to put in place the mechanism; and
- (b) the Local Manual of Property Services Branch (PSB) of ASD has been revised. Not only that the project officer should agree on a timescale for the completion of the feasibility study with the client department, he should also instruct the filing clerk to "bring-up" the case for follow-up on the due date. Internal guidelines on the bring-up service have been issued to all staff of PSB on 18 December 2000 and shall be re-circulated to all staff every six months.

## **Buildings Department (BD)**

**Case No. 2000/0674 : Issuing Certificates for Occupation to houses in Fairview Park which did not comply with the Buildings Ordinance and qualify for Occupation Permits; failing to safekeep the building plans of the houses, resulting in the loss of authorised plans on the original structures; and unjustifiably requiring owners of the houses to submit Certificates of Safety.**

9. The complaint was lodged with The Ombudsman on 27 March 2000 against BD, Lands Department (Lands D) and Planning and Lands Bureau (PLB), with the following allegations relating to the title deeds of some houses in Fairview Park :

- (a) issuing Certificates for Occupation (OCs) to houses which did not comply with the Buildings Ordinance (BO) and did not qualify for Occupation Permits (OP);
- (b) failing to safekeep the building plans of the houses, resulting in the loss of the authorised plans on the original structures; and
- (c) unjustifiably requiring owners of the houses to submit Certificates of Safety.

10. The Ombudsman considered that the allegation about OCs being issued to conceal non-compliance with the BO was unfounded and complaint point (a) was unsubstantiated. For complaint point (c), BD was correct in requiring the owners to submit Certificates of Safety in view of its concern over the safety of unauthorised building works in the houses. The Ombudsman therefore concluded that complaint point (c) was unsubstantiated.

11. Regarding complaint point (b), BD was responsible for the safekeeping of building plans and it acknowledged that the plans of some houses in Fairview Park were missing. This was attributed to the massive number of plans involved and the long time taken in developing the entire Fairview Park project. Over the years, there had been many requests to view the plans from various sections within BD, and from owners and Authorised

Persons. Plans were kept in different files at various places, and BD had moved office a couple of times. These resulted in some plans being misplaced or lost.

12. BD has taken a number of measures to deal with the loss of some of the building plans of the houses in Fairview Park. The department has also introduced improvement measures such as barcoding and microfilming to remedy identified deficiencies in its records management system. Nevertheless, as BD had indeed lost some of the building plans of the houses in Fairview Park, The Ombudsman considered that complaint point (b) was substantiated.

13. The Ombudsman has noted BD's actions in trying to alleviate problems caused by the missing plans on a case-by-case basis. Borrowing plans from the Fairview Park Property Management Limited may be a cheap and expedient way of having access to the plans, but this is not without risks. As BD itself has experienced, plans could be damaged or even lost over a period of time. During disputes between owners and the management company, there may be a need to verify plans in the custody of the company. The Ombudsman therefore considered that it might be preferable for BD to consider re-creating its collection of plans for Fairview Park by duplicating all plans in the possession of the management company.

14. Pursuant to The Ombudsman's recommendations, an effectively complete set of structural records has now been located from Government sources, it will therefore not be necessary for BD to re-create its collection of plans for Fairview Park. A complete set of structural plans for Fairview Park is now available for public viewing at BD.

15. In addition, to facilitate the retrieval of building plan by members of the public, BD has just installed a pilot Building Records Management System at its Building Information Centre for use by the public. The retrieval of building plans for Yau Ma Tei and Tsim Sha Tsui Districts is now a matter of seconds by pressing a few buttons on the computer. In the long term, it is intended to extend the electronic system to cover building records of all other districts in the territory.

**Case No. 2000/0996 : Maladministration in implementing a repair order; lying to the complainant on the completion of the repair of a drainage pipe; and delay in giving reply to the complainant.**

16. In 1994, seriously choked/defective drainage system had caused severe flooding and wastewater outflow at a building. BD therefore issued letters advising the owners of the building to carry out drainage repair works. As the owners did not respond to the advisory letter, a drainage repair Order was served on the Incorporated Owners (IO) of the subject building to repair the drainage system of the building. Since the required repair works had not been commenced by the due date of the Order, BD invoked section 28(7) of the Buildings Ordinance to employ the Government contractor to carry out the drainage repair works on behalf of the IO. The drainage repair works, which included replacement of defective pipes (i.e. not renewal of the whole drainage system), were completed in stages, and the last stage was completed in December 1998.

17. In March 2000, the new owner of a G/F Shop of the building complained that a broken pipe at the ceiling had caused leakage of wastewater inside the G/F Shop. He queried whether the government contractor had renewed the pipes at the ceiling inside his shop or not. He subsequently on 8 May 2000 lodged a complaint with The Ombudsman about BD, as follows :

- (a) maladministration in implementing the drainage repair Order in respect of the building;
- (b) lying as regards the completion of the repair of a drainage pipe at the said G/F Shop; and
- (c) delay in giving a written reply to the complainant.

18. The drainage repair works to the G/F Shop were completed in February 1997. While defective pipes in the shop were replaced, the subject pipes under complaint were not included in the works carried out by the Government contractor.

19. The Ombudsman found that complaint points (a) and (c) were substantiated, while complaint point (b) not substantiated. Pursuant to The

Ombudsman's recommendations, BD had issued a circular to remind the staff of the relevant work procedures as follows :

- (a) to keep adequate file records of the progress of works from start to finish, and to conduct site inspection to ensure that all required works have been completed and make suitable file records before certifying completion of the works; and
- (b) to reply promptly to all written complaints from members of the public. Where a substantive reply cannot be made within ten days, an interim reply should be made advising the complainant about the current position of the complaint and when a full reply would be made. The name and telephone number of the case officer should be given in the interim reply. Besides, BD had in place an independent system for records of complaints. These records are issued to the case officers regularly to serve as a reminder/monitoring system on the follow-up actions on the complaints. It is considered that these procedures would provide appropriate monitoring on the handling of complaints.

20. In addition, The Ombudsman also recommended BD to amend the departmental guidelines, requiring staff to inform owners/IO in writing about the completion of the works and the expiry date of the maintenance period immediately after the works have been physically completed. This would allow the owners/IO to express their views, if any, before the expiry of the maintenance period. BD considered that such implementation would present practical difficulties. This was because repair works were often completed by stages, it would involve a lot of extra administrative work in identifying and notifying different groups of owners in a building at different stages while BD officers had to focus on monitoring the work of the responsible Government contractor with a view to ensuring the quality and timely completion of the repair works. As such, BD instead proposed that prior to commencing drainage repair works, the owners/occupiers would be notified in writing of the name of the Government contractor, the programmed commencement date, the anticipated completion date, the maintenance period, and the name and telephone number of the case officer. This would facilitate the concerned parties to raise any queries about the progress of the works and any complaints about the works before the expiry of the maintenance period. This proposal

would bring about better communication between the owners and BD and improve the latter's service to the public. In this connection, a circular has already been issued reminding staff to follow these procedures in handling drainage repair works by the Government contractor.

21. In addition, BD is also installing a computer system, the Building Condition Information System, which is scheduled to commence operation in mid-2002. Confirmation on adequacy of site records will be required under the proposed system before BD staff can issue a completion letter to the Government contractor. This will help to monitor progress on the enforcement of orders and follow-up actions on enquiries.

**Case No. 2000/1141 : Improper handling of complaints about unauthorised building structures.**

22. BD issued an order to the co-owners of a building in April 1994 requiring removal of an illegal rooftop structure. Due to changes in ownership of some flats in 1994, a superseding removal order had to be issued. However, the superseding order was only issued in August 2000. A complaint was then lodged against BD with The Ombudsman in May 2000 by an owner of the building. After investigation, The Ombudsman considered that it was improper for BD to take such a long time to issue a superseding removal order. The complaint was therefore considered partially substantiated.

23. In response to The Ombudsman's recommendations, an apology letter was sent to the complainant on 22 January 2001. In addition, BD has coordinated with the Housing Department for rehousing arrangement so that the clearance can be carried out smoothly. However, taking into account the occupant's current difficulties and the assessment of the Social Welfare Department on the situation, BD's enforcement action is held in abeyance on compassionate grounds. The situation is now under review.

**Case No. 2000/2015 : Lack of response to the complainant' s complaint.**

24. In June 1998, a complaint was made to The Ombudsman that BD failed to follow up the water seepage problem in the complainant' s premises. BD replied to the complainant in August 1998 that appropriate action would be taken once the source of seepage was identified.

25. The complainant wrote to The Ombudsman again in August 2000. He stated that water seepage still persisted in his premises and despite his numerous enquires by letter and telephone, BD failed to respond and follow up the case. BD was unable to trace records of the complaints lodged by the complainant after August 1998 as the relevant file was found missing.

26. Upon notification of the complaint in August 2000, BD took follow-up actions immediately. Subsequently, a statutory order was served to remove a dilapidated unauthorised structure at the flat roof of the adjoining building. The Food and Environmental Hygiene Department and Water Supplies Department were also requested to take parallel investigations to identify the possible sources of seepage. BD will continue to follow up the case.

27. The Ombudsman after investigation considered that the complaint was substantiated. The follow-up actions taken by BD in response to The Ombudsman' s recommendations are as follows :

- (a) an apology letter was sent to the complainant on 6 April 2001;
- (b) a review on the internal guidelines of record management system will be completed shortly. The updated guidelines will be circulated to relevant staff reminding them of the appropriate procedures in managing and transferring files. Such guidelines will also be re-circulated periodically as reminders; and
- (c) a computerised monitoring system for handling complaints will be introduced as part of the Building Condition Information System, which is being installed and is scheduled to commence operation in mid-2002. As an interim measure, BD supervisors will maintain a list of complaints for monitoring purpose.

28. In addition, BD will shortly commission a consultancy study to explore new technology in detecting the source of water seepage. The study will be completed in about a year's time. The aim is to identify the responsible party in order that relevant Government departments can take effective enforcement actions against parties responsible for water seepage.

**Case No. 2000/2714 : Delay in taking action against unauthorised building structures in the building where the complainant lived.**

29. The subject building is a target building of the Building Management Coordination Committee (BMCC). In December 1997, BD issued 86 orders under section 24(1) of the Buildings Ordinance requiring owners of the building to remove metal gates and unauthorised appendages in two months' time.

30. After issuing the orders, BD conducted inspections in March, June, September and November 1998 to check if the orders had been complied with. At that time, since only one BD professional officer (a Building Surveyor) was engaged to deal with all BMCC buildings in that district, warning letters were only sent to relevant owners in March 1999 requiring the removal of outstanding unauthorised building works.

31. However, subsequent to the Garley Building Fire, BD and the Fire Services Department had reviewed the criteria in determining the enforcement action on metal gates swinging onto landings of staircases. Under the revised criteria, some of the metal gates originally required to be removed became acceptable, and the two departments therefore did not initiate any further enforcement action against these metal gates. In November 2000, a Coordinated Maintenance Building Scheme (CMBS) was set up to encourage and assist building owners to organise comprehensive repairs to their buildings. The building in question was selected as a target building under the Scheme. With the exception of those metal gates being subsequently regarded as acceptable under the revised criteria mentioned above, all the outstanding orders were to be enforced under the Scheme.

32. A complaint was made in October 2000. The Ombudsman conducted an investigation and considered that it was improper for BD to take such a long

time to enforce the removal orders. The complaint was therefore partially substantiated.

33. Following The Ombudsman's recommendations, an apology letter was sent to the complainant on 4 May 2001. BD has also included the building under the CMBS mentioned above. Under the new criteria, BD will withdraw some of the outstanding orders relating to metal gates. The owners concerned have indicated their intention to comply with the remaining orders and have appointed an Authorised Person to supervise the works. In addition, since BD's re-organisation in July 2000, two dedicated teams comprising nine professional staff and nine technical assistants have been set up to deal with outstanding removal orders. BD will deploy more staff in 2001-02 to expedite enforcement work in this respect.

**Case No. 2000/2943 : Delay in handling the complainant's complaint about illegal structure.**

34. This was originally a complaint lodged with The Ombudsman against the Home Affairs Bureau (HAB) regarding the following :

- (a) not taking prompt follow-up action on a complaint;
- (b) failing to give an acknowledgement or a written reply in response to the complaint letter; and
- (c) the poor attitude of an officer from HAB during a telephone conversation with the complainant on 30 August 2000.

35. The Ombudsman, upon her initial review, was of the opinion that the failure of BD to respond to the matter might have culminated in the complaint. The scope of her investigation was therefore extended to BD.

36. In April 2000, the complainant faxed a complaint letter to HAB, complaining about the dangerous installation of two air-conditioners outside a dispensary in Sham Shui Po. In the letter, he requested the Bureau to give him a written reply. As the complaint was not within the purview of HAB, HAB referred the matter in April 2000 to the then Control and Enforcement

(C&E) Section of BD for action and direct reply.

37. As the location/address of the alleged unauthorised building works (UBW) was not clear (i.e. without any street number or building name), BD's clerical staff ultimately entered HAB's memo into a miscellaneous file in May 2000. At the subsequent site inspection carried out in June 2000, it was established that the UBW was located at Pei Ho Street, which was a 'Building Management Coordination Committee' (BMCC) target building. As such, the officers concerned considered that the matter should be handled by the staff of the BMCC Unit of BD so as to give better support to the building management of the building.

38. Due to BD's reorganisation in July 2000 involving the BMCC Unit, the inspection report made in June 2000 was left unfinished. After the reorganisation, the case officer completed the report in August 2000. BD took prompt enforcement action and the illegal air-conditioning installation was removed in November 2000.

39. The Ombudsman considered that BD was at fault in not having properly taken follow-up action, upon receipt of HAB's referral in April 2000 and replied to the complainant as requested. The complaint against BD was therefore substantiated.

40. BD has implemented The Ombudsman's recommendations by :

- (a) sending a written apology to the complainant on 27 February 2001;
- (b) reminding BD staff concerned to complete the "Action Programme for Complaints on UBW" properly; and
- (c) re-circulating BD Administration Circular No. 1/2000 "General Guidelines for Handling Official Correspondence" to remind staff about sending interim/substantive reply to incoming correspondence within ten days.

41. In addition, the Building Condition Information System, which is scheduled to commence operation in mid-2002, can also track and monitor complaints about UBW. This ensures that responsible BD officers will take

prompt and timely follow-up actions on the complaints.

## **Census and Statistics Department (C&SD)**

### **Case No. 2000/0359 : Wrongly sending Notices on Lodgement of Import/Export/Re-export Declaration despite repeated complaints.**

42. The complainant lodged a complaint against C&SD for wrongly sending its Notices on Lodgement of Import/Export/Re-export Declaration (notices) intended for an exporting company (the Company) to his residential address.

43. Since the complainant moved to his address at the time in December 1997, he has received many notices addressed to the Company from C&SD. He repeatedly returned these post items to C&SD. As he continued to receive similar notices, he complained to C&SD in September 1999. Despite this, he continued to receive such notices. Feeling aggrieved, he lodged a complaint with The Ombudsman in February 2000.

44. Notices are issued by C&SD with the objective of enforcing the Import and Export Ordinance. Hong Kong is a free port and there is no need for customs clearance prior to importation and exportation of goods as is the case in many other places. Every person who imports or exports any article needs only lodge with the Commissioner of Customs and Excise (C, C&E) an accurate and complete import/export declaration within 14 days after the importation/exportation of the article and pay the required declaration charges. The Government checks the completeness and accuracy of these information against information in cargo manifests provided by transport carriers. Where non-lodgement is identified, notices would be issued to the companies/individuals concerned. The authority of the C, C&E to issue notices under the Import and Export Ordinance is delegated to C&SD. The purpose of identifying non-lodgement cases is to safeguard Government revenue collected through trade declarations and the reliability of trade statistics. Notices for non-lodgement cases are issued based on information provided in cargo manifests. However, information provided on manifests may sometimes be inaccurate, resulting in the issue of notices to wrong addresses. These notices would usually be returned to C&SD. To avoid possible abuse of the system by traders, a selection of the undelivered notices returned would be referred to the Customs and Excise Department (C&ED) for

investigation. Owing to resource considerations and to avoid undue disturbance to the public, C&SD made referrals only after ten or more notices had been returned in respect of one trader within a month or where special circumstances required the attention of C&ED.

45. In the present case, the notices were issued to the complainant's address because the cargo manifests submitted by the transport carriers clearly indicated that the Company exporting the goods was located at the complainant's address. Following the receipt of a letter from the complainant in September 1999, C&SD immediately suspended the issue of notices to his address. After withholding a total of 12 notices, C&SD referred the case to C&ED for investigation in early December 1999. Upon C&ED's investigation, the Company lodged on 21 December 1999 the required export declarations. As shown in the declarations, the address of the Company was still the complainant's address. There was no indication that the address was wrong or that there had been a change of company address. According to the Import and Export (Registration) Regulations, information reported on import and export declarations must be accurate. Pamphlets on how to complete import/export declarations and cautionary notes on declaration forms reminded importers/exporters of the legal consequences of providing inaccurate information. There had in fact been incidents where a company, despite initial denial of being located at a given address, was later confirmed after C&ED's investigation to be located at the given address. Under such circumstances, C&SD decided to issue further notices to the Company at the complainant's address when non-lodgement cases were again identified.

46. The Ombudsman concluded that the complaint was partially substantiated. C&SD accepted the recommendations by The Ombudsman. A summary of actions taken by C&SD regarding the recommendations is as follows :

- (a) a letter of apology was sent to the complainant on 4 August 2000;
- (b) enhancement to the relevant computer system has been implemented since early July 2000 to ensure a higher accuracy rate in the notice screening process. A watch list of keywords of company names and addresses requiring special attention has been incorporated into the enhanced computer system. Prior to postal despatch, the names and

addresses of all declaration notices are matched with the watch list. The watch list consists of keywords rather than the full names and addresses of companies in question in order to ensure that the latter can be identified even if their names and addresses may be presented slightly differently in different cargo manifests. Notices identified in the computer screening process are further inspected manually to confirm if they should be withheld. The watch list is frequently updated with the addition of cases involving five or more undelivered notices and other cases with problems pointed out by the addressees;

- (c) the criteria for referral of doubtful cases of malpractice have been reviewed and agreement for a new criterion has been reached between C&SD and C&ED in August 2000. Instead of referring those cases involving ten accumulated undelivered notices in a month, referral or follow-up work is now undertaken whenever five undelivered notices have been accumulated for a particular address; and
- (d) additional measures have been adopted by C&SD to handle undelivered notices. They are -
  - (i) prior to referring cases of undelivered notices to C&ED, C&SD attempts to look for the telephone numbers of the companies concerned and, where possible, contact the companies by telephone to verify the addresses, with a view to re-issuing declaration notices to the proper addresses. This measure, implemented since August 2000, has helped reduce the number of cases requiring referral to C&ED; and
  - (ii) letters are sent to transport carriers informing them that the addresses, as shown on manifests, of those importing/exporting companies related to undelivered notices are incorrect and requesting them to provide the correct addresses. Implemented since November 2000, this measure facilitates the re-issue of notices with correct addresses. This also has the effect of reminding transport carriers to make effort in providing correct addresses of importing/exporting companies on manifests.

## Education Department (ED)

**Case No. 1999/0362 : Unfairly setting a cut-off date for recognising the Bachelor of Teaching qualifications conferred by an overseas university as equivalent to a local first degree for the purpose of appointment to graduate teaching posts.**

47. Please refer to Case No. 1999/3153 under the Civil Service Bureau.

**Case No. 2000/0952 : Disregarding the complainant's case as a sex harassment case; unclear policy directive and procedural guidelines for handling sex harassment complaints at school; failing to handle the complainant's complaint immediately and to keep record of her complaint; interrupting the complainant's lessons and causing disturbance to the complainant's witness and family when the school conducted investigation; and failing to take appropriate action in investigating the complainant's complaint.**

48. On 14 November 1999, ED received a complaint case on sexual harassment lodged by a S7 student and her mother. The student at that time was studying in a government secondary school (the School). The mother alleged that her daughter had been repeatedly sexually harassed by her classmate, a male student, during the 1998/1999 and 1999/2000 school years. Investigations of the case by the School, ED and the Equal Opportunities Commission (EOC) showed that there was no evidence to substantiate the complainant's allegations. The mother then made several disruptions to the School and its students. Having failed in all these attempts, she resorted to The Ombudsman on 6 May 2000 and complained against the School and ED for not handling the sexual harassment case properly. According to The Ombudsman's investigation results, the allegation on sexual harassment was not substantiated. However, since ED did not have clear policy, procedure and guidelines for schools to handle complaints on sexual harassment, the allegation on the School and ED was partially substantiated. In that regard, The Ombudsman has made the following recommendations :

(a) ED may consider preparing clear guidelines to define sexual

harassment clearly and to assist schools on how to handle complaints on sexual harassment;

- (b) ED may consider establishing a complaint monitoring mechanism with schools so that schools may report to ED on complaints lodged by students; and
- (c) ED may strengthen the knowledge of teachers on sexual harassment and handling of such complaints through training, talks, etc.

49. In response, a senior school development officer of ED and the Assistant Principal of the School are assigned to draft the said guidelines in collaboration with a representative from EOC. The guidelines should be ready by the end of 2001. On completion of the set of guidelines, training programmes and talks will be arranged to strengthen the knowledge of teachers on sexual harassment and the handling of such complaints.

50. In addition, ED had explained to The Ombudsman that schools might draw up their own school-based complaint handling monitoring mechanism by making reference to the chapter on “Strategies for Handling Complaints” in the “School Administration Guide”.

**Case No. 2000/1133 : Lack of response to the complainant’s complaint against an alleged unregistered school; failing to take detailed inspections and appropriate actions against an “unregistered” school and providing inaccurate information about telephone calls made by an Assistant Director of the department.**

51. The complainant faxed a letter to the Director of Education on 21 December 1999 to report his suspicions that an unregistered school was operating next door to his home on Lamma Island. Having received no response from ED, he wrote to the Director of Education again on 4 March 2000. Subsequently, he received a telephone call and written reply from an Assistant Director of Education on 11 March and 15 March 2000 respectively. He also obtained further replies from ED. However, the complainant remained dissatisfied with the explanation and conclusion given by ED as he considered that the department had demonstrated utter incompetence in

handling the matter. He therefore lodged a complaint with The Ombudsman on 23 May 2000 against ED for :

- (a) not responding to his complaint against an alleged unregistered school;
- (b) failing to take detailed inspections and appropriate actions against an “unregistered” school; and
- (c) providing inaccurate information about telephone calls made by an Assistant Director of the department.

52. In the final report of investigation, The Ombudsman concluded that complaint point (a) was substantiated as ED has admitted its negligence in mishandling a fax without responding to the complainant promptly; complaint point (b) was partially substantiated as ED should have conducted surprise visits outside office hours to the suspected unregistered school. Complaint point (c) was found unsubstantiated because of lack of concrete evidence. On the whole, The Ombudsman concluded that the complaint was partially substantiated.

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

- (a) departmental circular is in place to advise officers of the guidelines on the proper handling of incoming correspondence. Arrangement has been made to re-circulate the circular at yearly intervals. Officers responsible for receipt and despatch duties in the department have been reminded to pay attention to the correspondence marked “Personal” which should be forwarded to the officer concerned for his personal attention;
- (b) the Central Compliance Team (CCT) has been conducting investigation visits during non-office hours if any case so requires. Since the establishment of the CCT in May 2000, over 140 investigation visits have been conducted outside normal office hours, some being conducted during the period from 6 p.m. to 10 p.m.; and

- (c) the arrangement for conducting investigation visits has been under constant review in the light of experience. In a recent review, officers responsible for investigation are reminded again to make more thorough analysis of the time slot for operation action and conduct investigation visits during non-office hours if required during any operation. This requirement has been updated in the guide “Procedures for Handling Suspected Unregistered School Cases” for investigation in June 2001.

**Case No. 2000/1221 : Impropriety in arrangements for the training of able-bodied Skills Opportunity School graduates in Skills Centre.**

54. A group of parents of the students in Skills Opportunity Schools (SOSs) lodged a complaint on 29 January 1999 with The Ombudsman against ED for impropriety in arrangements for the training of able-bodied Secondary Three (S3) SOS graduates (with an IQ of over 70 and without any disability) in Vocational Training Council (VTC) skills centres, which are established specifically for people with disabilities.

55. ED has, on the recommendation of the Education Commission Report No. 4, set up seven SOSs since 1993 for junior secondary students with severe learning difficulty. Graduates from these schools have all along been admitted into skills centres to continue training at the operative level. However, “learning difficulty” was deleted from the classification of disabilities in the White Paper on Rehabilitation 1995 on the ground that pupils with learning difficulty did not typically have an impairment and that they were amenable not to rehabilitation services but to educational services.

56. In 1998, the Health and Welfare Bureau (HWB) advised that S3 leavers of SOSs who were not categorised as disabled persons would cease to be admitted into skills centres. As a stopgap measure for able-bodied SOS students who were caught by the change of policy in 1995, it had been agreed among relevant bureaux/departments that skills centres would continue to admit such graduates until 2002/03, pending a long-term solution on the post-SOS placement arrangements.

57. The Ombudsman saw signs of inadequate co-ordination among

relevant bureaux/departments and decided to conduct investigation into the case. On the basis of the investigation findings, The Ombudsman considered that HWB, VTC, Education and Manpower Bureau (EMB) and ED had not properly played their respective roles after the announcement of the new policy in the 1995 White Paper. They did not take prompt action to draw to relevant parties' attention the problems arising from the new policy, to discuss the necessary resource re-allocation, co-ordination and arrangements, and to explain the situation to the public as early as possible. The Ombudsman found that the complaint was substantiated.

58. EMB, HWB, ED and VTC met in December 2000 to review the placement opportunities for able-bodied SOS graduates, with a view to working out a long-term solution in the students' best interest. They are now exploring in detail the following two options :

- (a) operation of extension classes in SOSs. One of the SOSs is now operating a one-year extension class for some of its S3 graduates to enhance their adaptability to employment or vocational training. The Administration is examining the effectiveness of such classes to see whether these should be formally introduced in all SOSs; and
- (b) provision of appropriate vocational courses by VTC (outside the skills centres) to cater for the needs of the able-bodied SOS graduates.

## **Environmental Protection Department (EPD)**

**Case No. 2000/0529 : Unreasonably approving the re-grant of a site for use as a fee-paying public car park without public consultation or a proper assessment of the environmental nuisance involved.**

59. A resident attributed the increased traffic noise and air pollution in the area where he lived to container trucks and heavy vehicles using the car park near his residence. He lodged a complaint with The Ombudsman and alleged that no proper assessment of the environmental nuisance involved was conducted and no public consultation was carried out before the site was re-granted for use as a car park. He further alleged that the decision to use the site as a car park was wrong.

60. The site in question had been granted in the form of a Short Term Tenancy (STT) for use as a car park for containers or heavy vehicles since 1993. In 1999, the District Lands Conference proposed to re-tender a new STT for the site for the same purpose in order to achieve market rentals. The proposal was circulated to the relevant departments, including the Transport Department, Environmental Protection Department (EPD), Planning Department and District Office for consideration. In the background notes, the Departments were informed of public complaints on the noise pollution generated from the car-parking operation. Given that there was a great demand for such car park in the district and in order to reduce the likelihood of illegal parking, the proposal was approved by the District Lands Conference but with no obvious input on the need for public consultation and environmental assessment.

61. After investigation, The Ombudsman found that the complaint against EPD and HAD was substantiated. The Ombudsman recommended that :

- (a) EPD should consider revising the environmental management arrangements for temporary land usage so that other departments could be provided with advice and comments on proposed temporary land uses to prevent or mitigate any likely environmental nuisance; and
- (b) HAD should consider issuing guidelines for its staff on the need for

assessing local views and sentiments on district projects and developments.

62. In response to the above recommendations, follow-up actions are as below :

- (a) an internal guidance note was issued by EPD on 14 July 2000 to all professional staff involved in environmental assessment in EPD, requiring that special attention be given to those sites that have previous complaint history. For such cases, EPD would normally not support the granting or renewal of such land use so as to safeguard nearby residents from environmental nuisance;
- (b) EPD has also reviewed and revised the relevant code of practice used by the Lands Department (Lands D) when processing land grant for open storage and temporary carpark sites. Besides, EPD has also included in the revision The Ombudsman's conclusions about the case. These include - special attention must be paid to sites where nearby residents have complained before; and public interest in securing a reasonably clean, pleasant and comfortable living environment is so important that it ought not be compromised or overridden lightly by economic concerns. The aim of the revision is to safeguard nearby residents from environmental nuisance. In addition, the revised code of practice, i.e., the "Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites", was issued to Lands D with a copy to the Planning Department on 9 January 2001; and
- (c) the Director of Home Affairs agreed that HAD should be pro-active in consulting members of the public. Staff of the department have been instructed to be more sensitive to possible local reaction to government proposals. The District Officer concerned has reviewed the arrangements for public consultation and has drawn up guidelines for his staff on the need to consult widely on government proposal and to update past consultation through a fresh round of consultation. Other District Officers have also been asked to consider drawing up similar guidelines.

## **Food and Environmental Hygiene Department (FEHD)**

### **Case No. 1999/1915: Rude manners of its staff and impropriety in handling the complaint.**

63. The complainant telephoned a District Office (Environmental Hygiene) (the District Office) of the former Urban Services Department (USD) (the functions in respect of this complaint have subsequently been taken over by FEHD) to complain against a local restaurant in March 1999. He complained that when he called the District Office again five minutes later to clarify his complaint points, a clerical staff answered his call in a rude manner and intended to refuse to handle his complaint. He then called the hotline of USD to complain against the clerical staff. In the morning of 1 April 1999, the complainant received a call from the District Secretary of the District Office. The District Secretary told him that he had received his complaint and asked for his personal particulars, adding that the complainant would be given a reply in a few days. However, by 20 April 1999, the complainant had not received any notice or reply. He therefore called the hotline again to enquire about the matter. Only then did he learn about the departmental rule that replies should be given to complainants within ten days of receipt of the complaints. On the afternoon of the same day, the complainant called the Staff Management Section of USD. An Executive Officer of the Section answered his call and promised to follow up the matter as soon as possible. However, by 30 April 1999, the complainant had not received any reply from USD, so he called the Executive Officer again to enquire about the matter. Subsequently, he received a verbal reply from the District Secretary over the telephone.

64. Dissatisfied with the District Secretary's reply, the complainant contacted the Executive Officer again on 3 May 1999 and asked him to review the findings of the investigation. The complainant said the Executive Officer promised to give him a reply within ten days, but in the end he did not receive the Executive Officer's reply until 14 May 1999. However, as the complainant was still dissatisfied with the Executive Officer's reply, he lodged a complaint with The Ombudsman on 23 June 1999.

65. The complainant made the following points :

- (a) rude manners of the staff of a District Office when answering his telephone enquiries and their refusal to handle his complaint against a restaurant;
- (b) impropriety of the District Office in handling his complaint against its staff; and
- (c) failure of its Staff Management Section to play fair in handling his complaint and give him a reply within ten days of receipt of his complaint as pledged.

66. Complaint point (a) was concluded as unsubstantiated, whereas complaint points (b) and (c) were substantiated. On the whole, the complaint was concluded as partially substantiated.

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

- (a) a letter of apology was issued to the complainant on 9 August 2000 concerning his complaint points (b) and (c);
- (b) a Complaints Management Section was set up on 1 November 2000 to assume overall responsibility for complaints management and to introduce a computerised Complaint Management Information System (CMIS) to manage more effectively all the complaints received;
- (c) various training courses/sessions on the proper handling of complaints have been organised by the Training Section for the staff who have to handle complaints in order to familiarise them with the proper procedures, communication techniques and proper telephone manner to deal with complaints;
- (d) the relevant administrative circulars concerning handling of complaints have been reviewed and revised. These circulars are circulated to staff concerned at regular intervals of six months; and
- (e) all officers concerned have been provided with a folder containing -

- (i) a comprehensive paper on the new Complaints Management Section and the CMIS;
- (ii) copies of all circulars duly updated regarding complaints handling; and
- (iii) a user guide to CMIS.

**Case No. 1999/2698 : Failing to inform the Magistracy of the complainant's change of address, resulting in the complainant's not being able to receive the summonses.**

68. This was a complaint against the former Regional Services Department (RSD) (the functions in respect of this complaint have subsequently been taken over by FEHD). The complainant alleged that although he had informed RSD of his new correspondence address and telephone number when he applied for transfer of his restaurant licence, RSD still sent the summonses by post to the restaurant. As a result, he did not receive the summonses and was absent from the hearings. Subsequently, the attempted service of the same summonses by a police officer personally on behalf of the Magistracy at his former restaurant caused him great embarrassment. The complainant considered that RSD had acted improperly in the service of summonses and lodged a complaint with The Ombudsman on 20 September 1999.

69. The Ombudsman was of the view that the Health Inspector should have taken prompt action to notify the department's Prosecution Section of the complainant's new address so as to avoid delays in the service of summonses. In turn, the Prosecution Section should also have notified the Magistracy of the change as soon as it came to their notice. As there had been omission on the part of RSD staff that had caused inconvenience to the complainant, The Ombudsman considered this complaint substantiated.

70. In the light of this complaint, RSD conducted a review of its procedures. Since then, it has issued internal guidelines to require its staff to take prompt action to record changes in personal data and where outside parties, organisations or departments were involved, to inform the latter of such

updated information as soon as possible.

71. FEHD has accepted The Ombudsman's recommendations. It will fully implement the internal guidelines referred above. Besides, it has already put in place arrangements with the courts to update addresses for the service of summonses.

**Case No. 2000/0658 : Delay in converting an aqua privy in the New Territories into a flushed toilet.**

72. Please refer to Case No. 2000/0659 under the Architectural Services Department.

**Case No. 2000/0721 : Unfair application of the Yellow Line Scheme.**

73. The complainants were three stall lessees of a market in the New Territories since 1982. They complained that the former Regional Services Department (RSD) (the functions in respect of this complaint have subsequently been taken over by FEHD) was unfair to approve the end stalls of the market to have display area at the side of their stalls. This caused the passage (Passage A) in between two rows of the above stalls very congested. In order to broaden Passage A to avoid congestion, RSD informed the lessees of the two rows of stalls in Passage A to set back their yellow lines by 11.5 cm on 16 November 1999. The complainants were not satisfied as this would cause their display areas less than those of other stalls of one metre in width. They lodged a complaint with The Ombudsman on 4 April 2000.

74. The Ombudsman was of the view that RSD in 1991 did not follow the policy as decided by the former Regional Council (RC) and extended the yellow line from shop front to the side of end stalls. Besides, when RC decided not to allow the demolition of end walls in the old designed markets, RSD made no response to cancel the yellow lines at the side of end stalls. When RSD implemented the policy decided by RC to solve the congestion problem at the passage, the implementation details set were not exactly in line with the policy. While installing the display areas at the side of the end stalls in the above market, RSD could not maintain the minimum one metre clear

width in Passage A. Not only that the congestion problem at Passage A was not solved, the Passage was also made narrower. Besides, when carrying out the improvement work in 1999, RSD could not explain to the end stall lessees that their yellow lines at side were additional benefits. On the contrary, RSD accepted the proposal raised by the end stall lessees to set back the same width of the yellow lines at shop front and at side of the stalls. This made the complainants feel dissatisfied with the arrangement, thinking that their display areas were less than those of the other, which was against the fairness principle. The Ombudsman concluded that this complaint was substantiated.

75. In line with The Ombudsman's recommendations, FEHD has had a thorough investigation of the yellow lines in all markets as well as the width of the passages. The result of the investigation showed that nine other markets where YLS had been introduced had sub-standard yellow line display areas and passages. Subject to the physical conditions of each market, FEHD will rectify the width of the yellow lines when they replace the yellow tile in future, so as to minimise inconvenience made to the market stall lessees. For newly built markets, display platforms have been integrated into the design of the stalls. Raised kerbs instead of yellow lines are used to demarcate the boundaries of the stalls.

**Case No. 2000/0994 : Failing to handle a licence transfer case of a market stall; refusing to arrange a meeting for the complainant with the market stall licensee; and lack of strict enforcement actions to control malpractice of certain market stalls.**

76. The complainant claimed that in 1995 she had paid HK\$50,000 to Mr B who in turn had paid HK\$30,000 to Mr A, a former Urban Services Department (USD) (the functions in respect of this complaint have subsequently been taken over by FEHD) market stall lessee, for the stall. Since then, the complainant operated at the stall, paid the rent, and continued the appointment of Madam C, who had been previously approved by USD as a Registered Assistant (RA) of Mr. A.

77. On 11 January 2000, the complainant learnt from a FEHD's notice that Mr A was applying to transfer the stall's tenancy to his daughter. The complainant immediately informed FEHD that the stall had already been

transferred to her. The complainant requested FEHD several times to arrange a meeting between Mr A and herself but her effort was futile.

78. The complainant lodged a complaint with The Ombudsman on 10 May 2000 as follows :

- (a) FEHD did not handle the transfer of market stall tenancy fairly;
- (b) FEHD had performed perfunctorily and was partial in favour of the lessee as it failed to accede to her request for an interview with Mr A; and
- (c) FEHD did not control the irregular operation of some market stalls.

79. With the complainant's consent, The Ombudsman referred the complaint to FEHD under the Internal Complaint Handling Programme.

80. Although the complainant claimed that she had paid to purchase the stall, she could not provide any signed document as evidence. Mr. A did not admit having transferred the stall to the complainant but emphasised that the whole matter was just a monetary dispute between his late wife and Mr. B. It was difficult for FEHD to ascertain the veracity of the different versions. In any case, under no circumstances would FEHD approve the transfer because the policy only allows transfer of tenancy to an eligible person (a lessee's spouse, parents or children) and approval was tantamount to condoning illegal transaction. FEHD had not been partial to any party in dealing with the transfer of tenancy of the stall in question.

81. The Ombudsman opined that although FEHD could not find sufficient evidence of an illegal transfer, all three parties Mr A, Mr B and the complainant, had directly or indirectly participated in an illegal transfer of the market stall while Madam C had been operating the stall without formal authorisation since 1 February 1999. The Ombudsman considered that the existence and continuation of such irregularity was a result of USD's and FEHD's failure to check carefully the identity of stall operators. The Ombudsman therefore classified complaint point (a) as partially substantiated.

82. As to the complainant's request to the staff of FEHD for a meeting

with Mr. A, FEHD had repeatedly indicated clearly that it would not be involved in any monetary dispute between Mr. A and the complainant. The Ombudsman did not consider FEHD's failure in arranging an interview for the two parties a perfunctory act. The Ombudsman therefore classified complaint point (b) as unsubstantiated.

83. The complainant claimed that FEHD had failed to enforce strictly the control measures against irregularities in market stalls operation because illegal operation was found in some other stalls. FEHD investigated the allegations but the findings did not substantiate the complainant's statement. As far as this case is concerned, The Ombudsman considered that complaint point (c) could not be substantiated.

84. In order to enhance the efficiency of market management as well as to plug any loopholes of unlawful transfer of market stall tenancy, The Ombudsman made the following recommendations to FEHD :

- (a) for this case of alleged unlawful transfer of market stall tenancy, serious consideration should be given to identify who was responsible and to take appropriate follow-up actions;
- (b) consideration should be given to decide clearly whether the engagement period of the 'authorized or registered deputy/employee' should tie in with the expiry of the tenancy; and
- (c) review the market management procedures for inspections, including the raid arrangement, increasing the number of inspections and simultaneously checking the identity of lessees and registered persons so as to ensure that only persons formally approved by FEHD could conduct business at the stall.

85. On recommendation point (a), FEHD considered that the evidence provided by the complainant indicated only a monetary dispute. As there was insufficient concrete evidence to establish a case of illegal transfer, FEHD was unable to take action against any person. The Ombudsman eventually agreed that FEHD could not pursue the matter further for lack of sufficient evidence.

86. Following point (c) of the recommendations, FEHD had revised the

“Operational Manual For Markets” on 28 June 2001. The frequency of inspections conducted by Market Foremen on the identity of stall operators has increased from once a month to once every fortnight. Overseers and Health Inspectors would conduct supervisory checks on the inspection work of the Foremen at least once a month. Senior Health Inspectors would also conduct periodic checking. Besides, FEHD has reminded the staff that the proper term to be used in like situation should be “Registered Assistant”.

87. On point (b) of the recommendation, FEHD, after taking account of the additional resources implications, decided against changing the current practice, i.e. the status of the authorised person should stand until the lessee of the subject stall notifies FEHD of his termination of such authorisation. This notwithstanding, FEHD has adopted new measures to ensure that only persons approved by the department can assist in the operation of market stalls. Since 1 March 2001, FEHD has required the lessee and the authorised person of all new applications for registration of assistants to sign separate undertakings declaring that the RA employed by the lessee is not the owner, transferee or sub-lessee of the stall in question, and they will notify the Department in writing immediately upon termination of the employment. By 30 September 2001, similar undertakings have been required from existing RA and stall lessees.

**Case No. 2000/1404 : Inefficient control on licensees of the Hawker Permitted Place Fixed Pitches.**

88. The complainant lodged a complaint with The Ombudsman on 22 June 2000 against FEHD for failing to take stringent measures to control hawker pitches at a hawker permitted area in Central District, resulting in :

- (a) illegal sale of preserved fruits;
- (b) the licensee’s non-personal operation of the pitch and a possible illegal transfer of the pitch to another person; and
- (c) allegedly using another pitch for storage of goods.

89. The complainant stated that the above hawker pitch, which sold preserved fruits, was formerly used for selling vegetables. He observed that the licensee (Madam A) was always absent from the pitch, so he suspected that the pitch might have been transferred to another person illegally. He alleged that FEHD only served summonses to Madam A without taking positive and effective follow-up actions to rectify the above irregularities.

90. As Madam A was found in breach of the licensing conditions by selling Class II commodities (i.e. preserved fruits), prosecutions had been taken against her since 1992 and over 40 summonses had been issued. The Ombudsman considered that complaint point (a) was substantiated.

91. Regarding the suspected transfer of business to another person, The Ombudsman had found, during a couple of inspections, that Madam A was present at the fixed pitch except on one occasion during which only her assistant was present. The Ombudsman considered that complaint point (b) was unsubstantiated.

92. For complaint point (c), FEHD had checked the inspection records for the past ten years and noted that the fixed pitch allegedly used by Madam A for storage had all along been operated by its legal licensee selling preserved fruits. It had never been changed for storage. Besides, the area of the above fixed pitch was larger than that of Madam A's fixed pitch, so a fixed structure commonly known as "shed" had been erected there for storage of goods. The licensee of this fixed pitch had indicated to FEHD that as Madam A was her relative, she therefore allowed Madam A to keep unsold goods in the shed occasionally. FEHD considered that this arrangement did not breach the existing policy or any legal provision. The Ombudsman therefore considered that complaint point (c) was unsubstantiated.

93. The Ombudsman concluded that the complaint was partially substantiated. FEHD has accepted and implemented The Ombudsman's recommendations as follows :

- (a) FEHD has conducted a comprehensive review of the work of the Hawker Control Team, including the existing arrangement for fixed pitch inspections and control over sale of un-permitted commodities. Guidelines on enforcement action against change of trade by licensed

hawkers without permission have been drawn up to ensure that inspecting officers would enforce the control measures stringently;

- (b) Madam A submitted her application again on 11 January 2001 for change of goods to be sold. Permission was granted on 13 February 2001 for her to sell Class II commodities (preserved fruits). At present, Madam A was selling preserved fruits at her fixed pitch. During subsequent inspections by staff of FEHD, no irregularities were found at Madam A's fixed pitch; and
  
- (c) the Government decided at the end of 2000 to resume the Central Market site and to abandon the plan of building a new market at Hollywood Road. Following this decision, FEHD decided to accept Madam A's fresh application for change of permitted commodities on her licence. Besides, FEHD will consider such similar applications in accordance with the Department's existing guidelines. FEHD has also promulgated a set of revised guidelines on the procedures for processing applications for change of trade by licensed hawkers and a list of criteria for approving such applications.

## **Government Secretariat - Civil Service Bureau (CSB)**

**Case No. 1999/3153 : Unfairly setting a cut-off date for recognising the Bachelor of Teaching qualifications conferred by an overseas university as equivalent to a local first degree for the purpose of appointment to graduate teaching posts.**

94. The complaint was lodged by 12 students who had enrolled in a distance-learning Bachelor of Teaching (B Teach) course of an overseas university in February 1999. They were aggrieved by the Education Department (ED) for unfairly setting a cut-off date for recognising the non-local qualification of graduates from the course as equivalent to an ordinary first degree from a local university for appointment to graduate teaching posts. The Ombudsman considered that the complaint should be formally investigated against ED, CSB and the Education and Manpower Bureau (EMB) given the role of CSB and EMB in determining the cut-off date for accepting non-local qualifications for appointment to graduate teaching posts.

95. On 22 November 1994, ED, on the advice of CSB, advised an overseas university in writing that the graduates of its B Teach course could be considered as equivalent to an ordinary first degree from a local university for the purpose of civil service appointment.

96. In May 1997, having noted that the said B Teach course was a distance-learning one operated in Hong Kong, CSB consulted the Hong Kong Council for Academic Accreditation (HKCAA) and was advised that the B Teach degree awarded under such circumstances was comparable to a local Higher Diploma only. CSB then informed ED of the revised assessment outcome of two cases in connection with holders of the B Teach degree from that university.

97. In view of the above outcome and a complaint from a teachers' union, CSB, together with ED and EMB, recognised on parity ground that candidates holding the same qualifications awarded at the same time should be accepted on the same basis, while a cut-off year for acceptance should be applied by reference to the year of award on the basis of the advice by the accreditation

authorities. With the endorsement of the Qualifications Assessment Liaison Group (QALG) formed amongst CSB, EMB, ED and HKCAA, ED issued a circular on 30 December 1998. The circular promulgated a special arrangement to continue to accept qualifications awarded on or before 31 December 1998 through distance-learning programmes of seven non-local institutions for appointment to graduate teaching grades, on the basis that these qualifications were assessed as comparable to a local degree before. Non-local qualifications awarded thereafter through these distance-learning programmes would be accepted only if they were considered acceptable on individual assessment on a case-by-case basis. The B Teach course in that university was one of these distance-learning programmes.

98. The 12 students involved in this complaint were awarded B Teach degree by that university in late 1999 after the cut-off date. Their non-local qualifications for appointment to teaching grades were hence subject to individual assessment. They lodged the complaint as they felt being misled and unfairly treated by ED.

99. The Ombudsman regarded that the letter from ED to that university in 1994 was a crucial consideration in the complaint, and allowance should have been given to students who were still taking the B Teach course in that university when the cut-off date was set. The Ombudsman thus considered that it was unfair to those B Teach students when QALG decided that the cut-off year should apply to them. Besides, QALG also failed to address the difficulties of the complainants who had already enrolled on the B Teach course, on the understanding that their qualifications would be accepted by the Government for appointment to teaching posts before the decision to set the cut-off date.

100. The Ombudsman therefore concluded that the complaint against CSB was substantiated and the complaint against ED and EMB was partially substantiated. On the whole, the complaint was partially substantiated.

101. In response to The Ombudsman's recommendations, the follow-up actions are as below :

- (a) ED conducted individual assessments on the qualifications of the complainants in accordance with ED's circular issued in 1998. On

the basis that the awarding circumstances and particulars of their qualifications were comparable to cases accepted previously, their qualifications were considered acceptable for appointment to graduate teaching posts. The complainants were informed of the results on 15 January 2001;

- (b) ED searched through their records and found one similar letter of “general acceptance” issued in respect of Bachelor of Education (BEd) programme offered by another university. Four candidates of the BEd programme, who had enrolled in the programme before the cut-off date but obtained their qualifications after the cut-off date, approached CSB for qualifications assessment for appointment to graduate teaching posts. ED conducted individual assessments of the qualifications held by the four candidates in accordance with its circular and found that the awarding circumstances and particulars of three of them were comparable to cases accepted previously. The qualifications of three candidates were therefore considered acceptable for appointment to graduate teaching posts. For the remaining candidate, as the awarding circumstances of his qualifications were not comparable to cases accepted previously, he was considered not qualified for appointment to graduate teaching posts. ED informed the four candidates of the results accordingly on 28 March 2001;

To avoid the recurrence of similar complaints in future, ED, in consultation with CSB and EMB, wrote to the two overseas universities on 30 March 2001 to clarify the Government’s policy and practices of qualification assessment for appointment to graduate teaching posts, with regard to letters issued to these two universities in 1994 and 1995 respectively. ED emphasised that assessments on non-local qualifications were made taking into account the circumstances during the assessment and the result of such assessment might not be applicable should the circumstances change in future; and

- (c) CSB noted The Ombudsman’s comments about the practice of preparing draft notes of meeting and would exercise due care in ensuring that the notes of meetings of the QALG would be prepared,

circulated and confirmed within a reasonable timeframe after the meeting in future.

**Case No. 2000/2787(I) : Failing to follow the provisions of the Code on Access to Information in handling the complainant's request for information.**

102. In April 2000, CSB completed a survey on "Business and Public Service Ethics". A summary of that part of the survey findings relating to the public service was subsequently made public as part of a press release in September 2000, which outlined CSB's endeavours in integrity management, and how the survey findings were being utilised to enhance vigilance in the civil service against corruption.

103. In October 2000, a reporter of one newspaper wrote to CSB requesting a full copy of the survey report. CSB did not consider it appropriate to release survey findings pertaining to the business sector. Relying upon para. 2.13(a) in the Code on Access to Information (the Code) (i.e. information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the department or any other person of priority of publication or commercial value), CSB declined the request and explained to the reporter why her request could not be acceded to. Instead of releasing the full report, a summary of the survey findings pertaining to ethical standards in the public service was provided to the reporter.

104. The reporter subsequently complained to The Ombudsman on 1 November 2000, alleging that CSB had unreasonably rejected her request for access to information contained in the survey report. The complainant raised four points :

- (a) CSB's reliance on para. 2.13(a) in the Code to decline access to the full report was wrong;
- (b) CSB, in choosing to make public only that part of the survey findings pertaining to the public service, had applied double-standards;
- (c) CSB, when replying to her in October 2000, had claimed that its press

release of September 2000 had given full treatment to the survey findings when in fact this was not the case; and

- (d) irrespective of whether CSB's decision to decline access to the full report was justified or not, CSB should have furnished to her the survey report in full minus the part about the business sector (instead of just giving her a summary of the survey findings about the public sector).

105. Of the four points raised by the complainant, the last one was found to be substantiated by The Ombudsman. On the whole, the complaint was found partially substantiated.

106. CSB noted that its decision not to disclose part of the information in the survey report had been upheld by The Ombudsman. The Bureau has accepted and implemented the two recommendations in The Ombudsman's report as follows :

- (a) a copy of the survey report (with findings on the business sector deleted) was sent to the complainant on 26 April 2001; and
- (b) an internal memo was issued on 16 May 2001 to remind officers to appropriately record on file the details of various factors and alternative actions that have been considered in the decision-making process and the final decision made when handling data access requests in future.

**Government Secretariat - Education and Manpower Bureau**

**Case No. 2000/1220 : Impropriety in arrangements for the training of able-bodied Skills Opportunity School graduates in Skills Centre.**

107. Please refer to Case No. 2000/1221 under the Education Department.

**Government Secretariat – Health and Welfare Bureau**

**Case No. 2000/0114 : Impropriety in arrangements for the training of able-bodied Skills Opportunity School graduates in Skills Centre.**

108. Please refer to Case No. 2000/1221 under the Education Department.

## **Government Secretariat - Home Affairs Bureau (HAB)**

### **Case No. 2000/1422 : Delay in handling the complainant's complaint; failing to give an acknowledgement or written reply to the complainant's letter and poor attitude of an officer during a telephone conversation.**

109. On 5 April 2000, the complainant faxed a letter to HAB complaining about the dangerous installation of two air-conditioners outside a dispensary in Sham Shui Po. He also suggested that the Government should conduct inspections of the installation of air-conditioners and urged for the promotion of installation safety. In his letter, he requested HAB to give him a written reply.

110. As the complainant's concern was not within HAB's purview, HAB referred the matter to the Buildings Department (BD) for action and direct reply.

111. On 11 April 2000, HAB received the same letter from the complainant again. HAB staff telephoned the complainant and left a message confirming receipt of the letter.

112. On 24 May 2000, HAB received a phone call from the complainant enquiring about the position of his complaint. HAB staff then informed him that the letter had been received and would be followed up.

113. On 22 June 2000, the complainant contacted HAB again. HAB then contacted BD and were told that they would take follow-up action. Subsequently, HAB sent a letter on the same day to the complainant informing him that his letter had been referred to BD in April 2000 and BD would give him a reply directly. The contact telephone number of the responsible officer in BD was also provided. On 24 June 2000, the complainant lodged a complaint with The Ombudsman against HAB for delay in handling his previous complaint and for failing to give an acknowledgement to his letter.

114. On 30 August 2000, the complainant called HAB saying that he had not yet received any response from BD. HAB staff explained to him that his case was being dealt with by BD. However, the complainant insisted that

HAB had the responsibility to follow up the case. The complainant accused HAB of refusing to contact BD despite his request. He then lodged a complaint against HAB and the subject officer for his poor attitude with The Ombudsman on 9 October 2000.

115. After investigation, The Ombudsman found that the complaint about delay in handling the previous complaint was unsubstantiated. However, The Ombudsman found that the complaint about failing to give an acknowledgement or written reply to the complainant's letter was substantiated. As regards the complaint about poor attitude of an officer during a telephone conversation, The Ombudsman did not have any finding because of the absence of corroborative evidence. On the whole, the complaint was partially substantiated.

116. HAB have implemented The Ombudsman's recommendations as follows :

- (a) re-circulating General Circular No. 8/97 "Office Procedures: Correspondence" and issuing a new circular bringing out the important points to note in handling correspondence with outside bodies; and
- (b) arranging circulation and re-circulation of The Ombudsman's publication "Effective Complaint Handling" at regular interval.

## **Government Secretariat - Transport Bureau (TB)**

### **Case No. 2000/0474 : Providing incorrect information to Legislative Council Secretariat.**

117. Since the commencement of the construction of the MTR Tseung Kwan O Extension, the Chairman of the Owner's Incorporation (the Chairman) of a residential estate had been writing to the MTR Corporation Limited (MTRCL), TB and the Legislative Council (LegCo) Secretariat complaining about damages at various locations of the estate allegedly caused by the construction works of MTRCL. Some of the complaint letters directed against MTRCL also called for responses from TB.

118. In March 2000, the Chairman wrote to The Ombudsman complaining against TB for misquoting the advice of the Buildings Department (BD) in TB's reply, dated 14 December 1999, to an inquiry made by the LegCo Secretariat. The advice of BD, supposedly made to MTRCL orally during a site inspection, was conveyed to TB in writing by MTRCL. BD subsequently indicated that no such advice was given to MTRCL during the relevant site visit.

119. After further consultation with BD and MTRCL and in view of the fact that the alleged BD advice was rendered orally, TB believed the discrepancy in the understanding between MTRCL and BD was possibly due to a misunderstanding amidst verbal communications between the two parties in the course of the site visit. The Ombudsman finally concluded that the complaint was substantiated.

120. The following action has been taken in response to The Ombudsman's recommendations :

- (a) letters of apology were issued on 7 September 2000 to the Chairman and the LegCo Secretariat; and
- (b) all staff have been reminded of the importance to take all reasonable care to verify information before it is released to the public or quoted in an official document.

**Case No. 2000/0750 : Wrongful exercise of authority to resume land in connection with a road project.**

121. The complainant was one of the co-owners of a Lot at Shing Ka Road, in D.D. Peng Chau (the Lot), part of which was proposed to be resumed in connection with the road project “Public Works Programme Item No. 193CL Peng Chau Development” (the road project). The road project was gazetted under the Roads (Works, Use and Compensation) Ordinance (the Ordinance) on 14 March 1997 and authorised by the Chief Executive in Council in 1998.

122. Subsequent to the authorisation of the road project, Deputy Director of Lands ordered on 17 November 1998 the resumption of the Lot under section 13 of the Ordinance.

123. The complainant, after learning that the Lot would be resumed under the road project, lodged a complaint with The Ombudsman on 4 April 2000 against TB for wrongful exercise of authority to resume his land. He alleged that the Administration had not complied with the statutory procedures as stipulated in the Ordinance to publicise the road project.

124. Having considered TB’s response to the complainant’s allegation, The Ombudsman considered that the complaint was unsubstantiated as the Administration had posted and published the notice of the road project in full compliance with the statutory provision under section 8 of the Ordinance.

125. The Ombudsman has made the following recommendations concerning the publication and posting of notice under section 8 of the Ordinance :

- (a) to include in the notice published under section 8(2) of the Ordinance the land lots affected;
- (b) to publish and post the notice together with a plan with clear illustration of the boundary of proposed project for easy understanding by the readers of the notice;
- (c) to serve the notice on individual land owners affected by the

resumption; and

- (d) to grant permission for the complainant's parents to reinstate a kitchen and a toilet in the building at an adjacent lot owned by the complainant.

126. TB has consulted the Department of Justice and other concerned departments about The Ombudsman's recommendations made in (a) to (c) above. Regarding recommendation (b), TB considered that the gazetted plans are normally A1 or A0 in size and may have several pages, it was therefore impracticable to publish the plans in the Government Gazette and newspaper or to post the plans on site. As an alternative measure, TB agreed to post the notice under section 8(2) of the Ordinance together with a location plan of A4-size on site showing the limit of works area of the road project for the public's information.

127. On recommendation (d), District Land Office/Islands has no objection to the self-reinstatement of the affected facilities within the building in the adjacent lot owned by the complainant, provided that the relevant special conditions of New Grant 4980 can be complied with to her satisfaction.

128. As regards recommendation (a), under current practice, the lots to be affected by a road scheme are detailed in the resumption table of the resumption plan. Members of the public may inspect the resumption plan at the display offices in the respective region. The land lots that are affected by a road scheme include not only those lots to be resumed, but also the land over which permanent or temporary rights will be created. TB considered that if all the details were included in the notice, the notice would become quite lengthy (especially for large projects with substantial land resumption exercise) and it would be very difficult to identify suitable locations within the works area to post the notice. In addition, people who are affected by a road scheme are not confined to the lot owners whose lots are to be affected. It may be unjustifiable for the Government to give such an exclusive preferential treatment to the lot owners only.

129. Concerning recommendation (c), TB considered that if the notice is not served on other affected parties, they may question why the government gives such an exclusive preferential treatment to the lot owners only, as similar

to that suggested above. It is also doubtful whether TB can identify and approach all the lot owners affected as they may live abroad or may be deceased.

## **Highways Department (HyD)**

**Case No. 2000/0871 : Failing to take prompt action in response to the complainant's complaint about the poor surface condition of a street; and shifting its responsibility to the Lands Department.**

130. A complaint was lodged against HyD, the Lands Department (Lands D) and Drainage Services Department in April 2000 about the poor road surface condition of Yau Shin Street and against HyD on shifting its responsibility to the Lands D. According to HyD's complaint record, the responsible staff referred the complaint to District Lands Office/Yuen Long (DLO/YL) on 6 October 1999 only via telephone but not in writing. DLO/YL stated that it had no record of such a referral. The Ombudsman emphasised that she considered the complaint against HyD as substantiated not because HyD was actually shifting the responsibility to another department, but because of the poor handling of the referral. While it was appreciated that Yau Shin Street was not under HyD's maintenance jurisdiction, the referral to Lands D on 6 October 1999 was not recorded in a proper manner. This led to the complainant's impression that the two departments were shifting responsibility to each other. The Ombudsman therefore concluded that the complaint was substantiated.

131. In response to The Ombudsman's recommendations, HyD issued an apology letter to the complainant for not having properly handled his verbal complaint in October 1999. Besides, HyD also amended the Departmental Complaint Handling Procedure that referral of complaints to other departments should be made in writing.

**Case No. 2000/2178 : Failing to consult affected residents, conduct site inspections and assessment before undertaking a road project; removing private installation without owner's consent and not giving assurances on the slopy stability and maintenance upon completion of the road project.**

132. The complainant is the owner of a small house in a village in Sai Kung. On 10 August 2000, in connection with a road improvement project, the construction contractor damaged parts of the railings, catchpit and stormwater

drain alleged to have been constructed by the complainant in association with his small house development.

133. A joint site inspection between the complainant and HyD and District Lands Office/Sai Kung (DLO/SK) was conducted on 11 August 2000. It was agreed that HyD would repair the damaged railing and the catchpit immediately. The railing and the catchpit were reinstated on 12 August 2000.

134. A Government Land Notice issued under Section 6(1) of the Land (Miscellaneous Provisions) Ordinance was posted on the railings on 16 August 2000 (which were in fact erected without authority). The complainant was informed of the situation on the same day and was advised that HyD would erect new railings of HyD's standard at the same location after the project was completed.

135. The proposal was not accepted by the complainant and another site meeting between the complainant, HyD and DLO/SK was conducted on 21 August 2000. After the meeting, HyD decided to revise the design to avoid the railings and the catchpit constructed by the complainant. The complainant, however, lodged a complaint in November 2000 with The Ombudsman against HyD and DLO/SK of Lands Department (Lands D) for :

- (a) failure to consult and give prior notice to the affected residents about the works in connection with the road project;
- (b) without the owner's consent, removing the railings and adding new water channel connection to the catchpit and the stormwater drain which he had built in connection with his small house development;
- (c) failure to conduct site inspection, check the land status, obtain Building Department's approval on the project plans, and to arrange an assessment on the impact of the project on the slope stability prior to the commencement of the works; and
- (d) failure to monitor the works, and to give assurances on slope stability and the future maintenance and management of the slope upon completion of the road project.

136. After investigation, The Ombudsman considered that complaint points (a), (c) and (d) were unsubstantiated, whereas point (b) was substantiated. On the whole, The Ombudsman concluded that this complaint against HyD and Lands D was partially substantiated.

137. The Ombudsman recommended that HyD and Lands D should consider reminding their staff of the need to conduct accurate survey of sites affected by public works projects to ensure that no private installation would be overlooked and the necessary procedure specified in departmental instructions were complied with before their removal. In pursuance of The Ombudsman's recommendations, DLO/SK held a meeting with the concerned staff on 6 March 2001 and issued a written office directive on 8 March 2001 reminding staff of the need to obtain consent from owners whose structures and installations would be affected by clearances. Besides, HyD would issue a technical circular (before October 2001) to remind staff to consult Lands D when they identify some non-standard structures or facilities.

## Home Affairs Department (HAD)

### **Case No. 1999/0113 : Failing to clear the unauthorised business stalls in a bazaar according to schedule.**

138. Similar to most other hawker bazaars in the New Territories, the Bazaar in question was constructed probably by the then New Territories Administration. In the early times, stalls were leased by the then District Commissioner and rent was paid on a monthly basis. However, this arrangement subsequently ceased. Although the management of the hawker stalls was in the hands of the Tai Po District Office prior to the 1960s, it was subsequently taken over by the former Regional Services Department (RSD). The Bazaar is situated on Government land and the site was allocated to RSD on 12 June 1996 for the purpose of a local open space development. Implementation of the project required clearance of the site, and in 1996 and 1998, the Architectural Services Department (ASD) on behalf of RSD submitted an application for clearance of the Bazaar to the Lands Department (Lands D).

139. The complainant was not happy with the environmental condition of the Bazaar. He made complaints to The Ombudsman in 1995 and 1997. RSD then took action to stop illegal hawking activities and proceeded with its plan to resite the stalls. On 3 October 1998, the complainant lodged another complaint with The Ombudsman against RSD, HAD and the Lands Department (Lands D) for not following through the plan to clear the stalls.

140. The Ombudsman conducted a detailed investigation into the matter and found that the complaint against RSD not substantiated. The Ombudsman however felt that the District Officer/Tai Po, as the Chairman of the Tai Po District Management Committee (DMC), had failed to perform his coordinating role in getting the departments together to work out a solution to solve the problem. The complaint against HAD was therefore partially substantiated.

141. The Ombudsman also noted that District Lands Office/Tai Po had refused to fix a date for clearance for the reason that “his job was just to forward the application for clearance to the responsible department and dispose

of the debris after clearance.” The Ombudsman considered that Lands D had known that the Bazaar was on Government land but for the past 18 years (since 1982), it had not taken any action to rectify the irregularity and not exercised the power conferred by the Land (Miscellaneous Provisions) Ordinance. The Ombudsman further considered that since Lands D had failed to hand over a cleared site to RSD, the open space project was shelved. The Ombudsman also clarified that there had not been any suggestion that Lands D should take unilateral action to clear the Bazaar and only suggested that Lands D rectified the illegal occupation of the Bazaar as soon as possible by using the Land (Miscellaneous Provisions) Ordinance. The Ombudsman concluded that the complaint against Lands D was substantiated.

142. The Ombudsman recommended that :

- (a) the Director of Home Affairs should discuss and co-operate with the departments concerned to work out a timeframe for solving the environmental hygiene, transport, management and relocation problems of the Bazaar; and
- (b) the Director of Lands should take prompt legal action to deal with the unauthorised occupation of government land by the stall owners.

143. In response to The Ombudsman’s recommendations, Lands D considered that proper co-ordination among the departments through the auspices of DMC would be the best possible way to settle the issue. As such, the Tai Po District Council and DMC have continued to discuss the matter and a working group has been set up to deal with the clearance. DMC has already informed stall owners that the Bazaar would be cleared on 1 March 2003 and it would also be responsible for coordinating the clearance and continue to work with the different departments on the details of the clearance operation.

**Case No. 2000/0528 : Unreasonably approving the re-grant of a site for use as a fee-paying public car park without public consultation or a proper assessment of the environmental nuisance involved.**

144. Please refer to Case No. 2000/0529 under the Environmental Protection Department.

## Hospital Authority (HA)

**Case No. 1999/3066 : Giving false statement in the “Certificate of a medical practitioner in support of application for removal of a patient to a mental hospital for the purpose of detention and observation” issued under the Mental Health Ordinance that the complainant had not requested to see the District Judge or Magistrate.**

145. The complainant was admitted to the Accident and Emergency Department of a hospital under HA on account of sudden acts of violence and unstable mental condition. A doctor of the hospital issued a certificate (Form 2) under the Mental Health Ordinance for his removal to another HA hospital for further assessment of his mental condition. After his eventual discharge, the complainant obtained a copy of Form 2 from the second hospital and found that the doctor had stated in Form 2 that he “had not requested to see the District Judge or Magistrate”. The complainant asserted that he simply did not know he could make such a request, and that he had never indicated that he did not wish to do so. He then lodged a complaint with The Ombudsman on 29 October 1999.

146. HA’s explanation was that the existing provisions under the Mental Health Ordinance did not impose an obligation on doctor to inform the patient of his right to see a District Judge or Magistrate, but Form 2 should indicate whether the patient had asked to exercise this right. Hence, HA had adopted the practice of not proactively informing the patient of the right to see a District Judge or Magistrate. As a matter of fact, the complainant had not made such a request.

147. The Ombudsman concluded that the doctor concerned had simply followed the general procedures of HA in sending the complainant to the mental hospital. The complaint was considered unsubstantiated. However, The Ombudsman suggested that a review of the relevant administrative measures should be conducted by the authorities concerned.

148. HA accepted The Ombudsman’s recommendations. Although section 31 of the Mental Health Ordinance and Form 2 did not contain express provisions imposing a legal obligation on doctors to inform patients of their

right to see a District Judge or Magistrate, HA's views were that as a good administrative practice, patients' rights should be made known. It was considered desirable that doctors should inform patients of their right to see a District Judge or Magistrate, and to record their requests in Form 2 accordingly. Following discussion among the authorities concerned, it was agreed between HA and the Judiciary that an arrangement should be put in place whereby the doctors should ask the patients whether they wish to see a District Judge or Magistrate as a matter of routine and the latter should interview the patients at hospitals as far as possible. The arrangements have been put into effect starting from 10 September 2001.

**Case No. 2000/1057 : Unreasonably hospitalising the complainant's daughter; failing to measure the dimensions before fabrication of his daughter's harness, giving unreasonable excuse; and failing to respond to the complainant's complaint.**

149. The complainant brought his one-month-old daughter (the patient) to a HA clinic on 3 September 1999 (Friday) and his daughter was diagnosed to be suffering from Developmental Dysphasia of Left Hip. The patient was required to be hospitalised for harness measurement and fitting, and was subsequently admitted to a HA hospital on 6 September 1999. After making the necessary measurements, a Pavlik Harness was made by the hospital's prosthetic-orthotic (P&O) staff for the patient in the afternoon. To assess whether the harness was properly made for the patient, the doctor ordered an x-ray examination which should be carried out without removing the harness from the patient. However, the doctor did not specify such a requirement in the x-ray examination request form. The x-ray examination was carried out on 7 September 1999. Without clarifying with the doctor concerned, the radiographer took the x-ray with the harness removed. As a result, a second x-ray examination was required. Arrangement was then made for the patient to have the x-ray examination at the HA clinic on 8 September 1999. The patient was discharged on that day (7 September 1999).

150. One month later, the patient returned to the HA clinic for a follow-up treatment. The attending doctor noticed that the patient's harness had been broken for three days and decided to hospitalise the patient for harness repair on the same day (8 October 1999). However, the P&O staff at the hospital

was unable to repair the patient's harness on that day due to heavy workload. The patient was subsequently granted home leave. As the repair would take about five hours to complete, the patient's mother was advised to bring the patient back to the hospital on the following day (9 October 1999) at 8:00 am. Unfortunately, the patient was brought back late to the hospital and the P&O staff did not have sufficient time to repair the harness on that day. There was no record on the exact arrival time of the patient. But according to the hospital's record, the patient did not show up as at 9:10 am. The patient was again granted home leave and arrangement was made for her to return to the hospital on the following Monday (11 October 1999) for harness repair. Being upset by such arrangement, the complainant did not bring the patient back for treatment as arranged.

151. Five months later, the complainant lodged an oral complaint with the Hospital Chief Executive on 1 March 2000 and investigations were duly launched by the hospital concerned. The complainant telephoned the Hospital Authority Head Office (HAHO) complaint hotline on 17 March 2000, complaining that the hospital had not responded to his complaint. In accordance with HA's prevailing complaint handling guidelines (i.e. all initial complaints should be referred to the hospital concerned for necessary investigation and reply), HAHO referred the complaint to the hospital. The hospital issued a reply to the complainant on 22 March 2000, which was within the time frame stipulated in HA's internal procedures (i.e. a substantive reply should be issued within one month after receiving the complaint). The complainant subsequently called the HAHO again on 12 and 20 April 2000, complaining that the hospital had failed to respond to his complaint against the radiographer and had incorrectly stated in its reply that measurement was made for the patient while the complainant was not accompanying the patient. Since these were new allegations and had to be dealt with by the hospital concerned, the HAHO referred the complaint to the hospital. The hospital issued a detailed reply to the complainant on 30 May 2000, apologising for the inconvenience caused to the patient's family. However, the reply did not address the issue of whether the measurement was made for the patient in the absence of the complainant.

152. The complainant subsequently lodged a complaint with The Ombudsman against the hospital on 17 May 2000 on the following :

- (a) unreasonably hospitalising his daughter;
- (b) failing to measure the dimensions of his daughter before making the harness, and in response to his complaint, alleged that the complainant was not accompanying his daughter when the measurement was made; and
- (c) failing to respond to his complaint on the radiographer for not following the doctor's instruction when performing the x-ray examination.

153. In its investigation, The Ombudsman considered that the hospitalisation of the complainant's daughter was not unreasonable but could have been arranged better to minimise the complainant's inconvenience. The Ombudsman also considered that there was no evidence to substantiate the complainant's allegation that measurement had not been made for the patient before making the harness. The Ombudsman however pointed out that in its reply to the complainant, the hospital stated that the complainant was not present when the measurement was made and such a statement was purely based on deduction, not on facts. As such, The Ombudsman considered that complaint points (a) and (b) were partially substantiated. Regarding point (c), The Ombudsman considered that the hospital's reply, in addressing the point regarding the radiographer not following the doctor's instruction when performing the x-ray examination, was evasive. The Ombudsman also remarked that the HAHO had not effectively followed up and monitored the complaint after referring it to the hospital. As such, The Ombudsman considered that point (c) of the complaint was substantiated.

154. HA has accepted The Ombudsman's recommendations, follow-up actions taken are as below :

- (a) the concerned Hospital Chief Executive has discussed and shared with all department heads and relevant staff at different staff forums the lessons learnt from the complaint case. At the hospital's department heads meeting held in October 2000, doctors have been requested to clearly state their specific requirements on the x-ray examination request to avoid disputes. At the staff meeting of the hospital's x-ray department held in September 2000, radio-diagnostic staff have been

reminded of the need to consult the referring clinicians on specific x-ray requirements in case of doubt. A memorandum was also issued in September 2000 to all radiographers to remind them to clarify with the referring clinicians whether immobilising devices, such as harnesses, should be removed from patients during x-ray examinations when in doubt. Radiographers were again reminded of the importance of risk and crisis management, effective communication and experience sharing among departments at the hospital's radiographers' meeting in March 2001. Continuous training programmes have also been arranged by HAHO and the hospital concerned to enhance the ability of staff in handling complaints;

- (b) the concerned Hospital Chief Executive has, on 5 June 2001, sent a letter to the complainant to apologise for failing to handle points (b) and (c) of the complaint; and
- (c) following a review on the existing complaint handling procedures within HA, the procedures of the complaint handling system have been further clarified to ensure effective complaint handling and monitoring of follow-up action in respect of cases referred to individual hospitals for investigation. These include -
  - (i) when referring complaints to individual hospitals for investigation, staff of the HAHO public complaint management section should require individual hospitals to copy to the HAHO their replies to the complainant;
  - (ii) reminders should be issued to the concerned hospitals if they fail to issue a reply to the complainant within three weeks; and
  - (iii) HAHO staff should examine the replies issued by the individual hospitals to ensure that the replies appropriately address the issues raised by the complainants.

155. Staff of the HAHO public complaint management section have been reminded of the procedures in handling complaints and referring complaints to individual hospitals.

## Housing Department (HD)

**Case No. 1999/2437 : Failing to explain to the affected residents the reason to shelve the original redevelopment planning of a public housing estate; failing to consult local residents on the proposed amendment to the original redevelopment planning; and failing to provide adequate local open space to the affected residents upon amendment of the redevelopment planning.**

156. The complainant was a resident of Ping Tin Estate, Redevelopment of Lam Tin Estate Phase 1. He alleged that HD had deviated from the original concept of design described in the Redevelopment of Lam Tin Estate paper which was submitted by HD to the former Kwun Tong District Board on 28 February 1992. In January 1998, HD shelved the original non-residential Redevelopment plan of Lam Tin Estate Phase 6 without any explanation. Subsequently, in the same year between August and November, HD decided to amend the original Redevelopment plan of Lam Tin Estate Phase 6 by building two Home Ownership Scheme (HOS) blocks on the site of the bus terminus. However, neither the former District Board nor the local residents were consulted on the new plan. In the complainant's opinion, adding HOS blocks there would affect the living density and landscape of Ping Tin Estate. Besides, he claimed that local open space was not provided to the residents of Ping Tin Estate according to the standard of 1 m<sup>2</sup> per person. He was upset with the above arrangements and lodged a complaint with The Ombudsman on 20 August 1999. After investigation, The Ombudsman concluded that the complaint was partially substantiated on the consideration that HD had not explained to the affected residents the reason to shelve the original redeveloping planning and had not consulted local residents on the proposed amendment.

157. In accordance with The Ombudsman's recommendations, the existing guidelines and procedures related to consultation with District Council had been reviewed. Branch Project Procedures Manual incorporated with the revised guidelines relating to presentation/consultation to District Council and pressure groups had also been issued for staff compliance.

**Case No. 1999/3357, 1999/3358, 1999/3359, 1999/3360 : Improper handling the complainant's earlier request for allocation of interim housing in Kwai Chung/Tsuen Wan in relation to the clearance action on their rooftop dwelling and no response to their complaint letter.**

158. The complainants are rooftop squatters in Portland Street. The Building Department issued the clearance order in October 1999. HD has arranged to rehouse the affected clearerees to Long Bin Interim Housing (IH) in Yuen Long.

159. The complainants were not satisfied with the environment and facilities in Long Bin IH, such as poor fire safety equipment, water seepage, lack of social facilities, etc. They requested to be rehoused to IH in Kwai Chung/Tsuen Wan. Their request was turned down by HD because the IH in Kwai Chung/Tsuen Wan had been reserved for rehousing the squatters affected by the clearance of Diamond Hill Squatter. The complainants alleged that the interim housing allocation arrangement was unfair.

160. The complainants sent a letter to Chairman, Hong Kong Housing Authority on 1 November 1999 and were dissatisfied that the substantive reply was only received on 7 December 1999. The complainant therefore lodged a complaint against HD with The Ombudsman. After investigation, The Ombudsman concluded that while the complaint point against interim housing allocation arrangement was not substantiated, but that against late reply to the complaint letter was partially substantiated. On the whole, this complaint was partially substantiated.

161. HD has accepted The Ombudsman's recommendations and conducted an internal review on the procedures in handling complaints. Detailed guidelines have been drawn up on the procedures of handling complaints and a bring-up system has been put into place to monitor the progress of complaints handled by subject officers.

**Case No. 2000/0346 : Refusing to re-connect the feeder cable of the complainant's flat to the common antenna broadcast distribution system of the estate after she had stopped subscribing to private television services.**

162. The complainant was a subscriber of the Hong Kong Cable Television Ltd. (HKC) years ago. She repeatedly requested HD to reconnect the feeder cable of her flat to the common antenna broadcast distribution system of the estate after she had terminated her subscription, but her request was turned down by HD. HD explained to the complainant that according to the agreement reached between the Hong Kong Housing Authority (HA) and the HKC, a tenant who stopped subscribing to HKC would not have his/her feeder cable reconnected to the common antenna broadcast distribution system of the estate, but instead, HKC would continue to provide network maintenance service to the feeder cable which was once disconnected. The complainant said that she was totally unaware of such agreement and was upset.

163. Besides, the complainant claimed that the Estate Office had never issued any notice or posted any announcement to inform the tenants of the relevant agreement between HA and HKC. The complainant blamed HD for lacking transparency in this matter and said that it took away her right of using the common antenna broadcast distribution system of the estate. She therefore lodged a complaint against HD with The Ombudsman.

164. After investigation, The Ombudsman concluded that the complaint was substantiated. HD's responses to The Ombudsman's recommendations are as follows :

(a) Notice to tenants

A notice in both English and Chinese on the content of the agreement between HA and HKC has been prepared for distribution to tenants. This will be supplemented by local publicity materials such as Estates Management Advisory Committee News to convey the same message to tenants.

(b) HA to relay tenants' complaints to HKC

The Customer Service Assistant (CSA) of HD stationed at estate office counter will act as the co-ordinator to handle tenants' complaints. He

will refer the complaints to HKC for action, or record the case for follow-up actions with HKC as necessary.

(c) Feedback to HKC on unsatisfactory performance

HD has all along appointed a Senior Building Service Engineer to specifically oversee the work of HKC. He attends regular meetings with HKC on a quarterly basis. Feedback from tenants and unsatisfactory performance including items recorded on log book kept at the estate office are discussed and dealt with at the Liaison Meeting.

**Case No. 2000/0480 : Delay in removing unauthorised structure in shop unit in public housing estate.**

165. A Community Centre (the Centre) has a plan to set up an office to launch a community support service scheme (the Scheme) at a shop unit at North Point Estate. In late September 1998, after signing a tenancy agreement with HD, the Centre applied to the Social Welfare Department (SWD) for funding to refurbish the said premises, with a view to providing service as quickly as possible. However, an unauthorised structure (the structure) was found in the shop unit. SWD then indicated that the structure had to be removed for the safety of the clients and the staff before it would consider the funding arrangement. After inspection carried out by HD, the structure was removed in June 2000. Since the demolished structure was originally earmarked for office purpose, the Centre had a need to rent the neighbouring shop as well. Unfortunately, the lease was not granted by HD. In December last year, SWD made known to the Centre that it would not subsidise the rent of the premises since the Centre was not yet able to launch its service. The Centre would only get its subvention if services were provided at the premises. Consequently the Centre had to use its raised funds for refurbishment in the hope of providing its service early.

166. The Centre accused HD of administrative malpractice for it should not let a shop unit with an unauthorised structure to the Centre. Since the Centre was unable to deliver timely service and launch the Scheme, it demanded HD to refund the rent, waive its payment of rent for the period of refurbishment and consider compensation for its loss in this incident. The Centre therefore lodged a complaint against HD with The Ombudsman. After investigation,

the complaint was considered to be partially substantiated.

167. The Ombudsman recommended that the Director of Housing should consider reviewing its work procedures for and guidelines on letting units and make improvements to ensure that before letting any unit, all the facilities including additions and alterations were checked and confirmed to be structurally safe. If the additions or alterations were to be kept, HD should state clearly in writing as for which party would be held responsible for the structural safety of those installations after the handing over of the premises so that disputes could be avoided. In response, a circular on 'Vacating Inspection for Commercial Lettings' has been issued by HD for staff compliance.

**Case No. 2000/0953 : Entering the private tenement flat of the complainant without giving a reasonable explanation and asking her young daughter to sign on documents which she did not understand.**

168. The complainant complained to The Ombudsman against HD for unauthorised entry into her property by the staff of the Clearance Unit on 19 April 2000 where only her two children were met therein. The complainant was dissatisfied to learn that HD staff had obtained an undertaking from her daughter, though the undertaking was signed by her daughter voluntarily. The Housing Manager in charge of the Clearance Unit had made a verbal apology to the complainant when the complaint was received.

169. After investigation, The Ombudsman concluded that the complaint was substantiated. HD accepted all the recommendations of The Ombudsman as follows :

- (a) an apology had been issued to the complainant; and
- (b) the existing procedures and guidelines regarding conducting visit to suspected alternative accommodation had been reviewed to provide instructions when no adult can be found in the premises and issued on 18 September 2000 for staff compliance.

## **Inland Revenue Department (IRD)**

### **Case No. 1999/3531 : Mishandling the complainant's tax assessment for 1998/99.**

170. The complainant, an overseas resident, learnt that IRD has sent him a tax return in June 1999. As he was in Hong Kong at that time, he telephoned IRD for a tax return to be sent to his Hong Kong address. However, the case officer told him that he had to notify the change of address in writing before a duplicate tax return could be issued.

171. The complainant acted accordingly and eventually filed the completed return in early August 1999. Prior to his departure from Hong Kong in early September 1999, he called the case officer twice in August 1999 to see if further information was required. On each occasion, he was promised a return call but it was not realised eventually. Finally, on the day the complainant was to leave Hong Kong, he managed to contact the case officer. He was told that his tax return and other documents previously requested by the case officer had not been received. In fact, the documents were in the case officer's in-tray but she had not been able to carry out a search due to heavy workload. When the complainant returned to his overseas residence, he found that IRD had sent him a notice of assessment. The complainant therefore lodged a complaint against IRD to The Ombudsman on 25 December 1999.

172. After investigation, The Ombudsman noted that the requirement to notify the change of address in writing was a temporary measure introduced by IRD in response to influx of such requests arising from a tax rebate announced in March 1999. However, the case officer was unaware of the withdrawal of the measure in April 1999. In this regard, The Ombudsman found that some improvements had to be introduced to reinforce the communication system. As regards the case officer, The Ombudsman found that due to her brief experience on the job, she had failed to handle the complainant's enquiries in a professional and caring manner. The complaint was concluded as substantiated.

173. Pursuant to The Ombudsman's recommendations, IRD had taken the following remedial measures :

- (a) IRD had written to the complainant on 21 February 2000 to explain the matter and tender an apology;
- (b) the supervisor of the case officer had interviewed her and given her proper guidance in handling similar situation; and
- (c) IRD's section leaders and supervising assessors had been reminded of the need to give adequate coaching and assistance to inexperienced officers.

174. Besides, The Ombudsman noted that the decision to withdraw the temporary measure was only circulated to senior staff via internal e-mail. The Ombudsman opined that important changes in policies and procedures affecting taxpayers should be brought to the attention of all frontline staff before their implementation. In the present case, the method of notification had proved to be inadequate. The Ombudsman recommended IRD to devise suitable means to ensure that changes in policies and procedures are brought to the attention of all relevant staff concerned in a timely manner. In this regard, IRD will in future keep all staff concerned informed of changes in policies and procedures well in advance through the issue of internal circulars.

**Case No. 2000/0159: Making the same mistake for two consecutive years of tax assessment.**

175. In February 1999, the complainant objected to a salaries tax assessment for the year of assessment 1997/98. IRD found that the assessment was automatically generated by the computer assessing system. Such assessment was based on the information returned by a company about having paid salaries to a person who bears the same name and identity card number as the complainant. The complainant had however previously lost her identity card and declared that she had not been employed by the company. After investigation, IRD believed that the person employed by the company had made use of the complainant's lost identity card. IRD therefore annulled the assessment. IRD subsequently adopted a series of measures to prevent similar mistakes from being made in future salaries tax assessments of the complainant, including the exclusion of the complainant from computer-issued

automatic assessment.

176. In the following year of assessment, the same company again reported income paid to the complainant. The computer assessing system this time generated an income discrepancy slip for the assessing staff to follow up. An income discrepancy slip will be generated whenever the income reported by an employee differs from that appeared in the employer's return. Despite the above measures to ensure special treatment of the complainant's case in place, the staff issued a manual notice of additional assessment due to oversight. The assessment was later annulled by IRD. The complainant lodged a complaint with The Ombudsman on 18 January 2000. After investigation, The Ombudsman found that this case involved negligence on the part of IRD staff, the complaint was therefore substantiated.

177. In response to The Ombudsman's recommendations, IRD had corrected the mistake, apologised to the complainant, reminded the staff about the procedures for handling similar cases and would review the relevant departmental circulars. Subsequently, IRD completed a review of the departmental circulars and issued a circular to strengthen the procedures for handling similar cases. Specifically, the relevant officers have been advised to verify the accuracy and validity of the information provided by both the employer and the impostor when handling such cases.

**Case No. 2000/1166 : Being unfair in processing the complainant's application for deduction of uniform and equipment maintenance expenses for uniformed officers; and failing to reply to the complainant's enquiry about the reasons for refusal.**

178. On 26 November 1999, the complainant objected to a salaries tax assessment for the year of assessment 1998/99 and requested to hold over her tax payment, on the ground that her claim for deduction of uniform and equipment maintenance expenses was disallowed. On receipt of the complainant's notice of objection, IRD issued an acknowledgement letter on 29 November 1999. On 4 January 2000, IRD wrote to inform the complainant that her request for tax holdover was rejected. In a letter of 31 January 2000, IRD gave the reasons for disallowing her deduction claim, and requesting for further information and supporting documentary evidence if she

decided not to withdraw the objection. In March and June 2000, IRD wrote to the complainant to inform her of the progress of the case. IRD confirmed with the complainant's employer, a government department, that the complainant was not required to wear uniform while on duty during the year of assessment 1998/99. Hence, the maintenance expenses incurred by the complainant could not be allowed under section 12(1)(a) of the Inland Revenue Ordinance. Subsequently, a determination was issued on 29 June 2000 confirming the assessment in question. The complainant was also advised of the right of appeal to the Board of Review under the Inland Revenue Ordinance. The above notwithstanding, the complainant lodged a complaint with The Ombudsman against IRD on 23 May 2000.

179. For administrative convenience, it has been a practice of IRD to issue annual circular letter to government departments announcing that a flat rate expense deduction will be allowed without the need for evidence to cover uniform and equipment maintenance claims by uniformed officers. In fact, an officer who is eligible and wishes to claim such a flat rate deduction must state the claimed amount in his/her tax return. It is stated on the tax return that "Documentary evidence need NOT be submitted but should be retained for future examination". The Ombudsman found that it was not improper for IRD to request for documentary evidence from the complainant in the present case.

180. In addition, The Ombudsman found the complaint with respect to the delay in handling objection was unsubstantiated as IRD had given timely responses in accordance with the standards set out in its performance pledges to the complainant. On the whole, the complaint was unsubstantiated.

181. The Ombudsman noticed that the government department, which employed the complainant, received enquiries from its staff and wrote to IRD to seek clarification about the deduction of uniform and equipment maintenance expenses, such as whether or not the flat rate deduction applies to officers who are not compulsorily required to wear uniform while on daily duty, and the requirement to submit payment receipts, etc., which are similar to the complainant's queries. In this regard, The Ombudsman found that there were doubts among some officers on the qualifying conditions for claiming the relevant expenses. The Ombudsman recommended IRD to review the circular letter and clarify the details so as to avoid the recurrence of similar

misunderstanding. Subsequently, IRD had suitably amended the circular letter and issued the revised letter to all concerned government departments.

## **Lands Department (Lands D)**

### **Case No. 1999/0114 : Failing to clear the unauthorised business stalls in a bazaar according to schedule.**

182. Please refer to Case No. 1999/0113 under the Home Affairs Department.

### **Case No. 2000/0749 : Failing to act in accordance with the laid down procedures for land resumption.**

183. The complainant was one of the co-owners of a Lot in D.D. Peng Chau (the Lot), a portion of which was resumed for a road project under the Roads (Works, Use and Compensation) Ordinance.

184. On 24 February 1999, the District Lands Officer/Islands (DLO/Islands) of Lands D informed the complainant in writing of the resumption of a portion of the Lot, and that G.N.5597 dated 19 November 1998 had been affixed near the Lot. The land, including a portion of the Lot, had been reverted to the Government on 20 February 1999. The complainant was asked to submit a claim to the Secretary for Transport for compensation for the resumption of his land.

185. The complainant wrote to DLO/Islands on 25 February 1999, raising objection to the road project on environmental and “fung shui” grounds and asked DLO/Islands to provide him with the scheme plan annexed to G.N.5597 and asked for justification of including his house in the road project.

186. DLO/Islands replied to the complainant on 5 March 1999 that his belated objection could not be entertained because the road project, which had been gazetted in March 1997 under G.N.1178, had been authorised by the Chief Executive in Council in July 1998 under G.N.3664.

187. The complainant lodged a complaint with the Legislative Council Secretariat on 19 March 1999 against DLO/Islands for excessive resumption of his land. Lands D replied to the complainant on 15 April 1999, explaining

that the land resumed from him would be used for slope stabilisation works as part of the road project.

188. Dissatisfied with the explanation, the complainant wrote to different organisations between March 1999 and May 2000, alleging excessive resumption of his land, land resumption without site investigation and non-compliance with the legal procedure in posting the land resumption notices at prominent positions. He also demanded the Government to reduce the area to be resumed from his land and to return the land to him after completion of the road project. On 4 April 2000, the complainant lodged a complaint with The Ombudsman who decided to conduct an investigation into the complaint on 4 July 2000.

189. After investigation, The Ombudsman concluded that on the whole, the complaint was unsubstantiated.

190. As a related issue, the complainant's family members claimed that the resumption of their land at the Lot and an adjacent lot owned by the complainant would result in demolition of their kitchens and toilets and would cause hardship to their family. DLO/Islands advised that the affected kitchen and toilet facilities were within the "non-building area" of the adjacent lot and were built without approval. An investigation officer of The Ombudsman visited the site and observed that kitchen and toilet facilities were available inside the complainant's house but not on the adjacent lot where the complainant's parents were living. The demolition of these facilities would cause inconvenience to them.

191. In response to The Ombudsman's recommendations, Lands D indicated no objection to the self-reinstatement of the affected facilities within the building on the adjacent lot if the complainant so wished, provided that the relevant special conditions of New Grant 4980 under which the Lot is held are complied with.

192. Subsequently the site had already been cleared and handed over to the project department on 3 January 2001 for the road project. Written proposal by DLO/Islands for self-reinstatement of a kitchen and a toilet within the adjacent lot by way of lease modification or short-term waiver at fees was sent to the complainant on 1 March 2001 with various reminders subsequent. No

response has so far been received from the complainant.

**Case No. 2000/0869 : Improper handling of an application for small house grant.**

193. The complainant applied to the District Lands Office/Yuen Long (DLO/YL) for a small house grant in April 1994. In April 1998, he was requested by DLO/YL to make a statutory declaration in support of the application.

194. DLO/YL discovered in May 1998 that the complainant's proposed small house site fell within the "Prohibited Area" (PA) of a proposed road project (any site proposed for small house development within 30.48 metres from known resumption/clearance limits would not be considered). DLO/YL had tried to obtain confirmation of the resumption limits from Highways Department since consideration might be given to approve applications for small house grants within a PA if the land resumption/clearance boundaries had been finalised.

195. Due to conflicting local views, the proposed road alignments could not be finalised. As a result, DLO/YL was only able to advise the complainant of the prohibition area restriction and reject his small house application on 13 March 2000, some two years after the implications of the road project were known. The complainant therefore complained to The Ombudsman on 24 April 2000 against Lands D for the improper handling of his application.

196. After investigation, The Ombudsman concluded that the complaint was partially substantiated. Lands D agreed with The Ombudsman's recommendations. A letter of apology has been sent to the complainant and DLO/YL has been asked to process the small house grant application as quickly as possible.

**Case No. 2000/1424 : Failing to take proper enforcement action against unauthorised canopy extensions, and unauthorised vehicular entry to and parking along a footpath.**

197. The complainant complained on 24 June 2000 various Government Departments' inaction against illegal canopies in Tui Min Hoi Village, Sai Kung on 24 June 2000. He also complained against the unauthorised entry by vehicles and parking along a public footpath, and also the debris and old furniture disposed on site. After investigation, The Ombudsman considered that the complaint against Lands D was partially substantiated.

198. The existing unclear delineation of responsibility between Lands D and Housing Department contributed to the delay in clearance. A joint operation initiated by District Lands Office/Sai Kung to clear the illegal structures, to deal with the illegal erection of two bollards at the entrance to the access road, and the removal of the debris and furniture was eventually conducted on 15 August 2000.

199. In response to The Ombudsman's recommendations, follow-up actions have been taken as below :

- (a) the Administration is considering the question of responsibility for squatter control, which, when fully implemented will eliminate the current grey areas in departmental responsibilities. Lands D will take a lead responsibility for joint clearance operations as far as possible; and
- (b) all District Lands Officers have been required to conduct regular reviews of land control cases to set priorities.

**Case No. 2000/2179 : Failing to consult affected residents, conduct site inspections and assessment before undertaking a road project; removing private installations without owner's consent and not giving assurances on the slope stability and maintenance upon completion of the road project.**

200. Please refer to Case No. 2000/2178 under the Highways Department.

**Case No. 2000/2715 : Delay in processing the complainant's application for a short-term tenancy to build a garden outside his house.**

201. On 17 February 1992, the complainant applied to District Lands Office/Tai Po (DLO/TP) for a Short Term Tenancy (STT) for building a garden outside his house. He claimed that staff of DLO/TP subsequently conducted a site inspection and verbally agreed to the site boundary of his application. He alleged there was no further response to his application and each time he telephoned DLO/TP, DLO/TP staff simply informed him that his application was being processed. It was not until August 2000 that he was offered the STT by DLO/TP. However, he declined the offer because he was dissatisfied with the amount of rental being demanded and the backdating of the STT offer for two years. The Ombudsman received the complaint against Lands D in respect of the delay in processing the application of the STT on 25 October 2000.

202. The Ombudsman noted the chronology of the events pertaining to this complaint in the course of investigation. She considered it rather strange for DLO/TP to inform the applicant by a standard letter on 17 February 1998, six years after the application that the application had to wait its turn for processing due to the heavy backlog. The Ombudsman considered that if DLO/TP had been unable to process the complainant's application due to manpower constraint, it should have informed him at a much earlier date. The Ombudsman concluded that the complaint was substantiated.

203. The Ombudsman recommended to Lands D to remind his staff of the need to respond to public enquiries promptly; the merit of notifying STT applicants of the estimated processing time and the reason(s) therefore if their applications could not be finalised within a reasonable time; and the need to conduct periodical review on outstanding cases to ensure that no cases have been left unattended or simply overlooked.

204. Lands D accepted The Ombudsman's recommendations and issued instructions to remind the staff to respond to enquiries promptly. Besides, DLO/TP has also set up regular review meetings on Short Term Tenancy/Short Term Waiver cases.

**Case No. 2000/2836 : Delay in releasing compensation for land resumption.**

205. A portion of a Lot (the Lot) was resumed under the Roads (Works, Use and Compensation) Ordinance in 1996 for implementation of a road widening project. All the lots affected by the project were reverted to the Government on 1 March 1996.

206. The complainant disputed on 3 September 1996 the area resumed. The complainant's company maintained that the area resumed should be 377.9m<sup>2</sup> instead 291.7 m<sup>2</sup> as mentioned in the offer letter. After investigation into the matter, District Lands Officer/North (DLO/N) informed the complainant on 24 March 1997 that the claim for additional land compensation would be processed because of the area discrepancy detected. A fresh offer letter dated 22 January 1998 covering land compensation of \$954,963 for the resumption of 377.9 m<sup>2</sup> (4,068 ft<sup>2</sup>) at \$234.75 per ft<sup>2</sup> was made to the complainant. The complainant wrote on 2 February 1998 to DLO/N and accepted the offer in full and the final settlement of all claims with respect to the Lot resumed.

207. Provisional payment of \$737,115 was released to the complainant on 23 November 1999 by DLO/N who needed to rectify the area of the Lot shown on the resumption plan before the compensation money for the extra area could be paid. Unfortunately, according to advice received from the Department of Justice on 21 August 2000, the compensation for the extra land of 86.2 m<sup>2</sup> should be dealt with by inviting the complainant to voluntarily surrender the land to the Government. On 25 October 2000, Lands D decided that the surrender should be proceeded with and the compensation should be based on the rate current at the date of surrender, without payment of interest. The complainant complained to The Ombudsman on 10 November 2000 against the delayed payment of land compensation for the Lot resumed.

208. Recent legal advice was that the Government was now contractually committed to pay compensation based on the rates offered above (i.e. \$234.75 per ft<sup>2</sup>). DLO/N, upon approval from Lands D Headquarters, released on 27 March 2001 the outstanding balance of land compensation immediately upon execution of a Surrender Deed by the complainant for the surrender of the extra land in question, i.e. 86.2m<sup>2</sup>.

209. The Ombudsman concluded that the complaint was substantiated. In pursuance to The Ombudsman's recommendations, Lands D has reviewed New Territories District Lands Offices' current land compensation procedures and has prepared draft guidelines to prevent the recurrence of a similar situation. Once the New Territories' District Lands Office have been consulted on the draft guidelines, they will be incorporated into the Lands Administration Office Land Instructions of Lands D Headquarters.

## Legal Aid Department (LAD)

**Case No. 1999/3361 : Mishandling the complainant's legal aid case; unreasonably refusing the complainant's request for change of assigned solicitors; and not discontinuing the legal proceedings after discharging the legal aid certificate and not notifying the complainant that he had to make his own request to the Court if he wished to discontinue the proceedings.**

210. Subsequent to his injury sustained whilst on duty, the complainant was invalidated from the Correctional Services Department (CSD). He was granted legal aid in 1994 for his Employees' Compensation Claim (ECC). On 27 April 1998, the complainant's application for legal aid to challenge the decision of the Commissioner for Correctional Services to invalidate him was refused for lack of merits. He appealed to the Registrar of the High Court against the refusal. On 26 June 1998, his legal aid appeal was allowed but limited to obtaining counsel's opinion on merits of his application for judicial review (JR).

211. On 15 July 1998, the complainant requested LAD to assign the lawyer he preferred to handle his JR case. In view of the lawyer's apparent lack of experience in JR case, the handling Legal Aid Counsel (LAC) explained to the complainant the position and suggested the case be assigned to the same solicitor who had been handling his ECC. However, the complainant insisted on having his case assigned to the solicitor he preferred. Upon LAD's request to acknowledge the above in writing, the complainant wrote on 27 July 1998 to nominate, instead of the lawyer he originally preferred, the solicitor recommended by LAD.

212. On 28 July 1998, his case was assigned to a solicitor and a counsel was also assigned accordingly. Upon the counsel's advice, the complainant's legal aid certificate was extended to enable him to apply for leave for JR. Leave for JR was later granted. On 25 January 1999, the assigned solicitor (A/S) informed the complainant that the hearing of the JR would be held on 31 May and 1 June 1999.

213. After examining the Affirmation filed by CSD subsequent to the grant of leave, the assigned counsel took the view that it was the complainant's own

decision not to respond to Government's offer of alternative employment; hence there would be no reasonable ground to proceed with the JR. The A/S then attempted to reach a settlement with the Department of Justice (D of J) to discontinue the JR application with no order as to costs. However, the complainant refused to agree to such course of action. On 19 February 1999, he signed to signify that whilst understanding the advice given by counsel, he did not accept the course of action suggested by the A/S.

214. On 24 March 1999, the A/S wrote to reiterate the advice given by counsel and remind the complainant of the possible discharge of his legal aid certificate if he insisted on the JR proceedings. In addition, the A/S informed the complainant that even without legal aid, he might proceed with the case by himself but in case he failed, he would have to pay the opposite party's costs.

215. Later, LAD sent a registered letter inviting the complainant to attend an interview to show cause as to why his legal aid certificate should not be discharged. The letter was returned unclaimed. On 21 April 1999, LAD discharged the complainant's legal aid because of, amongst other reasons, lack of reasonable grounds in continuing with the proceedings. A Notice of Discharge was sent to the complainant by registered mail, but was also unclaimed by the complainant. The Notice of Discharge was also filed with the court. The A/S also wrote to inform the complainant of the discharge and that the A/S could no longer provide legal service to him.

216. On 3 May 1999, the handling LAC met the complainant and explained to him the reasons why his legal aid certificate was discharged and tendered him a copy of the Notice of Discharge. Paragraph six of the Notice specified that if the complainant wished to continue the proceedings without a solicitor he should so inform the Court or otherwise he might not receive any notices relating to his case. On the same date the complainant made an appeal against the discharge and his appeal was dismissed on 26 May 1999.

217. On 31 May 1999, the complainant failed to attend the hearing of his JR. On the same day, the Court of First Instance (CFI) dismissed his application for JR. Later, the complainant filed an appeal to the Court of Appeal against the CFI's decision and the appeal was dismissed on 13 January 2000.

218. On 16 December 1999, the complainant lodged a complaint with The Ombudsman in respect of the following :

- (a) LAD and the A/S did not handle his case properly and the A/S also charged him unreasonably, for example on the professional fees for medical assessment and photocopying;
- (b) LAD refused unreasonably to assign the lawyer he preferred; and
- (c) LAD failed to discontinue his JR proceedings after discharging his legal aid certificate. He was not informed of the trial dates and the need to discontinue the proceedings, hence making him liable to D of J's order of costs.

219. After investigation, The Ombudsman on 25 August 2000 wrote to the complainant that the complaint was not substantiated. The complainant wrote to disagree The Ombudsman's conclusion on 19 September 2000. After further investigation, The Ombudsman maintained the conclusion.

220. The Ombudsman noted that the Notice of Discharge only states "If proceedings are in progress and you wish to continue without a Solicitor you should so inform the court or otherwise you may not receive any notices relating to your case." To avoid any misunderstanding and unnecessary disputes, The Ombudsman has recommended that LAD should write to remind the aided person that if he does not wish to continue the litigation, the aided person should notify the court himself. Concerning this recommendation, LAD's Work Improvement Team on Printed Forms (WITPF) did not think it advisable to pursue the same. This is because in cases where the former aided person is the plaintiff in the proceedings (similar to the case in question), any attempt by him to discontinue the proceedings may prompt the opposite party to seek an adverse costs order against him. The Ombudsman has been informed of the WITPF's decision and did not seek any further action from LAD but considered that the recommendation has been implemented.

221. Besides, in response to The Ombudsman's recommendations, LAD had also written to the D of J on 11 August 2000, requesting a waiver of legal costs which the complainant was liable to pay.

## Office of the Telecommunications Authority (OFTA)

### **Case No. 2000/1992(I) : Failing to follow the provisions of the Code on Access to Information in handling the complainant's request for information.**

222. OFTA received a press enquiry on 8 June 2000, requesting for information of the locations of all mobile radiotelephone base stations in Hong Kong under the Code on Access to Information (the Code). OFTA replied to the reporter on 16 June 2000 turning down her request as the information requested was provided by third parties and it was considered to be “commercially confidential”.

223. OFTA considered that the information should be classified as “commercially confidential” because in a similar case (even though this request was not filed under the Code) which the department had handled in October 1999 (i.e. some eight months earlier), OFTA had written to the mobile operators asking for their views and the mobile operators unanimously advised OFTA that the information concerned should be regarded as confidential and it should not be released to third parties.

224. The reporter subsequently filed a complaint with The Ombudsman on 9 August 2000 expressing her dissatisfaction with OFTA's reply. The Ombudsman issued an investigation report on 10 February 2001, concluding that the complaint was partially substantiated for the following reasons :

- (a) the Code Officer had failed to comply with paragraph 2.1.2 of the Guidelines to the Code. This paragraph requires that, in the circumstance that the information enquired is determined not to be disclosed, the administration concerned should -
  - (i) explain the reasons in detail and quote the relevant paragraphs in the Guidelines;
  - (ii) to inform the enquirer the channels available for reviewing the case; and

- (iii) the option for the enquirer to file his/her complaint with The Ombudsman.
- (b) the internal circular of OFTA on the administrative procedures for the Code had not been updated; and
- (c) as the previous request was not filed under the Code, according to the procedures, OFTA should have approached the mobile operators again to determine whether they would take a different view regarding the information under request.

225. Based on the recommendations of The Ombudsman, OFTA has taken the following actions :

- (a) letters were sent to the six mobile network operators on 3 March 2001 seeking their views on the disclosure of the relevant information. In response, all the mobile operators objected to the disclosure of the information which they considered to be confidential in nature. A reply was given to the reporter on 10 April 2001;
- (b) a memo was sent to the Secretary for Home Affairs (SHA) on 22 February 2001, asking for his clarification of the expression “clear and overwhelming” in paragraph 2.16.5(a) of the Guidelines to the Code. Paragraph 2.16.5(a) provides that “where a request is received for information which includes confidential business information, the procedures set out (*elsewhere in the Code*) should be followed to obtain the consent of the relevant third party, unless the case for confidentiality is clear and overwhelming”. SHA advised that he would directly approach the Office of The Ombudsman regarding this matter in his memo (ref. S/F(4) in HAB/CR/1/34/33) dated 3 April 2001. As SHA had taken up the matter directly with The Ombudsman, OFTA did not take any further actions in this matter; and
- (c) the departmental circular of the administrative procedures for the Code has been updated. The circular will also be updated on a regular basis.

## Official Receiver's Officer (ORO)

### **Case No. 1999/2930 : Not counting Saturdays as working time needed to process search applications.**

226. On 4 October 1999, the complainant lodged a complaint with The Ombudsman against ORO, claiming that ORO failed to include the half working day on Saturday in its handling of request for search of companies winding-up/bankruptcy records, thus causing a delay in the issue of search results. The complainant was also not satisfied with ORO concerning the need of one working day in processing search requests.

227. According to ORO's Performance Pledge made in 1994, if a search application was made in person, the search report would be issued within one working day. However, the pledge was only applicable from Monday to Friday, excluding Saturday. ORO explained that the target set at that time was to handle an average of 150 applications daily. In 1999, the number of search applications handled daily by ORO increased to 400. ORO added that owing to the implementation of the "Alternate Saturday Off" system, only half of the staff worked on Saturday. As ORO had to deploy staff to provide counter services, Saturday was not counted as a working day for handling search applications.

228. The Ombudsman was not satisfied with ORO's explanations. The Ombudsman pointed out that according to Section 546(1)(b)(i) of the Civil Service Regulations, a department head could alter the actual working hours of his/her subordinates at discretion. However, while pondering alterations, a department head must ensure that the said alterations would in no way affect the services provided to the public. Hence, The Ombudsman considered that ORO should not use the above excuse to refrain from improving the quality of service for search applications on Saturday.

229. ORO further explained that the need for one whole day to handle search applications was due to the lack of manpower and that its computer system was unable to cope with the demand of its daily operations. Having observed a mock search demonstration, staff of The Office of the Ombudsman expressed that in processing the search applications, certain specific words

termed as remarks depended heavily on manual work in the input. These words were often used but were not automatically provided by the computer system as appropriate selected items. They found the operation both backward and time-consuming. In response, ORO pointed out that they submitted a formal request in accordance with the procedures laid down by the Government to upgrade the functions of its computer system in April 1994. It had taken more than four years, i.e. until 1999 that the upgrading work of its computer system was implemented. The Ombudsman considered that had ORO taken a more positive approach in making a bid for enhancing its computer system as early as possible, the complaint might have been avoided.

230. The Ombudsman concluded that ORO could not shirk its responsibility and that the complaint was substantiated.

231. With regard to The Ombudsman's recommendations, ORO has implemented the following improvement measures from 28 August 2000 :

- (a) two computer terminals have been installed at ORO's Public Enquiry Counter for members of the public to submit search applications. Search reports will be available within one hour after payment of the search fee;
- (b) if members of the public choose to fill in the forms for making search requests, search reports will be available within three hours after payment of the search fee;
- (c) the related items in ORO's Performance Pledge have been amended so as to reflect the targets of improved and new services; and
- (d) search and counter services have been provided during lunch hours of Monday to Friday.

232. In addition, a feasibility study on the provision of electronic searches has recently been completed. The results of the study indicate that it is feasible to provide an online search service via the Government's Electronic Services Delivery Scheme. Application will soon be made for necessary funds to implement the proposed project.

**Case No. 2000/0190 : Failing to handle the complainant's written and telephone enquiries properly and delay in processing the winding-up procedures.**

233. The complainant was a former employee of a company (the Company). The Company was ordered to be wound-up by the court on 14 July 1999, and the Official Receiver was subsequently appointed the liquidator of the Company. Under the then "contracting-out scheme" of ORO for contracting out summary winding-up cases to be conducted by private sector insolvency practitioners, an agent company (the Agent) was appointed as agent of the Official Receiver on 14 July 1999 to undertake most of the duties to be performed by the Official Receiver and liquidator of the Company.

234. The complainant claimed to be owed outstanding wages and severance payment totalling about \$110,000 by the Company, and made an application to the Protection of Wages on Insolvency Fund Board for ex-gratia payment in respect of the monies so owed to him. However, at that time there was a pending High Court Action brought by the Company against the complainant and several other former employees of the Company for their involvement in an incident of unlawful withdrawal/misappropriation of the Company's funds. The complainant was stated to have taken \$40,000 from the Company funds. The Insolvency Fund Board then took the stance of temporarily withholding the processing of the complainant's application until the said High Court Action was resolved.

235. On 27 October 1999, the complainant sent a fax to ORO setting out the Insolvency Fund Board's stance on his application. He asked ORO to make an early decision on whether or not to proceed further with the said High Court Action, and if the decision was not to proceed further, it would enable him to receive the ex-gratia payment by the Insolvency Fund Board.

236. A Senior Insolvency Officer was the case officer of ORO responsible for this case. In response to the complainant's fax of 27 October 1999 aforesaid, the Officer rang him up about three days later and explained to him that all the affairs of the Company, including the conduct of the said High Court Action, would be attended to by the Agent. The complainant was advised to contact the Agent for enquiry regarding the said High Court Action. The Officer also forwarded the complainant's fax to the Agent by fax on 12

November 1999 for his information, then spoke to the responsible officer of the Agent over the phone and asked him to reply to the complainant's enquiry. Thereafter, the complainant made several follow-up telephone enquiries to the Officer about the progress of the matter, and each time he was advised that he should contact the Agent who was the party having actual knowledge of the matter.

237. The complainant was not satisfied with the manner in which his enquiries were being handled, and consequently made a complaint to The Ombudsman on 21 January 2000. After investigation, The Ombudsman concluded that the complaint was partially substantiated.

238. ORO has responded to The Ombudsman's recommendations as follows :

- (a) a written apology was sent to the complainant on 17 October 2000;
- (b) a circular was issued on 6 November 2000 to all Insolvency Officers, advising them of the appropriate approach in answering enquiries in company winding-up cases which are handled by the Office's agents under the contracting-out scheme. The Insolvency Officers should be personally responsible for collecting the necessary information from the agents to answer the enquiries;
- (c) ORO has circulated for the reference of all its staff, who are required to handle departmental in-coming and out-going documents, the papers containing the principles and guidelines for proper file management issued by the Government Records Service Division. At the same time, arrangement has been made with the Government Records Service Director for training talks on the handling of departmental in-coming and out-going documents to be given to those staff;
- (d) ORO's General Circular No. 4/99 on the subject of "Office Procedures: Correspondence" will be circulated to staff every six months, so as to remind them of the need to deal with correspondence within the Government or with outside bodies expeditiously; and

- (e) in strengthening the monitoring of the progress and efficiency of case handling, ORO has the following pledges included in its Performance Pledge for the year 2000-2001 -
  - (i) to make a distribution of dividend or interim dividend within nine months from the date when the distribution is possible; and
  - (ii) to put summary cases (i.e. cases with insufficient assets for any distribution) on release programme within 12 months.

**Case No. 2000/1651 : Delay in handling a company's winding-up case; and failing to give a definite reply to the complainant's enquiry on the progress of the case.**

239. The complainant was one of the directors and shareholders of a company (the Company). She complained to The Ombudsman on 12 July 2000 that :

- (a) ORO delayed in handling the case concerning the winding-up of the Company; and
- (b) ORO failed to give a definite reply to her enquiry on the progress of the case.

240. At the end of 1995, the complainant through her solicitors presented a winding-up petition against the Company. On 24 January 1996, the High Court made a winding-up order against the Company. The complainant on 15 May 1996 submitted to ORO her statement of the Company's affairs, which had been prepared by her accountant from the incomplete records of accounts. The complainant claimed that she was advised by the Insolvency Officer (Officer A) in charge of the liquidation case that the winding-up of the Company would be completed by 1997. She further claimed that during the period from 1996 to 1999, she made several telephone inquiries to Officer A about the progress of the winding-up. Each time, she was told that as one of the directors had not submitted the statement of affairs, the case could not be concluded.

241. The complainant also claimed that in or about mid-1999 she telephoned Officer A. She was told that Officer A was on sick leave and that another Insolvency Officer (Officer B) was handling the case in Officer A's absence. She then telephoned Officer B who told her that he had to go through the files before giving her an answer. She claimed that she had never received a definite reply from Officer B. On 24 May 2000, the complainant telephoned Officer A again but was told that he was taking his pre-retirement leave. The complainant was disappointed at ORO's failure to give her a firm reply on the progress of the winding-up case.

242. After investigation, The Ombudsman has found that complaint point (a) was substantiated because there has been delay on the part of ORO due to the frequent sick leave taken by Officer A but that point (b) was not substantiated. The complaint was therefore concluded as partially substantiated.

243. ORO has responded to The Ombudsman's recommendations as follows :

- (a) ORO has reminded case officers again to take notes regarding telephone conversations and record matters which would require follow-up actions;
- (b) to prevent the recurrence of the situation referred to in the complaint, ORO has put in place the following new arrangement for monitoring the progress of the cases of the Insolvency Officer (IO) taking long leave -
  - (i) for leave exceeding one month, both the supervising IO and the acting/sharing IOs are jointly responsible for monitoring the progress of the cases of the IO on leave;
  - (ii) IOs taking leave of over 14 days are required to prepare and provide handover notes covering all his cases and a list of urgent matters concerning his cases for the attention of the supervising IO and the acting/sharing IOs; and
  - (iii) for leave of 14 days or less, the IO taking leave is required to provide brief notes of the urgent matters concerning his cases for

the attention of his supervising IO and the acting/sharing IOs.

- (c) there are many external factors affecting completion of a non-summary case. However, ORO and the Hong Kong Society of Accountants have jointly set up procedures for contracting out non-summary cases, termed ORO's Administrative Panel A Scheme, in May 1996. Under the Scheme, private insolvency practitioners will be appointed liquidators of all contracted out non-summary winding-up cases and be responsible for completion of such cases in accordance with the winding-up provisions of the Companies Ordinance. Private liquidators are also required to submit half-yearly accounts to ORO for examination under section 203 of the Companies Ordinance and are subject to supervision by ORO under section 204 of the Companies Ordinance.

## Planning Department (Plan D)

### **Case No. 2000/2071 : Failing to consult local residents on a proposal to rezone an area for use as petrol filling station.**

244. The complaint was received via The Ombudsman on 28 September 2000. The subject Petrol Filling Station (PFS), located adjacent to Full Silver Garden, was originally zoned “Agriculture” and “Village Type Development” on the draft Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/1. Upon consideration of an objection under section 6(3) of the Town Planning Ordinance (the Ordinance) in February 1997, the Town Planning Board (the Board) decided to rezone the site to “Other Specified Annotated Uses “Petrol Filling Station”. (“OU(PFS)”) to meet the objection. According to section 6(7) of the Ordinance, when the Board decides to make an amendment to a draft plan to meet an objection and the amendment appears to affect any land, other than that of the objector, held under lease, tenancy or permit from the Government for a term exceeding five years, the Board shall give notice to the owner of the land in question by service, advertisement or otherwise as it deems desirable and practicable. The affected land owner(s) may object to the proposed amendment within the 14-day statutory exhibition period. Under section 6(8) of the Ordinance, any further objection against the proposed amendment will be heard by the Board and the Board shall decide whether to make any further amendment to the draft plan to meet the further objection. The notice of the rezoning of the subject site to “OU(PFS)” was duly gazetted under section 6(7) of the Ordinance on 20 November 1998. The zoning amendment was also displayed at the Secretariat of the Board, the Tuen Mun/Yuen Long District Planning Office (TMYL/DPO), and the District Office/Yuen Long (DO/YL).

245. In January 1999, the amendment was confirmed to form part of the draft OZP as no further objection under section 6(8) of the Ordinance to the proposed rezoning was received during its statutory notification period. On 26 October 1999, the Chief Executive in Council under section 9(1)(a) of the Ordinance approved the draft Kam Tin South OZP.

246. The complainants learned that the site had been rezoned for use as a PFS. They were very concerned about the environmental nuisances that

might be caused by the proposed PFS. It was alleged that neither Plan D nor Home Affairs Department (HAD) had consulted or informed residents of Full Silver Garden of the Board's decision, and as a result, the residents were deprived of an opportunity to submit their representations to the Board before the rezoning proposal was adopted. Feeling aggrieved, they lodged a complaint with The Ombudsman in August 2000.

247. During the investigation of the case by The Ombudsman, it was revealed that in the Board's Paper No. 4920 dated 6 November 1998 seeking the Board's agreement to exhibit proposed amendments to the draft Kam Tin South OZP No. S/YL-KTS/1 to meet objections, it was stated that the notice of the proposed amendments would be displayed at the Secretariat of the Board, TMYL/DPO, DO/YL as well as the Pat Heung Rural Committee (PHRC). However, upon the gazetting of the proposed amendments, the display of the notice at PHRC had been inadvertently missed out.

248. The Ombudsman concluded that the complaint against Plan D was substantiated, mainly on the following grounds :

- (a) the requirements under section 6(7) of the Ordinance were not complied with in full as the notice had not been displayed at the PHRC as decided by the Board;
- (b) there was no attempt to notify the objecting local organisations (including non-landowning local residents) of the Board's decision either directly or through DO/YL; and
- (c) The Ombudsman also considered that Plan D had not provided a thorough assessment of the situation to the Board when processing the rezoning proposal of the subject site.

249. In respect of The Ombudsman's recommendations, Plan D's responses were as follows :

- (a) ensure the accuracy of the assessment of local response and opinions in Plan D's future submission to the Board

Plan D will continue to ensure the thoroughness and accuracy of the

information and assessment contained in the Board's submissions. The Government is committed to taking public opinion into consideration when formulating policies and programmes. For statutory plans, public consultation normally takes place during the plan exhibition period and in the subject case, the Board had taken into account comments from relevant Government departments, the objector's proposal and local views on the objection as well as the findings of the land use review of the area.

In this case, the adverse comments/objection raised by the PHRC and Village Representatives against the proposed rezoning for PFS development had been conveyed by DO/YL to Plan D. These comments had been incorporated in the relevant paper submitted to the Board for consideration. Therefore, the Board was well aware of local views before making a decision to propose amendment to the draft Kam Tin South OZP.

There is an established channel to collect public opinions on development proposals through HAD and the respective District Officer. HAD and the respective District Officer provide an important bridge between the Board and local people by soliciting and reflecting local views. Since 1999, a number of administrative measures (detailed description see point (c) below) have been initiated to improve the notification procedures and dissemination of information regarding the Board's decision.

- (b) consider the legal implications, if any, of the non-compliance with section 6(7) of the Ordinance in respect of the notification to landowners of the Board's decision regarding the proposed amendment

According to the advice from the Department of Justice (D of J), there is a procedural irregularity in the subject case due to the omission to display notification of the proposed amendment at PHRC as agreed by the Board. However, a successful challenge on the validity of the current approved Kam Tin South OZP will depend upon whether any person has suffered any prejudice as a result of the omission. The right of the Full Silver Garden residents to object to the proposed

amendment should not be prejudiced as other forms of notification were given. Therefore, the approved OZP is valid unless and until it is declared invalid by the court.

- (c) consider informing the Board of this omission so that it could consider whether and if so, what remedial action might be appropriate

On 8 June 2001, Plan D informed the Board of the above omission in the notification of a proposed amendment. The Board noted the omission and the D of J's advice, as well as the current improved administrative practice in the notification procedures and the dissemination of information regarding the Board's decisions. Since 1999, the following measures have been initiated -

- (i) all notices of amendments (including detailed schedules of amendments) in the rural New Territories will also be posted at the relevant Rural Committees and will be available on the Board's homepage on the date of gazetting;
- (ii) the gist of the Board's decisions on planning applications/rezoning requests/objections will be available on the Board's homepage immediately after each meeting, and its detailed decisions will be available once the minutes are confirmed by the Board;
- (iii) improved procedures have also been worked out between Plan D and HAD in handling consultation on planning applications and rezoning requests, which include providing a gist of submission, background of the case and the relevant areas of concern to facilitate the District Officer to carry out public consultation on individual cases; and
- (iv) the Board's Secretariat will give a reply to persons having comments/objections on planning applications/rezoning requests (or objections) informing them of the Board's decisions, and where appropriate, the reasons for not accepting their comments.

## Social Welfare Department (SWD)

### **Case No. 2000/0476 : Mishandling the complainant's application for "New Born Baby Special Allowance" under the Comprehensive Social Security Allowance Scheme (CSSA).**

250. The complainant lodged a complaint with The Ombudsman on 9 March 2000 against a staff of the Sau Mau Ping Social Security Field Unit of SWD for having misled her and mishandled her application for special grant to cover expenses for her new-born baby. The turning down of her application for reimbursement for items purchased had caused her financial loss. After investigation, The Ombudsman considered that the complaint was partially substantiated.

251. According to the prevailing policy of the CSSA Scheme, able-bodied adults/children are only entitled to the special grants of rent, water charge, grant to cover schooling expenses for children, grant to cover child-care centre fees and burial grant. No other special grants are payable to them. Although the responsible caseworker had explained to the complainant that she was not eligible for the special grant to cover expenses for her baby, she accepted the receipts from the complainant. This led to the latter's misunderstanding that her claim for reimbursement for items purchased for her baby would be approved.

252. For the improper practice of collecting the receipts from the complainant, SWD sent a letter of apology to the complainant on 1 June 2000. In view of her financial hardship resulted from the already purchased items for her baby, the complainant was granted \$1,358 from the charitable trust fund on the same day.

253. The Ombudsman was satisfied with the follow-up actions taken by SWD. SWD had duly accepted The Ombudsman's recommendation and issued a memo on 18 August 2000 to remind its staff not to accept or obtain any receipts in cases where the applicants were not eligible for financial assistance under the CSSA Scheme. It would also strengthen training on its staff's communications skills.

## Territory Development Department (TDD)

**Case No. 2000/0506, 2000/0512, 2000/0518 : Failing to inform the public of the unusual soil settlement in Tseung Kwan O; failing to complete the investigation on unusual soil settlement in Tseung Kwan O in a timely manner; and failing to inform owners of the Home Ownership Scheme flats of remedial measures in writing.**

254. Four Tseung Kwan O (TKO) residents complained to The Ombudsman on 12 March and 13 March 2000 that TDD had the following administrative malpractices in respect of the unusual ground settlement in TKO :

- (a) TDD knew the unusual ground settlement in August 1998, but hid the fact and did not inform the public;
- (b) TDD failed to complete the investigation of the TKO unusual ground settlement in a timely manner; and
- (c) TDD failed to inform the owners of the Home Ownership Scheme flats about the remedial measures in writing.

255. The TKO Town Centre is situated on a new reclamation which is undergoing a natural process of settlement, and the rate of this settlement should decrease with time. TDD first knew in January 1999 that the rate of ground settlement had not decreased as predicted, and then immediately instructed the consultant to step up settlement monitoring and carry out investigation into the cause of the unusual ground settlement. In order to address the concerns of the TKO residents about the unusual ground settlement, during the period from November 1999 to May 2000, TDD attended six meetings to explain the situation of the unusual ground settlement to the residents. Moreover, TDD also sent monthly settlement records to the concerned estate management offices to keep the residents informed of the latest situation.

256. However, the geological conditions of the ground were more complex than anticipated, and the site investigation was complicated and

time-consuming. As a result, TDD could not complete the investigation and inform the residents of the cause and effects of the unusual ground settlement in March 2000 as originally envisaged. The revised completion date of the investigation would need to be extended to December 2000.

257. After investigation, The Ombudsman concluded that complaint points (a) and (c) were unsubstantiated, while point (b) was partially substantiated.

258. TDD agreed with The Ombudsman's recommendations and the unusual ground settlement investigation was completed in November 2000. The public was informed of the findings via different channels (including meetings with the residents). Moreover in May 2001, the Government decided to implement a remedial works scheme to rectify the defects in the open areas of Beverly Garden and Tong Ming Court caused by the unusual ground settlement, with a view to relieving the residents' anxiety. The monitoring report of TDD also shows that since early 2001, the ground water level has started to rise up and the unusual ground settlement has stabilised in the Town Centre area. TDD will continue to monitor the ground water level and settlement trend closely and provide the residents with the monitoring records regularly via the concerned estate management offices.

## Transport Department (TD)

**Case No. 2000/0146 : Failing to follow up properly a complaint about the violation of licence conditions by an employees' bus service plying between a commercial centre and a KCR station; and failing to render proper assistance to the complainant's motor company in its application for installation of a regulator's kiosk at a green minibus terminus in an estate and for supply of water and electricity thereto.**

259. A Company complained against TD in August 1999 for failing to follow up properly about the violation of licence conditions by an employees' bus service (EBS). A survey was conducted on 30 August 1999 and found that buses deployed by that EBS were not authorised to serve that particular EBS route. Written warning was issued on 8 October 1999 for the operator's cessation of the malpractice. The case became complicated when Passenger Service Licence (PSL) of the EBS expired on 30 October 1999, and under the new PSL conditions, the operator was required to submit operating details of the EBS for TD's approval. The EBS operator however explained that since the EBS was approved by TD in 1995, re-submission of the EBS application was not necessary. TD issued several letters to the EBS operator to clarify the new arrangement introduced after 1999 regarding EBS application and requested the EBS operator to cease the unauthorised EBS.

260. The EBS operator subsequently submitted an application to TD on 22 June 2000. As the EBS had been serving the employees of the commercial centre approved by TD since 1995 and no immediate replacement service was identified, the EBS application was approved on 8 November 2000 for operating during peak hours only. The Ombudsman considered the complaint was substantiated.

261. Besides, the Company also complained against TD for its failure to render proper assistance to its application for installation of a regulator's kiosk at a green minibus terminus in an estate and for supply of water and electricity. TD received a written suggestion from the Company on 10 September 1998 for the provision of a regulator's kiosk and supply of water and electricity in an estate. To proceed with the processing of the application, TD had verbally requested the Company several times to submit further information for

follow-up action. But there had been no response from the Company. TD ultimately wrote to the Company on 7 December 1998 for further information and only received the full information from the Company on 28 May 1999. TD then consulted relevant departments on the feasibility of the proposal in June 1999 and received all the comments by mid-August 1999. The Government Property Agency (GPA) advised that the Company should formally submit its application direct to them for approval. To expedite action, the case together with the comments from other departments was referred to GPA on 8 September 1999. TD then informed the Company on 17 September 1999 that there was no in-principle objection to the provision of kiosk and supply of water and electricity. However, the Company should submit an application to GPA. The application was subsequently approved by GPA on 21 December 1999.

262. The Ombudsman considered that TD had failed to issue the procedural guidelines on the provision of facilities on public roads, and made no written request to the complainant promptly for further information, hence delaying the processing of the application for a couple of months. This complaint was therefore concluded as substantiated.

263. Regarding The Ombudsman's recommendations in the investigation report, TD's responses are as follows :

- (a) TD issued the procedural guidelines on the provision of facilities on public roads in June 2000;
- (b) TD had completed the assessment of the application for operating the EBS between the commercial centre and the KCR Station. TD approved the operation of the above EBS on 8 November 2000 and stipulated in the "Details of the Approved Employees' Service" that the approved service would only provide supplementary transport service during peak hours;
- (c) TD agreed that in assessing the EBS application in future, irrespective of whether the service is a renewal case or a fresh application, it will, in accordance with the regulation of the Road Traffic Ordinance, assess the relevant factors, including the demand for the service, the level of service of other public transport services, and the traffic

condition of the area or road network of the proposed EBS;

- (d) TD has implemented a series of measures to monitor the non-franchised public bus services. For example, operators are required to display signboards which indicate the type of service at designated places of buses to facilitate TD's investigation of possible malpractices and the Police's enforcement action. TD would hold inquiry for cases that continue to violate the licensing conditions despite TD's warnings. These measures also apply to EBS; and
- (e) TD agreed that in future, TD would consider granting temporary approval to those EBS applicants whose applications are preliminarily considered to have met the licensing requirements but the processing of which would require a longer time to complete.

**Case No. 2000/0873, 2000/2122(I) : Failing to provide important information during discussion with Ex-Provisional District Board Members and Legislative Council Members on a construction project of a flyover; and impropriety in handling an application under the Code on Access to Information.**

264. The Sha Tin and Ma On Shan District Traffic Study completed by TD in 1995 indicated that the junction at Tai Chung Kiu Road/Siu Lek Yuen Road would be overloaded in 2001 by 20% and 28% respectively during the morning and evening peak hours. Based on this finding, TD initiated a project for the construction of a flyover at the subject junction. As part of the investigation study for the flyover project, a traffic impact assessment was conducted in 1997. The study indicated that the subject junction would be operating with reserve capacity of 14% and 7% respectively in 2001 as the developments in Ma On Shan had not progressed as fast as previously anticipated. However, the study indicated that the junction was expected to be overloaded by 6% and 11% in 2002 and 2006 respectively. Despite support given by the Ex-provisional Sha Tin District Board (STDB), the flyover project had received strong objections mainly from the residents of City One Shatin when it was gazetted in 1998. These objections were mainly founded on inadequate traffic justification and the associated adverse environmental impact. The complainants sought assistance from the Legislative Council (LegCo) members

and a LegCo Case Conference was convened in 1998 to discuss the flyover project.

265. In late 1998, the complainants requested, via the Code on Access to Information (the Code), for a copy of the traffic impact assessment report undertaken for the project. TD provided the report without Appendix A. The junction performances in 2001 and 2002 were included in the main text of the report. Appendix A contained the comments made by various government departments and the responses from the study consultant. TD considered that the main findings were included in the main text of the report and the Appendix might contain immature views and discussions which might cause confusion to the public. As all agreed comments had been reflected in the main text of the report, Appendix A was therefore not given to the complainants. Upon further application from the complainants for the missing Appendix A, TD had reviewed the case and provided the complainants with Appendix A.

266. The complainants complained to The Ombudsman on 19 April 2000 that TD had not provided the STDB and the LegCo members the relevant, important and updated data for the flyover project and that TD staff had not processed the complainants' application in an appropriate manner under the Code.

267. TD considered that both the Sha Tin and Ma On Shan District Traffic Study and the subsequent traffic impact assessment undertaken for the project indicated that the junction would not have adequate capacity to cope with the planned developments in Ma On Shan. The flyover project was therefore required to address the traffic problem at the subject junction. In this respect, TD had correctly reflected such findings to both the STDB and the LegCo members. TD also disagreed on the alleged mishandling of the complainants' application under the Code. The reasons for not providing Appendix A had been given above. Furthermore, the subject Appendix A was provided upon further application from the complainants.

268. The Ombudsman considered that the junction capacity data were important for the District Board and the LegCo members to appreciate the scale of the potential traffic problem at the subject junction and that TD should have provided the comprehensive, detailed and updated information to members during their discussions on the flyover project. The Ombudsman also

considered that Appendix A was an integral part of the traffic impact assessment report. It should therefore be provided to the complainant together with the main report. Even if TD decided not to provide the Appendix, they should explain to the complainants the reason, the appeal channel and their right to launch a complaint to The Ombudsman. Based on the above, The Ombudsman concluded that the complaint was substantiated.

269. TD has accepted The Ombudsman's recommendations and issued a memo on 3 April 2001 promulgating the revised Departmental Circular No. 6/01 "Code on Access to Information" providing an updated procedure for handling request for information under the Code. The memo also alerted staff of the requirement to follow General circular No. 3/97 "Public Opinion" to provide District Council members with the comprehensive and detailed information including the most up-to-date data during public consultation. Arrangement has been made to re-circulate this memo and the related circulars to concerned staff at quarterly intervals.

## **Vocational Training Council (VTC)**

**Case No. 2000/1222 : Impropriety in arrangements for the training of able-bodied Skills Opportunity School graduates in Skills Centres.**

270. Please refer to Case No. 2000/1221 under the Education Department.

## Water Supplies Department (WSD)

### **Case No. 2000/1991 : Entering the complainant's premises and replacing a water meter without giving prior notice; and failing to properly handle the complainant's enquiries.**

271. The complainant discovered that the water meter at his residence had been replaced on 19 July 2000. As he had not been notified of the matter, he called WSD's customer enquiry hotline that night to enquire. However, the hotline staff handling his call responded that no assistance could be given and suggested him to report to the Police. The complainant then called the Police. The policeman who arrived at his residence called the WSD hotline again to enquire about the case. Another officer of the hotline received this call and patiently explained that the concerned water meter had been replaced by WSD. Dissatisfied with WSD's meter replacement procedures and the improper handling of his case by the WSD hotline staff, the complainant lodged a complaint with The Ombudsman on 8 August 2000.

272. Accepting The Ombudsman's recommendations, WSD has followed up as below :

- (a) a letter of apology was issued to the complainant;
- (b) an appreciation letter was issued to the second hotline officer who handled the enquiry patiently and with a proper attitude;
- (c) the meter replacement procedures were reviewed and improved;
- (d) the gradual replacement of imperial meters by metric meters is in fact promulgated in WSD's Consumer Guide Book which is available to the public free of charge. WSD will nevertheless strengthen the publicity in this respect; and
- (e) this case has been included in the training materials for hotline staff.

## **Part II**

### **Direct Investigation Cases**

#### **Economic Services Bureau (ESB)**

##### **The regulatory mechanism for local travel agents for inbound tours**

273. Several unpleasant incidents occurred during the Chinese New Year period in 1999 when tour groups from the Mainland got stranded in Hong Kong. The Ombudsman decided to conduct a direct investigation into the matter in July 1999. The investigation report was released in July 2000, with conclusions as follows :

- (a) inbound travel agents, who were not members of the Travel Industry Council (TIC), operated without any supervisory control. There was therefore a disparity between the level of consumer protection offered to travellers travelling from and to Hong Kong;
- (b) as ESB and the former Trade and Industry Bureau were responsible for regulating different aspects of the business activities of local travel agents, it was desirable to rationalise the existing division of policy portfolios of the two bureaux;
- (c) there was a shared view among the trade organisations that the Administration should consider the need to introduce a proper control mechanism; and
- (d) the functions performed by the former Hong Kong Tourist Association were not regulatory.

274. The Ombudsman made a number of recommendations, including amongst others, the need to consider the introduction of a regulatory mechanism with legal backing for inbound travel agents, and measures to enhance service standards of tour co-ordinators. ESB accepted The Ombudsman's recommendations, its responses are as follows :

- (a) ESB undertook several rounds of consultation with industry associations and key inbound travel agents. It has also consulted the Advisory Committee on Travel Agents and commissioned a consultancy study to assess the impact of the proposed regulatory regime to be exercised by the Registrar of Travel Agents. After careful consideration of the views and recommendations made by the trade and related bodies, it decided to introduce a bill to put in place a licensing scheme to regulate inbound travel agents. The Travel Agents (Amendment) Bill 2001 was introduced into the Legislative Council on 11 July 2001 to put in place such a licensing scheme, which will help improve the service standard of inbound travel agents;
- (b) the recommendations made by the former Hong Kong Tourist Association's Strategic Organisation Review have been implemented or are being implemented by the Hong Kong Tourism Board and the Administration as appropriate. Most notably, this includes the establishment of the Hong Kong Tourism Board on 1 April 2001 following amendments to the former Hong Kong Tourist Association Ordinance;
- (c) The Travel Industry Council of Hong Kong (TIC) has set up a working group with representation from a wide range of industry members to work out a plan to raise the service standard of tour co-ordinators. They are considering introduction of a certification scheme for tour co-ordinators;
- (d) ESB will continue to work closely with the Consumer Council to further strengthen consumer protection. Besides, The Hong Kong Tourism Board and the Consumer Council have been working closely together on publicising consumer protection measures to visitors and will continue to cooperate in handling visitors' complaints;
- (e) the policy responsibility for the control of travel agents which provides outbound travel services has been transferred from the former TIB to the ESB with effect from 1 July 2000; and
- (f) ESB is conscious of the need to safeguard the interests of all visitors, irrespective of their nationality. On matters relating to the Mainland

tour groups, it will continue to maintain close contact with the China National Tourism Administration and other relevant bodies, such as the TIC, to ensure that the interests of visitors will not be compromised. The TIC has undertaken to amend their code of conduct requiring travel agents to take care of stranded tour groups.

## **Employees Retraining Board**

### **Selected issues concerning the provision of retraining courses**

275. In July 1999, The Ombudsman noted a newspaper report about a pilot tailor-made shoe-making operator course organised jointly by the Clothing Industry Training Authority, the Employees Retraining Board (ERB) and a shoe-making company. The report alleged that retrainees learnt little from the course and that practical training was merely a form of cheap labour. The incident raised public concern over the role of ERB and the quality and usefulness of such retraining courses. The Ombudsman therefore decided to conduct a direct investigation into the subject matter.

276. After investigation, The Ombudsman concluded that :

- (a) there was evidence suggesting that the mechanism and procedures laid down for course approval and review of pilot retraining courses had not been followed;
- (b) there were inadequacies in the existing mechanism and procedures through which ERB and its Executive Office discharged their course administration and development functions, in particular those related to the monitoring and evaluation of retraining course; and
- (c) there were still problems relating to the development and administration of tailor-made courses (TMCs) and on-job-training (OJT) schemes which warranted further attention by ERB and its Executive Office, despite the introduction of some improvement measures in November 1999.

277. ERB has agreed to accept all the recommendations of The Ombudsman. It has set up a Task Force in September 2000 to monitor the implementation of The Ombudsman's recommendations. In the light of the recommendations of The Ombudsman, the following actions have been or are being implemented by ERB to strengthen the retraining services and improve the quality of work :

- (a) ERB has revised and issued guidelines to the training bodies on the OJT scheme. These guidelines specify the details which the sponsoring employer and the training body are required to provide on the OJT scheme they propose, as part of a TMC. ERB has also prepared a brochure on the OJT scheme for distribution to employers. This brochure provides advice to employers on the criteria for determining the need for an OJT scheme, the timing for the training, and the steps to be taken to evaluate the effectiveness of the scheme whilst it is in progress and on completion. Guidelines to the training bodies on applying for TMCs and approval criteria have also been revised;
- (b) a standard application form with guidance notes has been introduced for use by the training bodies to apply for both a TMC and an OJT scheme;
- (c) the Course Approval Procedures were amended to remove the ambiguity and inconsistency mentioned in the investigation report of The Ombudsman. The revised procedures authorise the Executive Director of ERB to approve and modify repeated TMCs, including subsequent classes of pilot TMCs, with subsequent reporting to the Course Vetting Sub-committee. ERB will ensure compliance with established procedures regarding course approval and review;
- (d) ERB staff have paid more visits to monitor the progress and effectiveness of TMCs, particularly those with an OJT scheme. ERB has also required the training bodies offering TMCs to make more monitoring visits, and to obtain feedbacks from each and every retrainee throughout the course;
- (e) ERB has introduced additional measures to ensure the quality of training delivered by training bodies, e.g. setting up Course Advisory Teams comprising experienced professionals in relevant fields to conduct surprise visits to training bodies. A specific Course Advisory Team on Computer and IT-related courses has been set up and subject to review, other advisory teams for different major course types will also be set up. Two additional executive staff have been recruited to improve management audits of the accounting and course

delivery functions of the training bodies. They assumed duty in mid-August and the training bodies will now be visited more frequently for monitoring purposes;

- (f) visiting staff are required to carry out their task according to a checklist of guidelines and instructions and to report finding in a detailed set format;
- (g) ERB agreed that the calculation of retention rates to be used for various purposes and in various contexts should be reviewed in order to present a more accurate and objective picture as required in different circumstances. While ERB has decided to retain its existing definitions for “job placement”, it has undertaken to pay more attention to the job retention rates of placed retrainees;
- (h) TMC’s retention survey will be conducted on full coverage basis and all other types of full-time placement-tied courses’ survey on a sampling basis six months after completion of the course;
- (i) the placement rates to be published in future annual reports will be complemented by retention rates and other performance indicators (PIs), which will together indicate much more clearly the cost-effectiveness of all full-time placement-tied retraining courses;
- (j) ERB has now adopted a more comprehensive set of PIs, including an indicator to measure the relevancy of training to jobs taken up by retrainees (60% relevancy rate has been adopted) and job retention rate after six months for all placements (70% retention rate has been agreed). These PIs will be published in ERB’s Annual Report;
- (k) ERB is now working out with individual employers the key PIs and target achievement rates for OJT schemes for each type of TMCs;
- (l) ERB’s guidelines and instructions to the training bodies on how to analyse and report feedback from retrainees on the courses they have completed were revised and issued to the training bodies in April 2000. Following the full commissioning of ERB’s computer network with the training bodies in October 2000, most of the training

bodies on the network can now input into the computer system summaries of the evaluation questionnaires completed by the retrainees upon completion of their courses. These feedbacks are one of the primary considerations for assessing the training body's proposal for the same type of course to be conducted in the next quarter. Other considerations include the key PIs - utilisation rate, attendance rate and placement rate;

- (m) a document setting out the procedures for the training bodies to handle feedbacks from sponsoring employers on TMCs and OJT schemes is now issued to the training body concerned before commencement of a TMC;
- (n) the format of the evaluation report on TMCs has been revised. Adequate guidance and instructions for the completion of the evaluation report and related forms and the conduct of TMCs have been given to staff of the training bodies through briefing sessions and workshops by ERB. Such briefings will continue to be conducted for training bodies' staff as and when necessary;
- (o) training bodies are required to request every retrainee of every course to complete a post-course evaluation questionnaire. This, coupled with the PIs, would adequately reflect the effectiveness of the course. Since the conclusion of The Ombudsman's investigation, an enhanced mechanism for the collection and analysis of retrainees' feedback on each and every retraining course provided, both full-time and part-time, has been brought into operation; and
- (p) ERB staff provide continuous briefing and advice to relevant training bodies' staff on the course evaluation process. During the course management and financial audit visits to the training bodies, ERB staff always study samples of summaries of course evaluation questionnaires completed by retrainees. They advise training bodies' staff on any improvements considered necessary, such as setting out a more detailed summary of the comments made by retrainees, or a more accurate summary of suggestions for improvements by the training bodies. In addition, in the course of examining training bodies' quarterly proposals for courses, ERB staff also examine

summaries of evaluation questionnaires, along with other PIs. Advisory letters would also be issued to the training bodies concerned on any improvements considered necessary. The Course Advisory Teams mentioned in point (e) above will also advise training bodies' staff on course evaluation.

## **Food and Environmental Hygiene Department (FEHD)**

### **Clearance of Provisional Urban Council tenants and licence holders affected by Land Development Corporation's Development Projects**

278. In mid-1999, public concern was aroused over the undue delay in the commencement of the "Six Streets" redevelopment project in Mongkok. The project covered most of the area bounded by Portland Street, Argyle Street, Reclamation Street and Shantung Street. The site was cleared in December 1997 with the exception of 18 cooked food stalls in a temporary cooked food market of the former Provisional Urban Council (PUC). In January 1998, 13 stall operators moved out of the temporary cooked food market but five stall operators continued to occupy their stalls on site. As a result, the redevelopment project was delayed and the former Land Development Corporation (LDC) (the functions in respect of this complaint have subsequently been taken over by the Urban Renewal Authority (URA)) and the private consortium incurred additional loan interests for 16 months since January 1998, totalling \$439 million.

279. The former Urban Services Department (USD) (the functions in respect of this complaint have subsequently been taken over by FEHD) was the executive arm of PUC to implement its policy and decisions. The Ombudsman informed the then Director of Urban Services on 29 October 1999 of her decision to conduct a direct investigation into the subject.

280. In summary, The Ombudsman has concluded that :

- (a) in the resumption of the Nelson Street Temporary Cooked Food Market site, there was a lack of mutual understanding and agreement between USD and LDC on their respective roles and responsibilities. This caused problems over co-ordination on matters involving negotiation with the stall operations on ex-gratia payment and reprovisioning arrangements;
- (b) there is clearly a need on the part of FEHD to formulate comprehensive guidelines and procedures for resumption involving its tenants/licence holders affected by LDC development schemes; and

- (c) the different interpretation on the status of the “tenancy agreement”, are still susceptible to potential problems, for future LDC development schemes involving resumption of land taken up by FEHD's tenants/licence holders.

281. The Ombudsman has made the following ten recommendations for consideration by FEHD in future development projects involving the clearance of its tenants and licensees :

- (a) FEHD should work out and agree with LDC and Lands D their respective roles and responsibilities in the resumption exercise;
- (b) FEHD should assume a more proactive role to facilitate smooth negotiations between LDC and the stall operators/licensees on reprovisioning options;
- (c) FEHD should consider devising comprehensive guidelines on inter-departmental co-ordination to facilitate timely completion of the resumption exercise;
- (d) FEHD should consider assuming a co-ordinating role in the clearance of FEHD's tenants/licensees and hold regular co-ordination meetings between relevant departments to maximise efficiency in the resumption exercise;
- (e) FEHD should consider devising guidelines and procedures on the handling of development projects that involve or affect FEHD facilities for staff guidance and to ensure consistency;
- (f) FEHD should consider formulating contingency plans where resistance to resumption is expected to be put up by its tenants/licensees;
- (g) FEHD should review the adequacy of the communication and monitoring mechanism within the Department to ensure, in particular, an effective reporting system and a dialogue between the various divisions in headquarters and regional/district offices;

- (h) to forestall future challenges to the status of the stall agreement by its tenants/licensees, FEHD should review the legal status of the “tenancy agreement”, so as to clarify what notice period is required to terminate these agreements;
- (i) FEHD should ensure that its tenants/licensees are informed of the expected resumption date and suitably adjust the duration of the tenancy being renewed to avoid unnecessary delays to scheduled clearance; and
- (j) to protect its own position, FEHD should ensure that the tenancy agreements granted to its tenants/licensees are consistent with the terms of the land allocation.

282. FEHD has accepted the ten recommendations and will implement them to improve the operation and handling of future development projects involving the clearance of its tenants and licensees in consultation with Lands D and URA.

## **Selected issues concerning the management of government crematoria**

283. FEHD was set up on 1 January 2000 to replace the Urban Services Department (USD) and the Regional Services Department. Its Cemeteries and Crematoria (C&C) Section managed the following six crematoria :

- (a) Cape Collinson Crematorium (CCC);
- (b) Diamond Hill Crematorium;
- (c) Wo Hop Shek Crematorium;
- (d) Fu Shan Crematorium;
- (e) Kwai Chung Crematorium; and
- (f) Cheung Chau Crematorium.

284. In September 1996, USD's management first received a report from an Artisan alleging thefts from coffins at CCC. The allegations were concluded as unsubstantiated after a police investigation. In February 1999, the Civil Service Bureau (CSB) received reports containing similar allegations and also complaining about other acts of impropriety. CSB referred these to USD for action. USD initiated an internal investigation, and subsequently made a report to the Independent Commission Against Corruption (ICAC) in March 1999.

285. After investigation, ICAC arrested 11 officers who had worked in CCC in October 1999. In early 2000, extensive media reports about thefts from coffins at CCC led to a huge public outcry. In view of public concern, The Ombudsman initiated a preliminary assessment of the administrative issues associated with the incidents and subsequently conducted a formal investigation.

286. Based on observations and opinions, The Ombudsman concluded that :

- (a) over a period of many months after the CCC incidents, FEHD introduced improvement measures to prevent the recurrence of similar

malpractice. These included among others things, installation of CCTVs and introduction of videotape viewing registers to tighten supervisory control over crematorium operations;

- (b) despite these, there was room for further improvement as some of the proposed measures had not yet been implemented. An example was the introduction of the proposed Staff Rotation System;
- (c) some improvement measures appeared to have been made in response to specific inquiries or suggestions from her; and
- (d) there were many co-incidences and inconsistencies in the sequence of administrative actions FEHD claimed to have taken. She suspected that there were attempts to lure her Office into believing that the FEHD had undertaken more remedial measures than was the case.

287. The Ombudsman had made the following recommendations for consideration of FEHD :

- (a) FEHD should devise comprehensive monitoring mechanisms and control measures to facilitate the implementation of the various improvement measures;
- (b) FEHD should draw up a specific timetable for the implementation of the Staff Rotation Scheme, the recommendations listed in the comprehensive review completed by FEHD in February 2000 and ICAC's post-CCC incident management advice;
- (c) FEHD should continue to review the design, format and contents of the Inspection Registers for use by all crematoria staff to record tape movements and inspections;
- (d) FEHD should continue to consolidate and incorporate all relevant updated guidelines on inspections to crematoria and checking of tapes of CCTV into the Operational Manual to facilitate internal reference by the staff concerned;
- (e) FEHD should inculcate a culture among staff to encourage frank and

uninhibited reporting by staff and prompt rectification by the management in any case of mal-administration or potential mal-administration identified in the course of the operation of the crematoria;

- (f) FEHD should further strengthen staff supervision and enhance communication about crematorium operation through inspections and staff meetings;
- (g) FEHD should increase staff awareness on the need to ensure accuracy of the information provided to her and, if necessary, to issue specific guidelines for compliance;
- (h) FEHD should continue closer supervision on and enhance the supervisory accountability of the crematoria staff; and
- (i) FEHD should conduct regular management reviews of the operation of the crematoria with a view to making continued improvement in their services to the public.

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

- (a) The Ombudsman's recommendations set out in (a), (c) to (i) above were duly implemented or being implemented; and
- (b) as regards the recommendation in paragraph (b) above concerning Staff Rotation Scheme, given the nature of the duties involved, FEHD does not consider it appropriate to force postings on reluctant staff. Efforts will be directed at identifying suitable and willing staff in the first instance. With the implementation of the Voluntary Retirement Scheme and that some 68 staff now working in the C&C Section have applied to retire under this scheme, the Department will use this opportunity to effect staff changes.

## **Immigration Department (Imm D)**

### **Procedures for immigration control of persons who present themselves, are found or returned to Immigration Check Points without proof of identity**

289. Following media reports on the case relating to an autistic minor who was found missing since late August 2000 and believed to have entered the Mainland without going through immigration checks, The Ombudsman conducted a direct investigation to examine the relevant procedures and monitoring mechanism of Imm D in the handling of persons who present themselves, are found or returned to immigration check points, without any proof of identity. After investigation, The Ombudsman concluded that :

- (a) Immigration officers generally follow departmental guidelines and procedures in handling cases of undocumented persons and “slip-through” cases;
- (b) Immigration offices lack the knowledge, skill, awareness, and alertness, when handling undocumented persons with disabilities particularly those with communication difficulties; and
- (c) Imm D could do more to improve the overall operation, and in particular to strengthen the field and channel supervision, at the immigration control points.

290. The Ombudsman has then made a number of recommendations for consideration by Imm D to improve the overall operation and control at immigration control points. Imm D accepted The Ombudsman’s recommendations and implemented the following :

- (a) Handling Persons with Disabilities Particularly Those with Communication Difficulties

“ The Rules and Directions for the Questioning of Suspects and Taking of Statements ” were circulated to all officers on 11 July 2001 and will be re-circulated on an annual basis. Imm D has also enlisted

assistance from the Equal Opportunities Commission (EOC) and City University of Hong Kong (CityU) to conduct six sensitivity training seminars to its frontline and supervisory staff during the period from November 2000 to January 2001 to enhance staff sensitivity to persons with disabilities. With the training materials provided by EOC and CityU, the Training School of Imm D has provided training seminars to the remaining frontline staff at immigration control points. The training programme will be extended to staff in other sections and offices.

The EOC has finalised a draft study report with recommendations on the issue of sensitivity in dealing with people with disabilities for consultation with Imm D. Imm D will draw up detailed guidelines and instructions for its staff after the study report is concluded.

(b) Network and Guidelines for Professional Assistance

Since November 2000, Imm D has established focal points of contacts with the Social Welfare Department (SWD) so that its staff may seek social workers' professional assistance when they encounter mentally handicapped persons. Instructions in this regard have also been issued at various immigration control points.

(c) Verification of Missing Persons

Since October 2000, the Hong Kong Police Force (HKPF) has designated the Headquarters Command and Control Centre (HQCCC) as the focal point of contact for handling enquiries from Imm D concerning missing persons. Sectional instructions have been issued to promulgate the checking procedures.

Imm D has also consulted the HKPF and examined the usefulness of sharing their computer information to facilitate real-time checking of missing persons. With the share of computer information, in case undocumented persons encountered at control points can provide their personal particulars, Imm D can verify their identities by checking their identity card records in the Department without the assistance from HKPF. As regards those who cannot provide their names or

identity card numbers due to mental deficiency or communication incapacity, Imm D will seek assistance from HKPF's HQCCC which will make enquiries with various regions by using the person's features and other available information.

(d) Field Control and Monitoring Mechanism

The Management Services Agency (MSA) has finalised the study on the manpower requirements for channel supervision and secondary examination at immigration control points. It is accepted in principle that the duties of supervising counter staff and conducting secondary examination of passengers should be separated and performed by designated officers. Subject to availability of resources, Imm D will designate as far as possible a suitably trained channel supervisor in each immigration control point to handle persons with disabilities, in particular those with communication difficulties. Imm D will call for professional assistance whenever necessary.

All immigration control points are reviewing their existing CCTV systems in consultation with the appropriate authorities. The five boundary control points are seeking funds to improve the existing systems. At the Airport, some cameras have been adjusted to cover the principal exit points at the staff and crew channels so that movements through these channels can be better monitored, and additional video recorders for record keeping are being ordered. For the ferry terminals, the requisition for a new system with purpose-built functions (e.g. recording function and wider coverage) is underway.

Imm D has reviewed the design of immigration clearance counters with a view to improving security. Metal railings and glass barriers have been installed in front of departure counters at Lo Wu. At the Airport, the modification work to increase the height of counter gates and add another gate in front of counters at the departure halls has been completed. The modification work at the arrival halls will start on 20 September 2001 and is scheduled for completion by end of October 2001.

Supervisors at all immigration control points have been reminded to

step up spot checking. Frontline staff have also been briefed to be vigilant at counters to guard against slip-through cases. Disciplinary actions will be taken against staff who are found at fault or not complying with departmental guidelines and procedures, where appropriate.

(e) Training and Documentation

With the training proposal/materials provided by EOC and CityU, Imm D has incorporated sensitivity training in all its training programmes for members of the Immigration Service. Besides, review of relevant procedures and guidelines has been an on-going exercise in Imm D.

(f) Publicity

Imm D has liaised with SWD and sought its assistance to step up publicity to enhance public awareness. In this regard, SWD has disseminated guidelines to all parents' associations and rehabilitation service units. The guidelines aim to encourage persons with disabilities to carry proof of identity at all times, and advise parents and rehabilitation service operators to draw up contingency plan to search for missing persons with disabilities and to train up persons with disabilities on what to do when they find themselves get lost.