

## Office of The Ombudsman

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### Vision

To ensure that Hong Kong is served by a fair and efficient public administration which is committed to accountability, openness and quality of service



### Mission

Through independent, objective and impartial investigation, to redress grievances and address issues arising from maladministration in the public sector and bring about improvement in the quality and standard of and promote fairness in public administration



### Functions

The Ombudsman should serve as the community's watchdog to ensure that:

- Bureaucratic constraints do not interfere with administrative fairness
- Public authorities are readily accessible to the public
- Abuse of power is prevented
- Wrongs are righted
- Facts are pointed out when public officers are unjustly accused
- Human rights are protected
- The public sector continues to improve quality and efficiency



### Values

- Maintaining impartiality and objectivity in our investigations
- Making ourselves accessible and accountable to the public and organisations under our jurisdiction
- According the public and organisations courtesy and respect
- Upholding professionalism in the performance of our functions



### Performance Measures

- Speed of case work
- Complainants' level of satisfaction with case handling
- Redress obtained
- Recommended improvement measures committed to and/or implemented
- Non-repetition of complaints

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# History in Brief

## 1988

### 20 July

The Commissioner for Administrative Complaints ("COMAC") Bill was passed by the Legislative Council ("LegCo")



Second Commissioner Mr Andrew So, JP

## 1989

### 1 February

The COMAC Ordinance was enacted  
First Commissioner Mr Arthur Garcia, JP assumed office

### 1 March

The Office of COMAC became operational with staff seconded from Government

### 15 November

COMAC became a member of the International Ombudsman Institute ("IOI")



First Commissioner Mr Arthur Garcia, JP

## 1993

### 21 July

Legislative review completed, the COMAC (Amendment) Bill was introduced into LegCo

## 1994

### 1 February

Second Commissioner Mr Andrew So, JP assumed office

### 24 June

The COMAC Ordinance was amended:

- to enable the public to lodge complaints directly, instead of by referral from LegCo Members
- to extend the jurisdiction to some major statutory bodies
- to empower the Commissioner to publish anonymised investigation reports
- to empower the Commissioner to initiate direct investigation

### 30 June

Advisers were appointed to provide expert advice and professional opinion

### 1 July

Chinese title of the Commissioner was changed to 「申訴專員」 and the Office to 「申訴專員公署」

## 1995

### 1 March

Jurisdiction was extended to investigation into alleged breach of Code on Access to Information

### 23-25, 27 October

The Commissioner hosted the 15th Australasian and Pacific Ombudsman Conference and the International Ombudsman Symposium

## 1996

### 1 March

Non-official Justices of the Peace ("JPs") were enlisted in a JPs Assistance Scheme

### 15 -16 April

The Ombudsman's Office participated in the establishment of the Asian Ombudsman Association ("AOA") and became a founding member

### 24 October

The Ombudsman was elected to the Board of Directors of the IOI

### 27 December

English titles were changed to "The Ombudsman" and "Office of The Ombudsman"

## 1997

### 1 April

Mediation service was launched as an alternative dispute resolution method

### 25 July

The Ombudsman's Awards were introduced to acknowledge public organisations handling complaints positively

## 1998

### 8 May

The Ombudsman was elected Secretary of the AOA



Third Ombudsman Ms Alice Tai, JP

## 1999

### 1 April

Third Ombudsman Ms Alice Tai, JP assumed office

### 22 July

The Ombudsman's Awards were extended to acknowledge public officers' contribution towards better quality services

## 2000

**27 July**

The Ombudsman's Awards were further extended to acknowledge public officers handling complaints professionally

**2 November**

The Ombudsman was elected to the Board of Directors of the IOI



The Ombudsman's Awards 2000

## 2001

**28 March**

Telephone complaint service was introduced

**19 December**

The Ombudsman (Amendment) Ordinance 2001 came into operation:

- to establish The Ombudsman as a corporation sole with full powers to conduct financial and administrative matters
- to empower The Ombudsman to set terms and conditions of appointment for staff
- to adopt systems and processes separate from Government

## 2004

**1 April**

Ms Alice Tai, JP started her second term (2004 – 2009) as The Ombudsman

**10 September**

The Ombudsman was re-elected as Secretary of the IOI

**13 December**

With the departure of the last civil service secondee, this Office was staffed by a workforce entirely appointed by The Ombudsman under The Ombudsman Ordinance

## 2005

**24 October**

A "Memorandum of Administrative Arrangements" ("MAA") was signed between the Director of Administration and The Ombudsman to set out the general principles and guidelines governing the administrative arrangements for this Office and the working relationship with Government

**28 November - 1 December**

The Ombudsman hosted the 9th AOA Conference



Signing of MAA

## 2002

**6 September**

Office moved to permanent accommodation at Shun Tak Centre in Sheung Wan

**16 October**

The Ombudsman was elected Secretary of the IOI

## 2008

**5-8 November**

The Ombudsman hosted the Board of Directors Meeting of the IOI



IOI Board Meeting

## 2009

**1 April**

Fourth Ombudsman Mr Alan Lai Nin, GBS, JP assumed office

**11 June**

The Ombudsman was re-elected to the Board of Directors of the IOI



Fourth Ombudsman  
Mr Alan Lai Nin, GBS, JP

## 2010

**19 October**

The Ombudsman was elected Treasurer of the IOI

## 2011

**8 December**

The Ombudsman was re-elected Secretary of the AOA



AOA Conference

## 2012

**5-10 May**

The Ombudsman hosted the Mid-term Board of Directors Meeting of the IOI

**22-24 May**

The Ombudsman co-organised the IOI Regional Training of Asia and Australasia & Pacific Regions with the Commission Against Corruption of Macao



IOI Mid-term Board Meeting



## The Ombudsman's Review



Much as I dislike to harp on similar issues year after year, I feel obliged, as Ombudsman, to highlight again in this Review two such issues still prevalent as shown in the cases we handled: a compartmental mentality among Government departments and their insensitivity to the emergence of new problems.

In my last Review, I highlighted the problem of the sprawl of unauthorised developments and illegal occupation of Government land in the New Territories, as well as that of the proliferation of on-street promotional activities. This year, examples abound of seemingly small or localised problems being left unattended or shoved around until they grow and become unwieldy. A case in point is the problem associated with parallel trading activities in North District, which has grown to a calamitous magnitude, as some would describe it. But this state of affairs has not come into being overnight. My Office has been receiving public complaints about the problem as early as 2007. Time and again, we have urged the departments concerned to take rigorous actions in tandem and to work out a total solution in consultation with the local District Council and other relevant parties.

There is much wisdom in the old saying "a stitch in time saves nine". It is time-honoured, not archaic. It is much better and easier to nip the problem in the bud than wait until it reaches crisis level when the whole community gets out of patience and vehemently clamours for Government actions. I appeal to the Administration to learn the lesson.

While my Office's inquiries and investigations invariably mean more work for the Government departments concerned, such actions all serve to either vindicate what they have done or identify administrative deficiencies for improvement which would help prevent recurrence of mistakes and complaints. As it turned out, the majority of complaints were found unsubstantiated, meaning that the departments

concerned were exonerated after an independent and impartial inquiry/investigation by my Office. Unfortunately, there are still Government officers who do not appreciate the meaning and positive value of our intervention. Some have shown reluctance in providing us with all the necessary information. Others have behaved in an overly defensive manner. I consider it necessary for the Administration to provide Government officers with more education on our work. My Office will be pleased to assist.

Misunderstanding of our role and powers is also noted among the public. At one end of the spectrum, some people regarded our publicity efforts as over zealous, bringing undue pressure on Government officers. At the other end, there are those who would immediately complain to us whenever they are dissatisfied with an organisation, expecting that we will promptly order that organisation to meet their demand. Of course, we will try to contact the organisation expeditiously and ask for urgent attention if the complainant is indeed in a serious plight. However, The Ombudsman Ordinance stipulates that our investigation shall not affect any action taken by the organisation under complaint or the organisation's power to take further action with respect to any of its decisions which are subject to the investigation. My Office can only make recommendations for redress or improvement, and we can do so only after conducting a proper inquiry/investigation. It would, therefore, sometimes bring about quicker results if the complainant were to report his/her problem straight to the head of the organisation concerned. A complaint lodged with my Office does not always lead to a quick fix or more favourable treatment of the complainant's case by the organisation.

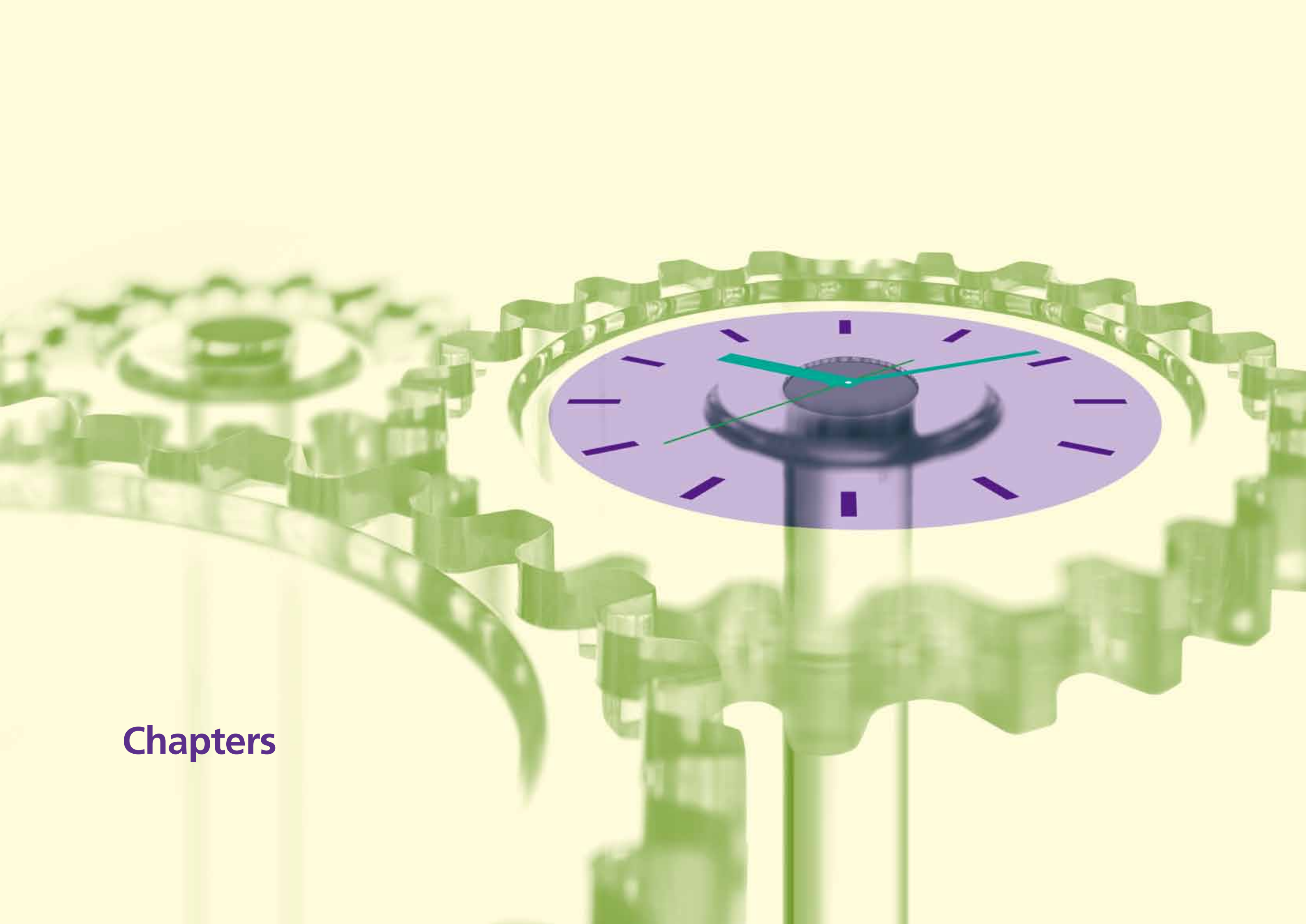
We will continue to publicise the role of The Ombudsman and promote a positive complaint culture.

Our experience with public complaints is that it is not uncommon for complainants to seek an apology from the organisation under complaint for the injustice that they have sustained. While apologies are not magic potions that work in every case, they can be quite effective in addressing the key needs of complainants. In some cases, an appropriate apology is in fact the main thing that they are after. I do recommend that Government departments and public bodies adopt a more open attitude towards making of apologies or at least expression of sympathy, sorrow or regret for the complainant's sufferings. Such acts often go a long way towards improving the relationship between the Government departments/public bodies concerned and the aggrieved persons.

In April 1997, mediation was first launched by my Office as an alternative dispute resolution method to deal with complaints involving no, or only minor, maladministration. After all these years, some organisations and members of the public still harbour misgivings about the implications of this method. It is my wish that more use be made of mediation where appropriate, since it is a totally harmless approach often conducive to "win-win" situations. In the year to come, my Office will continue to make efforts to promote understanding of mediation among Government departments, public bodies and complainants.

**Alan N Lai**

The Ombudsman  
31 March 2013



## Chapters





1.1 Established under The Ombudsman Ordinance (“the Ordinance”), Cap 397 of the Laws of Hong Kong, our Office functions as the city’s independent watchdog of public administration. We investigate actions by Government departments and public bodies for administrative deficiencies and recommend remedial measures. We promote good public administration for responsive and responsible, fair and open governance.

### Jurisdiction

1.2 The Ombudsman has powers to investigate complaints from aggrieved persons about maladministration by the Government departments and public bodies listed in Part I of Schedule 1 to the Ordinance (see **Annex 2**). We are always on the lookout, and maintain close contact with the Administration, for possible additions to the Schedule.

1.3 Besides investigating complaints received, The Ombudsman may, of his own volition, initiate direct investigation into areas of suspected maladministration usually involving systemic problems or issues of significant public interest.



1.4 Section 2 of the Ordinance defines “maladministration” as inefficient, bad or improper administration, including: unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for others.

1.5 The Hong Kong Police Force, the Independent Commission Against Corruption and two other organisations in Part II of Schedule 1 to the Ordinance (see **Annex 2**) are not subject to our investigation, except for cases of non-compliance with the Code on Access to Information<sup>1</sup>.

<sup>1</sup> The Code was introduced in 1995 to make available to the public as much Government-held information as possible, unless there are valid reasons – related to public, private or commercial interests – to withhold it. It applies to all Government departments, the Hong Kong Monetary Authority and the Independent Commission Against Corruption.

### Actions Not for Investigation

1.6 The Ombudsman’s purview is not without prohibition. Cases related, *inter alia*, to legal proceedings or prosecution decisions, contractual and other commercial transactions, personnel matters and imposition or variation of conditions of land grant are out of bounds. A full list of such prohibitions is at **Annex 3**.

### Restrictions

1.7 The Ordinance also prescribes other circumstances under which The Ombudsman shall not conduct an investigation. For example, the complainant has had knowledge of the subject of complaint for over two years, is anonymous, or is not the person aggrieved or a suitable representative of that person. Such restrictions are also detailed at **Annex 3**.

1.8 Nevertheless, in some cases, The Ombudsman has discretion whether or not to conduct, or discontinue, an investigation. A case may be taken up, for instance, if the complainant is able to explain satisfactorily why the complaint could not have been lodged within two years.

### Powers of Investigation and Recommendation

1.9 Under the Ordinance, The Ombudsman has a wide range of investigative powers: conducting inquiries, obtaining information and documents, summoning witnesses and inspecting premises of organisations under complaint.

1.10 While The Ombudsman’s investigation shall not affect any action taken by the organisation under complaint or the organisation’s power to take further action with respect to any decision which is subject to the investigation, The Ombudsman may report his findings and make recommendations for redress or improvement to the organisation.

1.11 Where an organisation does not adequately act upon his recommendation, The Ombudsman may submit a report to the Chief Executive of the Hong Kong Special Administrative Region. Where a serious irregularity or injustice is found, The Ombudsman may make a further report to the Chief Executive. In such event, the Ordinance requires that a copy of the report be laid before the Legislative Council within one month or such longer period as the Chief Executive may determine.



Chapter  
2

## Our Procedures

## Complaint Handling

## Modes of Complaint

2.1 Complaints may be lodged in person, by email, by fax, or by mail, postage-free if our complaint form is used. Complaints may also be made by telephone for simple cases involving not more than two organisations.

## Complainants' Representation

2.2 For a complaint made by an individual, he/she should normally be the person aggrieved unless that person is unable to act for himself/herself (see **para. 1.7** of Chapter 1).

2.3 For a complaint made on behalf of a body corporate, the complainant has to satisfy The Ombudsman that the body corporate has authorised him/her as its representative. The Ombudsman will allow legal representation if he considers it justified.

## Topical Complaints

2.4 From time to time, we receive complaints from more than one person, more or less concurrently, in respect of a particular current issue or hot topic. We term such cases "topical complaints" to distinguish them from complaint cases on disparate issues or topics, so as to reflect more accurately our caseload and the frequency of complaint against different organisations.

## Assessment

2.5 Our Assessment Team usually screens all incoming complaints within a day or two to examine whether they come within the statutory purview of The Ombudsman and whether they have a *prima facie* case to warrant investigation. The focus of assessment is on the substance and merits of the complaint, not quantity or level of persistence. The team will seek further information or clarification from the complainant if necessary.

2.6 We operate a Duty Officer Scheme under which our investigation officers meet new complainants face-to-face to obtain essential information on their cases for assessment and to brief them on our procedures and restrictions.

2.7 Cases "screened in" go to one of our six investigation teams for inquiry, resolution by mediation or full investigation. For the rest, a recommendation will be made to The Ombudsman for not pursuing the case.

2.8 Where The Ombudsman decides not to pursue a case, we aim to notify the complainant of the reason(s) within 15 working days (see **Annex 12** for our performance pledges). Even with complaints "screened out" because the complainants are anonymous, unidentifiable or not personally aggrieved, we do not dismiss them lightly but may examine if any serious or systemic maladministration or significant issue was involved. This may prompt topics for direct investigation assessment or even direct investigation (see **paras. 2.20 – 2.24**).

2.9 In some cases not pursued, as the complainants may be in need of services from some Government departments or public bodies, we take it upon ourselves to advise them where and how to get such services.

2.10 On appeal by complainants of cases "screened out", the Assessment Team will "re-assess" such cases and present its recommendation to The Ombudsman for decision as to whether the case should be re-opened for follow-up.

## Inquiry

2.11 The Ordinance provides that for the purposes of determining whether to undertake a full investigation (see **paras. 2.15 – 2.18**), The Ombudsman may conduct such "preliminary inquiries" as he considers appropriate. In the interest of complainants, we often use this procedure to resolve complaint cases of a general nature more speedily, without unnecessarily resorting to the more time-consuming action of full investigation. For simplicity, we call this "inquiry".

2.12 In conducting an inquiry, we ask the organisation under complaint to respond to us and, if we see fit, to the complainant in parallel. We will examine such response, the complainant's views on it, if applicable, together with any other relevant information or evidence that we may have collected. We will, in conclusion, present our findings to the complainant and make suggestions to the organisation for remedy or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.

## Mediation

2.13 With the consent of both the complainant and the organisation complained against, The Ombudsman may try to settle a case by mediation. This alternative method for dispute resolution is suitable for cases involving only minor or no maladministration. The two parties meet voluntarily to explore a mutually acceptable solution. Our investigation officers trained in mediation act as impartial mediators.

2.14 If mediation fails to resolve the matter, or the complainant requests to reactivate his complaint, our Office will assign another investigation officer to initiate an inquiry or a full investigation afresh. This is to ensure objective processing not influenced by prior knowledge from the mediation meeting.







## Full Investigation

2.15 For complex cases which appear to involve issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, or simply require deeper and fuller probing (see **para. 2.12**), our Office will conduct a full investigation.

2.16 This is an extensive or intensive process of probing to establish the facts. Besides examining documents, we may summon witnesses, counter-check data with the complainant and conduct site inspections. Where necessary, we will consult members of our Panel of Advisers, who are all experts with good standing in professional fields (see **Annex 15**).

2.17 We will also invite comments on our preliminary observations from any organisation or individual that may be criticised or adversely affected by the investigation report. When finalised, the report will be presented to the complainant for information and to the head of the organisation concerned for implementation of our recommendations.

2.18 In our investigation reports, complaints are classified according to how far the allegations of maladministration are well founded: “substantiated”, “partially substantiated” or “unsubstantiated”. In some cases, although the specific allegations in the complaint are unsubstantiated, other significant acts or aspects of maladministration are identified. These are classified as “substantiated other than alleged”. The different categories of outcome are defined in the **Glossary of Terms** (see **Annex 1**).

## Review

2.19 Complainants dissatisfied with our findings or conclusions may seek a review of their cases by providing supporting arguments and/or information. Such requests are first assessed by the Assistant Ombudsman concerned, who will consider the complainant’s grounds for review and whether the request should be entertained; if so, he will assign a suitable investigation officer to re-examine the case in detail and seek further information or comments from the organisation under complaint as necessary. A submission will eventually be made to The Ombudsman, via the Deputy Ombudsman, to determine whether our original conclusion should be upheld or varied.



## Direct Investigation

2.20 The Ombudsman’s power to conduct direct investigations (“DIs”) in the absence of complaints enables him to pursue issues raised by people not personally aggrieved (see **para. 2.8**), as well as to look at matters at a macro level as opposed to individual cases. Essentially, the latter means examining systems with systemic or widespread deficiencies. A DI may be prompted by significant topical issues of community concern, implementation of new or revised Government policies or repeated complaints of particular matters.

## DI Assessment

2.21 Before deciding whether or not to launch a DI against an organisation, we may conduct an initial assessment (“DI assessment”). For this purpose, we may research public information from annual reports and websites, legislation and media reports, or seek information from the organisation directly. If our assessment points to the need for further study, we will formally notify the head of the organisation and initiate a DI.

2.22 Where our DI assessment finds no significant maladministration or the organisation concerned has made proactive improvement, we will simply conclude our study and offer our findings to the organisation. Where appropriate, we make suggestions for improvement.

## Investigation Methodology

2.23 The procedures for DI are akin to those for investigation into individual complaints. Unlike the latter, however, we may declare publicly our initiation of DIs to invite views on the subject from relevant sectors and experts as well as the community at large.

2.24 In the course of our investigation, we often discuss our preliminary findings with senior officers of the organisation under investigation. Such exchanges are useful in clarifying points of doubt and furthering insight into the issues.

## Implementation of Recommendations

2.25 In all our reports, whether on complaint investigation or DI, our recommendations to the organisation concerned aim to make for more open and client-oriented service, transparent and accountable administration, more efficient processes and effective practices. These may even include comments on policies or legislation found outdated or inequitable.

2.26 Heads of organisations have an obligation to report at regular intervals their progress of implementation of our recommendations. We certainly also consider it our duty to monitor the same.

## Secrecy Requirement and Publication of Reports

2.27 The Ombudsman, staff and Advisers are all bound by law, under penalty of a fine and imprisonment, to maintain secrecy on all matters that come to our knowledge in the exercise and execution of our functions.

2.28 In this connection, it is our general practice not to respond to any question from third parties on individual complaints. However, where it is in the public interest to do so, The Ombudsman may publish at media conferences DI reports and anonymised reports on complaint investigation, or otherwise answer media enquiries on such investigations, again hiding names and other personal data.

2.29 We also place all our DI reports on our webpage for public reference.

## Essence of Our Investigation

2.30 Our object in investigation is to establish the facts and, where appropriate, enhance the quality of public administration. We do not conduct witch-hunt or criticise regardless. We inquire without fear or favour, bias or prejudice. We aim for fair and impartial conclusion of all cases.







Enquiries and Complaints Processing

3.1 The number of complaints received this year picked up again, reaching the figure of 5,501, or 5,263 if secondary cases<sup>1</sup> in *topical complaints* (see **para. 3.4**) were discounted, both the highest in the past five years. The number of enquiries maintained at a relatively stable level, slightly over 1,000 per month.



Fig. 3.1

Enquiries and Complaints Received			
Year	Enquiries	Complaints	
		Total	Excluding topical complaints
2008/09	14,005	5,386	4,533
2009/10	13,789	4,803	4,410
2010/11	12,227	5,339	4,712
2011/12	12,545	5,029	4,849
2012/13	12,255	5,501	5,263

<sup>1</sup> For counting purposes, each group of topical complaints is recognised by a “leader case” and the rest are taken as “secondary cases”.

3.2 Together with 848 cases brought forward from last year, we had a total of 6,349 complaints for processing this year.

3.3 A breakdown on the number of enquiries and complaints received and processed in the past five years is given in **Table 1**.

Topical Complaints

3.4 Topical complaints (see **para. 2.4** in Chapter 2) continued to feature in the complaints received, with 238 secondary cases this year, comprising about 4.3% of all complaints received. The largest group of topical complaints (with 114 secondary cases) arose from the Agricultural, Fisheries and Conservation Department’s measures to deal with stray cats, including its decision to charge \$11 for claiming back a stray cat by its owner, a decision which the Department quickly withdrew shortly after commencement of our inquiry into the complaint. The next largest lot of complaints (with 63 secondary cases) came from a group of detainees in a detention centre claiming ill-treatment. These cases could not be further pursued because the complainants either disclaimed to have lodged a complaint or were discharged and became untraceable subsequently. Another group (with 36 secondary cases) concerned the use of simplified Chinese characters in certain decorative lightings. We did not inquire into these complaints as the matter had been resolved before our action.



Mode of Lodging Complaints

3.5 Email remained the most common channel used in lodging complaints, accounting for 2,144 (39%) of all the complaints received. Nevertheless, personal contact, either by face-to-face interview or telephone, was still an important mode: 769 complaints (14%) were lodged in person and 675 (12%) by telephone. Figures in the past five years are given in **Fig. 3.2**.

Fig. 3.2

Mode of Lodging Complaints					
Mode	2008/09	2009/10	2010/11	2011/12	2012/13
In person	370	413	634	573	769
In writing –					
by complaint form	1,300	863	544	518	621
by letter through post	936	870	882	947	752
by fax	890	764	766	657	540
by email	1,515	1,362	1,954	1,783	2,144
By telephone	375	531	559	551	675
TOTAL	5,386	4,803	5,339	5,029	5,501

Complaints Handled

3.6 We completed processing 85.1% of all cases received during the year plus those brought forward from last year. Of the 5,401 cases which we completed processing, we pursued 2,285, while the rest were non-pursuable (see **Fig. 3.3**). Among those pursued, 2,094 (91.6%) were concluded by way of inquiry, 169 (7.4%) by full investigation and 22 (1%) by mediation.

3.7 The non-pursuable cases included those that we could not investigate due to restrictions by law or jurisdictional limitation (see **Chapter 1**) and those that were *withdrawn* by the complainant or *discontinued* by us after initial inquiry. There were also cases *not undertaken* because further inquiry is considered unnecessary for the following reasons:

- a *prima facie* case of maladministraton is not established;
- the complainant is merely expressing opinions or seeking assistance;
- the complainant has refused to consent to disclosure of personal data, necessary for our inquiries;
- the organisation concerned is taking, or has already taken, action on the matter; or
- there is another authority for the matter.

Fig. 3.3

Complaints Processed in 2012/13		
	Cases Processed	Percentage
Cases Not Pursuable	3,116	57.7%
Cases Pursued and Concluded	2,285	42.3%
<b>Total</b>	<b>5,401</b>	<b>100%</b>

3.8 The relatively high percentage of non-pursuable cases received this year was partly attributable to over 600 complaints from a few complainants who lodged with our Office repeated complaints against the same departments on trivial matters. Most turned out to be non-pursuable. Apart from these, the 100 odd cases of two groups of topical complaints, namely, those from the Immigration Centre detainees and those concerning simplified Chinese characters on decorative lightings also could not be pursued for the reasons mentioned in **para. 3.4**.

Major Causes for Complaint

3.9 Based on the allegations made by the complainants, the top five causes for complaint were:

- error, wrong decision or advice (30.4%);
- delay (14.6%);
- ineffective control (10.7%);
- staff attitude (6.8%); and
- lack of response to complainants (6.5%).

The top three causes were the same as last year. More details are given in **Table 3**.

3.10 Based on full investigations into cases, the top five forms of maladministration substantiated or partially substantiated were:

- error, wrong advice or decision (30.7%);
- delay or inaction (17.7%);
- ineffective control (16.1%);
- failure to follow procedures (8.9%); and
- lack of response/reply to complainant or enquirer (8.9%).

More details are given in **Table 8**.



Most Popular Targets of Complaint

3.11 The top four organisations in the league of the “top ten” organisations most frequently complained against based on the number of complaints we received (excluding those not pursuable) were the same as last year, including their ranking. The fifth to the ninth organisations in the league last year also remained in the league, though with slight changes in their ranking. The Agricultural, Fisheries and Conservation Department, not in the league last year, came to the fifth position this year, with 115 topical complaints against it (see **para. 3.4**). Details of the league are given in **Table 6**.

Outcome of Investigations and Inquiries

3.12 We concluded 169 complaints by full investigation, with 94 (55.6%) *substantiated*, *partially substantiated* or *substantiated other than alleged*. The outcome of our full investigations is summarised in **Fig. 3.4**.

Fig. 3.4

Substantiation Rates of Complaints Concluded by Full Investigation		
Classification	No. of Complaints	Percentage
Substantiated	32	18.9%
Partially substantiated	55	32.6%
Substantiated other than alleged	7	4.1%
Unsubstantiated	75	44.4%
Inconclusive	0	0.0%
<b>Total</b>	<b>169</b>	<b>100.0%</b>

3.13 Of the 2,094 inquiry cases concluded, inadequacies or deficiencies were found in 671 (32.0%). We would suggest improvement measures where due, whether or not inadequacies or deficiencies were found. **Table 9** gives the details.

Direct Investigation

3.14 We completed six direct investigations during the year. The subjects studied covered the administration of temporary closure of metered parking spaces during road works, the booking and use of Government sports facilities, the administration of Government policy on private recreational leases, conveyance of patients by ambulance to “area hospitals”, recovery of mortgage default debts under the Home Ownership Assistance schemes and enforcement against illegal extensions by food establishments. Four direct investigations were in progress at the end of the year.

3.15 We completed 47 direct investigation assessments this year. Most of them were related to actions taken by the Lands Department and Buildings Department in response to reports of illegal occupation of Government land and illegal structures. Other issues studied covered the management of public cemeteries and illegal burials, parking facilities for motor cycles for persons with disabilities, weather forecasts by the Hong Kong Observatory and the regulation of gas tubings.

3.16 A list of the direct investigations and selected direct investigation assessments completed is in **Annex 5**.





Recommendations

3.17 On completion of 169 full investigations we made 161 recommendations. We also made 56 recommendations after six direct investigations. Among this total of 217 recommendations, 192 (88.5%) of them have been accepted by the organisations for implementation and 25 (11.5%) were still under consideration as at 31 March 2013.

3.18 For inquiry cases, we made a total of 73 suggestions for improvement on conclusion of our inquiries in the year. A breakdown, by target organisations, of the number of suggestions made is in **Table 9**.

Our Performance



3.19 Our performance pledges and record of achievement are listed in **Annex 12**. We continued to meet our pledges fully in respect of answering enquiries by telephone and in person and in arranging talks. For enquiries in writing, we answered 86.8% of them in five working days and 12.1% in six to ten working days, compared to last year's figures of 78.0% and 22.0%.

3.20 On complaint handling, we acknowledged 98.9% of all complaints received within five working days but exceeded the pledged time frame in 1.1% of the cases. For processing cases outside jurisdiction or under restriction, we exceeded the target timeframe of 15 working days in 1.8% of the cases, compared with 1.5% last year (see **Fig. 3.5(a)**).

3.21 We concluded 86.3% of the cases within three months, compared with 79.3% last year. Same as in the past two years, there were 0.9% of the cases not concluded within our pledge timeframe of six months (see **Fig. 3.5(b)**). This was largely attributable to factors not within our control but affecting our inquiries, such as complexity of the case and new developments mid-stream of the process.



Fig. 3.5

(a) Processing Time for Cases Outside Jurisdiction or Under Restriction			
Year	Response Time		
	Within 10 working days (target : >70%)	Within 11-15 working days (target : <30%)	More than 15 working days
2008/09	77.2%	19.6%	3.2%
2009/10	78.9%	16.3%	4.8%
2010/11	83.4%	14.5%	2.1%
2011/12	89.2%	9.3%	1.5%
2012/13	89.5%	8.7%	1.8%

Fig. 3.5

(b) Processing Time for Other Cases Concluded			
Year	Response Time		
	Less than 3 months (target : >60%)	Within 3-6 months (target : <40%)	More than 6 months
2008/09	65.9%	32.3%	1.8%
2009/10	54.7%	43.2%	2.1%
2010/11	74.5%	24.6%	0.9%
2011/12	79.3%	19.8%	0.9%
2012/13	86.3%	12.8%	0.9%

Overview

3.22 The number of complaints received this year reached a record high, though quite a number of them were not pursuable for various reasons. While some non-pursuable topical complaints were a contributing factor, the few complainants who sent in numerous trivial complaints almost on a daily basis also added to the number of non-pursuable cases.

3.23 The year also saw a higher number of complaints concluded by way of full investigation, which found wrong decision, delay and ineffective control to be the most common forms of maladministration. These coincided with the major causes for complaint. Our full investigations and direct investigations generated more recommendations to organisations this year. The above were achieved without sacrificing our ability to fulfill our performance pledge – over 86% of our inquiry and investigation cases were completed within three months, against a pledge of no less than 60%. We continued our efforts in mediating suitable case, with encouraging results.

3.24 We will endeavour to maintain a high level of efficiency as well as thoroughness of our complaint handling work in the year to come.







Enhancing Quality Administration

4.1 An important aspect of our complaint handling work is to make recommendations to the organisations under complaint with an aim of improving their quality of administration. Most of our recommendations are accepted by the organisations (see **paras. 3.17** and **3.18** in Chapter 3). We monitor their action periodically until they have implemented our recommendations. During the year under report, the measures introduced by organisations in implementing our recommendations fell broadly into the following categories:

- (a) guidelines for clarity, consistency or efficiency in operation;
- (b) better arrangements for inter-departmental coordination;
- (c) measures for better public enquiry/complaint handling;
- (d) measures for better client services;
- (e) measures for more effective regulation or control;
- (f) clearer and more reasonable rules;
- (g) clearer and more timely information to the public; and
- (h) training for staff.

4.2 Specific examples are given in **Annex 10**. Measures for better client services, enhanced guidelines for staff and clearer and more timely information for the public were the categories where most recommendations were made.

Mediating Disputes

4.3 Our effort to resolve complaints in suitable cases without resorting to inquiry or investigation continued this year with encouraging results. A total of 12 Government departments/agencies voluntarily participated in mediation, though at times requiring some initial persuasion, and successfully reached agreement with the complainants in 22 cases. These cases concerned a large variety of matters, such as water seepage, applications for compensation, rules in a marathon race, remarking of public examination papers, demolition of a disused unauthorised

bridge, provision of lighting in public housing estates and better postal delivery service.

4.4 Most of the successful cases were conducted by face-to-face mediation meetings, though telephone mediation was also adopted in some simple cases. Both complainants and organisations which had participated in mediation generally considered the process worthwhile. Our officers who had acted as mediators also gained much satisfaction in bringing about a win-win solution in these cases. Some organisations expressed that they would actively consider resolving suitable complaints by mediation in future.

Transparent Government and Access to Information

4.5 As noted in Chapter 1 (**para. 1.5**), our Office is conferred with the duty and power to handle complaints about breaches of the Code on Access to Information. This year the number of complaints received relating to the Code increased significantly, from last year’s 35 to 59 this year. The figures for the past five years are shown in **Fig. 4.1** below:

Fig. 4.1

Number of Code-related Complaints in the Past Five Years	
Year	No. of Complaints Received
2008/09	24
2009/10	46*
2010/11	42*
2011/12	35
2012/13	59

\* The figures in 2009/10 and 2010/11 each include 3 cases not recognised as such complaints in the year when they were received but so classified on conclusion in the subsequent year.

4.6 We concluded 49 Code cases during the year, with faults or defective handling of requests for information found in 20 of them. A major fault found was unreasonable refusal to provide information, wholly or partly, mostly for a wrong reason but it was not rare that no reason was given at all. Where a wrong reason was given, often it involved an inapt claim to protect the privacy of personal data. Procedural defects were also identified in some cases, such as late provision of the information requested and failure to inform the requesters of appeal channels in accordance with the Code when their requests were turned down.

Identifying and Tackling Systemic Issues

Lack of Determination to Deal with Long-standing Problems

4.7 We commented in last year’s report on Government’s lack of determination to tackle perennial problems such as shop-front extension. Another group of long-standing problems concern illegal occupation of Government land. In a complaint case handled during the year, a piece of Government land had been occupied for various activities, including illegal parking, hawking and drying of clothes. A number of departments had attempted to tackle the issue but, with various excuses, the problem remained unresolved for 30 years, until after we had investigated a complaint from a citizen.



4.8 Another example was the many loopholes in the booking system for sports facilities managed by the Leisure and Cultural Services Department. These defects had been the subject of continued complaints, both to the Department and to our Office. No comprehensive review had been conducted to deal with the problems until we commenced a direct investigation into the subject. We consider it essential that departments and organisations should be sensitive to emerging new issues and nip the problems in the bud rather than procrastinating action until the problems have grown and taken root.

4.9 Nevertheless, we are pleased to note that in both cases mentioned above the Administration responded positively to our recommendations and quickly introduced effective measures to resolve the problems.

### Failure to Keep Proper Records

4.10 In a number of cases we handled, we noticed that some departments/organisations were lax in keeping proper records. In all these cases, the departments/organisations concerned claimed to have sent a reply to the complainant or have kept the complainant informed of progress of the handling of his case, but our inquiries could find no record of such action having been taken. We consider this malpractice a reflection of the lack of sense of accountability on the part of the departments and organisations concerned.

### Issues Examined by Direct Investigations

4.11 Apart from identifying systemic issues from our complaint case handling or from other sources, such as the media, we may also conduct direct investigations to look into the issues more deeply or from a broader perspective. As mentioned in **para. 3.14** of Chapter 3, we completed six direct investigations this year.

4.12 From a complaint case we noticed that some metered parking spaces closed temporarily for road works by public utilities had been closed for an unnecessarily long time, because the works had commenced late and ended early, resulting in a waste of public facilities. We conducted a direct investigation on this subject and found that there was no monitoring of the actual commencement or completion of road works requiring temporary closure of metered parking spaces. This waste of public facilities was particularly serious where the duration of closure approved was overly generous. We recommended a series of measures to tighten the criteria for approving closures, the monitoring of the commencement and completion of the road works requiring the closures and the penalty for breaches.

4.13 The direct investigation mentioned in **para. 4.8** above was a response to the numerous complaints received regarding the booking and use of Government sports facilities. The major complaints included touting, difficulty in booking by individuals and organisations and the wastage of venue facilities caused by no-show of users. We found that, although excess in demand for sports facilities might be an underlying cause for the complaints, deficiencies in the booking system and execution had fuelled malpractices. We recommended a series of measures to tackle such deficiencies, in areas such as the long advance booking periods for individuals and organisations, the time gap between telephone booking and payment, the lax enforcement of identity verification, the lack of penalty for no-show by individuals or late cancellation by organisations, the free “stand-by” arrangement, and the lack of transparency of the block booking arrangements. In the course of the investigation, we benefited greatly from views and comments received from members of the public in response to our declaration of commencement of the investigation. The formulation of our recommendations was also a result of thorough discussions with the Leisure and Cultural Services Department.

4.14 We started our direct investigation into the administration of Government policy on private recreational leases when the Home Affairs Bureau (“HAB”) was negotiating with many sports clubs regarding the renewal of their leases. In granting leases to the sports clubs at nil or nominal rents, Government required the clubs to make available their facilities for use by non-member eligible bodies, albeit only on a limited scale. However, we found HAB’s monitoring and publicity in this respect quite inadequate. We recommended HAB to increase accessibility of the sports clubs’ facilities to eligible bodies, strengthen publicity of the availability of such facilities, monitor compliance more closely and enhance the related complaint handling mechanism. On HAB’s undertaking to conduct a comprehensive review on the policy of granting leases to sports clubs at nil or nominal rents, we urged it to take this on board as soon as possible, with wide public consultation.

4.15 Our investigation into the arrangement of the Fire Services Department and the Hospital Authority for ambulancemen to take patients, including those in critical condition (e.g. patients suffering cardiac or respiratory arrest), to hospitals according to their “catchment areas” aim to address concerns about the delay caused by the rule and the serious consequences that might result. The investigation revealed that, while the current system had its rationale and could basically remain unchanged, special arrangements should be made to identify patients in critical condition and take them to the nearest hospital in terms of travel time so as to meet their most urgent need to receive medical treatment. We further recommended proper training for the frontline ambulancemen and regular review of the arrangement.

4.16 The direct investigation into Housing Department’s (“HD”) arrangements for recovery of mortgage default debts under the Home Ownership Assistance (“HOA”) schemes was triggered by a complaint lodged with us. Being the mortgage default guarantor for properties sold under the HOA schemes, the Hong Kong Housing Authority (“HKHA”) had to settle mortgage default claims with banks. The total amount was substantial. As HKHA’s executive arm, HD had the duty to chase the default ex-owners for recovery of the debts but did not do so for 18 years since the first claim had been settled in 1991. Apart from revealing this oversight of HD, our investigation also found that, even after the setting up of a mechanism in 2009 for debt recovery, HD’s progress had been unsatisfactory and its procedures defective. We recommended the Department to review its operational and monitoring arrangements, strengthen training for its staff and expedite the process.

4.17 We also looked into the regulatory measures against illegal extension of business area by restaurants of the Food and Environmental Hygiene Department (“FEHD”) and Lands Department (“Lands D”). We found FEHD’s deployment of only health inspectors but not hawkers control officers in tackling the problem an under-utilisation of its frontline resources, its over-emphasis on the frequency of inspections and prosecutions but not the long term deterrent effect of its enforcement actions inappropriate, and the cumbersome three-tier appeal mechanism and the exercise of discretion by FEHD to withhold implementing the suspension or cancellation of licences under the Demerit Points System prone to abuse. We also found Lands D, as the land administrator, to have failed to use its powers to contain the problem. We recommended FEHD to actively explore the best use of its resources, to conduct targeted raids on recalcitrant offenders, to simplify the appeal mechanism to two-tier, and Lands D to actively use its powers to support FEHD when required. We also recommended designation of spots for regularised alfresco dining and to facilitate applications from restaurant operators for setting up outside seating accommodation at those spots.





Challenges from Parties

Re-assessment of Cases

4.18 As explained in **Chapter 2**, our Assessment Team examines all incoming complaints and determines whether they come within our jurisdiction. Cases are screened out if they fall outside our jurisdiction, or for which we are restricted by law to investigate, or that are otherwise inappropriate for us to pursue. Complainants disagreeing with our decision may request to have their cases re-assessed.

4.19 During the year we received 374 requests for re-assessment, with 119 subsequently re-opened for inquiry.

Review of Cases

4.20 For cases concluded after we have examined the issues under complaint, complainants dissatisfied with our findings or conclusions may seek a review. Such requests will be considered according to laid down procedures. If it is considered justified, a review will be conducted.

4.21 This year we received 88 requests for review, with 40 declined and 48 reviews conducted. I varied my decision in three cases after review and upheld my original decision for the remaining 45, as shown in **Fig. 4.2**.

Fig. 4.2

All Review Cases						
Reason \ Result	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	2	-	1	-	-	3
Decision upheld	-	44	-	-	1	45
						48

Judicial Review and Litigation

4.22 A complainant not satisfied with my decision may, apart from requesting a review by me, seek a judicial review by the court.

4.23 A complainant had applied, in 2010, for leave to apply for judicial review against my decision not to continue our inquiry into his complaint against a Government department for his failure to give his consent, despite repeated reminders, for us to transfer his personal data to the Department for the purpose of the inquiry. Leave was refused by the High Court in October 2010. The complainant was seeking leave of the Court of Appeal to appeal against the High Court decision.

4.24 The Small Claims Tribunal case mentioned in my report last year lodged by a complainant against our Office as a co-defendant was heard in April 2012. The claim was struck out with cost to our Office. During the year, there was also a claim lodged with the Small Claims Tribunal by another complainant against our Office for not taking up his complaint. The case was struck out in the first hearing in September 2012 with cost to our Office.

Challenging Complainant Behaviours

4.25 From time to time we encounter challenging complainant behaviours in the course of our work. They range from illegible writing to persistently labouring on a point that had been repeatedly clarified, from using bad language to exhibiting physical threats, and from calling up frequently to check progress to swamping us with daily complaints. We understand this to be a common feature of any complaint handling work and deal with it professionally, reminding ourselves constantly that each complaint should be assessed objectively regarding its merits. At the same time we are mindful of the need to deploy our resources effectively for better service for the public and respond to the challenges sensibly. We provide suitable training to our staff so as to equip them with the necessary knowledge and skills.

Resistance to Our Inquiries

4.26 We experienced misunderstanding of our work by individual Government officers in some of our inquiries. Often they considered the complaint as unjustified and hence our inquiry as creating unnecessary work for them. We had to explain to them that, being an impartial investigator, we cannot pre-judge whether an allegation is substantiated or not before we know all the facts and hence the need for inquiry. It is our insistence on objectivity and impartiality that we may win public confidence on the fairness of our findings, even where we conclude a complaint as unsubstantiated.

Overview

4.27 Helping Government departments and organisations improve the quality and efficiency of their operation and standard of service as well as their response to citizens' demands and queries is an important object of our complaint handling work. We achieve this by making recommendations on conclusion of our investigations and, equally importantly, by following through their implementation. During the year we saw many good measures introduced by various Government departments and organisations as a result of our recommendations.

4.28 Our direct investigations continued to be an important vehicle to address systemic problems in public administration revealed by the complaint cases we handled or by the media. We are pleased that Government takes our findings seriously and generally accepts our recommendations. Meanwhile, there was a noticeable increase in number of complaints lodged concerning public access to information. It showed a heightened public awareness of their rights in this respect and we hope the Administration will respond positively to this trend.

4.29 We will continuously enhance our ability in our investigative work and professionalism in complaint handling and promote mediation as a means to resolve suitable cases.







Staffing

5.1 During the year, we retitled the “Complaints Officer Grade” to “Investigation Officer Grade” to better reflect the job nature of our investigation officers. We continued to implement a three-pronged strategy to build up a healthy contingent of investigation officers. As in the previous year, we recruited graduates with no or little working experience at the entry rank of Assistant Investigation Officer, offering them early nurturing and a career path. We also recruited people with public sector experience directly to the more senior ranks. This has enabled us to tap experience from people of different public administration backgrounds, and broaden the outlook of the grade. To allow more flexibility in manpower deployment, we continued to supplement our regular workforce with temporary investigation officers who had rich experience in public administration. This has helped us tide over temporary shortfall in investigative manpower and cope with fluctuations in caseload.

5.2 A total of 12 investigation staff (one at Chief Investigation Officer level, two at Senior Investigation Officer level, five at Investigation Officer level and four at Assistant Investigation Officer level) were appointed. Our organisation chart is in **Annex 14**.

Fig. 5.1

Staff Complement			
Breakdown of staff	As at 31.3.2011	As at 31.3.2012	As at 31.3.2013
Directorate	4	4	4
Investigation	54	55	60
Administrative & support	48	49	47
<b>Total regular staff</b>	<b>106</b>	<b>108</b>	<b>111</b>
Temporary investigation staff: equivalence to full-time posts (total staff-days)	5.1 (1,351)	5.1 (1,356)	3.9 (1,032)
<b>Grand total</b>	<b>111.1</b>	<b>113.1</b>	<b>114.9</b>



Fig. 5.2 Career exhibitions

5.3 Through our outreach activities, we continued to introduce career opportunities in our Office to members of the public, particularly university students. We participated in career exhibitions organised by the Chinese University of Hong Kong, the University of Hong Kong and the Hong Kong University of Science and Technology in January and March 2013, and the Education and Careers Expo held at the Hong Kong Convention and Exhibition Centre in January and February 2013. We were encouraged by the positive feedback to these initiatives, which also served to enhance public understanding of our mission and the work of our investigation officers.

Staff Training

5.4 We attached utmost importance to equipping and enriching our staff with professional knowledge and skills for the efficient and effective discharge of their duties, and to cope with the changing social environment and the increasingly challenging nature of complaint handling.

5.5 To facilitate the integration of our new recruits into the new working environment and enable them to be fully operational as quickly as practicable, we conducted an induction programme for them, covering different aspects of work of an investigator.

5.6 A workshop was conducted for our investigation officers on techniques in handling difficult situations in their daily dealings with complainants through interactive role-play. Another workshop was organised to keep our staff abreast of the latest trend and techniques in public communication, focusing on presentation skills and interaction with the media.

5.7 To promote the use of mediation in resolving complaints, we provided sponsorship for investigation staff to attend more elaborate training and attain accreditation as mediators.



Fig. 5.3 Workshop on handling difficult situations



Fig. 5.4 Workshop on presentation skills

5.8 Ten officers attended the International Ombudsman Institute Regional Training Programme held in Hong Kong and Macao to enhance their exposure to best practices in complaint handling in different jurisdictions.



Fig. 5.5 IOI Regional Training Programme

Revamp of Information Technology Systems

5.9 With the advance in information technology, the Office has planned to upgrade our computer system for the handling and management of complaints. This would lead to a more efficient workflow and less use of paper.

Complaints against the Office

5.10 This year, we concluded a total of 23 complaints lodged against staff: their manners, our work practices and procedures or both. Two of the complaints against our staff were found “substantiated”. We treasured the lessons learned and provided appropriate staff counselling to the officers concerned.

5.11 Generally speaking, complaints against our staff often arose from dissatisfaction with our conclusions and decisions on their cases against Government departments and public organisations. Nevertheless, we take complaints most seriously as each complaint provides us with an opportunity to review our work systems and practices. We are always ready to improve the services to the community.

Fig. 5.6

Complaints against the Office concluded in 2012/13		
Nature	Substantiated	Unsubstantiated
Staff manner (e.g. delay, negligence, abuse of power, unacceptable behaviour)	2	17
Work practices and procedures	-	2
Both staff manner and work practices and procedures	-	2
Total	23	





Chapter 6

## Publicity and External Relations



Fig. 6.1 Poster advertisement in bus station shelter

6.1 To promote fairness and efficiency in public administration, we put great emphasis on enhancing public awareness and engaging different stakeholders. Throughout the year, we publicised the ombudsman's system by a wide range of activities.

### Public Education and Promotion Publicity Campaign

6.2 We rolled out a brand new TV commercial from October to November 2012, with the tag-line “We identify mistake and urge for prompt correction”. By a simple device of highlight pen, the TV commercial illustrated the role of The Ombudsman in exposing various administrative errors in an office setting. It was broadcast in local television, public transport and online TV channels.

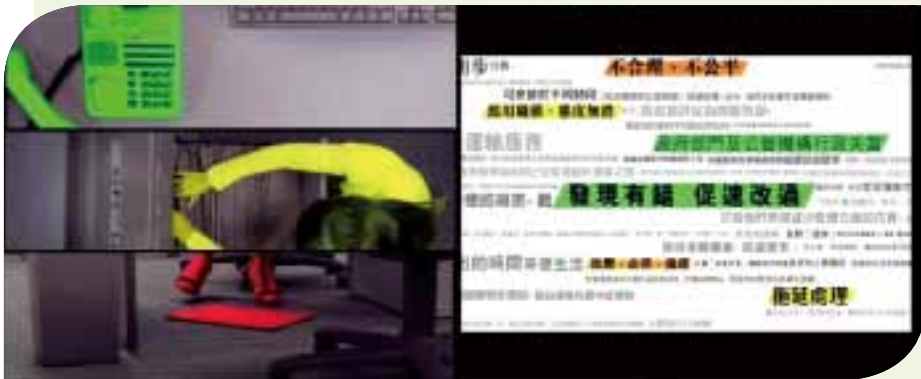


Fig. 6.2 TV Commercial - We identify mistakes and urge for prompt correction



Fig. 6.3 Roving exhibition

6.3 The publicity campaign also included print advertisement on different free dailies and bus station shelters.

### Roving Exhibition

6.4 To reinforce the effect of the TV commercial, we organised a series of roving exhibitions at around the same time. We set up exhibition panels in 11 locations across the territory, including Government offices, shopping malls and MTR stations. Over 12,000 members of the public visited the booths and received our souvenirs and publicity leaflets.



Fig. 6.4 Print advertisement - “We identify mistakes and urge for prompt correction”





Fig. 6.5 Press conference

Press Conferences and Media Releases

6.5 Mass media is by far the most effective means to disseminate significant information and capture public attention. During the year, we organised three press conferences, announcing the results of three anonymised complaint investigation reports and five direct investigation reports. We also declared the initiation of two direct investigations. The public announcements drew wide media coverage.

Fig. 6.6

Press Conferences/Public Announcements	
31 May 2012	<ul style="list-style-type: none"><li>Announcement of findings of direct investigation on:<ul style="list-style-type: none"><li>i. Granting of short term tenancies at nominal rent</li><li>ii. Effectiveness of administration of temporary closure of metered parking spaces during road works carried out by public utilities</li></ul></li><li>Announcement of findings of anonymised investigation into complaint against three Government departments for failing to curb the unauthorised activities of a hawker stall</li></ul>
19 September 2012	<ul style="list-style-type: none"><li>Announcement of findings of direct investigation on:<ul style="list-style-type: none"><li>i. Booking and use of sports facilities of Leisure and Cultural Services Department</li><li>ii. Administration of Government policy on private recreational leases</li></ul></li></ul>
18 October 2012	<ul style="list-style-type: none"><li>Declaration of direct investigation into Transport Department mechanism for monitoring the frequencies of franchised bus services</li></ul>
4 January 2013	<ul style="list-style-type: none"><li>Declaration of direct investigation into access to information and records management in Hong Kong</li></ul>
10 January 2013	<ul style="list-style-type: none"><li>Announcement of findings of direct investigation on conveyance of patients by ambulance to “Area Hospitals”</li><li>Announcement of findings of anonymised investigation into:<ul style="list-style-type: none"><li>i. Complaint against Social Welfare Department for unreasonableness in its assessment of the income of CSSA recipients</li><li>ii. Complaint against three Government departments for failing to properly handle unlawful occupation of Government land</li></ul></li></ul>

Talk for Departments and Organisations

6.6 We conducted six outreach talks to Government departments and organisations during the year, including the Office of the Privacy Commissioner for Personal Data, the Social Welfare Department, the Post Office, the Food and Environmental Hygiene Department, the University of Hong Kong and the Hong Kong Jiangsu Exchange Promotion Association. These were valuable occasions for public officers to deepen their understanding on our work.

Youth Education

6.7 Young people are future leaders of the society. We actively look for opportunities to publicise our work to the younger generation. During the year, we received visits from students of two secondary schools. We also took part in the Education and Careers Expo 2013 organised by the Hong Kong Trade Development Council. Over 4,000 people, mainly teenagers, visited our booth and learnt about our work and career opportunities.



Fig. 6.7 Talk for Government department



Fig. 6.8 Education and Careers Expo

Online Promotion

6.8 We continued to widen our reach through different online channels. We generated a Quick Response Code (“QR code”) to facilitate efficient access to our website through smart phones. We have also set up a facebook fan page to provide news feed to the public. All publicity videos and online games are accessible through the fan page ([www.facebook.com/Ombudsman.HK](http://www.facebook.com/Ombudsman.HK)).



Fig. 6.9 Fan page

Working with Professionals, Community Leaders, etc.

Advisers and JPs

6.9 Our Advisers and Justices of the Peace (“JPs”) under the JPs Assistance Scheme play an important role in offering professional support to our Office.

6.10 In October 2012, we organised a seminar on special grounds for public rental housing and rehousing. On the occasion, our Advisers and JPs enjoyed a fruitful and constructive exchange of views with the speakers from Government departments and organisations.



Fig. 6.10 Seminar on special grounds for public rental housing and rehousing

Legislative Councillors

6.11 Every year, I meet with Members of the Legislative Council to update them on our work. The meeting of this year took place on 18 December 2012, when we discussed issues of mutual and public concern.

The Ombudsman’s Awards

6.12 I present The Ombudsman’s Awards annually to public organisations and officers to recognise their efforts in fostering efficient administration and adopting positive attitude towards complaint handling. Over 200 guests attended this year’s presentation ceremony, which was held on 31 October 2012. The Social Welfare Department won the Grand Award. The Hong Kong Monetary Authority and the Water Supplies Department were the other two winning organisations, whereas 41 officers got the individual awards.



Fig. 6.11 The Ombudsman’s Awards presentation ceremony

Fig. 6.12

Winning Organisations for 2012
Social Welfare Department - Grand Award
Hong Kong Monetary Authority
Water Supplies Department

Fig. 6.13

Individual Awards for 2012	
Organisation	No. of Awardees
Airport Authority	1
Buildings Department	2
Civil Engineering and Development Department	3
Consumer Council	1
Correctional Services Department	1
Customs and Excise Department	1
Department of Health	1
Drainage Services Department	2
Education Bureau	1
Efficiency Unit	1
Environmental Protection Department	1
Fire Services Department	1
Food and Environmental Hygiene Department	1
Highways Department	2
Home Affairs Department	2
Hong Kong Examinations and Assessment Authority	2
Hospital Authority	2
Immigration Department	2
Inland Revenue Department	2
Judiciary	1
Land Registry	1
Lands Department	1
Legal Aid Department	1
Mandatory Provident Fund Schemes Authority	2
Marine Department	1
Office of the Privacy Commissioner for Personal Data	1
Social Welfare Department	1
Student Financial Assistance Agency	2
Water Supplies Department	1

Overseas and Mainland Liaison

6.13 I maintain close contacts with ombudsman institutions worldwide. In June and November 2012, I attended the Asian Ombudsman Association Board Meeting in Azerbaijan and the International Ombudsman Institute (“IOI”) World Conference and Board of Directors Meeting in New Zealand respectively. These cooperative networks kept us up to date on development of the ombudsman system around the world.

6.14 In May 2012, my Office hosted the IOI Mid-term Board of Directors Meeting in Hong Kong. We also co-organised the IOI Regional Training on Complaint Management with the Commission Against Corruption (“CCAC”) of Macao. The three-day training and exchange enabled participants to widen their exposure and deepen their insights on complaint management.



Fig. 6.14 The IOI Regional Training on Complaint Management

6.15 The Deputy Ombudsman led a team of six members to visit the Department of Supervision in Shandong, China in September 2012. Through meetings and visits to their public service units, the delegation gained greater exposure to the monitoring system at provincial level.

6.16 In February 2013, I visited the CCAC, Macao with my colleagues. The visit deepened our understanding on their case profile and mode of investigation.

6.17 Throughout the year, various mainland and overseas delegations visited our Office. These offered good opportunities for us to promote our work and understand about the functions of other institutions. The list of visitors is at **Annex 16**.



Fig. 6.15 Visit to Shandong, China

Looking Ahead

6.18 We are committed in publicising our work to reach out various sectors of the community. To step up our campaign this year, we are collaborating with the Radio Television Hong Kong to produce a television programme with eight episodes, to be broadcast in summer 2013. This initiative aims at further educating the public on our functions and jurisdiction. In addition, we have embarked on a project for the revamp of the Office website to facilitate convenient access to our website information. We will continue our efforts in reaching out to the public by different creative means.



Annexes



Annex  
1

## Glossary of Terms

**Complaint**

A complaint is a specific allegation of wrong doing, unreasonable action or defective decision which affects and aggrieves the complainant.

**Complaint Not Undertaken**

This is a complaint which The Ombudsman has decided not to process further after considering all its circumstances, e.g. whether there is sufficient *prima facie* evidence of maladministration.

**Direct Investigation (“DI”)**

This is an investigation initiated in the public interest even in the absence of complaint and generally on matters of a systemic nature or wide community concern.

**Direct Investigation Assessment**

This refers to the preliminary examination and assessment on a potential subject for direct investigation. Where our direct investigation assessment finds no significant maladministration or the organisation concerned has made proactive improvement, we will not initiate a direct investigation. We will conclude our study and offer our findings to the organisation. Where appropriate, we make recommendations for improvement.

**Discontinuation of Complaint**

This is the cessation of inquiries into a complaint for reasons such as insufficient information or evidence from complainants and lack of complainants’ consent for access to their personal data.

**Enquiry**

An enquiry is a request for information or advice.

**Full Investigation**

This refers to an in-depth inquiry, usually into complex or serious complaints and usually with recommendations for improvement or remedy upon conclusion.

**Inconclusive**

This is a situation where, at the end of a full investigation, The Ombudsman is not prepared to draw any conclusion on a complaint because the evidence is conflicting, irreconcilable, incomplete or uncorroborated.

**Inquiry**

For general complaint cases, we may use this procedure to resolve complaints more speedily. We ask the organisation under complaint to respond to us and, if we see fit, the complainant in parallel. We will examine such response, the complainant’s view on it, if applicable, together with any other relevant information or evidence we have collected. We will, in conclusion, present our findings to the complainant and make suggestions to the organisation for remedy or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.

**Investigation**

This may be a full investigation into a complaint or a direct investigation without a complaint.

**Maladministration**

This is defined in The Ombudsman Ordinance. It basically means poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for a person.

**Mediation**

This is a voluntary process carried out where the complainant and the organisation under complaint agree to meet to discuss the complaint and to explore mutually acceptable solutions. Investigators from this Office act as impartial facilitators.

**Outside Jurisdiction**

This refers to the situation where the action or organisation subject to complaint is not within The Ombudsman’s jurisdiction under The Ombudsman Ordinance.

**Restrictions on Investigation**

These are the restrictions on investigation under The Ombudsman Ordinance.

**Substantiated other than Alleged**

This is where a complainant’s allegations are unsubstantiated but The Ombudsman discovers other aspects of significant maladministration and comments on those other deficiencies.

**Substantiated, Partially Substantiated and Unsubstantiated**

These reflect the varying degrees of culpability of an organisation under complaint on conclusion of a full investigation.

**Topical Complaints**

These are complaints on a particular social or topical issue. They are essentially against the same action or decision by the organisation under complaint.

**Withdrawal of Complaint**

This is a complainant’s voluntary withdrawal of a complaint. However, depending on the nature or gravity of the allegations, The Ombudsman may still pursue the case.





## List of Scheduled Organisations

### Organisations Listed in Part I of Schedule 1, Cap. 397

1. All Government departments/agencies except the Hong Kong Auxiliary Police Force, the Hong Kong Police Force, the Independent Commission Against Corruption, and the Secretariat of the Public Service Commission
2. Airport Authority
3. Auxiliary Medical Service
4. Civil Aid Service
5. Consumer Council
6. Employees Retraining Board
7. Equal Opportunities Commission
8. Estate Agents Authority
9. Financial Reporting Council
10. Hong Kong Arts Development Council
11. Hong Kong Examinations and Assessment Authority
12. Hong Kong Housing Authority
13. Hong Kong Housing Society
14. Hong Kong Monetary Authority
15. Hong Kong Sports Institute Limited
16. Hospital Authority
17. Kowloon-Canton Railway Corporation
18. Legislative Council Secretariat
19. Mandatory Provident Fund Schemes Authority
20. Office of the Privacy Commissioner for Personal Data
21. Securities and Futures Commission
22. Urban Renewal Authority
23. Vocational Training Council
24. West Kowloon Cultural District Authority

### Organisations Listed in Part II of Schedule 1, Cap. 397

1. Hong Kong Auxiliary Police Force
2. Hong Kong Police Force
3. Independent Commission Against Corruption
4. Secretariat of the Public Service Commission

## Circumstances Where Complaints are not Followed up or Investigated

### Actions not Subject to Investigation - Schedule 2, Cap. 397

1. Security, defence or international relations
2. Legal proceedings or prosecution decisions
3. Exercise of powers to pardon criminals
4. Contractual or other commercial transactions
5. Personnel matters
6. Grant of honours, awards or privileges by Government
7. Actions by the Chief Executive personally
8. Imposition or variation of conditions of land grant
9. Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases
10. Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

### Restrictions on Investigation of Complaints - section 10(1), Cap. 397

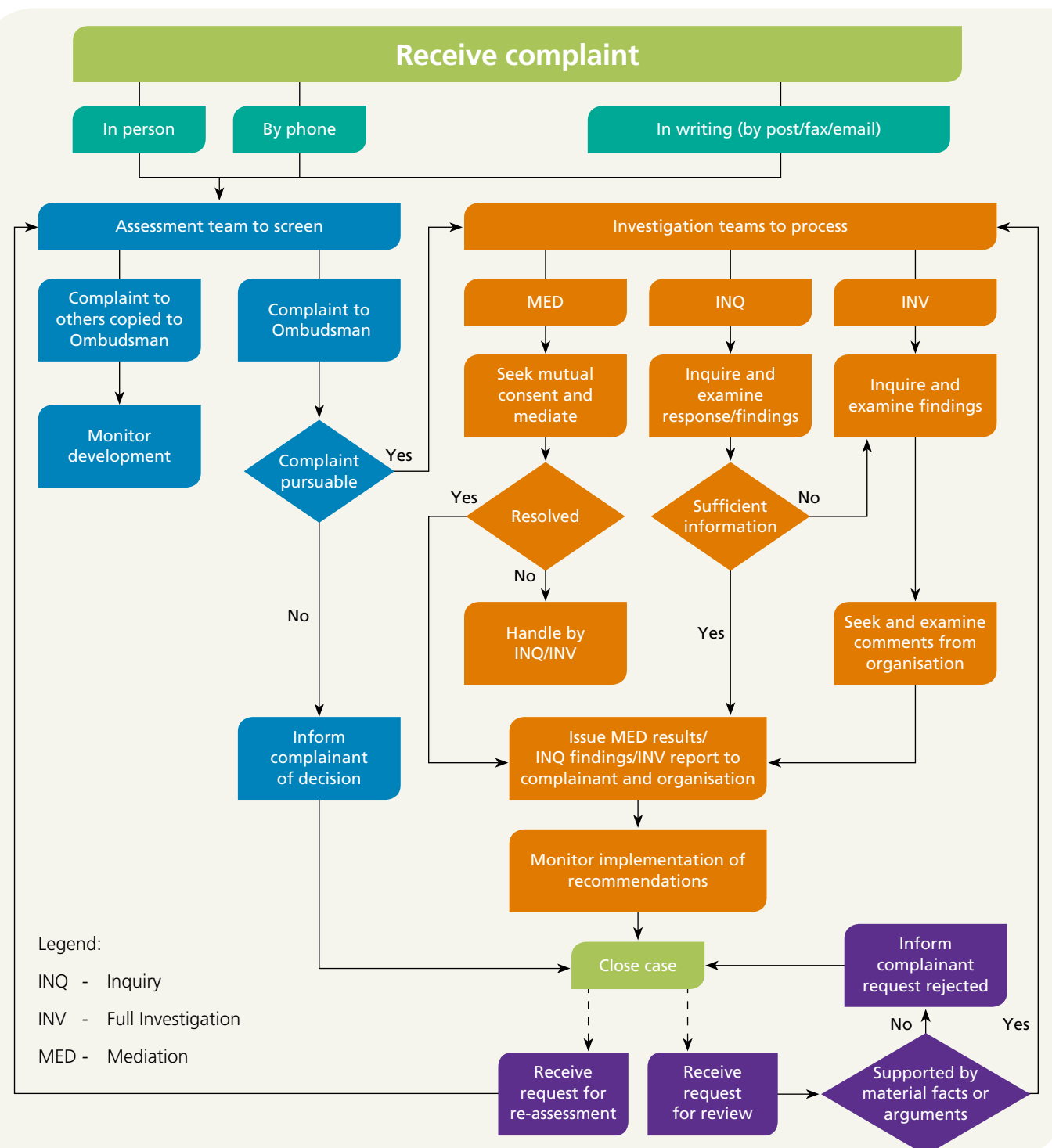
1. Complainant having knowledge of subject of complaint for more than two years
2. Complaint made anonymously
3. Complainant not identifiable or traceable
4. Complaint not made by person aggrieved or suitable representative
5. Subject of complaint and complainant having no connection with Hong Kong
6. Statutory right of appeal or remedy by way of legal proceedings (except judicial review) being available to complainant

### Circumstances Where The Ombudsman may Decide not to Investigate - section 10(2), Cap. 397

1. Investigation of similar complaints before revealed no maladministration
2. Subject of complaint is trivial
3. Complaint is frivolous or vexatious or is not made in good faith
4. Investigation is, for any other reason, unnecessary

## Annex 4

# Flow Chart on Handling of a Complaint



## Annex 5

# Index of Direct Investigations and Selected Direct Investigation Assessments Completed

### Direct Investigations

OMB/DI/221	Booking and Use of Sports Facilities of Leisure and Cultural Services Department
OMB/DI/223	Effectiveness of Administration of Temporary Closure of Metered Parking Spaces during Road Works Carried out by Public Utilities
OMB/DI/231	Regulatory Measures and Enforcement Actions against Illegal Extension of Business Area by Restaurants
OMB/DI/243	Conveyance of Patients by Ambulance to "Area Hospitals"
OMB/DI/269	Administration of Government Policy on Private Recreational Leases
OMB/DI/274	Recovery of Mortgage Default Debts

### Direct Investigation Assessments (Selected)

OMB/DI/261	Illegal Burials at Public Cemeteries and their Vicinity
OMB/DI/266	Processing of Applications for Building Maintenance Subsidy
OMB/DI/276	Assessment of Premium for Home Ownership Scheme Flats
OMB/DI/279	Parking Facilities for Motor Cyclists with Disabilities
OMB/DI/285	Buildings Department's Enforcement Action against Unauthorised Building Works in a Building
OMB/DI/289	Weather Forecasts by Hong Kong Observatory
OMB/DI/296	Regulation of Gas Tubings
OMB/DI/297	Pedestrian Flashing Green Countdown Display
OMB/DI/299	Monitoring of Construction and Building Materials by Architectural Services Department
OMB/DI/302	Lands Department's Enforcement of Tree Preservation Clauses in Land Lease of an Estate



Annex  
6Summaries of Direct  
Investigations CompletedFire Services  
Department (“FSD”) and Hospital  
Authority (“HA”)

Case No. OMB/DI/243 –  
Conveyance of Patients by  
Ambulance to “Area Hospitals”  
(Investigation declared on 17  
May 2012 and completed on  
21 December 2012)



## Background

Ambulance service for conveying patients to hospitals for emergency treatment is the responsibility of FSD. FSD and HA had agreed to divide the territory into 20 areas (hereinafter called “catchment areas”). Except in special circumstances<sup>1</sup>, FSD ambulances invariably took patients to the designated hospitals or clinics within the hospital catchment areas (hereinafter called “area hospitals”) where the patients were located.

2. Nevertheless, an area hospital might not be the hospital nearest to the location of a patient. The fixed rule for ambulances to take patients even “in critical condition”<sup>2</sup> to area hospitals might result in delayed treatment and hence serious consequences.

3. In the light of the above, The Ombudsman initiated a direct investigation to examine the inadequacies of this conveyance arrangement.

## Our Findings

*Rationale for Conveyance to Area Hospital*

4. According to FSD and HA, the arrangement of conveying patients to area hospitals was made with the “best interests” of patients in mind. The scale, equipment and intake capacity of the hospitals, rather than travel distance and travel time, were the main factors for consideration.

*Area Hospital Not Necessarily the Nearest Hospital*

5. We studied the 22 complaint cases received by FSD over the past three years as well as the Department’s documentary exchanges with HA concerning their review of the service boundaries of catchment areas. We found examples, on Hong Kong Island, in Kowloon as well as in the New Territories, which showed that the area hospital might not be the nearest hospital. In one case, the travel time to the area hospital was some 10 minutes longer than to the nearest hospital.

*Expert Opinions*

6. Our medical advisers and the medical association, medical practitioners and patients’ organisation that we consulted all held that patients in critical condition should be taken to the nearest hospitals for treatment as soon as possible to prevent fatal results.

<sup>1</sup> Special circumstances include: patients having “severe trauma” or involved in “large-scale accidents”.

<sup>2</sup> Examples are: cardiac arrest and serious respiratory distress.

## Our Comments and Recommendations

7. Under the established system, ambulancemen were merely required to follow some simple pre-set instructions in carrying out their duties and take patients to the area hospital. They did not need to make a lot of judgement on the patient’s condition.

8. However, taking patients to the area hospital rather than the nearest hospital might result in several minutes’ delay. While such delay might not make much difference to most patients, it could be a matter of life and death for those in critical condition.

9. In the light of the above, The Ombudsman urged FSD and HA to:

- (1) allow for special arrangements while keeping the established system: where the area hospital is not the nearest hospital, patients in critical condition should be taken to the nearest hospital;
- (2) provide proper training and draw up clear guidelines for ambulancemen, including a definition of patients in critical condition, to facilitate implementation of the measure in (1) above; and
- (3) set up a regular review mechanism and maintain contact with various stakeholders (including ambulancemen), so as to gradually introduce the measures in (1) and (2) above.

10. FSD and HA generally accepted the above recommendations. They agreed to start with cases of “cardiac arrest” and “respiratory arrest”, which are more easily identifiable. As ambulancemen acquired more experience and/or were given the necessary diagnostic equipment, FSD would extend the special arrangement to include more types of critical condition and allow such patients to be taken to the nearest hospital as well.

11. We appreciated the difficulties faced by ambulancemen and were not opposed to the incremental approach suggested by FSD and HA. Nevertheless, critical condition is not limited to the two types. The Ombudsman urged FSD and HA to conduct regular reviews and strive to provide ambulancemen with the necessary equipment, training and guidelines so that ultimately all patients in critical condition would be taken to the nearest hospital for emergency treatment as far as practicable.

## Food and Environmental Hygiene Department (“FEHD”) and Lands Department (“Lands D”)

Case No. OMB/DI/231 – Regulatory Measures and Enforcement Actions against Illegal Extension of Business Area by Restaurants (Investigation declared on 9 February 2012 and completed on 28 March 2013)



### Background

Alfresco dining outside the licensed boundary of restaurants often leads to street obstruction, causes environmental hygiene and noise problems, and brings nuisance to upstairs and nearby residents. FEHD, the licensing authority, had failed to effectively curb or contain the problem, despite its enforcement actions. Lands D had also seldom taken enforcement actions against illegal occupation of Government land by restaurants, although it is responsible for land administration.

### Our Findings

2. Our findings were as follows.

#### *Inefficient Use of Resources by FEHD*

3. FEHD’s enforcement actions against restaurants, including prosecutions for illegal extension of business area, were mainly carried out by its Health Inspectors (“HIs”). In certain districts, Hawker Control Officers (“HCOs”) also participated in enforcement operations, but they just played a supporting role. This meant that FEHD had not fully utilised the law enforcement power of its frontline staff and had not made good use of its resources. Indeed, restaurants selling cooked food on Government land were no different from unlicensed itinerant hawkers selling snacks on pavements. Both were in essence illegal hawking activities on the street. HCOs had the statutory power and duty to take enforcement action against them. Also, the shift duty hours of HCOs (7 am to 11 pm, seven days a week) were much longer than the normal working hours of HIs (8:30 am to 6 pm, Monday to Friday). HCOs could effectively supplement HI’s efforts in tackling the problem at night when illegal extension of business area by restaurants was especially rampant.

#### *FEHD’s Lack of Determination and Objectives*

4. FEHD was apparently concerned only about its frequency of inspections and number of prosecutions. It had not set objectives and formulated enforcement strategies. It did not deal with recalcitrant offenders with greater determination and increased frequency of operations, nor did it change its mode of operation for more effective enforcement actions.

5. Moreover, FEHD usually only prosecuted restaurants with illegal extension of business area, without arresting the culprits on the spot and seizing the articles involved. Consequently, its enforcement actions lacked deterrent effect.

6. Furthermore, FEHD could have applied for closure orders from the Court against unlicensed restaurants with illegal extension of business area, but it had never used that “trump card”. This had significantly weakened FEHD’s power of enforcement.

#### *Cumbersome Three-tier Appeal Mechanism under the Demerit Points System*

7. A restaurant licensee contravening the food or hygiene stipulations under the relevant legislation would be liable to prosecution and fined upon conviction. FEHD would also register demerit points against the licensee under its Demerit Points System. Accumulation to a certain number of demerit points might result in suspension or cancellation of the restaurant licence. However, any restaurant licensee dissatisfied with a decision of licence suspension or cancellation might appeal to FEHD, the Licensing Appeals Board and eventually the Municipal Services Appeals Board. Taking advantage of the lengthy appeal process and FEHD’s discretion to suspend the implementation of the decision, the licensee concerned could defer the effective date of licence suspension or cancellation. The restaurant could carry on its business despite the continuing offence, sometimes for more than 300 days.

#### *Narrow Coverage of “Non-standard Requirements” in Provisional Licence*

8. For food premises located in black spots where illegal extension of business area was rampant and for those with multiple previous convictions for illegal extension of business area, FEHD would impose “non-standard requirements” in their provisional licences, prohibiting the licensees from encroaching on Government land or common passageways outside their premises. FEHD would only issue a provisional licence after confirming that the restaurant concerned had not been prosecuted for any “street obstruction” offence during the 14-day “observation period” prior to its declaration of compliance with the licensing requirements. We considered that the coverage of the above measure should be extended to all provisional licence applications and the “observation period” should be lengthened to enhance the deterrent effect.

#### *Lenient Licensing System*

9. Under the current licensing system, a person whose restaurant licence had been suspended or cancelled could still apply for a new licence afterwards without any restrictions, irrespective of whether that involved the same premises or the same restaurant name. FEHD did not duly consider whether the applicant was a “fit and proper person” to become a licensee. We found such a licensing system too lenient.

#### *Lands D’s Inadequate Efforts to Curb Illegal Occupation of Government Land by Restaurants*

10. While admitting that illegal occupation of Government land by restaurants was an issue within its purview, Lands D held that before instituting any prosecution, it must first post a notice under the relevant legislation, ordering the occupation of Government land to cease before a specified deadline, and if the occupant complied at first but subsequently occupied the land again, the Department would have to post a new notice rather than just invoking the first notice for immediate enforcement action.

11. We noted that the notice actually orders the occupant to “cease occupation” of the land, not just to “temporarily remove” the articles occupying the land. Accordingly, any notice posted should remain valid until the occupation substantively ceases. There was no reason why Lands D could not rely on the notice to clear or confiscate any articles placed on the land and institute prosecution.

12. As the administrator of Government land, Lands D has an undeniable responsibility to control the occupation of Government land by restaurants. Indeed, where a restaurant applied for setting up an alfresco dining area in a public place, FEHD’s approval for the application was subject to Lands D’s grant of a land tenancy. It was, therefore, inconceivable that Lands D did not actively take enforcement action against illegal occupation of Government land by restaurants.

#### *Need to Promote Legitimate Alfresco Dining*

13. Restaurant licensees might apply to FEHD for setting up alfresco dining areas outside their premises, but the number of successful applications had been small. We considered that the Administration should encourage more alfresco dining areas to be set up in a legitimate and regularised manner. That would not only bring more convenience to restaurant operators and customers, but would also reduce the pressure on FEHD in taking enforcement actions. FEHD would then be able to concentrate its resources on tackling those cases causing serious environmental nuisance.



## Recommendations

14. The Ombudsman made a total of 17 recommendations to FEHD and Lands D, which included:

### FEHD

- (1) to actively explore the best use of existing resources and relevant legislation, and to consider setting up a taskforce comprising HIs and HCOs, deploying more manpower and using diverse strategies to deal with unauthorised food operations in public places; meanwhile, to at least allow HCOs more participation in dealing with the problem;
- (2) to conduct targeted raids on recalcitrant offenders, taking more frequent enforcement actions against them, making arrests and seizure of articles, bringing more prosecutions, applying for closure orders from the Court and publicising information about those restaurants;
- (3) to consider amending the relevant legislation to simplify the mechanism for appeal against suspension or cancellation of licences from three-tier to two-tier; except under very special circumstances, to refrain from withholding the suspension or cancellation of licences pending appeals by restaurant licensees;
- (4) to consider extending the applicability of “non-standard licensing requirements” to all premises under application for restaurant licences, and to lengthen the “observation period” before the issuance of provisional licence;
- (5) in respect of an applicant with his/her restaurant licence previously cancelled due to repeated offences, to refuse to process, for a specified period of time, his/her application for any restaurant or related licence in relation to the same premises; to consider, in the long term, how to restrict applications from recalcitrant offenders for restaurant or related licences in relation to any premises;
- (6) to suggest to District Councils the designation of spots for alfresco dining in suitable areas, and to facilitate applications from restaurant operators for setting up outside seating accommodation at those spots; and

### Lands D

- (7) to study with the Department of Justice how to more effectively exercise statutory powers to deal with illegal occupation of Government land by restaurants, in fulfilment of its responsibility as land administrator.

## Background

For many years, in order to meet the shortage of recreational and sports facilities in Hong Kong, Government has granted land at nil or nominal rent to some organisations to establish and operate sports clubs. Such organisations comprise private bodies committed to promoting sports development and providing recreational facilities, social welfare organisations, uniformed groups, national and district sports associations and civil servants associations. Grants are made under Private Recreational Leases (“PRLs”). As at the time of our investigation, there were altogether 73 PRLs thus granted.

2. PRLs were generally granted for a term of 15 years. As at 30 June 2012, 55 of the 73 PRLs had expired. Most of the sports clubs concerned had applied for renewal of their leases.

3. HAB is responsible for administering the above policy of granting land by way of PRLs (“PRL policy”).

## Our Findings

### Opening Hours Grossly Deficient

4. The PRL policy and lease conditions stipulate that all sports clubs shall, at the request of the respective “competent authorities”<sup>3</sup>, open parts of their sports facilities for use by “eligible bodies”<sup>4</sup>.

5. Formerly, the lease conditions required the sports clubs to open their sports facilities to eligible bodies for no more than three sessions each week, each session not exceeding three hours. There was no minimum requirement. Given that the sports clubs are granted land at nil or nominal rent, such limited scale of opening was not commensurate with the public subsidy they enjoyed.

### Ineffective Monitoring

6. Before July 2010, HAB had not laid down any criteria or procedures with the other competent authorities for vetting applications from eligible bodies to use the facilities of the sports clubs. Nor had the Bureau required the sports clubs to report regularly on the use of their facilities by eligible bodies. HAB’s past efforts in monitoring the enforcement of the lease conditions were clearly inadequate.

### Lack of Publicity

7. Except for reminding the other competent authorities in 2001, 2010 and 2011 to inform eligible bodies that they might apply for using the sports facilities of the sports clubs, HAB had not carried out any publicity or promotion on the opening of such sports facilities. With such meagre publicity, it was no wonder that up to the time of completion of our investigation, no eligible body had ever applied to the competent authorities for using the sports facilities.

### Arrangements for Opening Facilities Still Inadequate in Renewed Leases

8. Under the renewed leases, all the sports clubs are required to open their sports facilities to eligible bodies for at least 50 hours per month with no upper limit. Nevertheless, that figure actually means the aggregate total of the hours of opening of all the sports facilities of a sport club.

<sup>3</sup> “Competent authorities” include HAB, the Education Bureau (“EDB”), the Social Welfare Department (“SWD”), the Leisure and Cultural Services Department (“LCSD”) and the Civil Service Bureau (“CSB”).

<sup>4</sup> “Eligible bodies” include schools as defined in the Education Ordinance, social and welfare organisations receiving subvention from SWD, national sports associations eligible for subvention from LCSD, Government departments, and youth and uniformed groups receiving subvention from HAB. Their corresponding “competent authorities” are EDB, SWD, LCSD, CSB and HAB respectively.

## Home Affairs Bureau (“HAB”)

Case No. OMB/DI/269 –  
Administration of Government  
Policy on Private Recreational  
Leases

(Investigation declared on 21  
May 2012 and completed on  
27 August 2012)



9. In our view, if all or most of the sports clubs just meet this bare minimum, it would be difficult to convince the public that the clubs' repayment to society matches the public resources that they enjoy. Furthermore, given the different scales of operation of the sports clubs (some have only a few sports facilities, while others may have ten or more), HAB's across-the-board requirement for them to open their facilities for not less than 50 hours might constitute disparity of treatment.

10. Fortunately, the new leases also stipulate that the sports clubs must each set out a Scheme to Implement the Greater Access Requirements ("the Scheme"), giving details regarding the opening of their sports facilities (including the available facilities, and their numbers of hours and sessions of opening) for HAB's approval. In addition, HAB has the power to revise the content of the Scheme at any time during the new lease. These two provisions serve to empower HAB to a certain extent to urge the sports clubs to make such arrangements for opening their facilities as to be more in accord with public expectations.

#### **No Proper Mechanism for Complaint Handling**

11. In case eligible bodies have any complaints about access to the sports facilities of the sports clubs, the relevant competent authorities have all along handled such complaints by way of "consultation and coordination". If the competent authorities could not resolve the disputes, HAB would intervene and start an investigation. However, HAB does not have the power to override the decisions of the other competent authorities.

12. We consider that HAB should develop a proper mechanism for handling complaints concerning the opening of the sports facilities of the sports clubs. There should also be clear stipulation as to who has the authority to make the final decision in case of disputes.

#### **Recommendations**

13. The Ombudsman recommended that HAB:

- (1) fully take into account public interests when vetting and revising the Schemes of the sports clubs, such that they would make their sports facilities as readily accessible as possible in proportion to their scales of operation to meet the needs of eligible bodies;
- (2) step up publicity on the opening of the sports facilities of the sports clubs;
- (3) implement with vigour its measures to monitor the sports clubs' compliance with the lease conditions and the Schemes, including the setting up of an electronic database, frequent random checks and immediate actions to rectify inadequacies where necessary;
- (4) enhance the mechanism for handling complaints regarding the opening of sports facilities and, in particular, stipulate clearly who has the authority to make the final decision in case of disputes; and
- (5) embark on a comprehensive policy review as soon as possible, involving wide public consultation.

14. HAB accepted the above recommendations.

#### **Introduction**

It is the policy of the Hong Kong Housing Authority ("HKHA") to issue mortgage default ("MD") guarantees for properties sold under the Home Ownership Assistance ("HOA") schemes<sup>5</sup> in order to secure favourable borrowing terms from the banks for the buyers. Where a property owner defaults on the mortgage, the bank may foreclose the property, and where the proceeds of sale is insufficient to cover the outstanding loan, the bank may make a claim to the Housing Department ("HD"), the executive arm of HKHA, for the shortfall. After settling the MD claim, HKHA is entitled to subrogate the bank's rights to the loan. HD, as executive arm of HKHA, will have both the right and the duty to chase the ex-owner for the recovery of the shortfall.

2. Through a complaint case, it came to our knowledge that although HD had been settling MD claims since 1991, it only started chasing ex-owners for the MD debts 18 years later in 2009.

3. Against this background, we initiated a direct investigation to examine the magnitude of the problem and whether there was room for improvement in HD's debt recovery arrangements.

#### **Our Findings**

4. Our investigation showed that HD had no record of any thought or discussion being given to the need to recover these MD debts before 2009.

5. In 2009 an HD internal audit on HOA units under the Secondary Market Scheme revealed that HD had incurred \$230M on 826 cases of MD claims under the Scheme, and recommended that HD should set up a mechanism to review the recoverability of the MD debts and take chasing action where appropriate.

6. In pursuance of this recommendation HD set up arrangements for the recovery of MD debts in late 2009. Although the recommendation was made in respect of Secondary Market Scheme units, HD in fact provided MD guarantees for all HOA units. Therefore, HD extended its recovery action to all HOA units.

7. Up to end June 2012, HD had incurred a total of \$973M on 4,407 cases of MD claims. After two and a half years' of recovery action, the amount of debt recovered was about \$3.4M, or 0.3% of the total. The position of the 4,407 cases at end June 2012 was as follows:

- 1,360 cases (31%) were excluded from the review, being time-barred or involving discharged bankruptcy;
- 901 cases (20%) had 1st round review completed;
- 1,398 cases (32%) were in the process of 1st round review; and
- the remaining 748 cases (17%) were pending 1st round review.

#### **Housing Department ("HD")**

Case No. OMB/DI/274 –  
Recovery of Mortgage Default Debts  
(Investigation declared on 26 March 2012 and completed on 20 March 2013)



<sup>5</sup> The HOA schemes are schemes under which HKHA provides subsidised home ownership flats to qualified persons. HOA schemes include Home Ownership Scheme, Tenant Purchase Scheme, Private Sector Participation Scheme and Secondary Market Scheme.



## Observations

8. The MD debts are public money and \$973M is not a small amount. For as long as HKHA's policy of providing MD guarantees for HOA buyers continues, HKHA will be subject to the potential liability of more MD claims and accumulating more MD debts. HD needs to have a proper system to manage the recovery of the MD debts, both for financial management reasons and to avoid giving the community the wrong message that debts owed to the Government need not be repaid.

9. HD's oversight and failure to take any debt recovery action for 18 years after acquiring the right to the MD debts is unacceptable. Besides, even after the setting up of a mechanism in 2009 for debt recovery, progress has been unsatisfactory and some of the arrangements put in place are inefficient and ineffective.

## Recommendations

10. HD should:

### Overall

- (1) draw lessons from this experience and adopt a more alert and vigilant approach in managing public money in future;

### Debt Recovery Arrangements

- (2) review its operational arrangements to ensure that the appropriate order of priority is followed in handling the case work. It should consider, among other things, whether efforts should continue to be made to pursue time-barred and deceased-debtor cases, taking into account the effectiveness of such efforts, the resources available, and the existing case backlog;
- (3) review its workflow with a view to streamlining the procedures, paying particular attention to, among other things, whether its arrangements for searching addresses are efficient and whether the MD team can be given access to use more interview rooms;
- (4) review carefully its guidelines and strengthen training for its staff;
- (5) exercise due care and diligence in handling the MD debt cases and enhance monitoring of staff performance; and
- (6) use its best efforts to meet its target of completing 1st round review of all 4,407 cases by year 2015/16, by staff redeployment or any other means.

11. Our recommendations were generally accepted by HD.

## Background

Of the complaints we received about LCSD sports facilities, most of them concerned difficulties in booking, unfair allocation of quotas between individuals and organisations and unauthorised transfer of permits (a practice commonly known as "touting"). In this connection, The Ombudsman initiated a direct investigation into the arrangements regarding the booking and allocation of LCSD sports facilities with a view to identifying areas for improvement.

## Our Findings

2. Shortage of sports facilities was the underlying cause for booking difficulty and the emergence of touting activities. In the face of such shortage, LCSD is expected to strike a balance among the multiple goals of promoting sports for all while raising the standard of elite sports, and providing convenient services to the public while curbing touting activities. This is not an easy task.

3. Our direct investigation revealed that apart from the imbalance between demand and supply, deficiencies in LCSD's booking system and its execution had further aggravated the difficulties in booking and the problem of unauthorised transfer of permits.

## Observations and Recommendations

4. The prevalence of touting activities could be attributed to deficiencies in the booking system as well as inadequacies in execution. They provided many opportunities for touting. Deficiencies in the system included:

- individual booking could be made 30 days in advance, allowing touts ample time to find "buyers";
- the maximum number of hours allowed for individual booking was too generous;
- individuals could use different identity documents to circumvent the limits on bookings;
- abuse of system by touts was easy because immediate payment was not required for telephone reservations by individuals;
- the definition of organisations that could enjoy three-month priority booking rights was too lax;
- reallocation arrangements in case of bad weather was too favourable to the hirer; and
- absence of penalty for "no show" cases plus the free "stand-by" arrangements provided opportunities for touting.

As regards inadequacies in execution, they included:

- staff failing to check identity documents diligently; and
- no administrative penalties for unauthorised transfer of permits.

## Leisure and Cultural Services Department ("LCSD")

Case No. OMB/DI/221 –  
Booking and Use of LCSD  
Sports Facilities  
(Investigation declared on 5  
July 2011 and completed on  
19 September 2012)



5. Apart from touting and related booking problems, our investigation also examined other issues such as difficulties in booking by individuals and organisations as well as utilisation of the sports facilities. These included:

- (1) by not counting bookings by LCSD and the Home Affairs Bureau against the quota for organisations, there was in effect no guarantee of available hours for booking by individuals;
- (2) the requirement that only hirers were allowed to sign in was inflexible and inconvenient;
- (3) in booking fee-charging facilities, accessing the Leisure Link System during peak hours was difficult;
- (4) in booking non-fee charging facilities, no convenient computerised system was provided;
- (5) unclear guidelines on processing bookings by organisations and delays in confirmation of bookings had caused difficulties to some organisations in coordinating activities;
- (6) the requirement of a 40-day notice for cancellation of bookings by organisations ignored their operational needs in coordinating activities;
- (7) the inconvenient arrangements for cancellation of bookings by individuals plus no penalty for “no-show” cases induced a waste of resources;
- (8) LCSD was lax in handling cases where organisations failed to use booked facilities; and
- (9) some of the facilities were not fully utilised and LCSD should consider adjusting their opening hours to increase supply.

6. The Ombudsman made a total of 22 recommendations to LCSD regarding touting activities, bookings by individuals and organisations and the use of facilities. LCSD accepted all the recommendations.

7. Our recommendations should help to improve the situation. However, it would not be realistic to think that they would solve all booking problems and eliminate all touting activities once and for all. As the department responsible for the management of sports facilities, LCSD should monitor closely the utilisation of its facilities, listen carefully to the feedback of stakeholders, and keep its system and arrangements under constant review in order to meet the needs of the community.

## Background

Complaint cases revealed that some metered parking spaces have been closed for periods much longer than actually necessary for the approved road excavation works. Although TD and Hy D had initiated some enhancement measures in 2010 and 2011, there were still many cases of non-compliance (i.e. unnecessary closure). Accordingly, The Ombudsman initiated a direct investigation to examine the issue.

## Application for Temporary Closure of Metered Parking Spaces

2. Utility undertakers (“UUs”) which need to carry out road excavation works have to apply to Hy D for excavation permits (“XPs”). If serious traffic impact is involved, Hy D will require UUs to submit temporary traffic management (“TTM”) proposals to TD and the Hong Kong Police Force (“HKPF”) for assessment and approval. If temporary closure of metered parking spaces is required, the UU concerned should include such proposal in the TTM submission for TD’s assessment. Hy D will then determine the overall XP period, taking into account the TTM endorsed by HKPF and TD, and issue XP to the UU concerned.

3. The UU concerned will then liaise with TD on the period of closure of metered parking spaces. On approval of the application submitted by the UU concerned, TD will issue a Works Request to its contractor to effect the closure.

## No Monitoring before September 2010

4. Prior to September 2010, there was no monitoring of UU’s actual occupation of temporarily closed metered parking spaces, resulting in unnecessary closures not being detected. Although Hy D conducted regular audit inspections on active sites to check their compliance with XP conditions, the inspections did not cover such unnecessary closure of parking spaces.

## Enhanced Measures Introduced in 2010 and 2011

5. Starting from late September 2010, Hy D agreed to notify TD of unnecessary closure of such parking spaces discovered during audit inspections on a trial basis.

6. In February 2011, TD began to monitor UU’s work progress through conducting routine site inspections shortly after the start of the closure period and periodically thereafter, in addition to Hy D’s audit inspections.

7. In February 2011, Hy D also promulgated the inclusion of a new condition in the XP conditions requiring UUs to obtain TD’s prior approval for occupying parking spaces for road works.

8. From 1 April 2011 onwards, TD started to issue formal approval letters with specified Approval Conditions, requiring UUs to confirm to TD the scheduled start date of closure in advance, to inform TD in case of early completion of works and to submit updated site photos regularly to TD for checking work progress.

## Observations and Comments

### *Prolonged Period of Unnecessary Closure*

9. Four cases were studied, which illustrated the extent (sometimes more than three weeks) of unnecessary closure of metered parking spaces due to road excavation works. The nature of non-compliance included late start and/or early completion of works or cancellation of works without informing TD to re-open the parking spaces. Whilst one of the four cases occurred in 2009 when there was no monitoring on the subject, the other three cases showed that prolonged period of unnecessary closure persisted even after introduction of the enhanced measures in 2010 and 2011.

## Transport Department (“TD”) and Highways Department (“Hy D”)

Case No. OMB/DI/223 –  
Effectiveness of Administration  
of Temporary Closure of  
Metered Parking Spaces during  
Road Works Carried out by  
Public Utilities  
(Investigation declared on 21  
July 2011 and completed on  
25 May 2012)





### ***Need for Further Step-up of Monitoring Measures***

10. Regarding TD's new Approval Conditions, the consequence of non-compliance with the requirements of informing TD about early completion of works and submitting regular site photos was unclear. We consider it necessary for TD to spell out the consequence, whether by refining its Approval Conditions or by otherwise conveying the message to UUs.

11. TD's monitoring of the UU's work progress after implementation of the enhanced measures remained unsatisfactory. As shown in a case occurring in July 2011, the UU concerned did not comply with the Approval Conditions in submitting updated site photos but TD failed to discover this. We consider it important for TD to check closely the submission of site photos by UUs. If necessary, TD should consider setting up a computerised database for this purpose.

### ***Approval of Duration of Closure Over-Generous***

12. TD's approval for estimated time required for closure was over-generous. This was reflected in the cases we studied. Actual works took only 7 days to complete versus 31 days approved for temporary closure of parking spaces in one case, 15 versus 43 days and 18 versus 94 days in two other cases.

### ***Need to Review Situation Regularly***

13. The magnitude of the problem was unknown, as TD all along did not conduct site checks until February 2011. Besides, before November 2010, UUs were only verbally requested to report changes of commencement/completion date of the works, which could again be made verbally. Also, TD kept no statistical records of non-compliance cases. As a result, the situation of non-compliance so far discovered might be just the tip of the iceberg. TD should continue to review the situation regularly to see if further measures were necessary to tackle problem.

### ***Our Recommendations***

14. The Ombudsman made six recommendations as follows:

- (1) Hy D to continue conducting audit inspections on sites involving temporary closure of metered parking spaces and reporting non-compliance to TD, until TD's monitoring measures have shown to be fully effective;
- (2) TD to emphasise to UUs, by refining the contents of the Approval Conditions or otherwise, the importance of:
  - (a) submitting site photos on time and the consequence of non-compliance; and
  - (b) informing TD of early completion of works and the consequence of non-compliance;
- (3) TD to check closely the submission of site photos by UUs and, if necessary, to set up a computerised database for this purpose;
- (4) TD to keep statistical records and details of non-compliance cases;
- (5) TD to review the situation of non-compliance at half yearly intervals to see if any further measures are necessary; and
- (6) TD to enhance its assessment of the time required for closure of parking spaces.

## Index of Cases Concluded by Full Investigation

Annex  
7

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Agriculture, Fisheries and Conservation Department</b>			
2011/3083C	Failing to promptly attend to the complainant's request for assistance to protect the swallows' nests at the external walls of a law courts building	Substantiated	2
2011/3426	Failing to implement properly the restriction on vehicular entry into a road within a country park on general holidays	Substantiated	2
<b>Airport Authority</b>			
2012/1414A	Lack of communication with the Immigration Department when the "Red Rainstorm Warning" was in force, thus causing inconvenience to travellers	Unsubstantiated	0
<b>Architectural Services Department</b>			
2011/3083A	Failing to promptly attend to the complainant's request for assistance to protect the swallows' nests at the external walls of a law courts building	Partially substantiated	1
<b>Buildings Department</b>			
2011/1858	Failing to follow up on the problems of building safety and unauthorised building works arising from telecommunications equipment installed on the rooftops of two village houses	Unsubstantiated	1
2011/4312A	Failing to take enforcement action against some unauthorised building works	Unsubstantiated	1
2011/4722	Unreasonably requesting to conduct a ponding test at the complainant's flat when handling a water seepage complaint	Unsubstantiated	0
2011/5219A	Delay in handling a water seepage complaint	Substantiated	2
2011/5223B	Unreasonably issuing a nuisance notice to the complainant's mother when handling a water seepage complaint	Unsubstantiated	0
2012/1854	(1) Inaccurate information in a repair order (substantiated); and (2) Failing to reply to the complainant's query (substantiated)	Substantiated	0
2012/2080	Failing to take enforcement action against unauthorised building works	Unsubstantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2012/2234A	Failing to follow up a complaint against unauthorised building works	Substantiated	1
2012/2341A	Shirking responsibility in handling a complaint about an unauthorised building works item	Partially substantiated	0
2012/2630	Failing to take enforcement action against unauthorised door openings and change of domestic use of a building	Unsubstantiated	0
2012/2799A	Failing to provide accurate underground works chart to the complainant	Unsubstantiated	0
2012/2847	(1) Failing to answer the complainant's enquiries (unsubstantiated); (2) Unreasonably rejecting the complainant's application to join the Reporting Scheme for Unauthorised Building Works ("UBW") in New Territories Exempted Houses (unsubstantiated); (3) Posting a Removal Order in a plain envelope (unsubstantiated); (4) Selective enforcement against UBW (unsubstantiated); and (5) Improperly passing the complainant's information to a consulting company (unsubstantiated)	Unsubstantiated	1
2012/3780	(1) Unreasonably refusing to conduct further tests at the premises above the complainant's in a water seepage complaint (unsubstantiated); (2) Biased and inaccurate investigation report (unsubstantiated); (3) Improperly informing the owner of the premises above the complainant's that he was not liable for any compensation (inconclusive); and (4) Failing to use any instruments to conduct investigation (substantiated other than alleged)	Substantiated other than alleged	2
2012/3862C	Denying responsibility for investigating a water seepage complaint simply after a 15-minute observation without conducting any tests	Unsubstantiated	1
2012/3922	(1) Mishandling a water seepage complaint (unsubstantiated); and (2) Mishandling a complaint about unauthorised building works (partially substantiated)	Partially substantiated	2
<b>Civil Aviation Department</b>			
2012/2862	Failing to handle the complainant's complaint against helicopter noise nuisance	Partially substantiated	3
<b>Civil Engineering and Development Department</b>			
2012/2851A	Failing to conduct proper consultation on the Liantang/Heung Yuen Wai Boundary Control Point project	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Correctional Services Department</b>			
2011/2857	(1) Divulging the drug addiction history of a released inmate, who was the complainant's son, while the released inmate was under the Department's statutory supervision (inconclusive); (2) Threatening to send the released inmate back to the rehabilitation centre if he abused drugs again (inconclusive); and (3) Failing to properly follow up on the complainant's telephone calls for help in respect of the released inmate's suicidal thoughts and her complaint against the officers concerned subsequent to the death of the released inmate (partially substantiated)	Partially substantiated	2
2012/3179	(1) Delay in providing a complaint form of this Office to the complainant (inconclusive); (2) Pressuring and luring him to admit breach of discipline (inconclusive); and (3) Taking away temporarily a copy of his witness statement about an assault case of himself that he wanted to hand over to a visitor (unsubstantiated)	Unsubstantiated	1
<b>Drainage Services Department</b>			
2012/2799B	Failing to provide accurate underground works chart to the complainant	Unsubstantiated	0
<b>Electrical and Mechanical Services Department</b>			
2012/1442	Failing to monitor properly the performance of a maintenance service contractor for the air-conditioning system of a market	Substantiated	2
<b>Employees Retraining Board</b>			
2011/4988	(1) Amiss in its supervision of an appointed training body (unsubstantiated); (2) Failing to address a complaint about the teaching quality of a course trainer (unsubstantiated); and (3) Unreasonably rejecting the complainant's request for transfer to a more advanced course and requiring her to continue attending the course not suitable for her (substantiated)	Partially substantiated	2
2012/2559	(1) Delay in handling the complainant's request for information (substantiated); (2) Wrongly quoting the provisions of the Board's own Code on Access to Information ("the Code") when refusing the complainant's request for information and failing to give reasons for refusal (partially substantiated); (3) Wrongly adopting certain paragraphs of the Government's Code on Access to Information as parts of the Code (unsubstantiated); and (4) Improperly assigning the same officer in handling both of the complainant's complaint and request for information (unsubstantiated)	Partially substantiated	0



Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Environmental Protection Department</b>			
2011/3689B	Failing to accede to the complainant's request that his environmental protection organisation be invited to consultation meetings, such that not all divergent views on Government's environmental protection policy were taken into account	Unsubstantiated	0
2011/4161A	Failing to adequately supervise a contractor's demolition work which involved asbestos and improperly handling a complaint against the contractor	Unsubstantiated	1
2011/5105A	Failing to prosecute the operator of the complainant's neighbouring shop for causing air pollution in its plastic-cutting process at the shop front	Unsubstantiated	0
2012/0807	Failing to follow up on the problem of dark smoke frequently emitted from a chimney on the rooftop of a funeral parlour	Unsubstantiated	0
2012/0954D	Failing to take enforcement action against the environmental nuisances created by two offensive trade factories	Unsubstantiated	1
2012/1674	(1) Failing to properly control the noise nuisance caused by a construction site (unsubstantiated); and (2) Unreasonably issuing a permit for 24-hour operation of the construction site (unsubstantiated)	Unsubstantiated	0
2012/2286	(1) Faulty procedures for assessment of an air pollution complaint (unsubstantiated); and (2) Failing to take action against the improper location of the kitchen exhaust outlets of two food premises (unsubstantiated)	Unsubstantiated	1
<b>Equal Opportunities Commission</b>			
2012/0855	(1) Refusing to take up the complainant's case on the wrongful ground that she lodged her complaint after the time bar (partially substantiated); (2) Failing to provide evidence to support its claim that its officers had explained the relevant laws to the complainant, who chose not to lodge her complaint at that time (unsubstantiated); and (3) Being biased towards the company under complaint (unsubstantiated)	Partially substantiated	1
<b>Fire Services Department</b>			
2012/1184A	Shirking responsibility in resolving the problem of blockage of an Emergency Vehicular Access in the complainant's village	Unsubstantiated	0
2012/2234B	Failing to ensure compliance with the fire safety regulations applied to a building	Unsubstantiated	0
<b>Food and Environmental Hygiene Department</b>			
2011/4073A	Failing to take any enforcement action against suspected unauthorised hawking activities carried out in the name of charity sale	Unsubstantiated	1
2011/4312B	Failing to take enforcement action to curb the street obstruction problem caused by some unauthorised building works	Unsubstantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2011/5105B	Failing to solve the environmental hygiene and obstruction problems caused by the plastic-cutting process at the front of the complainant's neighbouring shop	Unsubstantiated	0
2011/5219B	Delay in handling a water seepage complaint	Substantiated	2
2011/5223A	Unreasonably issuing a nuisance notice to the complainant's mother when handling a water seepage complaint	Unsubstantiated	0
2012/0192B	Failing to take enforcement action in a water seepage complaint	Unsubstantiated	0
2012/0245	Failing to take effective enforcement action to tackle the problem of street and passageway obstruction caused by some candy stalls	Substantiated	1
2012/0629	Failing to conduct tests in a proper manner when handling a complaint about vapour condensation on the floor of the complainant's flat, allegedly caused by an air-conditioner at the flat below	Partially substantiated	2
2012/0875	(1) Delay in responding to a food complaint (substantiated); and (2) Failing to take actions on the complaint (partially substantiated)	Substantiated	1
2012/0954A	Unreasonably granting offensive trade licences to the operators of two factories and failing to take action against the environmental nuisances created by the two factories	Partially substantiated	1
2012/1182	Delay in processing the complainants' claim for damages caused by a water-pipe burst to their market stalls	Unsubstantiated	2
2012/1416	(1) Failing to take enforcement action against the unauthorised roadside banners displayed by some District Councillors at a certain location (unsubstantiated); (2) Wrongly requiring the complainant to pay for the removal cost for an unauthorised roadside banner (substantiated); (3) Failing to give notice before removing the said banner (unsubstantiated); (4) Delay in mailing to the complainant the demand note for the removal cost for the banner (substantiated); and (5) Failing to account for the calculation of the removal cost for the banner (unsubstantiated)	Partially substantiated	1
2012/1764A	(1) Failing to take enforcement action and shifting responsibility when handling a complaint about pavement obstruction and environmental nuisance caused by a recycling shop (substantiated other than alleged); and (2) Failing to keep the complainant informed of the case progress (unsubstantiated)	Substantiated other than alleged	2
2012/2053	(1) Unreasonably forbidding filming in a crematorium (substantiated); and (2) An officer failing to wear his uniform and produce his staff identify card while on duty and showing poor manners (partially substantiated)	Substantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2012/2130	(1) Failing to take enforcement action on the distribution of free newspapers at certain locations (unsubstantiated); and (2) Failing to respond to the complainant's enquiry (unsubstantiated)	Unsubstantiated	1
2012/2146	(1) Failing to take enforcement action against a fruit shop which had caused street obstruction (partially substantiated); and (2) Failing to respond to the complainant's repeated complaints (unsubstantiated)	Partially substantiated	1
2012/2363A	Failing to effectively control the unauthorised extension of business area by a licensed stall	Substantiated	1
2012/2430	Failing to respond to an objection to a littering charge	Substantiated	0
2012/2476	(1) Delay in relocating three portable toilets near a road junction which had allegedly blocked drivers' sightline (substantiated); and (2) Making false claim about the local villagers' objection to relocation of the portable toilets (substantiated other than alleged)	Substantiated	3
2012/2566A(I)	(1) Delay in handling a complaint about miscellaneous articles placed near the complainant's residence and failing to solve the problem (partially substantiated); (2) Failing to respond to a complaint about stench lodged a year ago (inconclusive) (3) Failing to respond to the complainant's request for the case number of her complaint (substantiated); and (4) Poor staff attitude (unsubstantiated)	Partially substantiated	2
2012/2601	(1) Failing to take enforcement action against nuisances caused to the complainant's premises by the emission of hot air from a nearby air-conditioner (unsubstantiated); (2) Measuring the temperature of the complainant's premises at inappropriate locations (unsubstantiated); (3) Improper procedures in conducting investigation into the complainant's complaint against emission of hot air from a nearby air-conditioner (unsubstantiated); and (4) Delay in handling the complainant's complaint (substantiated)	Partially substantiated	1
2012/2697A	Failing to reply to the complainant according to performance pledge	Substantiated	0
2012/2704(I)	Refusing to release information of the affected premises in a water seepage complaint in which the complainant's premises was the suspected source of seepage	Substantiated	1
2012/2725	(1) Failing to respond to an enquiry about the safety of a bottle of juice (substantiated); and (2) Inconsistency in replying whether it would take enforcement action against the manufacturer which purportedly breached the food safety regulations (unsubstantiated)	Partially substantiated	1
2012/2741A	Failing to take effective enforcement action against a licensed food establishment which had caused street obstruction	Partially substantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2012/2803A	Delay in handling a complaint about the display of unauthorised roadside election banners	Unsubstantiated	1
2012/3671	(1) Wrongful approval of food business licences to two food premises and failing to take action against the improper location of the kitchen exhaust outlets of those food premises (unsubstantiated); (2) Failing to take enforcement action against a food premises which was in breach of the licensing requirement, and later operated without a licence (partially substantiated); and (3) Faulty arrangement for inspection (unsubstantiated)	Partially substantiated	2
2012/3862A	(1) Shifting responsibility when investigating a water seepage complaint (unsubstantiated); and (2) Failing to use any instruments to test a fresh water supply pipe (unsubstantiated)	Unsubstantiated	1
2012/3883	Mishandling a water seepage complaint	Partially substantiated	1
2012/3952	(1) Unreasonably refusing to expedite investigation for a water seepage complaint (substantiated); and (2) Ineffective investigation methodology (unsubstantiated)	Partially substantiated	1

#### Government Secretariat – Chief Secretary for Administration's Office

2012/2621	Failing to provide clear information to the public on the different arrangements for reproduction of archival materials	Substantiated	1
2012/2697B	Providing incorrect information to the complainant	Unsubstantiated	0
2012/2803B	Failing to refer a complaint about the display of unauthorised roadside election banners to relevant departments for follow-up action	Partially substantiated	1
2012/3140A	(1) Failing to respond to the complainant's complaint against a Government department (partially substantiated); and (2) Providing the complainant's telephone number to the Government department without the complainant's consent (unsubstantiated)	Partially substantiated	1

#### Government Secretariat – Education Bureau

2011/4434	(1) Unreasonably keeping the complainant waiting on the line for one and a half hours before the line suddenly went dead (substantiated); and (2) Unreasonable refusal by an officer to disclose his name to the complainant and suddenly hanging up when the complainant was still talking (substantiated)	Substantiated	2
2012/2183(I)	(1) Failing to follow up the complainant's complaint against her husband for providing false information in her son's application form for admission to Primary 1 and to declare the application form void (unsubstantiated); (2) Wrongly refusing to treat the application form for admission to Primary 1 completed by the complainant as valid and to allocate a place to her son (unsubstantiated); and (3) Unreasonably refusing to provide the complainant with a copy of the application form (substantiated)	Partially substantiated	2



Case No.	Complaint	Overall Conclusion	No. of Recommendations
2012/2415	(1) Granting/renewing agreements for the operation of two national education centres without going through open tender (partially substantiated); (2) Leasing a vacant school premises to an organisation for the operation of a national education centre at a nominal rent without publishing the related principles and process (unsubstantiated); and (3) Improper tender arrangements for the operation of a national education centre (substantiated other than alleged)	Partially substantiated	1
2012/5425	(1) Inconsistent explanation of the selection criteria of School Principal's Nominations (unsubstantiated); (2) Unreasonably including "School Services" as a selection criterion (unsubstantiated); (3) Refusing to disclose the names of the members of the Selection Committee (partially substantiated); (4) Impropriety in placing teachers who had taught candidates to write self-recommendation letters in the Selection Committee (unsubstantiated); (5) Lack of meeting minutes of the Selection Committee (partially substantiated); and (6) Fabrication of a document (unsubstantiated)	Partially substantiated	2
<b>Government Secretariat – Environment Bureau</b>			
2011/3689A	Failing to accede to the complainant's request that his environmental protection organisation be invited to consultation meetings, such that not all divergent views on Government's environmental protection policy were taken into account	Unsubstantiated	0
<b>Government Secretariat – Home Affairs Bureau</b>			
2011/4098	(1) Unclear procedures for application for the use of Private Recreational Leases facilities (unsubstantiated); (2) Unnecessarily disclosing the complainant's information to a third party when processing the complainant's application (unsubstantiated); and (3) Delay in processing the complainant's application (unsubstantiated)	Unsubstantiated	1
2012/2608	Unreasonably rejecting the complainant's application for Allowance for New Arrivals under the Community Care Fund	Unsubstantiated	0
<b>Highways Department</b>			
2011/4270B	(1) Improperly building a gate for the "Pai Lau" of a village near the complainant's estate, such that villagers could illegally occupy the Government land behind the gate (substantiated); and (2) Failing to plan how to handle the problem of the gate, such that a joint operation had to be cancelled when the villagers claimed ownership of the gate (unsubstantiated)	Partially substantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2012/0123A	Failing to handle properly the installation of crash gates at the entrance of a road within a country park	Unsubstantiated	0
2012/2799C	Failing to handle the complainant's request for waiver of excavation permit charge	Unsubstantiated	0
<b>Home Affairs Department</b>			
2011/3089B	Failing to properly handle unlawful occupation of Government land for 30 years	Substantiated	1
2011/4270A	(1) Improperly building a gate for the "Pai Lau" of a village near the complainant's estate, such that villagers could illegally occupy the Government land behind the gate (substantiated); and (2) Failing to plan how to handle the problem of the gate, such that a joint operation had to be cancelled when the villagers claimed ownership of the gate (unsubstantiated)	Partially substantiated	1
2011/4509C	Refusing to rectify a wrong lot number on a memorial for registering the succession to landed property in the New Territories	Partially substantiated	1
2012/0886B	Failing to take up the maintenance responsibility of a slope which was formed after Government's construction of a footpath within the complainant's land	Unsubstantiated	0
2012/1604	Mishandling a request for installation of bollards to prevent cars from driving through a pedestrian walkway	Unsubstantiated	1
2012/2703	Unreasonably requesting the complainant to produce his tenancy agreement	Unsubstantiated	0
2012/2968	Unreasonably refusing the complainant's application for use of facilities in a community centre	Substantiated	1
2012/3187A	Refusing to mediate among the complainants and a Small House owner regarding the preservation of a footpath	Unsubstantiated	0
2012/3851	(1) Unreasonably requiring applicants for hiring a community hall/centre to submit a copy of the approval document for using copyright works (substantiated); (2) Unreasonably requiring "eligible organisations" to submit a copy of such approval document (substantiated); (3) Failing to grant an exemption to "eligible organisations" from submitting such approval document (unsubstantiated); (4) Failing to provide assistance to "eligible organisations" to obtain approval documents (unsubstantiated)	Partially substantiated	1
<b>Hong Kong Arts Development Council</b>			
2012/2418	Lack of fairness and transparency in the selection of a curator representing Hong Kong to the Venice Biennale	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Hospital Authority</b>			
2011/2936	(1) Delay in processing a patient's application for joining the Public Private Interface – Electronic Patient Record Sharing Pilot Project, rendering his record inaccessible when needed (substantiated); and (2) Failing to acknowledge a letter from the patient's family enquiring about the progress of the application (partially substantiated)	Partially substantiated	2
2011/4424	Failing to address the complainant's queries regarding the use of physical restraint on his father	Partially substantiated	3
2012/1168	Improper handling of a patient's complaint on prescription of wrong medicine	Substantiated	2
<b>Housing Department</b>			
2012/0935	Delay in handling two flooding incidents and providing untrue information in the complainant's claim procedure	Substantiated other than alleged	2
2012/1240	Delay in handling a report of backflow of sewage	Unsubstantiated	1
2012/3547	Unreasonably including the complainant's previous residence in the list of unpopular public rental housing units under the Express Flat Allocation Scheme and providing incorrect information to the press	Unsubstantiated	0
2012/3862D	Denying responsibility for investigating a water seepage complaint simply after a 15-minute observation without conducting any tests	Unsubstantiated	1
<b>Immigration Department</b>			
2011/5200	(1) Providing an incorrect telephone number to the complainant such that she was unable to get timely help from a border control point and failing to call an ambulance for her as promised (unsubstantiated); (2) Failing to explain to the complainant that calling an ambulance was outside the scope of the hotline service and advise her where to seek help (partially substantiated); and (3) Failing to maintain complete records of telephone calls from enquirers seeking help (partially substantiated)	Partially substantiated	3
2012/1414B	Lack of communication with the Airport Authority when the "Red Rainstorm Warning" was in force, thus causing inconvenience to travellers	Unsubstantiated	0
<b>Inland Revenue Department</b>			
2012/0077	Failing to retain complete records in a tax recovery case	Partially substantiated	3
<b>Judiciary Administrator</b>			
2011/3083B	Failing to promptly attend to the complainant's request for assistance to protect the swallows' nests at the external walls of a law courts building	Unsubstantiated	0
2012/1922B	Failing to give a true account of an incident in the course of an investigation into the complainant's complaint	Unsubstantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Labour Department</b>			
2011/4161B	Failing to adequately supervise a contractor's demolition work which involved asbestos and improperly handling a complaint against the contractor	Unsubstantiated	1
2012/2623(I)	Refusing the complainant's request for information and failing to give reasons for refusal	Substantiated	1
2012/4825	(1) Wrongly referring the complainant's case to the Minor Employment Claims Adjudication Board (partially substantiated); (2) Providing incorrect advice to the complainant (unsubstantiated); and (3) Refusing to confirm the reason for rejecting the complainant's case in writing (unsubstantiated)	Partially substantiated	1
<b>Land Registry</b>			
2011/4509B	Refusing to rectify a wrong lot number on a memorial for registering the succession to landed property in the New Territories	Unsubstantiated	0
2012/3813	Failing to register in the Land Register in respect of a flat in a building a Letter of Compliance regarding investigation orders issued by the Buildings Department, such that an application for reverse mortgage by the owner of the flat (the complainant) was unsuccessful	Substantiated	0
<b>Lands Department</b>			
2011/1859	Failing to take further lease enforcement action against the breach of lease conditions caused by the installation of antennas on the rooftops of two village houses	Unsubstantiated	0
2011/3089C	Failing to properly handle unlawful occupation of Government land for 30 years	Substantiated	2
2011/4270C	(1) Improperly building a gate for the "Pai Lau" of a village near the complainant's estate, such that villagers could illegally occupy the Government land behind the gate (substantiated); and (2) Failing to plan how to handle the problem of the gate, such that a joint operation had to be cancelled when the villagers claimed ownership of the gate (unsubstantiated)	Partially substantiated	1
2011/4312C	Failing to take enforcement action against some unauthorised building works on Government land	Substantiated	1
2011/4509A	Refusing to rectify a wrong lot number on a memorial for registering the succession to landed property in the New Territories	Unsubstantiated	0
2011/4961	Delay in handling the complainant's query about the area of land to be allowed for use under a proposed short term tenancy	Substantiated	1
2012/0106	Refusing the request of the complainant (the owners' committee of an estate) to clarify the rationale for approving the allegedly unfair provisions of the Deed of Mutual Covenant of the estate	Unsubstantiated	0



Case No.	Complaint	Overall Conclusion	No. of Recommendations
2012/0120	Failing to stop the illegal operation of a columbarium and its unauthorised occupation of Government land	Partially substantiated	3
2012/0192A	Failing to repair the waterproofing layer of the floor slab of the roof of a building on behalf of the Financial Secretary Incorporated	Unsubstantiated	0
2012/0583	Delay in handling the complainant's small house application	Substantiated	2
2012/0954B	Unreasonably granting short-term tenancies to two offensive trade factories	Substantiated	1
2012/1184B	Shirking responsibility in resolving the problem of blockage of an Emergency Vehicular Access in the complainant's village	Unsubstantiated	0
2012/1764C	(1) Failing to take enforcement action and shifting responsibility when handling a complaint about pavement obstruction and environmental nuisance caused by a recycling shop (unsubstantiated); and (2) Failing to keep the complainant informed of the case progress (substantiated)	Partially substantiated	1
2012/1909(I)	Unreasonably refusing to provide the complainants with documents related to their squatters	Partially substantiated	2
2012/2268	Delay in taking lease enforcement action against property owners who violated the restriction on land use	Substantiated	1
2012/2341B	Shirking responsibility in handling a complaint about an unauthorised building works	Substantiated other than alleged	1
2012/2363B	Failing to effectively control the illegal occupation of Government land by the operator of a stall	Partially substantiated	1
2012/2444	Failing to take land control action against a number of shops which had illegally occupied Government land	Partially substantiated	1
2012/2566B(I)	(1) Delay in handling a complaint about miscellaneous articles placed near the complainant's residence and failing to solve the problem (partially substantiated); (2) Failing to respond to the complainant's request for the case number of her complaint (substantiated); and (3) Failing to recover the cost for removing the miscellaneous articles from their owner (unsubstantiated)	Partially substantiated	1
2012/2741B	Failing to take effective enforcement action against a food establishment which had illegally occupied Government land	Partially substantiated	1
2012/2851B	Failing to conduct proper consultation on the Liantang/Heung Yuen Wai Boundary Control Point project	Unsubstantiated	0
2012/3187B	Impropriety in approving a Small House project, resulting in the removal of a footpath	Unsubstantiated	0
2012/3831A	Impropriety in handling a proposed extension for Temporary Government Land Allocation to the Water Supplies Department	Unsubstantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Leisure and Cultural Services Department</b>			
2011/4956	Failing to verify a tenderer's eligibility in a tender exercise for management of turf cricket pitches at a recreation ground	Substantiated other than alleged	2
2011/5182A	Delay in implementing a project to construct leisure and recreation facilities	Unsubstantiated	0
2012/1591	Unfairness in the assessment for applications for hiring a performing venue and mishandling the display and distribution of publicity materials	Unsubstantiated	1
2012/1657B	Failing to properly handle the nuisance caused by airborne floss of cotton trees to residents nearby	Partially substantiated	1
2012/1718	Failing to properly handle the nuisance caused by airborne floss of cotton trees to residents nearby	Partially substantiated	1
<b>Marine Department</b>			
2012/1983	Mishandling the complainant's application for permission to lay a private mooring	Partially substantiated	1
<b>Office of the Telecommunications Authority</b>			
2011/1860	Approving the application of a telecommunications company for installation of telecommunications equipment on the rooftop of a village house without ascertaining the relevant Government department's permission	Unsubstantiated	0
2011/4218	Falsely claiming that the complainant had refused to give a statement in order to cover up delay in commencing investigation into a complaint	Unsubstantiated	1
2011/4813	Failing to stop an advertising company from sending unsolicited fax advertisements to the complainant	Unsubstantiated	0
<b>Official Receiver's Office</b>			
2011/4916	(1) Failing to carefully examine the value of a bankrupt's property in mainland China when acting as trustee (substantiated); and (2) Delay in handling the complaint (unsubstantiated)	Substantiated	3
2012/1664	Undue delay in realising a bankrupt's assets and distributing the dividends to the complainant as a creditor	Unsubstantiated	0
2012/2801	Failing to take proper action for a bankruptcy case, and delay in replying to the complainant's enquiry	Unsubstantiated	0
<b>Planning Department</b>			
2012/0954C	Taking selective enforcement action against the hoardings on the complainant's land, but not the altered use of land by an offensive trade factory	Unsubstantiated	1
<b>Post Office</b>			
2012/0360	Improper handling of a complaint about mail delivery	Partially substantiated	3
2012/0962	Failing repeatedly to deliver overseas parcels to the complainant and returning the undelivered parcels to the sender without first serving on the complainant a notice of collection	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2012/2439(I)	(1) Delay in responding to the complainant's enquiry (substantiated); (2) Unreasonably withholding a damage report issued by the Mainland postal administration (substantiated); and (3) Citing a wrong mail item number in its reply letter and allegedly providing an untrue statement (partially substantiated)	Partially substantiated	2

#### Rating and Valuation Department

2012/1922A	(1) Giving wrong advice for the complainant's application for repossession of his property (unsubstantiated); (2) Neglecting him maliciously when he was queuing at the enquiry desk to express his views (unsubstantiated); and (3) Failing to conduct a thorough investigation into his complaint (unsubstantiated)	Unsubstantiated	1
2012/2786	(1) Unhelpful and sloppy staff attitude (inconclusive); (2) Delay in handling the complainant's application for information of the rateable value of a property (unsubstantiated); and (3) Mishandling the complainant's request for refund (unsubstantiated)	Unsubstantiated	3

#### Registration and Electoral Office

2012/2803C	Delay in handling a complaint about the display of unauthorised roadside election banners	Substantiated other than alleged	1
2012/3031(I)	(1) Providing the complainant with inconsistent information about his eligibility for voting in the 2012 Legislative Council Election (inconclusive); (2) Incorrectly informing the complainant that he could not request change of personal information by fax (unsubstantiated); (3) Refusing to provide the letters previously issued to the complainant as per his request (partially substantiated); and (4) Incorrectly advising the complainant that he could vote in another geographical constituency to which he no longer belonged (unsubstantiated)	Partially substantiated	0
2012/3176	(1) Failing to contact the complainant to confirm her address before cancelling her voter registration (partially substantiated); and (2) Failing to take prompt action to address the complainant's complaint about having received the poll cards of some unknown persons (unsubstantiated)	Partially substantiated	2

#### Social Welfare Department

2011/4073B	Failing to suspend the charity sale by a charitable organisation immediately on learning that the organisation had allegedly transferred its Public Subscription Permit to hawkers for profit-making hawking activities	Substantiated other than alleged	1
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Case No.	Complaint	Overall Conclusion	No. of Recommendations
2012/1418	(1) Unreasonably refusing to follow up a complaint against a subvented non-governmental organisation (unsubstantiated); and (2) Failing to provide on its website the Chinese version of some documents relating to the monitoring of subvented non-governmental organisations (substantiated)	Partially substantiated	1
2012/1511	(1) Unreasonableness in the assessment of the income of an elderly and disabled couple, who had received a residential property as a gift, such that they had to return one month's Comprehensive Social Security Allowance (partially substantiated); and (2) Delay in handling the application of the complainant's father for Disability Allowance (unsubstantiated)	Partially substantiated	1
2012/2285	Misleading the complainant's father into thinking that he had to remove the complainant's name from the tenancy agreement of his public housing unit in order to obtain Comprehensive Social Security Allowance	Unsubstantiated	0
2012/2305	Failing to properly monitor the staffing and facilities of an elderly home at which the complainant's mother had fallen down and sustained injuries several times within two years	Unsubstantiated	0
2012/3140B	(1) Failing to arrange another officer to take care of a disabled person who was under legal guardianship of the Director of Social Welfare when the case officer was on leave (unsubstantiated); (2) Improper response to the complainant's enquiry about the health condition of the disabled person (substantiated); and (3) Assigning the officer under complaint to handle the complainant's complaint (substantiated other than alleged)	Partially substantiated	2

#### Student Financial Assistance Agency

2011/4892	(1) Delay in processing the complainant's application for deferment of loan repayment (substantiated); and (2) Unreasonably requesting the complainant to pay the interest on default payment during the processing period of his application for deferment (substantiated)	Substantiated	0
2012/0626	Prohibiting the offer of any course tuition fee discount to Senior Citizen Card holders who applied for the Continuing Education Fund's reimbursable courses	Unsubstantiated	0

#### Transport Department

2011/3089A	Failing to properly handle unlawful occupation of Government land for 30 years	Partially substantiated	1
2011/3137	(1) Mishandling complaints about excessive sound volume of the audio-visual system on franchised buses (unsubstantiated); and (2) Failing to sufficiently monitor whether the advertising time was kept within the stipulated ratio (substantiated)	Partially substantiated	0



Case No.	Complaint	Overall Conclusion	No. of Recommendations
2011/4000	Failing to exercise due care while updating the complainant's data, resulting in an error in his address record and hence non-receipt of a fixed penalty ticket issued to him by the Police	Partially substantiated	0
2012/0095	Improper handling of a complaint about unauthorised change of minibus route	Substantiated	0
2012/0123B	Failing to implement properly the restriction on vehicular entry into a road within a country park on general holidays	Substantiated	3
2012/1403	Unfair treatment in rejecting the complainant's applications for residents' bus service and selective enforcement in terminating its coach service	Unsubstantiated	1
2012/2206	Unreasonably rejecting the complainant's application for driving examination due to his previous dishonoured cheque payment of vehicle licence fee	Unsubstantiated	0

Water Supplies Department

2012/3831B	Delay in handling local residents' objection to the Department's application for an extension of Temporary Government Land Allocation	Partially substantiated	1
2012/3862B	(1) Contradicting conclusions about whether a fresh water supply pipe had leakage (unsubstantiated); and (2) Overruling the findings of another Government department without conducting thorough tests (unsubstantiated)	Unsubstantiated	1

# Summaries of Selected Cases Concluded by Full Investigation

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)



## Details of Complaint

The complainant noted that traffic signs were placed at the entrance of a road within a country park ("the Road"), prohibiting vehicles from entering on general holidays ("general holiday restriction"). However, on one Sunday, he allegedly saw several vehicles (including a Government vehicle) using the road, but AFCD staff turned a blind eye to them and did not take enforcement actions.

- The complainant alleged that there was neither a crash gate nor a watchman at the entrance of the Road to prevent vehicles from entering on general holidays.
- Country park management, road traffic management and installation of crash gates at the entrance of the Road are the responsibilities of AFCD, TD and Hy D respectively. This complaint, therefore, involved the three Government departments.

## Sequence of Events

- Towards the end of 2003, several Government departments (including AFCD, TD and Hy D) held a meeting and decided to install crash gates at the entrance of the Road to prevent vehicular entry on general holidays. Hy D completed the installation works in August 2005. As the keys of the gates were yet to be handed over to the departments concerned, AFCD only started in late May 2006 to put the gates into operation before and after a general holiday.
- AFCD sent an email to TD in mid-June 2006, claiming that the crash gates were positioned less than three metres from an expressway which ran perpendicular to the Road. When its staff stopped their vehicle in front of the gates to erect or remove them, the back of the vehicle would stick out to the expressway and pose a potential safety risk.
- TD staff conducted a site inspection afterwards and confirmed that the distance between the crash gates and the expressway was five metres, which should be sufficient for AFCD staff to park their vehicle parallel to the expressway. However, AFCD insisted that some large vehicles (such as refuse collection vehicles) might need to enter and leave the country park on general holidays. It, therefore, suggested that the gates be relocated further away from the expressway. AFCD would simply not put the gates into operation for the time being.

**Agriculture, Fisheries and Conservation Department ("AFCD"), Transport Department ("TD") and Highways Department ("Hy D")**

Case Nos. OMB 2011/3426, OMB 2012/0123 A & B – Country park management

Main allegations:  
AFCD and TD – failing to implement properly the restriction on vehicular entry into a road within a country park on general holidays; and failing to handle properly the installation of crash gates at the entrance of the road – substantiated  
Hy D – failing to handle properly the installation of crash gates at the entrance of a road within a country park – unsubstantiated



7. In early July 2006, TD sent a memorandum to Hy D, AFCD and the Water Supplies Department to seek their views on relocating the crash gates. Then in May 2010, TD sent a work request of “normal priority” to Hy D, which put the request on its list of small-scale traffic improvement projects.

8. In mid-October 2010, Hy D informed its contractor of the proposal to relocate the crash gates. The contractor drew up a temporary traffic arrangement (“TTA”) and applied to TD and the Police for approval. In mid-October 2011, AFCD wrote to TD and urged it to start the relocation works as soon as possible. Meanwhile, Hy D also enquired TD of the approval status of the TTA. TD then replied that it had no objection to the arrangement.

9. The contractor completed the relocation works in March 2012. Starting from 1 April, AFCD staff would put the crash gates into operation before and after general holidays.

### Comments from the Three Departments

#### ***Allegation of Failure to Implement Properly the General Holiday Restriction***

10. AFCD explained that the Road was open to bicycles and other vehicles on non-holidays. Owing to the large number of visitors on public holidays, however, TD set up the general holiday restriction on the Road for visitors’ safety. There were road signs at the entrance stating the restriction period. AFCD held that vehicular control on the Road should be the responsibility of TD. Meanwhile, Hy D should take up repairs and maintenance of the Road, and the Police should enforce traffic control.

11. TD argued that according to the law, country parks should be under the jurisdiction of AFCD. As a matter of fact, in a memorandum issued in 2004, the Lands Department suggested that TD consult AFCD concerning the arrangements to prohibit vehicular entry to the Road. This indirectly proved that TD did not have jurisdiction over the management of the Road.

12. AFCD insisted that its staff had not been empowered by the law to enforce vehicular control on the Road. Violations of the general holiday restriction would be reported to the Police for follow-up action.

13. TD claimed that traffic control signs had been placed on the Road to advise motorists of the general holiday restriction. The Police would take enforcement actions against offenders and institute prosecutions. TD also confirmed that among the vehicles that allegedly had entered the Road on that Sunday, only the Government vehicle had a permit to enter the Road.

#### ***Allegation of Failure to Install Crash Gates at the Entrance of the Road***

14. AFCD explained that there was potential safety risk due to a mistake made by Hy D in installing the crash gates and that TD had also asked AFCD not to put up the gates in bad weather so that vehicles might enter the park for emergency repairs. AFCD staff, therefore, stopped putting the gates into operation during general holidays.

15. TD reiterated that the traffic control signs at the entrance should serve the purpose of reminding motorists of the general holiday restriction on the Road. The crash gates were only a supplementary facility.

16. TD also noted that it had actually consulted AFCD in 2004 regarding the design of the crash gates and, after an inspection, confirmed that the gates were located five metres from the expressway. The distance conformed to the original requirements and should be sufficient for AFCD staff to park a vehicle of suitable

length (e.g. a light goods vehicle) when putting the gates into operation. So, no mistake was involved and the relocation works were in no way urgent. Nevertheless, TD finally agreed to relocate the gates and advised AFCD not to put up the gates in bad weather.

17. Between 2006 and 2010, there had been a number of personnel changes and transfers among those TD engineers responsible for the region where the country park was situated. They held divergent views on whether the crash gates were necessary. TD finally issued a work request to Hy D in May 2010. The contractor’s TTA application, however, did not reach the TD staff responsible due to an error in dispatch. As such, TD issued its reply only in November 2011.

18. Hy D pointed out that the crash gates were installed in 2005 and ready for use. TD’s request in May 2010 for their relocation was regarded only as some enhancement works, with a priority lower than other projects. Therefore, it was never discussed at the joint monthly works meetings of Hy D and TD, and Hy D did not follow up the matter immediately even when TD took a long time to approve the contractor’s TTA application. Later on, when Hy D learned that TD expected an early completion of the relocation project, it promptly commenced the works. The gates were finally relocated in March 2012.

### Our Observations and Comments

#### ***Allegation of Failure to Implement Properly the General Holiday Restriction***

19. The complainant claimed that he saw several vehicles entering the Road on a general holiday. TD confirmed that only one Government vehicle held a permit. This showed that the road signs alone could not ensure effective implementation of the general holiday restriction. Actually, the departments concerned had already decided that crash gates were needed. However, there had been obvious inadequacies in the implementation of the arrangement.

20. As there was no independent evidence, this Office could not determine whether AFCD staff had, as alleged, turned a blind eye to offenders. Anyway, AFCD has a statutory duty to manage and protect country parks, and hence a responsibility to stop any irregularities within those parks.

#### ***Allegation of Failure to Install Crash Gates at the Entrance of the Road***

21. According to an agreement among the departments concerned, after the installation of the crash gates in August 2005, AFCD staff should be responsible for putting the gates into operation before and after a general holiday. Nevertheless, AFCD cited various reasons and just stopped performing this duty. It also failed to devise other feasible measures to prevent violation of the general holiday restriction before relocation of the gates. This reflected its negative attitude and inflexibility in handling the problem and amounted to dereliction of duty. Besides, AFCD kept silent when TD consulted it regarding the design of the gates in 2004, only to point out the problem and ask for rectification after they had been installed. This was clearly a waste of time and resources.

22. When TD learned of AFCD’s intention to stop putting up the crash gates, it should have discussed the matter with AFCD and devise a relocation works schedule. TD should also consider taking interim measures to implement effectively the general holiday restriction.

23. TD also indicated that there were divergent views among its engineers on relocation of the gates between 2006 and 2010. Nevertheless, it provided no information showing that there had been internal discussions about the issue. Such discussions were in fact unnecessary as TD had already sought the opinions of other departments concerned in July 2006 regarding relocation of the gates.



24. We considered TD to have failed to provide a reasonable explanation for its failure to follow up promptly the relocation works between 2006 and 2010. Actually, without setting up a bring-up system for monitoring of non-urgent projects such as relocation of gates, these non-urgent projects could easily be neglected. In addition, the contractor's application for approval in December 2010 regarding the TTA was delayed for about a year because of a dispatch error on the part of TD. We found such delay unacceptable.

25. As for Hy D's follow-up on the contractor's work, the Department only acted on TD's request and proceeded with the relocation works according to its proposal. We found no impropriety on the part of Hy D concerning the installation and relocation of the gates.

26. We also found no documentary records on the jurisdiction and division of work among the departments regarding the management responsibility of the Road. Both AFCD and TD shifted the responsibility to each other. We considered that as AFCD staff members were responsible for putting the gates into operation and would conduct regular patrols in the country park, it should be easier for them to spot any problems and respond promptly. Therefore, it would be more appropriate for AFCD to be the coordinating department.

### Conclusion

27. AFCD stopped taking up the responsibility of putting the crash gates into operation soon after their installation. It also failed to take any feasible measures to prevent violation of the general holiday restriction and was trying to stay away from the problem. TD also did not follow up the problem properly such that the crash gates were rendered useless. Meanwhile, the proposed relocation works were delayed because of a dispatch error. The Ombudsman considered the complaint against AFCD and TD substantiated.

28. There was no impropriety on the part of Hy D regarding the installation and relocation of the crash gates. The Ombudsman considered the complaint against Hy D unsubstantiated.

### Recommendations

29. The Ombudsman made a number of recommendations to AFCD and TD. They included:

- (1) AFCD to take the lead in holding discussions with other departments concerned (such as TD and Hy D) to clarify the division of work among them regarding the management responsibility of the Road and set up an incidents report mechanism. Any of their decisions made should be clearly recorded and properly filed;
- (2) TD to devise a bring-up system for monitoring all types of works requiring follow-up action; and
- (3) TD to review its internal dispatch and file records mechanism to avoid errors and omissions.

A case of delay and failure to carry out duties conscientiously

### Details of Complaint

During a telephone discussion about a complaint with Officer A of EDB, the complainant requested to speak to Officer A's supervisor. The complainant said that she could hold the line and Officer A agreed to transfer the call. She then waited for about one and a half hours, but nobody picked up the telephone. The line then suddenly went dead.

2. The next day, the complainant called Officer A again and requested to speak to her supervisor. Officer B picked up the telephone, but refused to disclose his name. He even hung up abruptly while the complainant was still talking.

### Recording of Telephone Conversations

3. A recording of the telephone conversations provided by the complainant revealed the following. During her conversation with Officer A, the complainant did not want to hang up. She insisted on holding the line and waiting to speak to Officer A's supervisor, and Officer A agreed to let her wait and hold the line. She then waited for about one and a half hours before the line went dead. The next day, when the complainant was talking to Officer B, she asked him many times for his name, but he refused to tell her. Officer B told the complainant that he was not from the same team as Officer A's and it was, therefore, "pointless and unnecessary" to give his name to the complainant. Finally, while the complainant was still talking, the line went dead.

### Response from EDB

#### Allegation (1)

4. EDB considered Officer A to have been patient and polite during the telephone conversation with the complainant. Officer A denied having promised to transfer the complainant's call to her supervisor. Officer A felt that the complainant was rather agitated at that juncture, so she did not dare to ask the complainant to hang up but simply placed her handset aside. Officer A was then so busy with her work that she did not notice when the line went dead.

5. EDB had since reminded frontline staff to promptly inform members of the public if their request could not be met, so that they would not have unrealistic expectations.

#### Allegation (2)

6. Officer B was not a member of the Bureau's Complaint Handling Unit, so he did not see any need to disclose his name to the complainant. Yet, EDB agreed that Officer B, as a public officer, should not have refused to disclose his name. EDB had since instructed staff to listen patiently when answering calls from the public and give them clear replies. Furthermore, staff must not refuse to disclose their names and job titles.

### Our Comments

7. According to the recording of the telephone conversations, Officer A's response could lead the complainant to believe that her call would be transferred to a senior officer. Even if Officer A did not know how to deal with the complainant's reaction, she could have told the complainant that she needed to consult her supervisor before coming back to the complainant.

8. As Officer B was neither a member of the Complaint Handling Unit nor Officer A's supervisor, Officer A should not have let him answer the call at all, nor should he have answered it. As a public officer, he should not have refused to disclose his name when answering a call from the public. Moreover, the recording revealed that Officer B had really been rude.

### Education Bureau ("EDB")

Case No. OMB 2011/4434 – Staff attitude

Allegations: (1) an officer unreasonably putting the caller on hold for a long time, until the line suddenly went dead – substantiated; and (2) an officer unreasonably refusing to disclose his name and abruptly hanging up – substantiated



### A case of poor staff attitude

### Electrical and Mechanical Services Department ("E&MSD")

Case No. OMB 2012/1442 –  
Monitoring of contractor

Allegation: failing to monitor properly the performance of a maintenance service contractor for the air-conditioning system of a market – substantiated

## Conclusion and Recommendations

9. The Ombudsman considered this complaint substantiated.
10. The Ombudsman urged EDB to closely monitor staff's compliance with its instructions to avoid occurrence of similar incidents. Furthermore, EDB should apologise to the complainant for its staff's improper behaviour.

## Details of Complaint

The complainant was a stall operator in a market under the Food and Environmental Hygiene Department ("FEHD"). Since the end of 2011, the market's air-conditioning system often malfunctioned and needed repairs. Moreover, the complainant alleged that the contractor had once refused to respond to his enquiries while doing some repairs and had on another occasion failed to abide by its performance pledge to arrive at the venue within two hours for repair work. He considered that E&MSD had failed to monitor its contractor properly.

## Our Findings

### *Maintenance of Air-conditioning System in Public Market*

2. The maintenance services of the market's air-conditioning system were outsourced to a contractor, whose performance was monitored by E&MSD. To ensure that all repairs and routine checks were carried out properly, E&MSD would review, among others, a fault call summary report ("the Summary Report") updated and submitted daily by the contractor. The maintenance contract stipulated that the contractor should attend the fault within two hours upon receipt of a report from FEHD.

3. According to E&MSD records between 1 November 2011 and 31 October 2012, its contractor received 177 fault reports from FEHD concerning the market's air-conditioning system. In particular, there were 108 complaint cases about the air-conditioning system in around 150 days between May and September, of which immediate or follow-up rectifications were necessary in 75 cases. The figures showed that stall operators were highly dissatisfied with the air-conditioning system during hot seasons.

### *E&MSD's Monitoring Records*

4. Having examined the Summary Reports kept by E&MSD and cross-checked them against the records of FEHD, we spotted over 100 entries which seemed to be unreasonable or inconsistent. For example, the times or locations mentioned in FEHD's fault reports were different from those in the records submitted to E&MSD by the contractor. In some other cases, FEHD had requested the contractor to repair certain faults, but E&MSD had no relevant records.

## Response from E&MSD

5. E&MSD explained that, on the date specified by the complainant, the contractor had properly followed up his complaint about air-conditioning system breakdown and arrived at the venue within two hours in compliance with the performance pledge. Nonetheless, E&MSD admitted that there were inadequacies in the way the contractor handled the complainant's enquiries and so had urged the contractor to make improvement. As regards our findings, E&MSD had the following response.

## System Performance Target

6. E&MSD contended that, among the 177 cases involved in the period under investigation, 72 cases did not require any rectification as the air-conditioning system was found to be functioning properly after inspection. In 69 of the other cases, the cooling capacity met the requirement, although some repairs were necessary. There were only 36 cases of insufficient air-conditioning supply. E&MSD, therefore, considered that the temperature at the market was maintained within the standard range for most of the time. The air-conditioning system was working properly in general.

7. Under the Service Level Agreement between E&MSD and FEHD, the performance target of air-conditioning system was set at not less than 99% service availability. E&MSD indicated that the service availability of the market's air-conditioning system was 99.78% for the period from November 2011 to October 2012 and met the performance target.

## Monitoring of Contractor

8. E&MSD argued that the Summary Reports did not provide the full picture. Hence, it was unreasonable for us to conclude that the data held by E&MSD were riddled with errors after cross-checking only the Summary Reports against FEHD's records, and then suspect that E&MSD's monitoring system was ineffective. E&MSD also kept the job cards completed by the contractor's technicians on-site and countersigned by FEHD's representatives, as well as the plant room log book recording their time of arrival/departure and maintenance details. In monitoring the contractor's performance, E&MSD mainly relied on the job cards, which were cross-checked against the plant room log book and the Summary Reports.

## Our Comments

9. It was within E&MSD's professional judgement in using service availability for assessing the performance of air-conditioning system, so we would not comment. However, although the market's air-conditioning system was able to maintain 99% service availability at all times, it aroused complaints from stall operators almost every day during spring and summer when the need for air-conditioning was usually higher (paragraph 3). We considered it worthwhile for E&MSD to examine whether this reflected inadequacy of the current minimum standard to meet the actual demand of stall operators, or that there were other problems. The contractor was required to make repairs every two days on average. The cost effectiveness of such maintenance services was also questionable.

10. Our queries regarding the monitoring system of E&MSD was more attributable to its unawareness of the data errors than the errors *per se*. When we started our full investigation, E&MSD initially only submitted the Summary Reports as supporting documents of its monitoring measures over the contractor's performance. It was only when we asked E&MSD to peruse and comment on our preliminary investigation results that it provided supplementary information. Regarding the inconsistencies we identified between its records and the data held by FEHD, E&MSD simply tried to show that the relevant data in the Summary Reports were correct. E&MSD was anxious to excuse itself, rather than rectify the problem.

11. In its response to our investigation, E&MSD did not even realise the many errors and omissions in the Summary Reports. We doubted that it had regularly cross-checked various records with due diligence to keep track of the contractor's performance, and whether it was an effective way to do so.





## Conclusion and Recommendations

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

13. The Ombudsman recommended that E&MSD:

- (1) conduct a comprehensive inspection of the market's air-conditioning system, and consider exploring with FEHD the feasibility of replacing the system, wholly or partially, taking into account the malfunction and fault reports received in future; and
- (2) maintain even closer contacts with FEHD to ensure that the follow-up records submitted by the contractor were accurate and improve its existing monitoring system over the contractor.

A case of ineffective control

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

Case No. OMB 2012/0875 – Food labelling

Allegations: (1) delay in responding to a food complaint – substantiated; and (2) failing to take actions on the case – partially substantiated

## Details of Complaint

In mid-January 2012, the complainant lodged a complaint with FEHD against a shop ("Shop A") for selling prepackaged food without labels, thereby violating the laws on food labelling.

2. On 14 February, FEHD staff replied to the complainant that they had found during their site inspection that morning some prepackaged food without labels and had accordingly asked the shop to withdraw the food. Yet, that very afternoon and on subsequent occasions, the complainant could still see food without labels on sale at the shop.
3. The complainant alleged that there had been delay on the part of FEHD as it had only responded to his complaint after nearly a month ("allegation (1)"). He also suspected that the Department had never actually acted on his complaint ("allegation (2)").

## Relevant Regulations

4. Under the Food and Drugs (Composition and Labelling) Regulations, unless otherwise exempted, all prepackaged food shall be marked and labelled with such information as the name of the food, "best before" date, quantity, ingredients, and name and address of the manufacturer. There should also be a nutrition information label.

## Procedures for Handling Food Complaints

5. FEHD's operation guidelines stipulate that food complaints must be handled expeditiously. Staff of District Environmental Hygiene Offices ("DEHOs") should conduct preliminary investigations to collect evidence and submit an interim report within four working days to the Centre for Food Safety ("CFS") for follow-up actions. Depending on the irregularities found, CFS staff may issue warning letters to demand rectification of the problem within a specified period, or even institute prosecutions. CFS should also notify the complainants of case progress and outcome.

## FEHD's Explanation

6. In mid-January 2012, the local DEHO received the complainant's food complaint through the 1823 Call Centre. However, its staff failed to follow the

procedures for handling food complaints and did not act on the case promptly. Although they had found irregularities during a site inspection in early February, they did not refer the case to CFS immediately for follow-up actions. They only made a referral to CFS in late April when the shop was found to have breached the law again. FEHD admitted serious delay. Subsequently, between May and August, CFS staff conducted several inspections at Shop A and on two occasions found food without labels on sale. The person-in-charge was twice prosecuted with police assistance.

7. FEHD indicated that before April 2012 (i.e. before we commenced our inquiry into the case), its staff had tried several times to call the complainant to inform him of the actions taken by the DEHO and its investigation results. However, they only managed to contact him once in mid-February. Meanwhile, the DEHO had also failed to inform him of the investigation results between mid-February and late March (i.e. no irregularities were found at Shop A). Later on, FEHD issued five written replies to the complainant between May and August regarding case progress and investigation results.

## Our Comments

### Allegation (1)

8. That the DEHO staff had treated the food complaint as just an ordinary complaint reflected their lack of understanding of the definition of and handling procedures for food complaints. The fact that they did not conduct a site inspection until almost three weeks after receipt of the food complaint was an indication of their sluggishness.

9. Furthermore, the DEHO staff should have tried to contact the complainant by email when they could not reach him by telephone. It was also improper of them not to notify him of case progress between mid-February and late March.

10. The Ombudsman considered that there had indeed been delay in FEHD's response to the complainant's food complaint. Allegation (1) was, therefore, substantiated.

### Allegation (2)

11. It was not true that FEHD had not taken any action on the case. Nevertheless, we found it disappointing that even after our intervention, the Department had remained sluggish and still failed to promptly deal with the complainant's food complaint of early May: DEHO staff did not inspect the shop in accordance with the procedures and just referred the case to CFS four days later, while CFS staff again waited for more than ten days before conducting an inspection and taking enforcement actions.

12. In the light of the above, The Ombudsman considered allegation (2) partially substantiated.

## Conclusion and Recommendations

13. Overall, the complaint was substantiated.

14. FEHD has since apologised to the complainant for its delay in handling his food complaint and failure to inform him of the progress of its investigation. The Ombudsman urged FEHD to remind staff periodically that they must follow its operation guidelines to handle food complaints promptly and conscientiously. Moreover, they should keep complainants informed of case progress and outcome in a timely way.



A case of failure to follow guidelines and delay in handling complaints

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

Case No. OMB 2012/2053 –  
Filming in crematorium

Allegations: (1) unreasonably forbidding filming in a crematorium – substantiated; and (2) an officer failing to wear his uniform and produce his staff identity card while on duty and showing poor manners – partially substantiated



### Details of Complaint

The complainant was hired by a family to film the funeral of their deceased member in the hall of an FEHD-managed crematorium. While he was filming, a person who claimed to be an FEHD officer intervened and asked him to leave.

2. The complainant considered that FEHD should have allowed the family to apply for permission on the spot to film the funeral instead of stopping him from filming without consulting the family. He also complained against the officer concerned for not wearing his uniform while on duty. Furthermore, the officer had not produced his staff identity card and was very rude.

### Relevant Regulations

3. Under the Cremation and Gardens of Remembrance Regulation, any person who "wilfully disturbs or interferes with any funeral service" or "behaves in a noisy or unseemly manner" in any Government crematorium shall be guilty of an offence.

4. Photography and filming in a crematorium requires prior approval from FEHD. This is to ensure that consent has been given by the host family as well as to protect other users from being disturbed. The Department has posted notices of that regulation at conspicuous positions within the venue. FEHD normally accedes to requests from family members for photography and filming of funerals in crematoriums.

### Response from FEHD

5. According to FEHD, the officer concerned changed into his own clothes temporarily because his uniform was soaked with sweat after outdoor work. He also forgot to wear his staff identity card. The officer explained that he was duty-bound to forbid unauthorised photography and filming. He asked the complainant to leave the hall because the latter ignored him and continued with the filming.

6. FEHD admitted impropriety in the way the officer had handled the situation. Had he checked immediately with the family whether the complainant had obtained their consent to film the funeral and suggested to them that an application could be made on the spot, this unpleasant incident could have been avoided. FEHD had apologised to the complainant.

7. Although the officer denied having been rude, FEHD had subsequently reminded all staff to be polite to the public.

### Our Comments

8. FEHD exercises control over photography and filming in crematoriums to maintain order and prevent disturbance to funerals. However, in this incident, the officer, instead of trying to resolve the issue in a reasonable manner, merely insisted that the complainant stop the filming. The consequential dispute between him and the complainant caused even greater disturbance to the funeral.

9. We attributed the incident to FEHD staff's inadequate understanding of the rationale behind the Department's regulation of photography and filming in crematoriums. Without any written guidelines, staff could only interpret the relevant rules in their own ways, resulting in mishandling of problems. Furthermore, FEHD had not provided any information to let facility users know that application could be made on the spot.

10. In view of the above, The Ombudsman considered allegation (1) substantiated.

11. As regards the allegation of the officer's poor manners, the complainant's edited video clip showed that the officer had at some points spoken loudly and disrupted the solemn proceedings of the funeral. Though his attitude could not be described as rude, his handling of the situation was clearly improper. Besides, it is true that he was not in uniform while on duty. Nor was he wearing his staff identity card.

12. The Ombudsman, therefore, considered allegation (2) partially substantiated.

### Conclusion and Recommendations

13. Overall, The Ombudsman considered the complaint substantiated.

14. The Ombudsman recommended that FEHD:

- (1) promptly include in its operational guidelines the arrangements for photography and filming of funerals in crematoriums to inform frontline staff of the relevant policy and handling methods; and
- (2) provide information to the public on how funeral organisers and families of the deceased can seek permission for photography and filming in crematoriums.

A case of unclear guidelines and rigid staff attitude

### Details of Complaint

On 23 May 2012, while Mr A, employed by the complainant, was pruning shrubs for a Government department at the central divider of a motorway, an FEHD officer issued Mr A a Fixed Penalty Notice ("FPN") for littering in a public place (i.e. depositing the cut leaves on the ground). The complainant considered the FPN to have been issued unreasonably to Mr A and wrote to FEHD two days later to raise an objection ("the Objection Letter").

2. Having heard nothing from the Department other than an acknowledgment of 30 May, the complainant paid the fixed penalty on 12 June, just before the 21-day deadline for payment.

3. On 13 and 28 June, the complainant sent two reminders to FEHD for a reply to the Objection Letter. Still receiving no response, the complainant lodged a complaint with this Office against FEHD on 18 July.

### Response from FEHD

4. FEHD guidelines stipulated that a complaint should be acknowledged within 10 calendar days of receipt and a substantive reply given within 30 calendar days. FEHD issued an acknowledgement to the complainant on 30 May, as it considered the Objection Letter to be a complaint about improper issue of the FPN as well as an attempt to dispute Mr A's liability for the offence.

5. FEHD recognised that any dispute against an FPN, which has a 21-day deadline for payment, must be dealt with swiftly. However, a dispute of liability for an offence should be raised by the offender himself. On 6 July, its staff tried to contact the complainant by telephone, but in vain. On 26 July, FEHD wrote to the complainant and suggested that Mr A, the offender, should raise the dispute in his own capacity.

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

Case No. OMB 2012/2430 –  
Littering charge

Allegation: failing to respond to an objection to a littering charge – substantiated





A case of serious delay in responding to an objection to a charge

## Food and Environmental Hygiene Department ("FEHD"), Buildings Department ("BD") and Lands Department ("Lands D")

Case Nos. OMB 2011/4312A, B & C – Unauthorised structures and illegal operation of shops

Allegations:  
FEHD – failing to stop the obstruction of pavement by two illegally built shops – unsubstantiated  
BD – failing to take enforcement action against two illegally built shops – unsubstantiated  
Lands D – shirking responsibility and failing to take enforcement action against the unlawful occupation of Government land by two illegally built shops – substantiated

6. FEHD admitted that the case had been handled very unsatisfactorily; in particular:
  - the staff concerned had failed to issue an interim reply to the complainant when a substantive reply was not possible within the pledged time; and
  - the letter of 26 July was very untimely and, therefore, unacceptable.
7. On the advice of the Department of Justice, FEHD subsequently withdrew the FPN.

### Our Comments and Conclusion

8. It was clear that FEHD had failed to handle the complainant's case properly and seriously delayed responding to the Objection Letter. The Ombudsman, therefore, considered the complaint substantiated.

9. FEHD has since reminded staff to strictly adhere to departmental guidelines in handling disputes of liability for fixed penalty and complaints.

### Details of Complaint

Since 2009, the complainant had repeatedly complained to BD and FEHD respectively against the owner of a ground-level shop ("Shop A") of a building for illegally constructing two shops ("Shops B and C") along the side wall of the shop and encroaching on the pavement, and against the operators of Shops B and C for placing their merchandise on the pavement such that pedestrians had to take the risk of stepping out onto the carriageway.

2. Later on, in November 2011, the complainant also sought help from Lands D, but was told that the responsibility rested with FEHD and BD. He, therefore, complained to this Office against the three departments: FEHD for failing to handle effectively the problem of obstruction of the pavement; BD for not taking enforcement action against the two unauthorised building works ("UBW") items, i.e. Shops B and C; and Lands D for shirking its responsibility and failing to take action to stop the occupation of Government land by the two shops.

### Jurisdictions of the Three Departments

#### FEHD – Street Obstruction and Unlicensed Hawking

3. FEHD can take the following action on problems within its jurisdiction: if the street obstruction is not serious, FEHD will issue a warning to the persons concerned and demand that the objects causing obstruction be removed within a reasonable time. Immediate enforcement action will be taken against repeated offenders without further warning. In case the obstruction is serious, FEHD will invoke relevant laws to prosecute immediately the parties concerned, including any unlicensed street hawkers involved.

#### BD – UBW Items on the External Walls of Buildings

4. BD can serve a removal order on the title owner of the external wall of a building if UBW items are found there. Prior to April 2011, BD had a policy, adopted after wide public consultation, to take priority enforcement action against unauthorised structures newly built or posing an obvious threat or imminent danger to life and property. In April 2011, the policy was enhanced to include "UBW items projecting from the external walls of buildings" as structures that warrant removal with priority.

5. However, UBW items on pavements which are Government land are not subject to the Buildings Ordinance. Hence, BD cannot take any enforcement action.

#### Lands D – Unlawful Occupation of Government Land

6. Those who occupy Government land without authorisation (including illegal construction of platforms on a public pavement) will be served an order by Lands D demanding cessation of such occupation before a specified date, after which the Department can remove the UBW item or deal with it by other means. In addition, an inter-departmental agreement provides that for cases involving illegal extension or street obstruction by a shop, BD would deal with the extended structures that are supported by a building, while Lands D would tackle any standalone and immovable platform erected on the pavement.

### Sequence of Events

7. In early 2008, BD received an anonymous complaint regarding Shops B and C. Since they did not pose any obvious threat or imminent danger to life and property, according to BD's policy at that time, they were not UBW items that called for immediate removal. BD, therefore, did not take enforcement action.

8. In August and September 2011, FEHD received reports on street obstruction by Shop B. Its staff conducted a number of inspections afterwards and issued two verbal and two written warnings to its operator for obstruction of the pavement by his merchandise.

9. In late October 2011, the District Lands Office ("DLO") of Lands D received the complainant's complaint against Shops B and C. After inspection, DLO staff considered the two shops to be structures extending from the external wall of the building to the pavement. In November, the case was referred to BD and FEHD for follow-up action.

10. FEHD staff conducted several inspections and found that both shops placed their merchandise on the pavement. Written warnings were issued and the operator of Shop C was prosecuted for "obstructing public places".

11. In November, BD conducted a site inspection and discovered that Shops B and C actually comprised six UBW items (items I to VI). Among them, items I, II and III (which included platforms) were erected on the pavement while items IV, V and VI (which included the retractable canopies) were projections from the external wall of the building. The pavement had become much narrower as a result of encroachment by the two shops. BD decided to take immediate enforcement action against items IV, V and VI in accordance with its enhanced policy, while asking DLO to remove items I, II and III in tandem.

12. However, DLO maintained that not all of items I, II and III sat on Government land. In its view, the six UBW items formed one big unauthorised structure extending from the external wall of the building and so BD should be the action department. In the event, DLO discussed the matter with BD and agreed in March 2012 to take joint enforcement action with the latter against item I. Notices were also posted on items II and III in April, ordering the parties concerned to remove those parts occupying Government land by the date specified.

### Our Comments

#### FEHD

13. Shops B and C looked like ordinary shops. Consequently, before the complainant took the matter to this Office in October 2011, FEHD staff did not notice during inspections that their operators were actually engaged in unlicensed hawking on the street and so only took action on the obstruction of the pavement by their merchandise. We found this excusable.



14. The Ombudsman, therefore, considered the complaint against FEHD unsubstantiated.

15. Nevertheless, after receiving DLO's referral of the case in November 2011, FEHD should realise that the two shops were actually unauthorised structures on the pavement. It should, therefore, also institute prosecution against unlicensed hawking on the street, instead of continuing to focus only on street obstruction. This showed inadequate alertness on the part of FEHD.

#### **BD**

16. That BD decided not to take enforcement action against the UBW items in 2008 was in accordance with its policy at that time. The complaint against BD was, therefore, unsubstantiated.

17. In late 2011, BD conducted another site inspection and took immediate enforcement action against items IV to VI according to its enhanced policy. It further suggested that DLO take action against the other UBW items in parallel. We considered its handling of the case reasonable and practical.

#### **Lands D**

18. Lands D is empowered by law to deal with occupation of public pavements by UBW items and should have cooperated with BD in resolving the problem. Nevertheless, DLO obviously ignored its own duty and merely referred the case to other departments.

19. The Ombudsman, therefore, considered the complaint against Lands D substantiated. He was pleased to note that DLO had eventually remedied the situation by taking land control action against items I to III.

### **Recommendations**

20. The Ombudsman made the following recommendations:

- (1) BD and Lands D should monitor closely the demolition of the UBW items; and
- (2) FEHD should step up training and supervision of its frontline staff to ensure strict enforcement against unlicensed hawking that involves UBW.

21. This Office was pleased that all the six UBW items had finally been demolished in June 2012.

A case of lack of  
dutifulness and alertness

### **Details of Complaint**

The complainant, a graduate student, frequently visited the Public Records Office Search Room under GRS for research purpose. She claimed to have seen from time to time Search Room users taking photographs of archival materials themselves without paying a fee. Neither GRS staff and website nor Search Room notices, however, ever informed users that they could do so. In early July 2012, she told GRS staff what she saw and suggested that notices be posted to publicise the free self-serve photography service. However, GRS took no action even by the end of July.

2. Later, the complainant asked GRS staff for permission to photograph some 2,000 pages of materials contained in eight Government record files, but was told that where ownership of copyright was not clear, photography was prohibited but photocopying (at a fee of \$3.7 per page) was allowed. However, the staff could not provide any justification for such a restriction.

3. The complainant subsequently discussed with two other GRS staff members (Ms A and Mr B) several times such issues as photocopying/photography of archival materials, photocopying fee, copyright and royalty. Nevertheless, the two staff members' opinions differed. Eventually Mr B said that the photocopying fee, charged at a level determined by the Treasury, was royalty payment; and that whether a piece of archival material could be photographed had nothing to do with its copyright. He also indicated that users could not photograph non-Government materials. If a copy was needed, only photocopying was allowed. The complainant argued that under the Copyright Ordinance ("CO"), taking photographs of materials for research purpose would not constitute an infringement of copyright. Mr B replied that he was not conversant with the Ordinance.

4. The complainant was dissatisfied that the administration of GRS should be so messy and that GRS staff members were not familiar with legislation related to their work. Furthermore, the way GRS handled users' requests for photographing archival materials might jeopardise the rights of researchers to reproduce such materials.

### **Response from GRS**

#### **Methods of Reproducing Images of Archival Materials**

5. "Government archival records" held by the Public Records Office of GRS are open to public inspection, pursuant to the Public Records (Access) Rules 1996.

6. Members of the public who wish to obtain a copy of archival materials can decide to do so by ways free of charge (such as copying the information by hand or inputting it into a notebook computer themselves) or by using fee-charging services provided by GRS (such as photocopying or microfilming). Prior to May 2009, GRS might allow photographs be taken under special circumstances (e.g. the printed material is too fragile for photocopying). The different ways of reproducing archival materials have been set out in the rules on using the Public Records Office Search Room ("the Rules").

7. Nevertheless, in recent years, users had been found taking photographs of archival materials without permission. In view of this, GRS decided to relax the restrictions on self-serve photography service in May 2009. A set of internal guidelines was drawn up, stating that users could use their own equipment to photograph archival materials in the Search Room free of charge. Photographic reproduction was limited to those Government records and publications already open to public inspection and assessed to be in a state suitable for photography.

### **Government Records Service ("GRS")**

Case No. OMB 2012/2621 –  
Reproduction of archival  
materials

Allegation: failing to inform  
members of the public that they  
could take photographs of  
archival materials themselves  
free of charge; and providing  
different and confusing  
interpretations of the copyright  
legislation to the public by staff  
members unfamiliar with the  
law – substantiated





### Photocopying, Photography and Copyright

8. GRS did not impose any restriction on the number of photocopies a user could make or the extent of a piece of material allowed for photocopying. It was because photocopying was done by GRS staff members, who knew how to handle and protect archival materials. For photography service provided on a self-serve basis, however, archival materials would have a bigger risk of being damaged. There were also copyright concerns. GRS, therefore, restricted materials for photography to Government records and publications.

9. Upon receipt of the complainant's enquiries, GRS sought the Intellectual Property Department's ("IPD") advice on the copyright issue in July and August 2012. IPD pointed out that as far as the CO was concerned, there existed no difference between photocopying and photography. Besides, the definitions of "public records" under the Access Rules 1996 and the CO were similar. Consequently, such records could be copied and the copies supplied to anyone without infringement of copyright. Besides, non-Government documents annexed to the files transferred to GRS by various Government departments could be considered "public records" and hence reproduced, even if they were not in Government copyright. Nonetheless, third party information not in Government copyright had to be handled carefully. GRS subsequently standardised the scope of photocopying and photography services.

10. In view of IPD's opinions, the Rules were also revised in July and September 2012 to state clearly that "apart from scanners, personal photographic devices (e.g. digital cameras) may be used for taking photos of some of the holdings". Prior approval of the duty archivist must be obtained and an application form be filled in. Subject to the user's consent to certain conditions (e.g. copies of the materials thus obtained would only be used for research purpose), photography of non-Government copyrighted materials would be permitted.

### Response to the Complainant's Allegations

11. It was appropriate for Ms A, whose duty was not related to access to archival materials, to advise the complainant to contact Search Room staff regarding which materials were allowed for photography. Mr B followed departmental guidelines in explaining to the complainant that she could only photograph Government documents and publications. He also advised her on the general principles of the CO and guidelines on the self-serve photography service. As his interpretation of the Ordinance was different from the complainant's, he sought the advice of IPD. He denied having said that the photocopying fee was royalty payment, or that "whether a piece of archival material could be photographed had nothing to do with its copyright". Once he obtained IPD's advice, Mr B informed the complainant that she could photograph all the materials enclosed in the eight files in question.

12. Besides, the self-serve photography service was included in the Rules and the service was also introduced to participants in GRS workshops. In response to the complainant's suggestions, the Rules had been revised for better service.

13. GRS considered that the complainant had been rendered proper assistance. Her enquiries were adequately responded to and her suggestions actively followed up. It was not a case of poor administration and GRS never neglected the protection researchers should enjoy under the CO.

### Our Observations and Comments

14. GRS issued the internal guidelines in 2009 but did not revise the Rules in tandem. As a result, users would not know that they might use their own equipment to photograph archival materials. In fact, the Rules were essentially guidelines on using the Search Room. Their revision might not help much in drawing the attention of users to the self-serve photography service.

15. As alleged by the complainant, neither GRS staff and website nor Search Room notices informed users of the self-serve photography service. Consequently, they might have to spend money on photocopying. Although the service would be mentioned at GRS workshops, only participants would learn about it. That was unfair to the general public.

16. Mr B's explanation on the self-serve photography service was in line with GRS's prevailing internal guidelines. The fact was that GRS imposed its restrictions on photography service without noticing that both photocopying and photography of archival materials would have copyright implications. They only consulted IPD when the complainant raised her queries. Given the GRS management's lack of full understanding of the copyright issue, it was only to be expected that its frontline staff would not be able to explain it clearly to the complainant.

### Conclusion

17. GRS had failed to use appropriate channels to inform Search Room users of all the legal methods to reproduce archival materials, such that they might not be aware of the self-serve photography service. Furthermore, the Department consulted IPD on copyright issues only upon the complainant's enquiries. That was clearly an oversight.

18. Overall, The Ombudsman considered this complaint substantiated.

### Recommendation

19. We recommended GRS to publish a separate set of guidelines covering all the methods of reproducing the images of archival materials. This would help publicise the related services among users and make it easier for frontline staff to explain them to the public such that similar complaints could be avoided.

### Details of Complaint

In April 2011, the complainant's father ("Mr A") was advised that a surgical operation was necessary when attending his regular medical appointment at a public hospital ("Hospital B"). Mr A intended to have the operation in a private hospital and signed a Public Private Interface – Electronic Patient Record Sharing Pilot Project ("PPI-ePR") form to facilitate access to his medical records with HA hospitals and clinics by the private hospital. However, Mr A did not receive the access code until July that year.

2. On behalf of Mr A, the complainant chased HA for progress in writing but received no reply. He was dissatisfied with HA's inefficiency and alleged that its processing of the PPI-ePR application had caused delay in his father's treatment.

### Our Findings

#### Episode Numbers and Move Episode Cases

3. For every visit to HA hospitals or clinics, patients will be given an episode number which carries their medical history and the medical information about that particular visit after consultation. Such number is connected to the patient and therefore should not be reused for other patients even if the patient concerned did not show up for appointment.

A case of lack of careful consideration in service provision

### Hospital Authority ("HA")

Case No. OMB 2011/2936 – Delay in processing application

Allegations: (1) delay in processing a patient's application for joining the Public Private Interface – Electronic Patient Record Sharing Pilot Project, rendering his record inaccessible when needed – substantiated; and (2) failing to acknowledge a letter from the patient's family enquiring about the progress of the application – partially substantiated

4. Though HA's Patient Master Index Guidelines ("PMI Guidelines") issued in 1995 advised hospitals against reuse of episode numbers, the practice of moving an episode number pre-created for a certain patient to another patient when the intended patient failed to show up (known as a "move episode") continued in some hospitals. There are other scenarios where "move episode" is necessary, including same patient with multiple identifiers (e.g. a patient receiving treatment at different HA institutions using different identification documents) and different patients with same identifier (e.g. a patient seeking emergency service using his relative's Identity Card).

5. Where there is a "move episode", a "yellow flag" will pop up in the PPI-ePR system, indicating that further verification of the patient's personal data is required. Before clearing the yellow flag, the clinical departments involved are required to verify and confirm if the data are correctly assigned so that the accuracy and completeness of patients' personal data and medical information under the PPI-ePR platform could be safeguarded.

### **The Present Case**

6. In June 2006, Mr A missed an appointment at another public hospital ("Hospital C"). The episode number pre-created for him was reused for another patient, resulting in a "move episode". When he submitted his PPI-ePR application in April 2011, a yellow flag popped up in the system, indicating a need to verify the data. In June 2011, upon consultation with HA, Hospital C was advised to sort out all clinical data, including drug allergy information before removing the yellow flag. After Hospital C had completed the data verification process in July 2011, Hospital B was informed that the yellow flag had been removed and was ready for patient enrolment. The PPI-ePR Programme Office ("PO") then released the authorisation code to Mr A.

## **Response from HA**

### **Allegation (1)**

7. According to HA, an application for PPI-ePR would normally be completed within two weeks. The present case took 70 days because it had to collate data from two hospitals and one of them needed time to further sort out some mixed-up drug allergy information of the two patients involved. Moreover, given the huge number of yellow flag cases each year, HA would not specially call a patient to verify his data but would do so during his follow-up appointment. In this case, however, the doctor at Hospital B failed to do so during Mr A's follow-up appointment. HA undertook to remind its staff to verify patients' data during their follow-up consultations.

8. As regards reuse of episode numbers, HA had reminded Hospital C to observe the PMI Guidelines. HA had also notified hospitals to clear outstanding PPI-ePR cases related to "move episode", revised guidelines to enhance compliance of managing "move episode" cases, and issued reminders urging hospitals not to reuse episode numbers.

9. HA stressed that the traditional means of doctor-to-doctor communication was still the usual and commonly adopted practice in Hong Kong. In this case, the doctor at Hospital B had written a referral letter describing the details about Mr A's medical information so that Mr A could seek expert opinion and further management from his private doctor while awaiting completion of the data verification procedures.

### **Allegation (2)**

10. In May 2011, the complainant called PO to enquire about the progress of Mr A's PPI-ePR application. In response to his telephone enquiry, PO staff explained that Mr A's medical records were under review and she would revert to the complainant once the enrolment was completed. PO followed up by chasing Hospital C for the data verification process. The next day, the complainant also wrote to PO requesting assistance to speed up processing of the application. As the PO staff believed that her verbal explanation would suffice, she did not issue any written reply to the complainant.

11. From HA's perspective, PO had taken the necessary action in line with current practice in processing Mr A's application. Nevertheless, HA admitted that the processing time could have been shortened and the complaint handling procedures improved.

## **Our Comments**

12. We accepted that it was prudent for HA to verify the patient data upon detection of a "move episode". While the usual verification time was two weeks, HA took 70 days in this case. Moreover, it was not until HA issued an instruction that Hospital C started to sort out and verify all the clinical data. In view of the above, The Ombudsman considered allegation (1) substantiated.

13. As to whether HA had failed to acknowledge the complainant's letter, we note that the PO staff had explained the situation when the complainant called and enquired about the progress. However, on receipt of his subsequent letter, the PO staff could have clarified with him on whether his concerns had been addressed in the telephone conversation. The complainant only managed to get the updates from Mr A's follow-up consultation with Hospital B and the private hospital.

14. We considered that although the delay was mainly caused by the time required to verify data involved in the "move episode" cases, and HA might be reluctant to reveal that Mr A's case involved the mix-up of patients' information, it should have taken the initiative to reveal the genuine and detailed cause of the delay to the complainant instead of waiting until he filed a complaint to this Office in August 2011. The Ombudsman, therefore, considered allegation (2) partially substantiated.

## **Conclusion and Recommendations**

15. Overall, The Ombudsman considered this complaint partially substantiated.

16. While HA has implemented some measures with a view to clearing up yellow flag cases, The Ombudsman recommended that HA further adopt the following remedial measures:

- (1) to urge frontline medical staff to clear any yellow flags in a patient's records upon attendance of the medical appointment by the patient; and
- (2) to review the checks and balances mechanism to ensure strict adherence to the PMI Guidelines.

**A case of delay and staff's failure to follow guidelines**





## Housing Department (“HD”)

Case No. OMB 2012/0935 – Compensation for flooding

Allegations: (1) delay by HD’s property service agent in following up two incidents of bursting of a flushing water pipe at the complainant’s public housing unit; (2) provision of false information by the agent to the loss adjuster of the insurer in an attempt to cover up its mistakes; and (3) denial of liability by HD to duly compensate the complainant regarding the two flooding incidents – substantiated other than alleged



### Details of Complaint

The complainant was the tenant of a public housing unit (“Flat A”). At about 11 pm on 8 June 2010, she found the balcony of Flat A flooded with water gushing out from a pipe. She called the management office of the property service agent (“PSA”) and the Police at once. However, staff of the PSA arrived at the scene more than an hour later and argued with her over the source of the flooding. The main flushing water valve was finally turned off at 1 am.

2. The following evening (i.e. on 9 June), water again came gushing out from the flushing water pipe awaiting repairs. The PSA staff arrived at Flat A half an hour after receiving the complainant’s call and turned off the flushing water valve.

3. The complainant was dissatisfied that the PSA staff should have come to her assistance so late during both flooding incidents. The delays had caused damages to her property. Later on, she sought compensation from the Hong Kong Housing Authority (“HKHA”). Nevertheless, in an attempt to cover up its mistakes, the PSA provided false information to the loss adjuster (“LA”) of the insurer, such that the LA concluded that HKHA and the PSA had performed their duties and so advised against compensation. While HD later on refunded several thousand dollars of rentals to her, showing admission to negligence, it fell short of paying her due compensation for the damages to her property.

### Response from HD

#### Course of Events

4. In late night of 8 June, the PSA staff on duty arrived at Flat A three minutes after receiving the complainant’s call. When they saw water coming out from the flushing water pipe, they turned off the section gate valve located on another floor, effectively cutting off flushing water supply 12 minutes later. The staff stayed at Flat A for about 30 minutes to help clear up the water and inform the complainant of repairs arrangements before leaving. Two police officers had also been to Flat A to look into the incident. The management office posted a notice at the building afterwards, warning the tenants not to turn on the flushing water valve themselves.

5. In the evening of 9 June, PSA staff arrived at Flat A two minutes after receipt of the complaint. They discovered that the valve that had been turned off the night before was turned on and immediately turned off both the section gate valve and the main valve. This time, the staff spent almost two hours at Flat A and helped clear up the water. Two police officers were also present that evening.

6. The complainant later on applied to HD for rehousing. She also asked for a refund of the rental for Flat A from the time of the two incidents till late November (i.e. when she moved to the new flat). In addition, she demanded compensation from HKHA and the PSA for the flooding.

#### Allegation (1)

7. With the complainant’s consent, HD had asked the Police to provide the records concerning the two flooding incidents. The records showed that police officers arrived at Flat A about 20 minutes after receipt of the complainant’s call for help. There, they saw PSA staff help clearing up the flood water. There was no record of any arguments between the complainant and the staff. Besides, information such as the incident reports of the PSA and the log book entries of the security control room for the estate concerned did not contradict with the police reports. HD considered that there was no delay on the part of the PSA in handling the incidents.

#### Allegation (2)

8. The LA appointed by the insurer of HKHA had investigated into the two flooding incidents. Results indicated that the flooding on 8 June was caused by the sudden bursting of a flushing water pipe in the balcony of Flat A; while that on 9 June was the result of the section gate valve having been turned on without authorisation. As both incidents were not within the control of HKHA or the PSA, negligence was out of the question.

9. HD confirmed that the PSA had posted notices for the tenants’ information after both incidents, reminding them not to turn on the flushing water valves themselves. The Department had also interviewed the PSA staff concerned and found that their statements accorded with records of the PSA and the Police. There was no evidence of their having given false information to the LA.

#### Allegation (3)

10. HD added that the complainant’s request for rehousing was granted on grounds of her health. She had signed the tenancy agreement for the new flat in late November 2010. Later on, she asked for a refund of Flat A’s rental between early June and late November but was refused.

11. As for the complainant’s claim that HD had refunded to her several thousand dollars’ rental, HD clarified that the money was actually paid out of the PSA’s own charity fund to relieve the complainant of her financial difficulty. Though well-intentioned, the action was indeed improper as it had not sought HD’s prior approval and gave the wrong impression of admission to liability for the incidents.

### Our Comments

#### Allegation (1)

12. The PSA staff arrived at Flat A shortly upon notification by the complainant and helped clear up the water there. There was no delay on their part. Follow-up actions by the PSA were in accordance with HD guidelines and nothing indicated any improprieties. The Ombudsman, therefore, considered allegation (1) unsubstantiated.

#### Allegation (2)

13. We considered that HD’s explanation was supported by the Police records, the incident reports of the PSA and the statements by the PSA staff concerned. There was no evidence to prove that the PSA had given false statements to the LA. The Ombudsman considered allegation (2) unsubstantiated.

#### Allegation (3)

14. This Office accepted HD’s explanation regarding the complainant’s claim that she had received a rental refund from the Department. The LA had been commissioned to assess liability for the incidents. That the complainant received the refund from the PSA did not imply that HKHA would take up liability for the property damage. The Ombudsman, therefore, considered allegation (3) unsubstantiated.

### Other Problems Revealed

15. The PSA failed to explain clearly to the complainant that the refund was a good-will gesture, and the content of the agreement between the complainant and the PSA seemed to respond to the complainant’s request for a rental refund. It is therefore understandable that she took it to mean HD’s admission to liability and willingness to make compensation. We considered the PSA’s handling method questionable. On the other hand, the case also reflected HD’s inadequate

monitoring of PSAs, such that they could enter into private agreements with public housing tenants and give them financial assistance without HD's knowledge. This led to misunderstanding eventually.

### Conclusion

16. The Ombudsman considered there to be inadequacies regarding HD's monitoring of PSAs. Overall, this complaint against HD was substantiated other than alleged.

### Recommendations

17. The Ombudsman made the following recommendations:

- (1) HD should review the current guidelines on monitoring of PSAs and consider to set up a mechanism to regulate PSAs' provision of financial assistance to public housing tenants; and
- (2) that the second flooding was caused by the section gate valve being turned on without authorisation was an indication of an inadequacy in the design of the valve. HD, therefore, should review the matter and make improvements in this regard.

#### A case of inadequate monitoring of contractors

#### Immigration Department ("Imm D")

Case No. OMB 2011/5200 – Ambulance service at border control points

Allegations: (1) providing an incorrect telephone number to the complainant such that she was unable to get timely help from a border control point and failing to call an ambulance for her as promised – unsubstantiated; (2) failing to explain to the complainant that calling an ambulance was outside the scope of the hotline service and advise her where to seek help – partially substantiated; and (3) failing to maintain complete records of telephone calls from enquirers seeking help – partially substantiated

### Details of Complaint

The complainant's elder brother, who urgently needed medical treatment, was transferred back to Hong Kong by a mainland ambulance via a border control point. The complainant called the 1868 hotline ("the hotline") of Imm D to request an ambulance to stand by at the control point to take her brother to the hospital. She called the number that the hotline staff provided to seek help from the duty room of the control point, only to be told that it was not the right place to call.

2. Subsequently, she made several calls to the hotline and was promised arrangement for an ambulance. At the hotline staff's request, she provided the estimated arrival time. However, the ambulance on Hong Kong side was yet to arrive after she and her brother had reached the control point and completed the clearance. She then called the hotline again to urge for early arrival. The ambulance finally arrived 20 minutes after they had entered the territory and took the patient to the hospital. Unfortunately, the complainant's brother died that night.

3. The complainant considered that Imm D had not handled her case properly, resulting in delayed delivery of her brother to the hospital for medical treatment. She requested an investigation by Imm D. When she later found that it was the Police and not Imm D that called the ambulance, she considered the Imm D staff to have failed to act as promised. If calling an ambulance was outside the scope of the hotline service, the staff concerned should have explained it to her and advised her where to seek help. She refused to accept Imm D's explanation that its failure to provide a recording of the telephone conversation on that day was due to a suspension of power at Immigration Tower at the time. She suspected that Imm D was hiding the truth.

### Response from Imm D

#### Hotline's Automatic Telephone System

4. In August 2005, Imm D launched its 24-hour hotline service to provide assistance to Hong Kong residents. To improve its service and increase the capacity to deal with major incidents outside the territory, Imm D introduced an automatic telephone system for the hotline ("the system") in December 2010 to add more telephone lines and install new functions such as automatic call distribution and recording. As the telephone system did not have a backup power supply, Imm D had to divert all the calls to its direct lines through the call forwarding function to maintain service at times of its monthly three-hour routine maintenance, any suspension of power supply or power failure.

#### Handling Public Enquiries and Requests for Assistance

5. For general enquiries, Imm D will only make simple data entries for statistical purpose and no personal particulars or other details will be kept. The hotline staff will not keep records of requests for assistance if such requests can be resolved immediately and require no follow-up action. Details are recorded where the caller requests an ambulance for any Hong Kong resident who will be arriving in Hong Kong from the Mainland. The hotline staff will then contact the relevant border control point. Cases successfully referred to control points for follow-up are treated as being settled and no other records will be kept.

#### Handling of Requests for Ambulance Service at Control Points

6. On receiving a referral of request for ambulance service from the hotline, the duty officer at a border control point will jot down the details and then alert the Police guard post at the control point to activate the mechanism to call an ambulance and assist the patient in going through the clearance procedures.

7. At present, there is no cross-border patient transfer service. Hong Kong residents who are in the Mainland and require ambulance service upon returning to the territory may call the hotline to make a request. They can also seek help from Imm D staff on arriving at the control points or call 999, the emergency hotline.

8. Patient transfer by ambulance from the Mainland to Hong Kong via the border control points requires traffic control and the coordination work will be taken up by the Hong Kong Police Force. To ensure speedy clearance by the relevant departments, the ambulance must be arranged after the patient's arrival at the Mainland checkpoint. Besides, the Fire Services Department does not offer appointment service for ambulance.

#### The Complainant's Case

9. Imm D did not consider the hotline staff to have delayed handling the complainant's enquiry. They had assisted her properly and provided the correct telephone number of the duty room. It was appropriate for the staff to provide that telephone number to the complainant for further enquiries as she was not sure about her arrival time at that moment. Moreover, Imm D found that the control point staff had followed the existing mechanism and provided assistance within the shortest possible time to the complainant in transferring her brother back to Hong Kong for medical treatment.

10. Imm D did not find any evidence in support of the allegation that the hotline staff had broken the promise to call an ambulance for the complainant. Imm D believed that the complainant was very worried about her brother's condition and she wanted to arrange an ambulance to wait for them. Yet, Government does not provide such service and the hotline staff failed to explain the situation clearly to her, resulting in her disappointment. Imm D pledged to strengthen its communication





with other Government departments and review with the Fire Services Department and the Police the mechanism for calling ambulances at border control points.

11. Imm D agreed that there was still room for improvement in the hotline service, especially in how requests for assistance could be handled and recorded effectively when some functions of the telephone system were disrupted. The Department subsequently adopted improvement measures such as keeping records of all enquiries/requests received through the direct lines for internal audit purpose, carrying out random checks and enhancing staff training.

### Our Comments

12. We were satisfied that the hotline staff has provided the correct telephone number of the duty room to the complainant and handled the case in accordance with the departmental guidelines. As part of the recording or record of telephone conversation was unavailable and the staff members were unable to recall the incident, we could not be sure whether they had made the promise as alleged by the complainant.

13. During a visit to the duty room of the control point in question, our investigation officers found that it was not uncommon for Hong Kong residents to request ambulance service while they were outside the territory. Imm D also indicated that the frontline staff posted to work in the duty room were all experienced and capable officers familiar with the operations of border control points. In the absence of objective proof, the complainant's allegation that the duty room staff failed to offer assistance when she called could not be justified. The Ombudsman considered allegation (1) unsubstantiated.

14. Furthermore, we found that the complainant had wrongly believed from the outset that an ambulance could be pre-arranged through the hotline. Unaware of her expectation, the hotline staff had not clarified it, resulting in her misunderstanding. The Ombudsman, therefore, considered allegation (2) partially substantiated.

15. Our investigation confirmed that there was a power suspension at Immigration Tower at the time and the recording function of the hotline was disrupted. Imm D's explanation to the complainant was, therefore, based on facts and there was no cover-up. Nevertheless, this case revealed that when some functions of the hotline service were disrupted, Imm D did not adopt any contingency measures to record the enquiries/requests for assistance that the direct lines handled. We were of the view that incomplete records might undermine the role of the hotline in assisting Hong Kong residents who were outside the territory in distress in the case of a widespread or major emergency. The Ombudsman, therefore, considered allegation (3) partially substantiated.

### Conclusion and Recommendations

16. Overall, The Ombudsman considered the complaint partially substantiated.

17. Imm D emphasised that the direct line system with no recording function had been effective in handling major incidents even before the upgrading of its hotline system. However, we took the view that, if Imm D kept only incomplete records for lack of a properly established case file and if the way Imm D staff handled a case should be queried subsequently, it would be difficult for the Department to provide objective evidence either to defend for its staff or to give the party making the query a fair account.

18. The Ombudsman recommended that Imm D:

- (1) promptly review the implementation of the improvement measures for recording enquiries/requests for assistance handled by the hotline and

consider adding a backup power system to maintain the recording function so that the hotline could perform its functions fully and effectively;

- (2) review the contents, methods and channels of publicising its hotline service. Apart from giving a clear description of the role of Government departments in patient transfer across the border and the handling procedures of requests for assistance, the Department should also remind the public to familiarise themselves with the relevant information so that they could make sensible decisions for themselves in case of emergency; and
- (3) review from time to time the current procedures and examine whether patients could be transferred to the nearest hospital more quickly to provide earlier treatment for patients.

### Details of Complaint

The complainant was an expatriate who had worked in Hong Kong during the 1990s. A tax representative ("the Representative") was appointed by his employers to handle his tax matters and he left Hong Kong in 1998.

2. In May 2011, when the complainant was leaving the territory after a brief visit, he was stopped at the airport by the Immigration Department ("Imm D") in accordance with a Departure Prevention Direction ("DPD") issued by the Court against him for outstanding tax. He was allowed to depart after making a partial payment including an outstanding tax of \$45,544 and a \$7,059 surcharge (collectively referred to as "the amount under complaint").

3. He subsequently found out that in March 1999, IRD had issued him a tax rebate cheque (Refund Cheque, "the RC") in the amount of \$45,544 for the year of assessment 1997/98. However, the Representative had returned the cheque to IRD in late April and requested that it be used to offset the complainant's outstanding tax. The complainant, therefore, asked IRD to refund the amount under complaint, but was refused.

4. IRD argued that it received a letter and a telephone call in late March and mid-April 1999 respectively, indicating that the complainant did not receive any tax rebate cheque and requesting a replacement cheque. It was noted that the complainant's address was also updated in the IRD database at that time ("the new address"). A new cheque (Replacement Refund Cheque, "the RRC") in the amount of \$45,544 was issued to the complainant at the new address on 17 May 1999. The cheque was cashed on 24 May. As such, the set-off arrangement as requested by the Representative had not been made, meaning that an amount of \$45,544 was still outstanding.

5. The complainant refuted IRD's arguments and asked for proofs of his having requested, received and cashed the RRC, as well as the Department's record of its issuance. IRD could provide none. He was aggrieved that IRD had coerced him to pay the amount under complaint without grounds.

### Our Findings

6. Taxpayers' records such as personal particulars, refund and settlement history, etc. are kept in the IRD Mainframe Computer System ("Mainframe"). Individual

#### A case of faulty procedures

#### Inland Revenue Department ("IRD")

Case No. OMB 2012/0077 –  
Records retention practice

Allegation: unreasonably asking the complainant to pay outstanding tax plus surcharge without providing any supporting documentary proofs – partially substantiated



sections of IRD have also developed their own databases. For instance, the Refund Section database keeps track of taxpayers' requests for cheque amendments and the cheque numbers of cheques issued.

7. IRD carries out a destruction exercise once a year on "inactive records" (such as bank statements and cancelled refund cheques) kept by the Refund Section for a period of seven years. For documents concerning change of address or personal particulars, they will be destroyed one year after all actions have been taken.

8. There is no time bar for retention of records of cases under tax recovery actions. Such records, kept in a collection file, are considered active records until the outstanding tax and any surcharge incurred have been fully settled. Refund records, including copies of refund cheques, do not normally form part of the recovery records.

### IRD's Response to this Case

9. There had been a tax rebate exercise for the 1997/98 assessment year. Nevertheless, the paper records relating to the complainant's requests for a replacement cheque and update of his address, as well as the copy of the RRC issued, were destroyed by January 2007 in accordance with IRD policy. Neither was the copy of the RRC retained by the bank, which normally kept such records for seven years.

10. Records retrievable from the Mainframe and the Refund Section database showed that the RC and the RRC (both in the amount of \$45,544) had been issued in March and May 1999 respectively. Status of the former was marked as "cancelled" and the latter, "presented". In addition, the payee name source code showed that both cheques were made to the same payee. Since there was only one name (i.e. the name of the complainant) registered under the complainant's file in the Mainframe and all refund cheques were marked with "Non-Negotiable and Account Payee Only", the RRC had to be deposited into the complainant's personal bank account. IRD also believed that the RRC had been delivered to the new address, as indicated by the address source code used with respect to the RRC.

11. When IRD informed the Representative in June and July 1999 that the set-off request could not be processed (because the RRC had already been cashed), the latter agreed to contact the complainant for payment. IRD, therefore, had reasons to believe that the refund case was closed and retention of its records unnecessary.

12. IRD did receive the RC returned by the Representative in April 1999 (paragraph 3). Upon our inquiry, the Department searched its database but found no set-off arrangement having been made with it. In other words, the amount of \$45,544 was still outstanding. Since it had remained unpaid, IRD imposed a surcharge. Between July 1999 and June 2005, IRD had time and again notified the complainant of his tax liabilities and the surcharge by post directed to his various addresses (four Hong Kong and four overseas addresses) and via the Representative. The complainant had also responded by email. IRD was of the view that had the complainant been more serious upon receipt of these notices and queried about the outstanding tax earlier, it could have retrieved the source documents in the Refund Section and obtained a copy of the cashed cheque from the bank.

13. Regarding the DPD, IRD had sent two letters to the complainant in August 2001 and November 2004, warning him that the Department might apply to the Court for the order. Several reminders for payment were also issued to him. The Court finally granted the DPD against the complainant in February 2006.

### Our Comments

14. This Office had identified certain inadequacies in IRD's records retention practice and did not fully agree with IRD's views regarding this case.

15. Tax recovery actions inevitably involve law enforcement actions that may restrict the right of the taxpayer, as in the complainant's case. IRD must take a prudent approach in keeping records for tax collection cases. In the present case, the Collection Enforcement Section, which took over the complainant's case for tax recovery actions since June 1999, was fully aware of the reasons for the \$45,544 being outstanding and the significance of the RRC. Nevertheless, it did not keep copies of the relevant documents in the Refund Section files as evidence of the tax owed by the complainant.

16. Besides, we considered that refund records are not necessarily irrelevant to tax recovery action and it is the responsibility of IRD to ensure all records pertaining to the tax collection action are maintained properly as supporting evidence until the tax collection action is over.

17. As the paper records relevant to the complainant's requests for a replacement cheque and change of address had already been destroyed by IRD by 2007, the only piece of evidence that IRD could produce to indicate that the complainant had requested a replacement refund cheque was an indirect one – an internal memo from the Refund Section to notify the Collection Enforcement Section of the request. It was not sure whether IRD had taken proper steps to verify the identity of the person who made the request in the first place.

18. Likewise, IRD's computer records such as the numbers and dates of issue of the RC and the RRC, the payee name source code and the address source code, as well as IRD's practice of marking all refund cheques with "Non-Negotiable and Account Payee Only" could just serve to suggest that the cheques had been made payable to the complainant and sent to the addresses given, and that the RRC had been credited to the complainant's bank account. IRD stated that there was no record of the RRC having been returned undelivered and that it had confirmed with the bank that the new address was the complainant's last known forwarding address. We considered these to be corroborative but not direct evidence of the RRC having been sent to an appropriate address. In fact, we could not be sure whether IRD had followed the proper and stringent procedures in accepting the address change request before sending the RRC to the new address.

19. Since IRD was not prudent enough in keeping records for tax recovery cases, the records concerning the complainant's tax liabilities were incomplete and inadequate. The Department could not provide concrete evidence to prove beyond doubt that the tax remained unpaid, though we believed it had perused all relevant records before applying for the DPD against the complainant.

### Other Problems Identified

20. Evidence of maladministration on the part of IRD was also found in our investigation. For instance, its staff failed to notice the inconsistent instructions given by the complainant (request for a replacement cheque) and the Representative (request for a set-off arrangement using the RC). This gave rise to various confusions later and hence this complaint. Update of the complainant's address was not heeded by different IRD officers even within the same section such that some letters concerning tax matters were sent to another address. The DPD could not be successfully served to the complainant because the Collection Enforcement Section still used an old address of the complainant.



21. Nor were IRD's tax recovery actions proactive enough. It did not try to deliver a warning letter to the complainant when notified by Imm D of his arrival in Hong Kong in December 2003. Similarly, the Collection Enforcement Section failed to contact the complainant direct through his overseas addresses or make effective use of his email address for tax recovery purpose after he had confirmed by email receipt of IRD's 2004 warning letter.

### Tax Recovery Actions and the DPD

22. Notwithstanding the above, this Office considered that IRD had reasonable grounds for taking tax recovery actions against the complainant. The bank statement kept by IRD was hard evidence that the RRC had been cashed on 24 May 1999, so the cheque must have been issued. Other evidence provided by IRD (paragraphs 10 and 11), though indirect, were strong corroborative evidence that the RRC had been issued in the complainant's name and the money credited to his bank account. Also, the RRC had been sent to the last known address of the complainant which could not be proved incorrect. There was no record of it having been returned undelivered.

23. We also considered IRD's application for the DPD against the complainant justified, as it had taken actions to recover the outstanding tax between July 1999 and June 2005, but in vain. Two letters concerning the outstanding tax and surcharge were sent to him at one of his overseas addresses, which was later proved to be correct. IRD, therefore, had reasons to assume that the complainant had left Hong Kong and resided elsewhere while being fully aware of his tax liabilities.

### Conclusion and Recommendations

24. Overall, The Ombudsman considered this complaint partially substantiated.

25. The Ombudsman recommended that IRD:

- (1) critically review its records retention practice to ensure all relevant records and evidence are properly maintained in the collection files;
- (2) review its internal communication and coordination mechanism to ensure effective and efficient transfer of information (especially any change of correspondence address of taxpayers/representatives) among various sections, and clarification of conflicting information received; and
- (3) strengthen staff supervision to ensure proactive actions for tax recovery and minimise incidents of negligence in communication with taxpayers, record keeping and tax refund.

A case of negligence and inadequacies in records retention

### Details of Complaint

The complainant had noticed since March 2010 several nests of wild swallows high up on the external walls of a law courts building in the New Territories. In mid-June 2011, she learned that scaffolding was being erected around the external walls. Worried that the paths to the birds' nests would be blocked once safety nets were put up to cover the scaffolding, the complainant sent an email request for help to AFCD that same night. She then contacted the law courts concerned and Arch SD direct and asked them to follow up the matter.

2. The complainant did not hear anything from the parties concerned. All the birds' nests were destroyed later on. She considered that the parties concerned had failed to actively follow up her request and had withheld the truth from her.

### Background

3. Under the Wild Animals Protection Ordinance ("the Ordinance"), no person shall, except in accordance with a special permit, take, remove, injure, destroy or wilfully disturb a nest or egg of any protected wild animal (including all wild birds). Otherwise, he commits an offence.

4. In general, the nests of swallows are structurally sound. The chance of them falling down naturally is very slim unless in exceptionally bad weather.

### Course of Events

5. Arch SD was responsible for the refurbishment of the external walls of the law courts building which began in late April 2011. The project was overseen by a consultant appointed by the Department and undertaken by a contractor. Upon handover of the site, the contractor discovered some "unidentified objects" on the external walls near the top floor but did not report the matter to Arch SD.

6. The complainant asked AFCD for help on 14 June and provided photographs showing the locations of the birds' nests the following day. On 16 June, a field officer of AFCD ("Mr A") went to the law courts building for a site visit and discussed with a Ms B of the law courts. He relayed to her the subject matter of the complaint, explained the relevant provisions of the Ordinance and suggested that openings be made on the safety nets near the birds' nests so that the swallows could come and go freely. However, Ms B asked Mr A to submit a written application and provide the relevant information to facilitate consultation with Arch SD and follow-up actions by the law courts.

7. Several days later, Mr A submitted the case report to his supervisor Ms C, who then sent a letter by fax to the law courts on 22 June. The letter contained suggestions to mitigate disturbance to the swallows' nests caused by the refurbishment works. However, the letter did not reach the law courts because the fax number was incorrect. Mr A discovered the mistake on 24 June and re-sent the letter after confirming the correct fax number. The law courts acknowledged receipt. At the same time, the refurbishment works which had been suspended for more than a week due to inclement weather resumed that same day.

8. On 27 June, the law courts informed the contractor and Arch SD. Workers of the contractor climbed up the scaffolding to check immediately but did not find any birds' nests. The complainant sent an email to AFCD again that day, claiming that she saw swallows hovering outside the safety nets trying to get back to their nests. Several openings were created on the safety nets the following day.

9. On 4 July, the complainant claimed that she had heard nothing from the parties concerned. Arch SD staff conducted a site visit at the law courts building that day but did not see any birds' nests. On 5 July, Arch SD, its consultant and the

**Judiciary Administrator ("JA"), Architectural Services Department ("Arch SD") and Agriculture, Fisheries and Conservation Department ("AFCD")**

Case Nos. OMB 2011/3083 A, B & C – Protection of wild birds

Allegations:

JA – failing to promptly attend to the complainant's request for assistance to protect the swallows' nests on the external walls of a law courts building – unsubstantiated

Arch SD – same – partially substantiated

AFCD – same – substantiated



contractor conducted a joint visit and found some remains of the birds’ nests right below the original position of the nests. On 8 July, they conducted another site visit, only to find that refurbishment had taken place at the parts of the external walls where the birds’ nests should have been. Bits and pieces of the remains of the birds’ nests, however, were found on the flower beds and the scaffolding.

10. The contractor suspected that the nests were destroyed in the storms earlier. AFCD indicated that no actions could be taken as there was not enough evidence that the contractor had wilfully disturbed protected wild birds. Arch SD and the Judiciary discussed the issue and decided to create more openings on other parts of the safety nets so that the swallows could rebuild their nests at the original locations.

## Comments from Departments Concerned

### AFCD

11. Reports of birds’ nests being affected by maintenance works were considered as non-urgent cases. Nevertheless, Mr A went over to the law courts building to inspect and tried to locate the birds’ nests as soon as possible. He also tried to explain the situation to the staff there and made several suggestions to them. Progress of the case had not been affected despite the somewhat late submission of his report to his supervisor. Also, as AFCD believed that the law courts and Arch SD had replied to the complainant, no further site inspection was arranged.

12. Mr A had handled similar cases before and never needed to give prior notice to the person-in-charge of a site in order to conduct an inspection. Nobody had ever asked him to provide information in writing either. Mr A had asked Ms B to go outside the building to inspect the external walls together but was refused. Mr A believed that the law courts would only take action upon AFCD’s written application. As for the incorrect fax number, he said that he had written it down as told by Ms B.

13. Ms C considered an application for site inspection unnecessary as Mr A had already conducted one there and then. Besides, he had discussed with Ms B about making some openings on the safety nets. She, therefore, believed that the law courts would follow up the matter immediately.

### JA

14. Outside parties should contact the law courts concerned before visiting any of the buildings under the Judiciary for official purposes. If indoor photographs of a Judiciary building are to be taken, prior application is also required.

15. The Judiciary was not aware of the birds’ nests on the external walls of the law courts building. Mr A had not notified the law courts prior to his visit, nor did he take Ms B’s advice to ask his supervisor to file an application at once. He neither pointed out to her exactly where the birds’ nests were, nor invited her to inspect the external walls together. Ms B, on the other hand, said she had given him a piece of paper with her telephone number and the law courts’ fax number on it on 16 June.

16. Staff of the law courts had checked with the contractor and was told that there were no birds’ nests. They had been keeping an eye on any letter from AFCD but received none. Also, Mr A did not leave his contact details.

17. JA sent two interim replies to the complainant on 11 and 15 July. A brief report was then issued in late July when it learned that Arch SD would give her a substantive reply.

### Arch SD

18. Initially, Arch SD did not know about the birds’ nests on the external walls of the law courts building. It actively followed up the matter afterwards and asked the contractor to create openings on the safety nets. It also conducted an investigation on why the birds’ nests had fallen down.

19. The birds’ nests were not easily visible to the naked eye on the ground level and the contractor’s report made no mention of them. Furthermore, bad weather continued for some time since the scaffolding was erected. It was, therefore, difficult to ascertain why the birds’ nests had fallen down. Arch SD staff had not withheld anything from the complainant.

## Our Observations and Conclusion

### AFCD

20. Although Mr A had handled similar cases before, he appeared quite helpless when his request to inspect the building was turned down on the spot. His version of the encounter on 16 June was very different from that given by Ms B. Without independent evidence, we could not decide whose account was more credible.

21. As Mr A had failed to point out to Ms B the exact locations of the birds’ nests, it was difficult for the Judiciary to take follow-up action quickly. Meanwhile, his communication with his supervisor was also ineffective (for instance, Ms C thought that the law courts would take immediate action but he thought otherwise). Moreover, it took him five days to complete his report about the case after his site visit, which was too slow.

22. AFCD should in fact be the Government department most concerned about the fate of the swallows’ nests. As June is the swallows’ breeding season, there were probably chicks inside the nests which were trapped by the safety nets covering the external walls. AFCD had failed to attach the proper urgency to the case or empathise the complainant’s worries.

23. Overall, The Ombudsman considered the complaint against AFCD substantiated.

### JA

24. It is not improper for JA to demand prior notice from outside visitors to its premises. Ms B’s supervisor had taken the initiative to try but she failed to locate the birds’ nests after Mr A left. Staff of the Judiciary also promptly contacted the contractor and Arch SD upon receipt of AFCD’s letter. Replies to the complainant were issued quickly and there was no evidence of delay or information being withheld.

25. The Ombudsman considered the complaint against JA unsubstantiated.

### Arch SD

26. Arch SD had taken timely and proper actions to follow up the case and reply to the complainant. Nothing indicated a delay or cover-up. However, its supervision of the contractor was inadequate.

27. The contractor had found some “unidentified objects” on the external walls of the law courts building but failed to report it. However, Arch SD had never issued any guidelines to its consultants or contractors requiring them to take steps to protect wild birds during construction works. Besides, after considering the opinions of AFCD and the complainant, as well as the weather information provided by the Hong Kong Observatory for the period concerned, this Office

believed that the birds' nests were probably destroyed by human action. If Arch SD had issued guidelines stating clearly that it was an offence to disturb birds' nests, the swallows' nests might have been saved.

28. The Ombudsman considered the complaint against Arch SD partially substantiated.

### Recommendations

29. The Ombudsman made the following recommendations:

#### AFCDD

- (1) to issue guidelines to all frontline staff to help them deal with the difficulties encountered in discharging their duties;
- (2) to reach agreement with those who seek help from the Department before conducting site visits such that information they provided can be made available to the responsible parties at the site when necessary; and

#### Arch SD

- (3) to review promptly the various improvement and remedial measures taken in the light of this case. For instance, Arch SD had already issued new guidelines on measures to protect wild birds; reminded its consultants to make sure that works feasibility reports are accurate and complete; and instructed its staff to contact the complainants proactively on receipt of complaints and inform them of case progress. Arch SD had also distributed to various departments a list of government buildings with birds' nests provided by the complainant for their actions to help protect the wild birds.

**A case of slow response to an urgent complaint and inadequate supervision of contractors**

### Land Registry ("LR")

Case No. OMB 2012/3813 – Oversight in registration of information

Allegation: failing to register in the Land Register in respect of a flat in a building a Letter of Compliance regarding investigation orders issued by the Buildings Department, such that an application for reverse mortgage by the owner of the flat (the complainant) was unsuccessful – substantiated

### Details of Complaint

The complainant owned a flat in a building. In 1998, the Buildings Department ("BD") issued two orders to the Incorporated Owners of the building to have certain parts of the building investigated. All the flat owners conducted investigations in compliance with the orders in 1999. Nevertheless, the complainant's application for reverse mortgage of her flat in May 2012 was rejected, because LR had not registered in the Land Register in respect of her flat the Letter of Compliance ("the Letter") issued by BD.

### Our Findings

2. Our inquiry revealed that BD had in fact copied the Letter to LR for registration in March 2000.
3. The LR officer concerned, however, failed to register the Letter in the Land Register in respect of the complainant's flat. It was not until after the complainant's enquiry in June 2012 that LR amended the Land Register in respect of her flat to show that the registration of the Letter had taken effect from March 2000. The complainant then succeeded in her application for a reverse mortgage.

4. LR apologised to the complainant for its officer's oversight. It indicated that its Registration Information System commissioned in February 2005 catered for more accurate and reliable registration, so similar mishaps were unlikely to occur again.

### Our Comments

5. LR admitted that the complainant's application for reverse mortgage had been affected by the carelessness of its officer. The complaint was substantiated.

### Details of Complaint

For many years, the Owners' Corporation of an industrial building had been complaining to Lands D about some units of the building being used for providing funeral services for pets, including cremation, provision of columbarium niches and adornment of the ashes, thus violating the land lease. However, the local District Lands Office ("DLO") under Lands D did not consider them as cases of high priority and hence had not taken any action. The problem persisted as a result.

### Response from Lands D

2. In March 2004, DLO received complaints referred by the Food and Environmental Hygiene Department ("FEHD") for the first time about some units of the building being used as animal crematoriums. DLO's investigation revealed that two units were being used for cremating pets and keeping their ashes. After seeking legal advice, DLO confirmed that such uses had violated the restrictions on land use stipulated in the land lease.

3. DLO also consulted FEHD, the Environmental Protection Department ("EPD") and the Fire Services Department. The three departments confirmed that those uses had not contravened any laws within their purview. As such uses had not violated any legislation relating to fire safety, they were not high priority cases under Lands D's internal guidelines, and hence it was not necessary for DLO to take immediate lease enforcement action.

4. In November 2004, DLO received similar public complaints regarding another unit of the building. After a site inspection, DLO confirmed that the unit was used for keeping ashes of pets. Subsequent inspections by DLO in 2005 found that two of the three aforesaid units were still being used for funeral services for pets, which were in violation of the restrictions on land use stipulated in the land lease. As the cases were not accorded high priority, DLO only issued warning letters to the property owners, stating that Government would take necessary action at any time if such violation continued.

5. In November 2007, EPD referred to DLO a complaint from the management company of the building about another two units of the building being used for cremating pets. DLO later confirmed that one of them had violated the land lease. However, as such operation did not pose any danger and it was not a high priority case, DLO only issued a warning letter to the property owner in February 2008. Similar complaints were received in the same year and DLO issued warning letters to the owners of three units after confirming the irregularities.

6. Between June 2008 and March 2012, DLO received numerous similar complaints regarding the building. After confirming that the units concerned had violated the restrictions on land use stipulated in the land lease, DLO again issued warning letters to the property owners. Subsequently, DLO staff attempted several

### A case of oversight

### Lands Department ("Lands D")

Case No. OMB 2012/2268 – Control over land use

Allegation: Delay in taking lease enforcement action against property owners who violated lease conditions – substantiated





times to inspect those units. However, on all occasions, either they were refused entry or nobody answered the door.

7. In June 2012, DLO staff were finally admitted to inspect two of the four units that were still in violation of the land lease. The representatives of the property owners concerned argued that the units were actually used for industrial manufacturing, since the ashes from the cremation of pets would be adorned and turned into mementos. The representatives of the owners of the other two units stated that the units were used for keeping the ashes of pets and as offices only, hence no violation of the restrictions on land use. After seeking legal advice, DLO confirmed that the latter two units had violated the restrictions on land use. DLO then decided to register the warning letters against the titles of those units at the Land Registry. It would similarly register the irregularities at the other units once violation of restrictions on land use was confirmed.

8. Lands D admitted inadequacies on the part of DLO in handling the complaints about the building. As remedy, it required DLO to submit reports from time to time for its close monitoring of the progress of lease enforcement action.

### Our Comments

9. The facts showed that since 2004, DLO had received many complaints about violation of the land lease of the building. Each time, however, DLO merely issued warning letters after investigation and obtaining legal advice. As those cases were not accorded high priority, DLO did not take any lease enforcement action other than issuing the warning letters, which were not legally binding. As a result of DLO's delay in taking substantive enforcement action, violation of the land lease had continued for eight years and the number of units involved increased from two to four. In total, seven units had violated the land lease. We considered DLO to have been lax in handling those cases.

10. Moreover, we found it quite unnecessary for DLO to seek legal advice time and again as all the units of the building were bound by the same land lease conditions and those under complaint were all involved in such uses as cremation of pets and keeping of their ashes. The defence by some property owners that their units were used for industrial manufacturing sounded far-fetched. Indeed, cremation of animal corpses was in violation of the restrictions on land use of the building. We, therefore, urged DLO to step up efforts in gathering evidence for more rigorous enforcement action against such blatant violations of the land lease conditions.

### Conclusion and Recommendation

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

12. The Ombudsman urged Lands D to expedite further actions on the irregularities in the building to deter other offenders.

A case of procrastination in taking enforcement action

### Details of Complaint

The complainant alleged that a new sports centre and a new civic centre had been under planning for over a decade in the district where he lived ("the District"). The facilities were originally expected to be completed and open to public in 2005/06. However, by the time he lodged his complaint with this Office in 2011, the civic centre proposal had been cancelled, while construction work on the sports centre had not yet started. The complainant was dissatisfied that LCSD had delayed in implementing the two projects.

### Background

2. When established in 2000, LCSD took over 139 capital works projects on leisure and cultural facilities left by the two former Municipal Councils. The majority of those projects, including the proposals to construct a sports centre and a civic centre on two different sites in the District, were still in an early planning stage.

3. Owing to the economic downturn at the time, limited resources were allocated for leisure and cultural facilities projects at that time. As a result, the Administration initially selected only 16 priority projects. The District's sports centre and civic centre were not on the list.

### Response from LCSD

4. LCSD indicated that, unlike the two former Municipal Councils, which could get a specific percentage from rates revenue directly for their capital works expenditure on leisure and cultural facilities, LCSD had to compete for funding in the annual resource allocation exercise in accordance with established procedures of Government departments. Despite such limitation, LCSD started consulting different District Councils in 2002 to prioritise all outstanding projects with a view to implementing them gradually.

5. In the Policy Address delivered in January 2005, the Chief Executive announced that 25 municipal projects had been identified for priority treatment, including the District's new sports centre. LCSD thus restarted the preparation process of the project and drafted the Project Definition Statement for it. It also requested the Architectural Services Department ("Arch SD") to commence a study and prepare a Technical Feasibility Statement for the project.

6. Since the sports centre's original site was located near some inflammable gas production facilities and fell within the consultation zone of potentially hazardous installations, approval from the Coordinating Committee on Land Use Planning and Control Relating to Potentially Hazardous Installations ("CCPHI") was necessary. In preparing a risk assessment report for submission to CCPHI, the consultant appointed by Arch SD had sought additional information from the gas company concerned, but the request was rejected on the grounds that such information was highly sensitive. In April 2009, CCPHI decided not to support the development project because of insufficient information.

7. Meanwhile, the Administration notified the local District Council in March 2009 that the District's new civic centre project had been shelved after considering various factors, which included a cross-district community cultural centre soon to be built in the neighbouring area; the District's population distribution and growth; and the existing venues and their usage rates. The local District Council then convened a meeting at the end of April and resolved that the proposed sports centre be relocated to the site originally reserved for the civic centre. To increase the types of leisure and cultural facilities available, a community hall and football pitches were added to the project.

### Leisure and Cultural Services Department ("LCSD")

Case No. OMB 2011/5182A – Leisure and cultural facilities projects

Allegation: delay in implementing the construction projects of a sports centre and a civic centre in a certain district – unsubstantiated



## Subsequent Development

8. LCSD had subsequently prepared a Project Definition Statement for the revised “Sports Centre, Community Hall and Football Pitches” project, which was approved by the Home Affairs Bureau in February 2012. Arch SD then commenced a technical feasibility study to prepare the project’s estimated costs and works schedule. LCSD undertook to seek the necessary resources to expedite the project.

## Our Observations and Comments

9. Since taking over the leisure and cultural facilities projects from the two former Municipal Councils in 2000, LCSD was unable to pursue the District’s sports centre project before 2005 because of the general economic downturn and shortage in Government resources at that time. The Department obviously could not make bricks without straw and we found no impropriety in LCSD’s handling of the project.

10. Since the sports centre project had been earmarked in the 2005 Policy Address for priority implementation, LCSD had indeed taken positive follow-up action. It was unfortunate that the project had to be relocated because of the special circumstances, particularly the refusal of the gas company to provide information and the lack of support from CCPHI. Therefore, LCSD should not be blamed for the project not being able to reach the construction stage yet.

11. LCSD had explained in detail why the civic centre project had been shelved (paragraph 7). We found no maladministration on the part of LCSD in the process.

## Conclusion

12. In the light of the above, The Ombudsman considered this complaint unsubstantiated.

## Details of Complaint

Since May 2011, the complainant had submitted several applications to LCSD for hiring the performance venue at a civic centre to hold a solo concert. However, LCSD kept rejecting her applications for a time slot on Friday, Saturday or Sunday. She queried the approving criteria and complained that LCSD might not be able to appreciate the levels of artistic attainment of individual applicants. This could result in unfair assessment of booking applications.

2. Finally, the complainant was allocated a Sunday slot in June 2012. She then designed a publicity poster with horizontal layout, but a staff member at the venue told her that the poster could not be displayed at LCSD’s ticketing outlets because it was not in vertical format. Also, she was only allowed to place one poster and one promotional leaflet at each outlet. Noting that other organisers of performances could place multiple copies of leaflets at the outlets, the complainant alleged that LCSD was biased against her. She also criticised LCSD for undermining artistic creativity in requesting her to change the poster design without reasonable grounds.

## Response from LCSD

### Assessment of Booking Applications

3. Under the existing assessment procedures, when there are more than one applications bidding for the same time slot at a performance venue, LCSD staff will give each application a score and a rating, taking into consideration the nature of the proposed event, its artistic merits, arts promotion value and community building value, the organising ability of the applicant and the popularity of the applicant’s previous events, etc. Allocation will be determined by computer ballot if two or more applications have the same score.

4. LCSD explained that all officers responsible for assessment of applications were professional arts executives with relevant knowledge and experiences. The artistic standards of applicants would be assessed by reviewing the event details provided in their application forms and their previous performance records. Where necessary, advice might also be sought from LCSD’s special advisory committee or other arts organisations.

5. The above assessment criteria were provided on LCSD’s website and the information sheet on booking arrangements. However, LCSD did not disclose any details about the weighting and point-scales assigned to each criterion. Nor would the applicants be informed of the total scores and ratings given to their proposed performances.

### Course of Events

6. LCSD records showed that since May 2011, the complainant had made three applications for hiring the performance venue at the civic centre. In fact, her first application was approved, only that the booking was subsequently cancelled because she failed to confirm before the deadline. In her second application, the same time slot was also requested by another party. Her application had a lower assessment score and was thus unsuccessful. As regards her third application, it was approved and the solo concert was held as scheduled.

7. Organisers of performances can place a number of promotional leaflets at different LCSD outlets. When sending the leaflets to each outlet for distribution, they must attach one sample copy stamped and endorsed by the host venue. LCSD believed that the complainant’s misunderstanding might have been caused by unclear explanation given by the venue staff.

8. As regards the size of posters, LCSD explained that there were only a limited number of panels for putting up posters at each outlet. For better use of panel space, its guidelines for preparation of publicity materials suggested a size with vertical layout so that several posters could be displayed side by side. On learning that the complainant’s poster was only slightly wider than the suggested dimension, an LCSD officer had inspected the outlet and confirmed that there was enough space for it. She then informed the complainant that posting would be arranged for her.

## Our Observations

9. We examined LCSD’s work records and confirmed that the Department had followed its established procedures, assessment criteria and monitoring mechanism in approving applications for hiring performance venues. It had established a proper administrative regime for assessing the artistic standards of proposed events in order to ensure objectivity and fairness in its procedures as far as possible. From the perspective of public administration, there was no impropriety on the part of LCSD in handling the complainant’s booking applications.



## Leisure and Cultural Services Department (“LCSD”)

Case No. OMB 2012/1591 – Hiring of performance venue

Allegation: failing to assess fairly applications for hiring a performance venue and mishandling the display and distribution of publicity materials – unsubstantiated

10. LCSD had given an account on the display and distribution arrangements of publicity materials. It had also committed to enhance staff training to improve their communication skills. In suggesting the complainant to follow the dimensions specified in the publicity materials guidelines, the venue staff was trying to make better allocation of resources and balance the needs of different organisers. This should not be regarded as undermining artistic creativity.

### Conclusion and Recommendation

11. Overall, The Ombudsman considered the complaint unsubstantiated.

12. However, we considered that there was a lack of transparency in LCSD's system of approving applications for venue hiring. The information sheet currently provided to the public only gave a brief list of assessment criteria without further elaboration on their weighting and other details. Without sufficient information, unsuccessful applicants would naturally query whether there was any black box operation. They might also question the objectivity and fairness of LCSD's assessments.

13. The Ombudsman recommended that LCSD review its system of approving applications for venue hiring and actively consider disclosing details of the assessment procedures to let applicants have a better picture of the requirements. If the booking results had to be determined by computer ballot, LCSD should also inform the unsuccessful applicants of the situation.

A case of lack of transparency in assessment procedures

### Leisure and Cultural Services Department ("LCSD")

Case No. OMB 2012/1718 – Tree management

Allegation: failing to properly handle the nuisance caused by airborne floss of cotton trees to residents nearby – partially substantiated

### Details of Complaint

The complainant was the property management company of a residential estate. There were six cotton trees planted on the pavement outside the residential estate. The complainant was concerned that airborne cotton floss dispersed by the trees each spring might affect the residents' health, and the seed pods falling from the trees might also injure passers-by.

2. The complainant had thus sought help from LCSD. In August 2011, LCSD replied that in April and May every year, its Tree Team would arrange for workers to use elevated platforms and remove the ripe fruits from the cotton trees in order to reduce the effect of cotton floss on the local residents.

3. In March 2012, noting that the cotton trees would soon blossom, the complainant contacted LCSD again for follow-up action. However, an LCSD officer denied having made any such promise. He only said that the case would be referred to the Food and Environmental Hygiene Department ("FEHD") to step up its clearance of the cotton floss and seed pods settled on the ground.

### Response from LCSD

#### Background

4. LCSD is currently responsible for the maintenance of around 9,000 cotton trees in the territory. In early 2011, in response to complaints from the District Councillors and residents of a district, LCSD hired a contractor to remove the seed pods of some cotton trees to reduce the effect of airborne cotton floss on residents nearby. However, it aroused public criticism because the contractor plucked the cotton flowers together with the seed pods. LCSD immediately stopped the work and started consulting the local residents again.

5. Most of the residents interviewed were against the continued removal of cotton seed pods. Wide media coverage of the above incident also attracted the attention of the public and tree conservation groups. They voiced out their concerns about the damage that such action might cause to the natural ecology. The Hong Kong Medical Association ("HKMA") advised LCSD that there was no evidence to support that exposure to low concentration of cotton fibres in non-occupational environment would be harmful to human health. However, people with asthma or hypersensitive airways might be susceptible to the irritating effects. They should seek medical advice or wear facial masks.

6. In June 2011, LCSD issued a new set of internal guidelines on handling cotton trees, stipulating that on receiving complaints of nuisance related to cotton floss, frontline staff trained for tree inspection should conduct a site visit in each case to assess the situation. LCSD would take into account such factors as the distance between the cotton trees and the residential areas, the amount and density of cotton floss dispersed from the trees and the severity of its effects, the amount of floss left on the trees, the remaining period of floss dispersal, the weather at the time and in the foreseeable future, and whether the parties affected could adopt any other mitigating measures. LCSD would only consider taking action when it was fully satisfied that cotton floss was causing a great nuisance and it was urgent and necessary to remove the seed pods.

7. In August 2012, LCSD formally consulted the Tree Management Office ("TMO") under the Development Bureau on the removal of cotton seed pods. The Expert Panel of TMO opined that cotton floss was not hazardous to the human body and the concerns of the public were largely psychological. The dispersal of cotton floss would only last for a short period of time. People should live harmoniously with trees and avoid disrupting the natural growth of cotton trees unnecessarily.

#### The Complainant's Case

8. In August 2011, an LCSD officer did tell the complainant that the Department would make arrangements in the following spring to remove the ripe fruits on the cotton trees. He obviously failed to follow the latest internal guidelines issued earlier in June 2011 and responded to the complainant's request in the usual manner.

9. In March 2012, another LCSD officer took over the case. He followed the internal guidelines and told the complainant that the Department would not pluck the flowers of cotton trees. He said the request for removing the seed pods would be answered later as LCSD had to conduct a site visit and assess whether there was an urgent need.

10. After a visit to the area around the complainant's estate, LCSD found that the nuisance of airborne floss had been abated by the higher rainfall that year, because many flowers soaked in the rain had fallen from the cotton trees. Consequently, LCSD decided not to remove the seed pods of the cotton trees, but would ask FEHD to step up its clearance of the flowers and cotton floss fallen to the ground. Nevertheless, in his subsequent reply to the complainant, the LCSD officer did not explain clearly the assessment results and the Department's rationale and approach in handling cotton trees.

11. LCSD admitted to inadequacies in the replies given by the two officers and apologised to the complainant.

### Our Observations and Comments

12. Whether LCSD should remove the seed pods of cotton trees involved professional knowledge on tree planting and maintenance, hence it was not an administrative issue within our purview. Our investigation focused on how LCSD





had made its decision to change its former procedures, and whether it had implemented the new measures properly.

13. In the past, LCSD had, at the local residents' request, removed the seed pods of some cotton trees. When LCSD conducted an internal review in 2011, LCSD only considered the views of HKMA and some media reports. There was no formal consultation with tree experts at that time. There was a lack of thorough consideration and in-depth study by LCSD in changing its former procedures.

14. After issuing the internal guidelines to its staff in June 2011, LCSD failed to promptly inform the public or the residents affected of the new measures and explain to them the reasons behind. Those who had sought help from LCSD before were disappointed to learn that it would no longer take action as in the past. It was understandable that they felt aggrieved as a result.

15. Moreover, although most of the factors for consideration cited by LCSD (paragraph 6) were measurable, no objective standards were set for those factors. While we considered it proper for LCSD to rely on the specialist knowledge and experience of its frontline staff to assess each case, it would be difficult to implement the measures effectively and explain the assessment results to the public in the absence of specific data or ranking. This could easily lead to queries and complaints.

### Conclusion and Recommendations

16. Although there was a lack of thorough consideration, LCSD was not totally groundless in changing its procedures for handling cotton floss. However, LCSD was insensitive to the reasonable expectation of the residents affected, nor did it provide any objective criteria to explain its decision. The Ombudsman, therefore, considered the complaint partially substantiated.

17. The Ombudsman recommended that, before reporting to the District Councils concerned on how it would deal with cotton floss in future, LCSD should study objective scientific research on the pros and cons of removing seed pods in order to explain clearly to the public the rationale behind its measures. Furthermore, in examining the guidelines issued in June 2011, LCSD should review the factors for consideration and assessment criteria so that its frontline staff can comply and avoid similar complaints.

### Details of Complaint

In February 2011, the complainant applied to MD for permission to lay a private mooring for his pleasure vessel at a bay of an outlying island ("the Bay"). Later that year, the pleasure vessel changed ownership. MD thus decided to stop processing his application. The complainant disagreed and pressed MD for more details of its established guidelines and procedures. MD rejected his request, stating that the information was for internal reference only.

2. The complainant alleged that MD had mishandled his application.

### Relevant Guidelines and Procedures

3. There are currently 46 private mooring areas in Hong Kong waters, as designated by the Director of Marine.

4. The "Notes for Guidance" of MD's application form for permission to lay a private mooring states clearly that an application must be made with a designated vessel licensed under the applicant's name. If mooring space is available at the proposed location, MD would conduct a site visit with the applicant to identify a suitable mooring position. The position should be technically feasible for mooring a vessel.

5. If an application involves private mooring outside the 46 designated areas, MD should consult the relevant Government departments and local organisations.

### Response from MD

#### Sequence of Events

6. The complainant applied to lay a private mooring at Location A of the Bay, one of the 46 designated private mooring areas, in February 2011. MD found the location unacceptable because of insufficient water depth and submerged rocks. The complainant then submitted an application for Location B in late August, but the water there was still too shallow. After a joint site visit, Location C with sufficient water depth to accommodate the vessel was identified.

7. As it had been five years since the last approved private mooring at the Bay was cancelled and removed, MD had to conduct a consultation regarding the complainant's application. Two objections were received during the first round of consultation. MD then conducted a second round. While consultation was still underway, however, the Department noticed that the ownership of the subject pleasure vessel had been transferred from the complainant to another person in November 2011. As there was no vessel registered under the complainant's name, MD decided not to process his application further and informed the complainant of such in March 2012.

8. The complainant argued that although he no longer owned the vessel, he had hired it. He queried MD's decision and asked the Department to give him more details on its guidelines and procedures. MD refused, stating that they were internal documents for processing applications and related matters only.

#### Handling of the Application

9. MD indicated that for better management and control of private moorings, it only accepts applications to lay a private mooring by the owner of a vessel. Applications by a hirer will not be accepted as it is very difficult to verify whether the leasing of the vessel is genuine, or to follow through the renewal or termination of the leasing contract or arrangement.

#### Provision of Guidelines and Procedures

10. MD argued that disclosure of the guidelines and procedures would possibly prejudice the proper and efficient conduct of its operations. Furthermore, as these documents are not exhaustive and are subject to change from time to time, MD was worried that making them available to the public would invite arguments from applicants in possession of outdated versions. This might inhibit staff from making frank decisions when processing applications.

11. In the light of the above, MD considered its refusal to provide the guidelines and procedures to the complainant justified under the Code on Access to Information ("the Code").

### Our Comments

#### Handling of the Application

12. It is MD policy not to accept applications to lay a private mooring from those



A case of lack of objective criteria for assessment and failure to notify the parties affected by new measures

### Marine Department ("MD")

Case No. OMB 2012/1983 – Application to lay a private mooring

Allegation: mishandling the complainant's application – partially substantiated

who do not own a vessel and MD stopped processing the complainant's application because he was no longer the owner of the pleasure vessel. We considered MD's handling of the application in compliance with its established guidelines and procedures.

#### **Provision of Guidelines and Procedures**

13. The Guidelines to the Code give examples of situations where a department's operation would be affected. Such examples are the conduct of tests, management reviews, examinations or audits conducted by or for a department where disclosure of the methods used might prejudice the effectiveness of the tests or the attainment of their objectives.

14. The present case did not fall within the areas contemplated by the relevant provision of the Code as suggested by its Guidelines. MD assumed that its staff would be inhibited from making frank and candid decisions in the face of contentions from applicants who were given MD's guidelines and procedures with regard to the processing of applications. We considered such assumption unreasonable and MD's reasons for refusal invalid.

#### **Conclusion and Recommendation**

15. Overall, The Ombudsman considered this complaint partially substantiated.

16. We recommended MD to provide the complainant with copies of the relevant parts of the guidelines and procedures on handling applications.

#### **Details of Complaint**

The complainant was the creditor of a bankrupt ("Mr A") whose assets were managed by ORO as trustee. The complainant alleged that ORO, when handling a property in mainland China jointly owned by Mr A and his family member ("Ms B"), had accepted a valuation report provided by Ms B without careful examination. Consequently, Mr A's 50% ownership in the property was sold to Ms B at a price far below its market value, to the detriment of the creditors.

#### **Course of Events**

2. In August 2010, ORO learned from the complainant that Mr A and Ms B jointly owned a property in mainland China. ORO then notified the two joint owners that Mr A's 50% interest in the property should belong to the Official Receiver as the trustee in bankruptcy, and invited Ms B to consider buying out Mr A's interest.

3. In October 2010, Ms B submitted to ORO a valuation report prepared by a valuation institution in mainland China ("the first valuation report") and offered to purchase Mr A's interest at a price equal to half of the assessed value. ORO accepted her offer and completed the transaction in January 2011.

4. The complainant considered the assessed value provided in the first valuation report too low because it had adopted the "costs approach" in assessing the value of the property. He appointed another institution in mainland China to value the property again using the "market comparison approach" and the market value assessed was four times the first valuation. He alleged that ORO had been negligent in accepting the first valuation report without conducting a careful assessment.

5. On receipt of the complaint, ORO started an investigation, which included verifying the professional qualifications of the valuation institution concerned and its staff and relevant records. It also appointed a Hong Kong surveyors' firm to assess the property again, and the market value it arrived at was about the same level as the one asserted by the complainant. ORO then wrote to Ms B, alleging that the valuation provided by her had deviated greatly from the market value. The transaction should therefore be nullified and she was demanded the shortfall. However, according to the legal advice received by ORO, the chance of recovering the shortfall would be slim and there was insufficient evidence to prove that fraud was involved in this case.

#### **Response from ORO**

6. ORO explained that it was difficult to find in the open market a buyer who would be willing to purchase 50% interest in a property. Moreover, the property was not in Hong Kong. Hence ORO would give priority consideration to any offer made by the co-owner (i.e. Ms B) in order to realise Mr A's assets as soon as possible.

7. According to ORO's internal guidelines, insolvency officers are required to obtain valuation to ascertain the market value of a property. If the buyer has already submitted a valuation report prepared by professional surveyors and the date of report is close to the date of transaction, ORO normally will not seek another valuation. Although the internal guidelines do not specify that officers should scrutinise the valuation report, ORO confirmed that the officer in this case had already examined the first valuation report and accepted in good faith that it had made a fair estimation on the market value of the property. He then relied on the valuation to sell the interest owned by Mr A.

8. ORO was in the process of enhancing its procedures of selling landed properties. For properties located outside Hong Kong, ORO would consider obtaining a second valuation or supplementary evidence where justified.

#### **Our Observations and Comments**

9. Our investigation focused on whether ORO had put in place appropriate administrative arrangements for assessing or engaging relevant professionals to assess property values, thus enabling ORO to discharge its duties of realising assets and protecting the interests of bankrupts and creditors.

10. The first valuation report clearly stated that it had, on the request of the property owners (namely, Mr A and Ms B), used the "costs approach" to assess the replacement or reconstruction value (instead of the market transaction value) of the property. According to the practice guide issued by the Estate Agents Authority, the "replacement costs approach" is seldom used and is only used sometimes as a last resort to value the type of properties which rarely changed hands and for which there are few comparables, such as hospitals, schools and churches.

11. The property partially owned by Mr A was for residential purposes. We found it strange that ORO had not raised any query over the "costs approach" adopted in the first valuation report and had accepted it without any analysis or explanation in the file records. It seemed that the case officer had submitted the case to his supervisor for approval shortly after ascertaining that a valuation report had been provided by Ms B. We could not see from the file records that they had considered the contents of the valuation report and whether the valuation approach adopted served the intended purpose.

12. It was only after ORO had completed the transaction and received the complaint that it verified the qualifications of the valuation institution concerned



A case of unreasonable refusal to provide information

#### **Official Receiver's Office ("ORO")**

Case No. OMB 2011/4916 – Property valuation

Main allegation: failing to carefully examine the value of a bankrupt's property in mainland China when acting as a trustee, thus impairing the interests of creditors – substantiated

and its staff, and checked whether the institution had any bad records. This fully reflected ORO's lack of deliberation and due diligence in its earlier approval process.

13. We considered the problem attributable to ORO's too rudimentary internal guidelines, which failed to include the essential step of scrutinising the property valuation report. Also, the supervisory mechanism at the management level was slack and failed to play the proper role of a gate-keeper before the deal was closed. As admitted by ORO, its officers were not experts in property valuation and they might be even less familiar with property outside Hong Kong. This was exactly why proper guidelines and effective supervision were important.

14. Moreover, we noted that Ms B had not provided any receipt to support an expense item to be deducted from the proceeds of property sale, and some other expense items deducted appeared to be messy and unclear. However, ORO exercised discretion to allow these items claimed by her. From the perspective of accountability, the officer should at least give an account on file of the justification for exercising his discretion, which should also be subject to review and monitoring by the management.

### Conclusion and Recommendations

15. ORO failed to conduct careful verification and consider thoroughly the contents of the first valuation report before entering into the transaction. Its supervisory mechanism was clearly inadequate, such that the management was unable to identify the problem and take actions at an early stage.

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

17. The Ombudsman recommended that ORO consider the following improvement measures:

- (1) to review and revise promptly the internal guidelines on sale of bankrupts' landed properties, which should include specifying in what circumstances a second valuation report should be sought;
- (2) to review and improve the supervisory mechanism on handling the sale of bankrupts' landed properties; and
- (3) to remind its staff members to record properly all deductible expenses in their files and consult their supervisors where necessary.

### Details of Complaint

The complainant alleged that there had been misdelivery of mail by PO since 2005. Consequently, a number of letters sent to her were lost and she received some letters addressed to other people. There was improvement after she had complained to PO in 2009. However, the problem recurred at the end of 2011 and she complained to PO again.

2. PO explained that non-delivery of mail could be due to various factors. In the absence of evidence, PO could not conclude that it was a result of misdelivery by the postman. She was dissatisfied with PO's explanation and believed that her privacy might have been disclosed as a result.

### Response from PO

#### Monitoring Mechanism and Performance Pledge

3. PO has a strict monitoring system under which postmen are required to follow laid down procedures for mail delivery and mail sorting will be randomly checked by senior postmen. Besides, PO regularly collects feedback from customers on its mail delivery service and conducts site visits and opinion surveys. In cases of repeated misdelivery of mail by postmen, PO will take disciplinary action against the postmen concerned in accordance with the Guidelines on Administrative Action and Summary Disciplinary Action.

4. As regards local mail delivery, PO pledges that 99% of locally posted letters will be delivered to the local addressees by the following working day. In the evaluation of work performance, a small percentage of mail will not be taken into account for various reasons, such as mail requiring redirection service or undelivered mail due to incomplete address. Nevertheless, PO would consider including cases involving misdelivery in its future evaluation of performance.

#### The Complainant's Case

5. In 2009, the complainant complained that the postmen had misdelivered mail addressed to other people to her. Among the three PO staff members who handled her complaint at the time, two subsequently resigned and the remaining one recalled that he had reminded the postman who was responsible for the delivery route to ensure accurate mail delivery. However, the record of that complaint was destroyed two years after the case was closed and PO could not provide further details.

6. In January 2012, the complainant complained to PO that she did not receive a monthly bank statement. As PO did not keep records of ordinary mail, the cause of non-delivery could not be determined. Nevertheless, to ensure service quality, PO had arranged to check the complainant's mail and nothing abnormal was found. PO believed that the delivery of others' mail to the complainant before the checking was a misdelivery. It had reminded the frontline staff to be more cautious.

7. According to PO, undelivered mail is normally returned to the sender at the return address. If the complainant suspected that her bank statement was undelivered or lost, she could clarify with the sender or authorise PO to contact the bank to investigate.

8. Since April 2009, PO had sent out 28 test letters to households along the delivery route and subsequently received three completed questionnaires. The respondents found the mail delivery service proper and satisfactory. Also, PO had attempted to collect feedback directly from the households nearby through site visits but failed because the doors were answered by housekeepers only. On the low response rate, PO noted from past experience that customers generally satisfied with the postal service might not complete and return the questionnaire. Furthermore, PO had not received any complaints about the same delivery route in the past two years and so believed that mail delivery service for the route was normal. PO, however, undertook to follow its existing arrangements and strengthen its monitoring of the mail delivery route.

### Our Comments

9. We considered that there was indeed a problem of misdelivery as the complainant did produce a letter which was addressed to another person. Yet, the evidence available could not establish that PO had misdelivered her bank statement to others and caused her privacy to be disclosed. The complainant also told this Office that there had not been any misdelivery lately.



A case of defective administrative and supervisory mechanisms

### Post Office ("PO")

Case No. OMB 2012/0360 – Mail delivery

Allegation: improper handling of a complaint about mail delivery – partially substantiated



10. Although test letters and on-site opinion surveys were used by PO to monitor mail delivery service, very few completed questionnaires were returned. This showed the customers' lukewarm response to the surveys. Also, the problems of misdelivery of mail and return of undelivered mail items to the senders were not covered in the questionnaire. We considered PO's monitoring measures unable to serve their purpose. As a result, PO's investigation in response to complaints had not been very effective and the validity and reliability of its opinion surveys were doubtful.

### Conclusion and Recommendations

11. In view of the above, The Ombudsman considered the complaint partially substantiated.

12. The Ombudsman recommended that PO:

- (1) enhance its monitoring mechanism by reviewing the handling of complaints about lost mail and considering using more proactive methods to check for misdelivery of mail. Such methods may include obtaining consent from the recipient to contact the sender for clarification;
- (2) consider improving the design of its survey questionnaire so that it can get a better picture of its mail delivery service; and
- (3) consider taking into account cases involving misdelivery of mail in its evaluation of services so that the performance can be accurately assessed.

#### A case of faulty monitoring mechanism

### Social Welfare Department ("SWD")

Case No. OMB 2012/1511 – Income test for Comprehensive Social Security Assistance ("CSSA")

Main allegation: unreasonableness in the assessment of the income of an elderly and disabled couple, who had received a residential property as a gift, such that they had to return one month's CSSA allowance – partially substantiated

### Details of Complaint

The complainant's parents lived in a public housing unit and were CSSA recipients. In June 2011, the complainant's sister purchased the unit for them, so that they could continue to live there as owners. Subsequently, SWD notified the elderly couple that the purchase amount should be treated as their income. They thus became ineligible for CSSA in July and were required to return that month's CSSA allowance to SWD.

2. The complainant considered SWD's decision unreasonable. She contended that according to the information provided on the Department's website, the value of an owner-occupied residential property would be totally disregarded for the asset test under the CSSA Scheme if there is an aged or disabled member in the household. Since her father was 65 and her mother was receiving disability allowance, both of them were eligible for that waiver. Besides, she had made several telephone calls to SWD to seek clarification before the public housing unit was purchased. An SWD officer confirmed to her that her parents' eligibility for CSSA would not be affected even if they became owners of their public housing unit.

### Response from SWD

3. According to SWD's guidelines on the CSSA Scheme, all applicants for CSSA must pass both its asset and income tests.

4. Regarding the asset test, elderly or disabled CSSA recipients are allowed to continue living in their homes and neighbourhoods on compassionate grounds. The values of their self-occupied properties are totally disregarded for the test ("Rule (1)").

5. Nevertheless, for the income test, if CSSA recipients receive real property or other assets as a gift from a relative or friend, the amount involved will be calculated as their "assessable income". Their CSSA allowance in the ensuing month will be adjusted accordingly ("Rule (2)").

6. SWD stressed that the above two rules are based on different rationale and principles. CSSA is meant to be the last safety net for people facing economic hardship. CSSA recipients should first use their own economic resources to cope with their basic necessities. Acquisition of property is not a basic necessity. In the case of the complainant's parents, they could have continued renting their public housing unit and receiving rent allowance under the CSSA Scheme. Hence, their CSSA allowance should be deducted in the light of the financial support from their daughter.

7. SWD learned from the Housing Department in July 2011 that the complainant's parents had become owners of their unit in June. Under Rule (2), the amount paid for purchasing the unit should be treated as their income. They thus had to return the CSSA allowance already paid to them in July. Nevertheless, under Rule (1), the value of their unit was totally disregarded for the asset test. From August 2011 onwards, they would continue to receive the full amount of their CSSA allowance every month.

8. SWD stated that its officer had explained Rule (1) to the complainant in response to her telephone enquiry. He had also asked her to provide relevant information so that he could report to his supervisor and follow up the case according to CSSA rules. Since the complainant did not provide further details, he did not explain Rule (2) to her at that time.

### Our Comments

9. We checked the SWD website and confirmed that the rules on the asset and income tests are in the Department's guidelines. Purely from the perspective of administrative procedures, SWD should not be regarded as at fault for enforcing the established Rule (2) to recover an overpaid CSSA allowance from the complainant's parents.

10. In the absence of telephone recording, we were unable to ascertain the details of the conversations between the complainant and the SWD officer. However, we considered that both Rules (1) and (2) were crucial information and should have been cited together by the officer when answering the complainant's enquiry.

11. In view of the above, The Ombudsman considered the complaint partially substantiated.

### Other Observations

12. This case also showed that Rules (1) and (2) are essentially contradictory. Rule (1) is based on the principle of compassion to care for the elderly and disabled. The intent is commendable. However, when an elderly or disabled CSSA recipient is given a place of residence by his/her relative or friend, there is actually no increase in his/her disposable income. If SWD rigidly enforces Rule (2) and requires him/her to return one month's CSSA allowance, it might paradoxically cause substantial hardship to him/her for one whole month, and possibly even an absurd scenario of him/her "being wealthy enough to own his/her home, but having no money to feed himself/herself".

13. The Ombudsman, therefore, urged SWD to review the above issue.



#### A case of contradictory rules and failure to provide full explanation

## Social Welfare Department (“SWD”) and Food and Environmental Hygiene Department (“FEHD”)

Case Nos. OMB 2011/4073A & B – Public fund-raising activities

**Allegations:**  
SWD – failing to suspend the charity sale by a charitable organisation immediately on learning that the organisation had allegedly transferred its Public Subscription Permit to hawkers for profit-making hawking activities – substantiated other than alleged  
FEHD – failing to take any enforcement action against the suspected unauthorised hawking activities – unsubstantiated



### Details of Complaint

The complainant alleged that a charitable organisation (“Organisation A”) had illegally transferred its Public Subscription Permit (“PSP”) obtained from SWD to some hawkers for profit-making activities. Subsequent media coverage of the allegation was followed by Police investigation. However, SWD failed to protect public interests by suspending Organisation A’s public charity sale immediately. The complainant considered this a case of ineffective control on the part of SWD.

2. The complainant had also reported to FEHD a hawker stall in operation at an approved site for Organisation A’s charity sale, where no sign was displayed to show that the stall was operated by the organisation for charity sale. He was dissatisfied that FEHD staff had only conducted a site inspection without taking any enforcement action.

### Our Findings

#### **PSP and Hawker Licence Exemption**

3. Organisations have to apply for a PSP from SWD for carrying out public fund-raising activities and to comply with the conditions set out in the permit. Such conditions include:

- no party other than the beneficiary organisations shall make any gains from the fund-raising activities;
- the fund-raising proceeds should be used for the purpose stated in the application;
- the fund-raising workers should wear a name tag; and
- the permit should be displayed prominently at the approved site for the fund-raising activities.

4. For charity sales, organisations can apply to FEHD for exemption from obtaining a temporary hawker licence (“licence exemption”).

#### **Monitoring of Fund-raising Activities**

5. To protect public interests, it is SWD’s practice to take follow-up action quickly on receipt of complaints about non-compliance with PSP conditions by any charitable organisation. It will cancel/suspend the organisation’s fund-raising activities immediately if such complaints are substantiated. However, where there is insufficient evidence of a serious breach of PSP conditions or a criminal offence and the Police has already started an investigation, SWD will only stop processing other PSP applications from the organisation until the Police completes its investigation.

6. In case of charity sales, after approving an application for licence exemption, FEHD will check whether the sales activities are obstructing public access and whether the operators are related to the charitable organisation granted the licence exemption. It will also ascertain whether the charity sales are conducted at the sites stated in the application. Verbal warning will be given if irregularities are found and prosecution will be initiated if such warning is not heeded.

#### **Video Recording Provided by Complainant**

7. A video recording provided by the complainant showed that the operators at the stall in question were selling items other than those prescribed in the PSP and they were not wearing any name tags. Besides, the PSP was not displayed prominently. The FEHD staff arriving at the site requested the operators to produce the relevant documents and advised them not to cause any obstruction to the public.

### SWD’s Explanation

8. SWD did not wish to cancel/suspend any charitable fund-raising activities rashly as there might not be sufficient legal justification. The Department wanted to act prudently and first make sure that there was enough evidence of a serious breach of PSP conditions or a criminal offence by the organisation. Moreover, SWD considered it inappropriate for the Department to take immediate action while the Police investigation was in progress.

9. Nevertheless, SWD had stopped processing other PSP applications from Organisation A. It had been liaising closely with the Police, with a view to taking action when necessary. The Police later concluded that there was insufficient evidence, so SWD decided not to take any action against Organisation A.

### FEHD’s Explanation

10. According to FEHD, it had conducted surprise checks from time to time after approving Organisation A’s application for licence exemption. Upon notification from the Police, it also quickly conducted a site inspection, and no irregularity was found. As to whether a sign was displayed at the stall in question to show that it was carrying out charity sale, FEHD clarified that the issue was outside its purview.

### Our Comments

11. Our investigation revealed that SWD had in fact followed up the complainant’s allegation by enquiring of Organisation A about the media report and referring the case to the Police. It was not unreasonable of SWD to decide not to cancel/suspend the organisation’s fund-raising activities, as there was insufficient evidence of a serious breach/a criminal offence having been committed.

12. Nevertheless, this case reflected SWD’s lax monitoring of fund-raising activities of organisations with PSPs. The video recording provided by the complainant showed that Organisation A might have illegally transferred its PSP to hawkers for profit-making activities and a number of PSP conditions had apparently been breached. SWD should have checked with FEHD the situation as shown on the video recording and demanded an explanation from Organisation A.

13. As to whether there was any sign at the stall showing that Organisation A was conducting a charity sale, we considered that since the issue was outside FEHD’s purview, it was not improper of FEHD staff to refrain from taking action there and then.

### Conclusion and Recommendations

14. Based on the above analysis, The Ombudsman considered the complaint against SWD substantiated other than alleged, while the complaint against FEHD unsubstantiated.

15. However, there were inadequacies in FEHD’s criteria for approving licence exemption and its monitoring of charitable activities. The Department also lacked a reporting mechanism to alert SWD of suspected irregularities of charitable organisations. Both SWD and FEHD should review their practices in this regard.

16. The Ombudsman recommended that SWD judiciously handle complaints against charitable organisations for non-compliance with PSP conditions. It should take decisive actions (including suspension of the fund-raising activities) in serious cases to protect public interests. The Ombudsman also recommended that FEHD notify other relevant departments when irregularities are found in the fund-raising activities of organisations granted licence exemption and, where due, initiate prosecutions against “unlicensed hawking”.

**A case of inadequate monitoring**

## Student Financial Assistance Agency ("SFAA")

Case No. OMB 2011/4892 – Application for repayment by instalments

Allegations: (1) delay in processing an indemnifier's application for repaying the arrears of a loan by instalments – substantiated; and (2) unreasonably asking the indemnifier to pay the interest accrued during the extended processing period – substantiated



### Details of Complaint

Some years ago, the complainant undertook to act as indemnifier when a Mr A applied for a Non-means Tested Loan from SFAA. In early February 2009, SFAA wrote to notify the complainant that Mr A had defaulted on the loan. As indemnifier, the complainant had the obligation to repay the arrears amounting to some \$52,800.

2. In late February 2009, the complainant applied to SFAA for repayment by instalments. In mid-March, SFAA replied that his application was being processed. However, it was not until mid-October 2011 that SFAA sent him a letter requesting supporting documents. Moreover, the complainant was asked to pay not only the arrears, but also the interest accrued between February 2009 and October 2011. The total amount was around \$59,200.

3. The complainant complained against SFAA for:

- (1) delaying the processing of his application; and
- (2) unreasonably asking him to pay the interest accrued over the entire period while his application was being processed.

### Response from SFAA

#### Allegation (1)

4. SFAA admitted that its staff had mistaken the complainant's application for repayment by instalments as having already been approved. It was not until October 2011 that the mistake was discovered and the staff wrote to the complainant to ask for supporting documents. SFAA apologised for the mistake.

5. Applications for repayment by instalments could normally be processed within six to eight months, a time span that SFAA conceded was too long to meet public expectation. To avoid occurrence of similar incidents, SFAA had since decided to adopt a number of improvement measures, such as strengthening communication with debtors; stepping up staff training and supervision; as well as improving case management and its report mechanism through a new computer system.

#### Allegation (2)

6. The complainant had at the outset signed a deed of indemnity which stated that he should indemnify Government against all losses incurred in case of default on the loan by Mr A. Such losses include interest on the loan, annual administrative fee and loss of interest earnings due to late payment. SFAA must, therefore, recover the interest on the arrears accrued during the six to eight months' normal processing time. Furthermore, the complainant could have first repaid part of the arrears according to his financial capability. Regarding the \$4,100 extra interest and administrative fee that had resulted from SFAA's delay in processing his application, SFAA had eventually given a refund to the complainant.

### Our Comments

#### Allegation (1)

7. The complainant applied in late February 2009 for repayment by instalments, but SFAA did not ask him for supporting documents until mid-October 2011. That was certainly a serious delay. In addition, while SFAA staff mistook the application as having been approved, SFAA took no action even when the complainant had failed to pay any single instalment. This showed inadequacies in SFAA's internal monitoring of cases of repayment by instalments.

8. The Ombudsman, therefore, considered allegation (1) substantiated.

#### Allegation (2)

9. As indemnifier, the complainant did have an obligation to pay the interest on the arrears and the administrative fee. But in this case, he had been asked to pay more than he should, just because of the oversight and delay on the part of SFAA staff in processing his application. Furthermore, before our intervention, SFAA had insisted on holding him responsible for the interest accrued over the entire period. That was indeed unfair to the complainant.

10. In the light of the above, The Ombudsman considered allegation (2) substantiated.

### Conclusion

11. Overall, The Ombudsman considered this complaint substantiated.

12. The Ombudsman was pleased that SFAA's latest improvement measures had effectively reduced the processing time for applications for repayment by instalments to within three months after receipt of the necessary supporting documents.

### Details of Complaint

The complainant had lodged a number of complaints with TD since February 2010 about the audio-visual programmes shown on franchised buses being too noisy and containing too many advertisements. He was dissatisfied with TD's lax control and alleged that the Department had failed to address the problems properly and give him a satisfactory reply.

### Background

2. Bus companies are required to seek prior approval from TD to install audio-visual system on franchised buses. In granting the contracts, TD stipulates a set of conditions for compliance by the bus companies, including the audio effect, programme contents and submission of regular reports.

### Response from TD

#### Allegation (1) – Requirements and Monitoring of Sound Volume

3. TD explained that it was difficult to determine a uniform sound volume because the background noise level inside a bus was affected by many circumstantial factors. Therefore, it had adopted a relative approach to setting regulatory standards, stipulating that the sound volume of audio-visual programmes should be comparable to the ambient noise level on the bus. The difference should not exceed two decibels.

4. Apart from requesting the bus companies to submit bi-monthly reports of random checks on the sound volume, TD would also deploy its staff to conduct surprise inspections. Measurements would be taken at designated positions on the upper and lower decks when the bus engine was on. The staff would use a special sound level meter to measure the sound levels before and after the audio-visual system was turned on. The difference between the two readings should not exceed two decibels. Between 2007 and 2011, TD conducted more than 4,000 inspections, and over 98% of the buses inspected were in compliance with the requirement.

A case of delay and negligence

## Transport Department ("TD")

Case No. OMB 2011/3137 – Audio-visual system on buses

Allegations: (1) mishandling complaints about excessive sound volume of the audio-visual system on franchised buses – unsubstantiated; (2) failing to monitor whether the advertising time was kept within the stipulated ratio – substantiated





5. On receipt of complaints about excessive sound volume, TD would first refer them to the bus companies for investigation. The bus companies would be required to submit a report to TD and adjust the sound volume immediately if it was found to be too loud. For repeated complaints, TD would conduct its own investigation.

#### ***Allegation (2) – Requirements and Monitoring of Programme Contents***

6. Under the contracts between TD and the bus companies, advertising time should not exceed 20%, or 12 minutes per hour of programme service.

7. TD would not censor the audio-visual programmes on buses before broadcasting and had not in the past requested the bus companies to submit regular reports on advertising ratio. In view of the growing concerns among passengers about the advertising ratio, TD started conducting random inspections every quarter since June 2011. Its first three rounds of inspections found that in nearly all cases, the limit of 20% was exceeded. In the most serious cases, advertisements took up as much as 90% of the airtime. TD had ordered the bus companies to rectify the situation as soon as possible and closely monitored the progress of their improvement measures.

8. A further round of random inspections by TD in April 2012 showed that the advertising ratio fell within the 20% limit in all cases.

### **Our Comments**

#### ***Allegation (1)***

9. TD had issued several replies to the complainant and explained how the broadcasting sound volume was monitored as well as the objective standard adopted for such purpose. We considered TD's explanations reasonable. A site visit conducted by our staff also confirmed that TD had followed its established procedures to conduct regular inspections. The complainant alleged that TD had failed to give a satisfactory reply mainly because he did not accept TD's method of measurement. As that was a matter of TD's professional judgement, we would not intervene.

#### ***Allegation (2)***

10. Advertising ratio was one of the basic contractual requirements. The fact that the amount of advertisements seriously exceeded the set limit reflected serious ineffectiveness in TD's original monitoring system. It only became aware of the problem after receiving complaints from the public. TD clearly had maladministration in this aspect.

11. TD had actively followed up on the complaints and its recent inspections found that the bus companies had complied with the requirements. We urged TD to monitor the situation closely and step up its inspections where necessary.

### **Conclusion**

12. The Ombudsman considered allegation (1) unsubstantiated and allegation (2) substantiated. Overall, this complaint was partially substantiated.

13. The showing of audio-visual programmes on buses was a business decision. Some passengers might feel that their rights were infringed by the broadcasting on buses or consider it a noise nuisance. Therefore, it was appropriate for TD to stipulate certain conditions in the contracts, such as restrictions on sound volume and advertising ratio. However, TD must exercise proper control to ensure that those conditions are complied with.

### **Details of Complaint**

When the complainant applied for renewal of his vehicle licence at a TD office in September 2011, he learned that the Police had issued to him a fixed penalty ticket for illegal parking earlier in March but he had never received it. He also found that TD's record of his residential address had been incorrect. The complainant alleged that TD had wrongly recorded his information, causing him to be charged an extra fine plus costs for late settlement of the penalty.

### **Procedures for Updating Address**

2. To update the address record of a vehicle owner, TD staff are required to check the address proof before inputting the information into the computer. The vehicle owner will then be given an acknowledgement letter for verification of the updated record on the spot. If any mistakes are found, the vehicle owner may request an amendment and a revised acknowledgement letter will be issued.

### **Our Findings**

#### ***Entry of Erroneous Address***

3. The complainant first registered his present residential address with TD in 2002. The address initially recorded by TD was complete and correct.

4. In September 2010, the complainant applied for renewal of vehicle licence through his agent. Although the address provided on the application form was generally the same as the originally recorded address, it gave the estate name without the building name ("the incomplete address"). However, a TD staff member proceeded to update the Department's computer records based on the application form, thereby replacing the original correct address with the incomplete address.

5. We believed the reason why the complainant could not receive the fixed penalty ticket issued by the Police in March 2011 was that it was sent to the incomplete address according to TD's computer records at that time.

6. In September 2011, the complainant applied for renewal of his vehicle licence at a TD office in person and provided his complete address on the application form. Noticing that the address differed from the computer records, the TD staff followed the normal procedures to update the information (paragraph 2) but input a wrong Chinese character for the building name. The complainant spotted the error when he checked the acknowledgement letter and the staff revised the records immediately. While the mistake on that occasion was rectified right away, it nonetheless triggered this complaint, which in turn prompted our investigation and revealed the mistake that had been made in updating the records one year earlier.

### **Response from TD**

7. TD admitted that the staff member who handled the application in 2010 had probably failed to check carefully the information on the application form against the address proof to make sure that they matched, and thus wrongly input the incomplete address into the computer.

8. To prevent recurrence, TD subsequently reviewed and revised the procedures for updating address records. The new procedures, effective from March 2012, stipulated that staff members must check the address proof to confirm that it tallies with the address on the application form.

9. Moreover, TD would hold regular internal briefing sessions to share with frontline staff cases of mistaken address records in order to remind them to exercise due care in handling such applications.

### **Transport Department ("TD")**

Case No. OMB 2011/4000 – Incorrect address information

Allegation: failing to exercise due care while updating the complainant's data, resulting in an error in his address record and hence non-receipt of a fixed penalty ticket issued to him by the Police – partially substantiated



A case of ineffective control

10. TD acknowledged the importance of maintaining correct address records. Nevertheless, oversight might occur as the staff had to handle a large number of applications every day within a tight timeframe. The Department already apologised to the complainant for the incident.

### Our Comments

11. On the application form submitted in 2010 for vehicle licence renewal, the complainant had put down an incomplete address but neither his agent nor the TD staff spotted the mistake. All the parties involved should bear certain responsibilities for the error. However, the mistake was not entirely unavoidable. The staff concerned should have realised that the original address in the computer records was a complete one while the address provided on the application form was the same address only without the building name. The staff had failed to exercise due care and diligence by simply treating the incomplete address as a new one without seeking any clarification.

12. When processing the application in 2011, another staff member had a typo in the address information. While the mistake was immediately rectified by the complainant, the incident showed that TD staff needed to pay more attention to the accuracy of addresses.

### Conclusion and Recommendation

13. The complainant had a duty to provide a correct address and to verify the updated information upon receiving the acknowledgement letter. Nevertheless, this case also revealed deficiencies in TD's procedures. While we appreciated TD staff's efforts to process all applications expeditiously, it would be counter-productive to sacrifice the accuracy of records for the sake of efficiency.

14. Overall, The Ombudsman considered the complaint partially substantiated.

15. The Ombudsman urged TD to review the implementation of the improvement measures from time to time in order to ensure the achievement of expected outcomes.

A case of staff negligence

### Details of Complaint

The complainant alleged that for many years a piece of unleased Government land ("the Site") had been unlawfully occupied for different purposes such as car parking, but Lands D, the department responsible for managing the site, had failed to properly handle the issue. Moreover, the complainant noticed that TD had carried out improvement works on the Site, which would in effect encourage illegal parking. HAD had also done nothing to follow up the issue at the district level.

### Our Findings

#### The Site

2. The Site was a piece of unleased Government land at the entrance of a village ("Village A"). Unfenced and accessible to both pedestrians and vehicles, it was managed by Lands D and had no designated use. Since the 1980s, illegal parking had become a problem on the Site.

3. Between 1991 and 1993, the then Regional Council had consulted HAD and Lands D on conversion of the Site into recreation and open space ("the conversion works"). After negotiation, local villagers accepted the conversion project but requested that parking spaces be provided on the Site for their use.

4. In late 1993, HAD was aware that the village expansion area scheme near Village A would be implemented and dozens of parking spaces would then be available. Therefore, HAD suggested that the conversion works should commence after implementation of the scheme. Nevertheless, Government later decided to conduct a comprehensive review of the New Territories Small House Policy and related issues. The village expansion area schemes of all districts were suspended and the conversion project on the Site was thus shelved.

5. In 2010, TD, Lands D and HAD received complaints about the Site being unlawfully occupied for different purposes. Lands D also received complaints about the safety hazards to pedestrians posed by vehicles entering and leaving the Site. It then asked TD to do an assessment.

### Responses from the Three Departments

#### TD

6. TD was aware of the perennial problem of illegal parking on the Site. Nevertheless, as the Site and its use were outside the Department's jurisdiction and its main concern was the safety of road users, TD took the view that the issues of illegal parking and road safety should be dealt with separately. Considering that there were already adequate parking spaces in the vicinity of the Site, TD did not see the need to designate the Site as a fee-charging car park.

7. In 2010, TD conducted a review on the vehicle access point and found that the ramp at the access point could be a potential hazard to people with mobility impairments and wheelchair users. Therefore, TD proposed some improvement works while retaining the vehicle access point.

8. After public consultation and discussions with various parties concerned, TD completed the works to add anti-skid road surfacing to improve the vehicle access point in April 2012. As regards the potential hazards posed by the ramp, TD completed improvement works at another access to the Site in May 2012 for use by those with mobility impairments and wheelchair users.

### Transport Department ("TD"), Lands Department ("Lands D") and Home Affairs Department ("HAD")

Case Nos. OMB 2011/3089A, B & C – Unlawful occupation of Government land for 30 years

Allegations:  
TD – failing to properly resolve the issues of unlawful occupation of Government land and illegal parking – partially substantiated  
Lands D – same – substantiated  
HAD – same – substantiated



**Lands D**

9. Lands D noted that it could invoke the Land (Miscellaneous Provisions) Ordinance (“the Ordinance”) to deal with unlawful occupation of Government land. However, illegal parking and hawking were problems of a transient nature. To invoke the Ordinance, Lands D would have to give the occupant a statutory notice of not less than 24 hours. Therefore, it would not give priority to these cases but would refer them to the Police and the Food and Environmental Hygiene Department (“FEHD”) to follow up.

10. On receipt of the complaints in April and May 2010 about unlawful occupation of the Site, Lands D referred them to FEHD and the Police for action. In view of the safety concerns and the historical background of the Site, Lands D also consulted HAD and TD on the problem of illegal parking. After considering the views from the two departments, Lands D decided to maintain the *status quo*.

11. Regarding issues like the low walls and metal posts there, Lands D had escalated the cases from “intermediate priority” to “high priority” on the list of sites for land control action in early 2012 after receiving complaints from the public and the media as well as referrals from this Office. Lands D also put up notices there, ordering the occupants to remove the low walls and metal posts by the specified deadline.

**HAD**

12. HAD considered that residents nearby would raise strong objection if car parking on the Site was prohibited. If TD did not find vehicles entering or leaving the Site to be potential hazards to pedestrians, Lands D might consider maintaining the *status quo*. Nevertheless, to resolve the illegal parking problem, Lands D might consider providing additional parking spaces after checking the progress of the village expansion area scheme.

13. Since illegal parking on the Site had become a perennial problem and there were public complaints, HAD subsequently changed its position and advised the departments concerned to take immediate action.

**Our Observations and Comments**

14. The Site was located right between busy roads and village houses, and yet the Government departments concerned had allowed unlawful occupation of Government land for illegal parking, hawking and other purposes to continue for more than 30 years. They had neither taken any enforcement action nor regularised those illegal activities. Rather, an improvement project was carried out at the vehicle access point, which was in effect an encouragement to illegal parking. It was embarrassing to the Administration. We considered that the departments concerned should be held responsible.

15. As the department responsible for managing unleased Government land, Lands D had merely relied on other departments such as the Police and FEHD to clamp down on the illegal activities. It paid little attention to the effectiveness of those actions and failed to follow up. While there might be constraints under the Ordinance for Lands D to take enforcement action against activities like illegal parking and hawking as it had stressed, Lands D still could not stay away from the issues entirely. Rather, as the problems had continued for years after its referral to other departments, Lands D ought to find other solutions.

16. After taking into account the views from HAD and TD, Lands D simply relied on the suggestion from HAD and decided to maintain the *status quo*. In fact, HAD had also advised that Lands D could consider providing additional parking spaces to resolve the illegal parking problem.



17. Lands D had delayed giving priority to the case. This would give people an impression that Lands D was trying to favour those with vested interest by not taking enforcement action, thereby undermining public faith in the law enforcement authorities. If Lands D considered the condition of the Site tolerable, it should consider regularising it so that necessary control action could be taken and reasonable rent collected.

18. We did not accept that TD should handle the issues of illegal parking and road safety separately. Even though the problem of illegal parking on the Site should be resolved in line with the decision of the land control authority, TD should render assistance. As illegal parking on the Site had existed for decades, if TD continued to cite the availability of parking spaces in the vicinity when assessing whether the Site should be designated as a fee-charging car park, the long-standing problem of unlawful occupation of the Site could hardly be resolved. If TD believed that there were adequate parking spaces, it should indeed refute the suggestion from HAD and support the elimination of illegal parking.

19. Moreover, while TD did not see the need to provide additional parking spaces on the Site, it proposed improvement works in order to ensure pedestrian safety and maintain the *status quo*. What TD did was self-contradictory and redundant. It could also be perceived as a measure to benefit those with vested interest.

20. Expecting strong opposition from the villagers, HAD suggested that Lands D should maintain the *status quo* if there was no road safety hazards. This had become a convenient excuse for Lands D not to take enforcement and control actions. While it was the duty of HAD to reflect the villagers’ views and expectations, we considered that HAD should balance the views of different parties and find a sensible, reasonable and lawful solution.

**Conclusion and Recommendations**

21. In view of the above, The Ombudsman considered the complaint against TD partially substantiated and the complaints against Lands D and HAD substantiated.

22. The Ombudsman recommended that:

**TD**

- (1) take a broader perspective in its future discussions with other departments regarding the long-term solution to the unlawful occupation of Government land and consider the opinions of various parties, such as the feasibility of regularising illegal parking;

**Lands D**

- (2) actively liaise and discuss with HAD, TD, the Police and other departments concerned for a long-term solution to the unlawful occupation of the Site;
- (3) liaise and discuss with other departments concerned on ways to determine the temporary and long-term uses of the Site; and

**HAD**

- (4) closely follow up the problem of unlawful occupation of the Site and liaise with the departments concerned, local organisations and villagers to seek temporary and permanent solutions to the problem.

23. The Ombudsman was pleased to note that the three departments concerned accepted our recommendations.

**A case of rigid attitude and evasion of responsibility**



Annex  
9Summaries of Selected Cases  
Concluded by Inquiry

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Estate Agents  
Authority (“EAA”)

Case No. OMB 2012/2637 –  
Delay in complaint handling

Allegations: (1) failing to inform the complainant in writing of the progress and results of investigation into her case; (2) failing to call back the complainant regarding her telephone messages; and (3) delay in reviewing her case on the pretext of case complexity



## Details of Complaint

In March 2009, the complainant lodged a complaint with EAA against a real estate agency. EAA, however, never gave her any written reply regarding the progress and results of its investigation.

2. In March 2011, the complainant enquired about the case progress at the EAA office in person and requested a review at once when she learned that EAA found her complaint unsubstantiated. Subsequently, she telephoned EAA repeatedly but no one answered her calls. She left a message every time but EAA staff never returned her calls.

3. Moreover, EAA staff told her in June 2012 that review of her case was not yet completed due to the complexity of the case and that EAA needed to wait for a reply from the real estate agency involved. The complainant considered that merely an excuse of the staff to delay review of her case.

## Response from EAA

*Allegation (1)*

4. EAA had actually completed its investigation into the case by the end of 2009 and issued a written reply in January 2010. So there was no delay. Nevertheless, a staff member made a mistake while inputting the complainant's address into the computer. The reply was thus delivered to a wrong address and the complainant never received it.

5. Since her request for review of the case in March 2011 and until July 2012, the complainant had visited EAA in person ten times to submit supplementary information or enquire of review progress. As such, the case officer deemed a written reply on the progress unnecessary. Moreover, giving verbal updates to a complainant was in keeping with EAA's internal guidelines.

*Allegation (2)*

6. EAA confirmed that the complainant had called nine times and only on one occasion was able to speak directly with the case officer. For the other eight times, she had left a message but the case officer did not return her calls. That was a violation of EAA's performance pledge.

*Allegation (3)*

7. The case officer had explained to the complainant that her case was rather complicated. EAA had already enquired with the property developer in question and was still awaiting a reply. Besides, EAA needed to interview the persons involved again and follow up the case in writing. Consequently, it was not until September 2012 that the investigation was completed. Nevertheless, EAA admitted to delay in writing up the investigation report.

8. In short, EAA admitted that there were inadequacies in its handling procedures and communication with the complainant during its review of her case. In this connection, EAA had taken several improvement measures, including stepping up staff training, enhancing its case monitoring mechanism and upgrading its computer system.

## Our Comments

9. The Ombudsman considered that for allegations (1) and (2), the complainant did not receive EAA's reply because EAA staff had made a mistake while inputting the address into the computer. They were insensitive and failed to confirm subsequently with her the correct correspondence address and provide her a copy of its written reply. In addition, the case officer did not call back the complainant although she had left a message time and again. Such performance was disappointing.

10. As for allegation (3), The Ombudsman considered that although the case was rather complicated and might take EAA a longer time to investigate, there was indeed delay on the part of EAA in that it did not proceed speedily to conclude the case and write up its report upon completion of its investigation.

A case of inadequacy in  
procedures

## Details of Complaint

The complainant, a Sheung Shui resident, had complained repeatedly to FEHD about the environmental hygiene problems caused by the numerous parallel traders littering on the pavement under a flyover (“the Spot”) in the district. He was dissatisfied that FEHD had only arranged for its contractor to clear the litter or cleanse the road surface with street washing vehicles, but had not taken any enforcement action against the offenders, such that the littering problem remained unresolved.

## Response from FEHD

2. FEHD explained that after receiving the complainant's complaints, it had worked with the Police to carry out several joint enforcement operations at the Spot. The measures taken by FEHD in such operations included issuance of Notices to Remove Obstruction to the parties concerned, seizure of articles causing obstruction to street sweeping work, and issuance of fixed penalty notices to people littering or spitting on the street. FEHD had also arranged for its contractor to clean up the Spot after each joint operation. Moreover, a large number of fixed penalty notices had been issued to people littering or spitting on the street during FEHD officers' routine patrols in the area.

Food and  
Environmental  
Hygiene  
Department  
 (“FEHD”)

Case No. OMB 2012/3534 –  
Environmental hygiene  
problems caused by parallel  
traders

Allegation: failing to take  
enforcement action against  
parallel traders littering on the  
street



A case of ineffective enforcement action

## Housing Department (“HD”)

Case No. OMB 2012/1836 – Improper consultation arrangements

Allegation: failing to send out invitations to a consultation forum in a timely manner and setting an unreasonable deadline for reply



A case of failure to properly monitor outsourced work

3. FEHD undertook to continue its monitoring of the situation. Where warranted, it would step up enforcement actions and carry out joint operations again with relevant departments to further improve the environmental hygiene there.

### Our Comments

4. Nonetheless, the complainant indicated to us that the littering problem continued and the environmental hygiene condition at the Spot had not improved. In this light, we urged FEHD to keep a constant watch over the Spot and be ready to take rigorous enforcement actions.

### Details of Complaint

On 5 June 2012, HD held a public consultation forum to solicit views on a development plan from individuals and organisations in the local community. On 2 June, the complainant received from HD an invitation letter dated 31 May, in which the recipient was requested to reply by 1 June if interested. The complainant considered that HD had failed to send out the invitations in a timely manner and set an unreasonable deadline for reply.

### Response from HD

2. HD explained that the public consultation forum was organised by its consultant and invitations had been sent out one to two weeks before the date of the forum. To attract more local attention to the matter, the consultant sent out another batch of invitations to the residents of nearby housing estates on 31 May. HD admitted that its consultant had set an unreasonable deadline for reply and apologised to the complainant.

### Our Comments

3. It was recognised that the second batch of invitations sent out by the HD consultant was intended to encourage more participation of local residents in the forum. Yet, sending out the letters only five days before the forum and requesting interested parties to reply within a day was clearly too hasty and would inevitably cast doubt on the sincerity of HD’s consultation.

4. We considered that HD should urge its consultant to be more careful in the arrangement of local consultation and make thorough plans to avoid recurrence of similar problems.

## Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation

Annex  
10

### (a) Guidelines for clarity, consistency or efficiency in operation

Organisation* (Case reference)	Administrative Enhancement
FEHD (2011/4847)	Guidelines on handling of food complaints revised to provide clearer instruction to staff on the circumstances requiring immediate collection of food sample for testing and/or request for the food shop/restaurant to stop selling the food
FEHD (2012/1182)	Clearer guidelines and detailed instructions issued for more efficient handling of compensation claims by members of the public
GS (FSTB) (2011/1396)	Guidelines revised to require staff to make reference to precedent cases in assessing applications for waiver of fees for fire service certificates required for issuance of Temporary Places of Public Entertainment Licences, to achieve consistency
HA (2011/3172)	Clearer instructions to staff that applications for medical reports supported by Chinese medical practitioners are acceptable
HD (2009/4758)	New guidelines drawn up to ensure that cases of dog-keeping in public housing on compassionate grounds are properly followed up by staff
HD (2011/2609)	Guidelines issued to ensure that Public Rental Housing flats are allocated only when issued with a valid Electrical Completion Certificate by a registered electrical contractor
IRD (2010/1671)	New measure implemented to suspend the issue of Property Tax Demand Notice to avoid confusion to taxpayers electing for personal assessment, and to notify taxpayers of the set off of their unclaimed refunds against their other tax liabilities
IRD (2012/0051)	Internal guidelines revised to improve internal coordination among different sections in handling tax matters of the same taxpayer
Lands D (2010/5282)	Guidelines revised to ensure timely processing of applications for ex-gratia compensation arising from land resumption
LCSD (2010/0492)	The on-line Direct Purchase Management System enhanced for better monitoring of quotation exercises, including those for purchases with short quotation periods
PO (2012/2169)	A prescribed form for posting parcels revised to better reflect international postal regulations governing return of undelivered parcels
SWD (2011/2856)	Guidelines drawn up advising staff either to obtain written confirmation from service users who request to keep their personal information confidential or to document clearly such requests
SWD (2011/3522)	Self medication record sheets of inmates of nursing home enhanced such that inmate refusals to hand in medicine prescribed by outside doctors to the nursing home for custody are properly recorded



WSD (2008/4817)	Guidelines on handling returned mails drawn up and computer system enhanced to avoid repeatedly sending water bills for the ex-occupier to an address of the new occupier
WSD (2009/0031)	Guidelines drawn up to clearly define the observation period so as to standardise the assessment method for underpaid water charges in cases involving defective water meters, and to avoid delay in recovering charges

**(b) Better arrangements for inter-departmental coordination**

Organisation* (Case reference)	Administrative Enhancement
DSD (2011/2658A)	A coordinating meeting convened with Hy D and CEDD to clarify the action department on complaints about grass on land between river banks and pedestrian pathways
EU (2010/1203 & 2010/2142)	A new system introduced to alert the directorate staff of departments under complaint to cases outstanding for over three months
EU, Lands D, Hy D and TD (2010/2027-28 & 2010/5147-48)	In respect of maintenance responsibilities for infrastructure items along the West Rail line: (i) joint review conducted by Hy D and Lands D on their departmental records to ensure that all relevant parties have proper records on the apportionment and handover of maintenance responsibilities and that the respective district maintenance/land offices are informed of the location of the source documents; guidelines developed for 1823 Call Centre to handle related complaints; and (ii) mechanism developed by TD, Hy D and Lands D for better coordination among them and MTR Corporation Limited over disputes or complaints concerning shared maintenance responsibilities
SWD (2011/5096B)	Communication channel with HD set up to ensure efficient handling of applications for compassionate rehousing

**(c) Measures for better public enquiry/complaint handling**

Organisation* (Case reference)	Administrative Enhancement
AFCD (2011/0470)	Guidelines on handling of public enquiries/requests for personal information of dog owners in dog bite cases drawn up for staff compliance
CC (2010/2855 & 2010/4026)	Guidelines revised stating clearly the time limit for consideration of closing an unresolved complaint case and work arrangements for staff on leave or resignation; also, computer system improved and temporary posts added to monitor and enhance the effectiveness of handling complaint cases
DH (2010/5326)	Guidelines issued to advise staff to give the office telephone numbers of staff to members of the public on request; staff designated to receive and handle fax and emails from the public

**(d) Measures for better client services**

Organisation* (Case reference)	Administrative Enhancement
AFCD (2010/3730)	Monitoring measures implemented to ensure that notices posted in a nature education centre are checked and approved before issue

BD (2011/4454)	(i) Staff and consultants required to make proper records of important observations during investigation of seepage complaints and take precautionary measures to prevent damage to private property when conducting seepage tests; (ii) Standard practice established whereby a copy of the "identification letter" showing the contact information of the responsible office and consultant will be issued to the flat owner under investigation of seepage complaints
DH (2012/0361)	Special measure introduced by the Tobacco Control Office to arrange inspection of venue shortly after receipt of report of illegal smoking where the smoking behaviour is expected to continue for a long period of time
FEHD (2010/2053)	New guidelines introduced allowing users of crematorium facilities to make on-the-spot applications for filming the funeral
FEHD (2012/1416)	Procedures revised to avoid delay in issuing demand notes and to allow sufficient time for the responsible parties to pay before the deadline the costs for private works done by FEHD for them (such as removal of roadside banners)
GS(LWB) (2012/2213)	Programme launched to promote the Registration Card for People with Disabilities to disabled persons receiving services from SWD and assistance provided to facilitate their application for the Card
HD (2012/3938)	Procedures for letting car parking spaces streamlined to ensure timely delivery of lease agreements to tenants
IPD (2012/2840)	Time frame set for checking applications for trademark registration
IRD (2012/2362)	Monitoring of property transaction cases strengthened by requiring Senior Assessor to review regularly the high risk cases and cases outstanding for 24 months
Lands D (2010/1203 & 2010/2142)	New measures to improve the efficiency in handling requests for pruning of roadside trees, including compiling monthly reports to keep track of outstanding cases; creation of four Complaints Liaison Officer posts; and contracting out the tree management related duties
Lands D (2012/3542)	Procedures simplified and time for preparing Lot Index Plans by the Survey and Mapping Office shortened to expedite the processing of applications for excavation permits
LCSD (2010/5012)	Library system enhanced to cater for eligible readers to renew borrowing of library items via internet
LCSD (2012/0196)	New measure adopted by management contractors of sports and recreational facilities to facilitate members of the public to distinguish the staff delegated the authority to check the identity documents of facility users
TD (2008/1857 & 2010/2074)	New arrangement introduced using number plates to identify the buyers in auctions of vehicle registration marks
TD (2012/2206)	For applications for driving examination submitted by applicants with outstanding debts, a grace period introduced for the applicant to settle the debt before decision to reject application
WSD (2009/4508)	A thorough checking exercise conducted in a building with misplacement of water meters identified to ensure all 300 odd water meters were not misplaced because of systemic faults; instruction on the installation of new water meters drawn up to strengthen staff monitoring and reduce the chance of misplacement of water meters
WSD (2009/4751)	Computer system enhanced to enable transfer of information provided by applicants online to WSD's respective unit(s) for follow-up and assignment of an application number to each online application to facilitate better communication between WSD and the applicant



**(e) Measures for more effective regulation or control**

Organisation* (Case reference)	Administrative Enhancement
DH (2007/2123)	Discussion started with a subvented organisation to change the subvention mode from “deficiency grant” to “discretionary grant” to suit the level of Government supervision appropriate for the organisation
EAA (2012/2637)	Double-checking procedures and bring-up system implemented to enhance data verification and complaint handling
FEHD (2009/1981)	Enforcement action against illegal extension of business area of newsstands strengthened by carrying out more frequent inspections, removing illegally extended structures immediately and invoking the “Mechanism for Cancellation of Hawker Licences”
Lands D (2011/0502)	Guidelines for handling applications for grave repairs/rebuilds revised to specify clearly in the approval letter the permitted size of the grave to prevent illegal extension
Lands D (2012/0120)	Time frame set for taking actions against illegal occupation of Government land for non-priority cases
LCSD (2010/0510)	The terms in the General Works Permit for works carried out in historical monuments revised for better clarity, with briefing sessions given to frontline staff as well as historical site owners; new team formed to ensure no unauthorised works will be carried out in historical sites
TD (2011/3137)	Monitoring of the proportion of advertisement on the broadcasting system on bus stepped up to ensure that it will not exceed the 20% threshold stipulated

**(f) Clearer and more reasonable rules**

Organisation* (Case reference)	Administrative Enhancement
HA (2010/0706)	Booking arrangements at Specialist Out-patient Clinics improved: (i) for patients requesting to change their bookings to another hospital due to move of home, the receiving hospital will as far as possible arrange a booking close to the booking date of the original hospital; (ii) the validity period of all referral letters is standardised to three months; and (iii) a remark is added in the referral letter to remind patients of the validity period
LCSD (2009/3143 & 2010/1986)	Guidelines on the booking and use of non-fee-charging facilities revised to ensure fairness in the allocation of the facilities between organisations and individuals during peak hours
LCSD (2010/1483 & 2010/1543)	A set of new regulations clarifying the use of free scanning and photo-copying services in computer resources centre drawn up and promulgated to all readers

**(g) Clearer and more timely information to the public**

Organisation* (Case reference)	Administrative Enhancement
BD (2010/2353(I))	Internal guidelines laid down for photographs and sketch plans to be included in the investigation reports on water seepage to be sent to people requesting the report for purpose of resolving the water seepage problem
FEHD (2012/3209)	FEHD’s enquiry/complaint hotline displayed on all vehicles of street cleansing contractors to assist FEHD in monitoring the performance of the contractors

HA (2012/2864)	Notice posted at hospitals to inform patients about the possible arrangement of allowing students to observe medical examinations
JA (2012/0250)	To provide on Judiciary’s website information on the commencement of accrual of interest on debt judged by the court
LCSD (2009/3118)	Notice posted at the free-of-charge hard-surfaced soccer pitches reminding the public of the right for priority use of the pitches by holders of check-in permits during booked sessions
RVD (2012/2786)	Application form for information on the ratable values of a property revised to state clearly the different prices charged for different modes of applications
TD (2011/3904)	Arrangement put in place for early discussions with all parties concerned about road closure arrangements during Ching Ming and Chung Yeung festivals to enable early announcements and wider publicity of the arrangements through radio and press releases
TD (2012/2206)	A reminder added in the debt recovery letters to alert debtors that all their future licensing applications would not be processed until outstanding debts are settled
WSD (2007/5719)	Water bill message revised to include more detailed information of the water account, to alert the consumer to contact WSD if the consumption is considered overestimated, and to highlight the overdue water charge and the high/low water consumption reminder

**(h) Training for staff**

Organisation* (Case reference)	Administrative Enhancement
LCSD (2010/0492)	Seminars conducted for staff engaged in quotation exercises and circulars issued to remind them of the proper procedures and requirements in conducting quotation exercises
LCSD (2010/3572)	Enhancement training organised to familiarise frontline staff with the guidelines and instructions on the handling of applications for displaying posters in LCSD venues
SWD (2011/5096B)	Staff training strengthened to enhance understanding of relevant housing policy and procedures to ensure efficient handling of applications for compassionate rehousing

\* see Table 4 for the full name of the organisation against the acronym.

Annex  
11Summary of Selected  
Case on Code on  
Access to Information

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

## Post Office (“PO”)

Case No. OMB 2012/2439(I)  
– Release of damage report

Allegations: (1) delay in responding to the complainant’s enquiry – substantiated; (2) unreasonably withholding a damage report issued by the Mainland postal administration – substantiated; and (3) citing a wrong mail item number in its reply letter and allegedly providing an untrue statement – partially substantiated

## Details of Complaint

In early May 2012, the complainant used PO’s Speedpost service to send five cans of powdered formula milk to his relative in mainland China. When the parcel was delivered to the destination, however, it was damaged with milk powder leaking out. In response to his enquiry, PO indicated that, based on a report issued by the Mainland postal authority, the damage had been caused by inadequate packing and thus no compensation would be payable. The complainant was dissatisfied that PO had delayed for more than a month before giving him a reply and that the mail item number cited in the reply letter was wrong. PO had also refused his request for a copy of the damage report on the ground that it was an internal document.

2. The complainant then obtained a certificate directly from the local delivery office in mainland China through his relative. The certificate stated that the external packing of the parcel was intact but, on opening the lids, the inner seals of two cans were found to have been completely broken. It was suspected that the damage was caused deliberately. The complainant queried why PO had not mentioned such things in its reply letter and alleged that it had provided an untrue statement.

## Response from PO

3. PO admitted that it had received the mail item damage report from China Post on 22 May. According to its established procedures, PO should have responded to the complainant within one week. However, because of shortage of staff, it was not until 28 June that PO contacted him by telephone and then issued a written reply the next day. Unfortunately, PO made a mistake when citing the mail item number in its letter. It re-issued the letter with the number corrected on 4 July but no explanation was given. PO apologised to the complainant for the misunderstanding caused.

4. As damage reports received from overseas postal administrations could not be released without their authorisation, such reports were generally for internal use only and so PO initially refused the complainant’s request. The complainant later submitted a form under the Code on Access to Information (“the Code”) to request the damage report. After obtaining the consent of China Post, PO then provided him with a copy.

5. Proper and sufficient packing is a pre-condition for compensation under the terms of Speedpost service. When accepting a parcel for posting, PO is not empowered to open it for checking and the sender is solely responsible for proper packing of the items inside. In this case, PO mainly relied on the damage report mentioned above to assess the parcel’s condition when it arrived at the destination and determine the compensation liability. PO had not seen the certificate obtained by the complainant before giving him a reply at the end of June and our referral of his complaint. Subsequently, PO sought further clarification from China Post, which stated clearly that the two documents concerned were not contradictory and reiterated that the packing of the parcel was faulty.

## Our Comments and Conclusion

6. The Code requires Government departments to actively provide the public with Government-held information as far as possible, unless there are reasons to refuse disclosure as stated in Part 2 of the Code.

7. We noted that PO had failed to give a reply to the complainant within the specified timeframe. It had also failed to comply with the Code in withholding the damage report on the ground of internal document without first ascertaining the intent of the Mainland postal administration. Even though the complainant had not made the request for information under the Code initially, PO was still obliged to act in compliance with the Code. It should have taken the initiative to seek the third party’s consent and release the information as soon as possible. The Ombudsman, therefore, considered both allegations (1) (delay in reply) and (2) (refusal to provide report) substantiated.

8. We agreed that the reply letter issued by PO at the end of June was based on the information available then. While PO made a mistake in the mail item number, there was no evidence of an untrue statement. The certificate subsequently obtained by the complainant provided certain details which seemed to be different from those in the damage report, but China Post already reiterated that the packing of the parcel was faulty. From the perspective of public administration, PO was not improper in citing its service conditions and refusing to pay any compensation. The Ombudsman, therefore, considered allegation (3) partially substantiated.

9. Overall, the complaint was partially substantiated.

## Recommendations

10. The Ombudsman recommended that PO:

- (1) review the measures for managing enquiries about mail items, such as enhancing its computer system by adding an alert function to reduce backlog and delay of cases; and
- (2) draw up internal guidelines to ensure that its staff follow the Code when handling requests for information, and formulate proper procedures to scrutinise decisions of refusing to release information.



A case of delay and unreasonable withholding of information

## Achievement of Performance Pledges

(1 April 2012 to 31 March 2013)

### (A) Enquiries\*

	Response Time		
	Immediate	Within 30 minutes	More than 30 minutes
By telephone or in person	12,065 (100%)	0	0
In writing	Within 5 working days	Within 6-10 working days	More than 10 working days
	165 (86.8%)	23 (12.1%)	2 (1.1%)

\* Excluding enquiries on existing complaints.

### (B) Complaints\*\*

	Response Time	
	Within 5 working days	More than 5 working days
Acknowledgement	5,075 (98.9%)	56 (1.1%)

\*\* Excluding cases where acknowledgement is not necessary or practicable.

	Cases outside jurisdiction or under restriction			Other cases		
	Within 10 working days (target: not less than 70%)	Within 11-15 working days (target: not more than 30%)	More than 15 working days	Less than 3 months (target: not less than 60%)	Within 3-6 months (target: not more than 40%)	More than 6 months
Cases concluded	822 (89.5%)	80 (8.7%)	17 (1.8%)	3,867 (86.3%)	575 (12.8%)	40 (0.9%)

### (C) Outreach talks

	Response Time	
	Within 10 working days	More than 10 working days
Requests for outreach talks	7 (100%)	0

## Complainants Charter

We endeavour to provide a high standard of service to the public. In fully discharging our duties, this Office has drawn up the following Charter:

### Our Commitment

- Handle complaints in a professional, impartial and efficient manner
- Keep complainants informed of the progress and outcome of our inquiries
- Explain our decisions clearly
- Protect complainants' privacy
- Treat the public with courtesy and respect

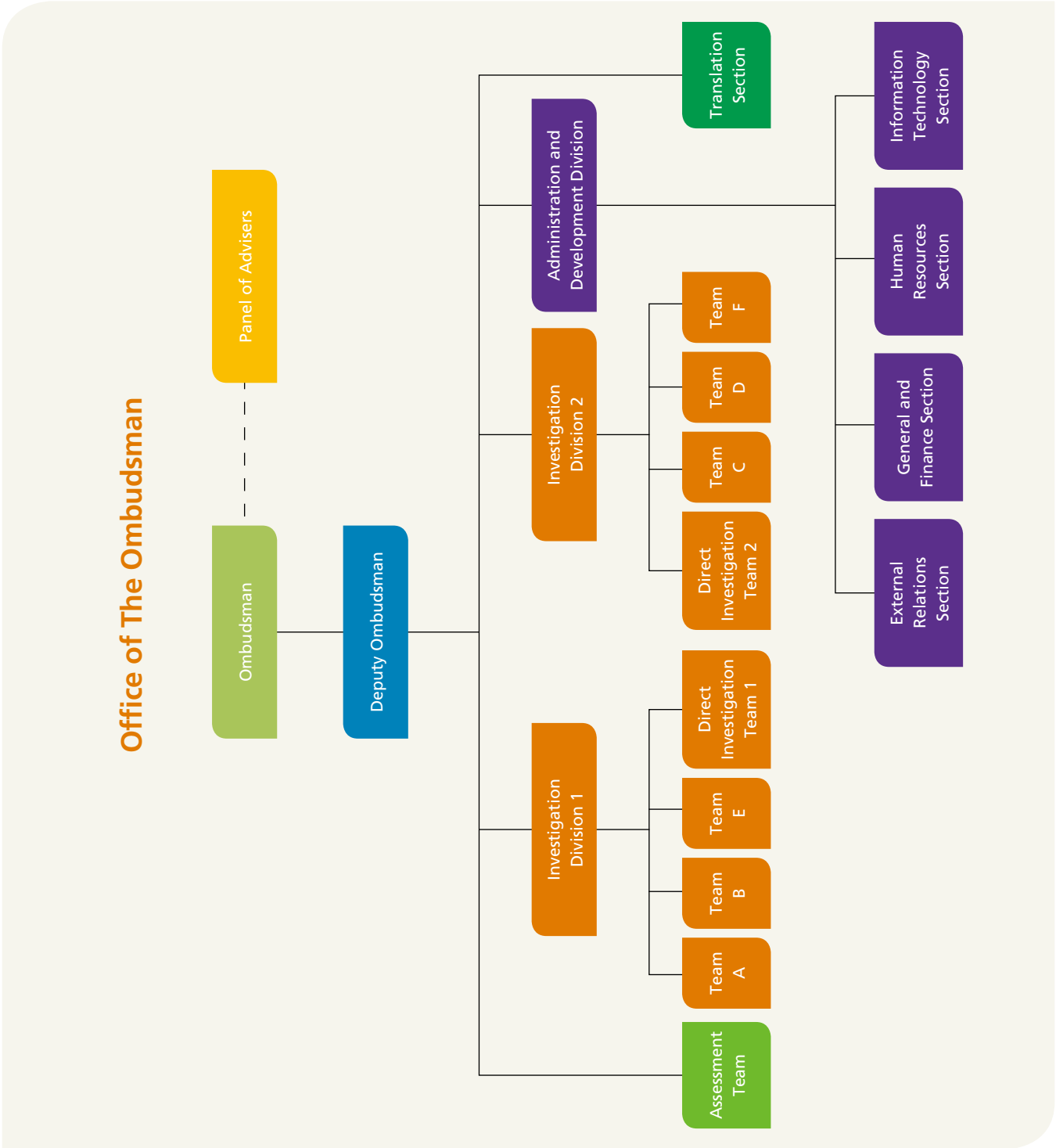
Complainants not satisfied with our findings may write to this Office and state the grounds for a review of their cases. Any views on individual staff or our services may be directed to the Chief Manager of this Office. We will take follow-up action with professionalism and fairness.

### Complainants' Responsibilities

- State clearly the issues of complaint
- Provide true and accurate information in a timely way
- Cooperate in our inquiries
- Lodge complaints in a reasonable manner
- Treat the staff with courtesy and respect

If complainants are not cooperative, the progress and/or outcome of our inquiries may be affected. In such circumstances, we will take proper actions as appropriate, such as making our decision on the basis of available evidence or terminating the inquiry.





### Engineering and Surveying

Dr Chan Ka Ching, Andrew  
 Mr Chan Yuk Ming, Raymond  
 Dr Ho Chung Tai, Raymond  
 Dr Hung Wing Tat  
 Mr Leung Kwong Ho, Edmund  
 Mr Tse Kam Chuen, Vincent

### Legal

Mrs Anne R Carver  
 Professor Johannes M M Chan  
 Professor M J A Cooray  
 Mr Robert G Kotewall  
 Dr Tai Yiu Ting, Benny  
 Professor Wang Gui Guo

### Medical and Nursing

Professor Chien Wai Tong  
 Professor Lai Kar Neng  
 Professor Felice Lieh-Mak  
 Professor Grace Tang  
 Dr Wong Chung Kwong

### Social Work and Rehabilitation Services

Professor Chan Lai Wan  
 Professor Ma Lai Chong, Joyce  
 Mr Ng Wang Tsang, Andy

\* In alphabetical order of surname

Visits to the Office of  
The Ombudsman

Date	Visitors
18 April 2012	Mr Chen Lianfu, Director of the General Bureau of Anti-Embezzlement and Bribery, Supreme People's Procuratorate of China, arranged by the Information Services Department
9 May 2012	Delegates from the Social Credit System Construction Unit of Guangdong Provincial Development and Reform Commission, arranged by the Hong Kong Economic and Trade Office in Guangdong
10 May 2012	Delegates from the National Bureau of Corruption Prevention of China, arranged by the Independent Commission Against Corruption
11 May 2012	Participants of the "Training Course on Legal System Construction" for officials from Qinghai Province, arranged by the Hong Kong Financial Services Institute
15 May 2012	Legal academics from mainland China, arranged by the Asian Legal Resource Centre
16 May 2012	Delegates from the Workplace Crime Prevention Branch of Dongguan Municipal People's Procuratorate, Guangdong Province, arranged by the China Business Centre, Hong Kong Polytechnic University
21 May 2012	Mr Danang Girindawardana, Chief Ombudsman of the Republic of Indonesia
24 May 2012	Delegates from the State Bureau for Letters and Calls, arranged by the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region
29 May 2012	Participants of the "Training Course by Fudan University for Young Cadres", arranged by the Hong Kong Institute of Asia-Pacific Studies, the Chinese University of Hong Kong
7 June 2012	Representatives from the Institute of Policy Development, the Civil Service College, Singapore
11 June 2012	Delegates from Wujiang Municipal Disciplinary Committee, Jiangsu Province, arranged by the China Business Centre, Hong Kong Polytechnic University
12 June 2012	"Training Scheme in Common Law for Mainland Legal Officials", arranged by the Department of Justice
13 June 2012	Delegates from the Workplace Crime Prevention Branch of Dongguan Municipal People's Procuratorate, Guangdong Province, arranged by the China Business Centre, Hong Kong Polytechnic University
22 June 2012	Participants of the "Training Course on Social Management" for cadres from Beijiao in Shunde, Guangdong Province, arranged by the Hong Kong Institute of Asia-Pacific Studies, the Chinese University of Hong Kong
26 June 2012	Delegates from the Gyeonggi Provincial Government, Republic of Korea

Date	Visitors
28 June 2012	Participants of the "Training Course on Anti-corruption Supervision and Construction of Prevention System" for officials from Xinjiang Uygur Autonomous Region of China, arranged by the Hong Kong Financial Services Institute
9 July 2012	Delegates from the Government Inspectorate of Vietnam
11 July 2012	Common Law Scholarship awardees from Peking University, arranged by the Hong Kong Bar Association
12 July 2012	Participants of the "Training Course on Public Administration and Crisis Management" for officials from Cixi in Ningbo, Zhejiang Province, arranged by the Hong Kong Financial Services Institute
17 July 2012	Participants of the "Training Course on Prevention and Management of Crisis in the Urbanisation of Cities" for officials from Hefei, Anhui Province, arranged by the Hong Kong Financial Services Institute
25 July 2012	Delegates from the Department of Supervision and Internal Audit, General Administration of Customs, arranged by the Customs and Excise Department
1 August 2012	Participants of the "Training Course for the General Office of Administrative Approval" of Ningbo, Zhejiang Province, arranged by the Hong Kong Financial Services Institute
8 August 2012	Participants of the "Training Course on Human Resources Development and Talent Development Strategy" for officials from Zibo, Shandong Province, arranged by the Hong Kong Financial Services Institute
14 August 2012	Participants of the "Training Course on Rule of Law and Governance" for officials from the Legislative Affairs Office of Sichuan Provincial Government, arranged by the Hong Kong Institute for Public Administration
15 August 2012	Delegates from the Department of Supervision, Shandong Province, arranged by the China Business Centre, Hong Kong Polytechnic University
21 August 2012	Participants of the "Senior Management Programme", arranged by the Civil Service College, Singapore
23 August 2012	Delegates from the Directorate on Corruption and Economic Crime, Botswana, arranged by the Independent Commission Against Corruption
28 August 2012	Participants of the "Training Course on Anti-corruption and Construction" for officials from Gansu Provincial Government, arranged by the Hong Kong Financial Services Institute
14 September 2012	Delegates from the Office of the Director of Public Prosecutions of Kenya, arranged by the Consulate of the Republic of Kenya in the Hong Kong SAR and Macau SAR
5 October 2012	Mainland law students and non-governmental organisations personnel, arranged by the Asian Legal Resource Centre
10 October 2012	Mr Huang Xianyao, Member of the Guangdong Provincial Standing Committee and Secretary of the Guangdong Provincial Commission for Discipline Inspection, and other delegates arranged by the Constitutional and Mainland Affairs Bureau
12 October 2012	Participants of the "Advanced Programme for Chinese Senior Judges", arranged by the City University of Hong Kong
17 October 2012	Delegates from the Sichuan Provincial Commission for Discipline Inspection, arranged by the Independent Commission Against Corruption
26 October 2012	Students from St Paul's Co-educational College
5 November 2012	Participants of the "Hong Kong-Singapore Permanent Secretaries Exchange Programme 2012", arranged by the Civil Service Bureau

Date	Visitors
6 November 2012	Mr Thomas Frawley, Northern Ireland Ombudsman and Vice-president of the International Ombudsman Institute
7 November 2012	Participants of the “Exchange Programme for Mainland Civil Servants”, arranged by the Hong Kong Institute for Public Administration
15 November 2012	Participants of the “Postgraduate Certificate Course in Corruption Studies”, arranged by the School of Professional and Continuing Education, the University of Hong Kong
19 November 2012	Participants of the “Training Course on Organisations in the Low Hierarchy and Community Construction”, Dalian Administrative College, Liaoning Province, arranged by the Hong Kong Financial Services Institute
20 November 2012	Students of the Master of Laws Programme, Singapore Management University
3 December 2012	Participants of the “Training Course on Construction Projects, Migrant Settlement and Social Management” for officials from Guizhou Province, arranged by the Hong Kong Financial Services Institute
5 December 2012	Participants of the “Training Course on Anti-corruption and Construction and Administrative Supervision” for officials from Xian, Shaanxi Province, arranged by the Hong Kong Productivity Council
6 December 2012	Delegates from the Organisation Department of Beijing, Communist Party of China, arranged by the School of Professional and Continuing Education, the University of Hong Kong
12 December 2012	Leader cadres from Yangchun, Guangdong Province, arranged by the School of Professional and Continuing Education, the University of Hong Kong
20 December 2012	Mr Nirj Deva, Member of the European Parliament for United Kingdom, Chairman of the European Parliament China Friendship Group, arranged by the Information Services Department
8 January 2013	Participants of the “Training Course on Procuratorial Work” for officials from Shanxi Provincial People’s Procuratorate, arranged by the China Business Centre, Hong Kong Polytechnic University
17 January 2013	Professor Carlos Lo, the Department of Management and Marketing, Hong Kong Polytechnic University
21 February 2013	Students from Shun Tak Fraternal Association Leung Kau Kui College
28 February 2013	Law professors and students from the Soka University, Japan, arranged by the University of Hong Kong
4 March 2013	Professor Mate Szabo, Commissioner for Fundamental Rights, Hungary
5 March 2013	Delegates from the Management Services Department, Prime Minister Office, Brunei, arranged by the Efficiency Unit
12 March 2013	Participants of the “Training Course on Innovation in Managing a Transforming Society” for officials from the Organisation Department of Zhuhai Municipal Committee, Guangdong Province, arranged by the School of Professional and Continuing Education, the University of Hong Kong
20 March 2013	Participants of the “Training Course on Construction of Service-oriented Government” for the Party School of Foshan Municipal Committee, arranged by the Institute for Entrepreneurship, Hong Kong Polytechnic University







## Tables

Table 1 Caseload

	Reporting year¹				
	08/09	09/10	10/11	11/12	12/13
Enquiries	14,005	13,789	12,227	12,545	12,255
Complaints					
(a) For processing	6,671	5,869	6,467	6,085	6,349
- Received	5,386[853]	4,803[393]	5,339[627]	5,029[180]	5,501[238]
- Brought forward²	1,285	1,066	1,128	1,056	848
(b) Processed	5,701[1,225]	4,775[402]	5,437[611]	5,237[210]	5,401[235]
Non-pursuable³	3,017[814]	2,560[100]	2,381[11]	2,560[127]	3,116[102]
Pursued and concluded	2,684[411]	2,215[302]	3,056[600]	2,677[83]	2,285[133]
- By inquiry⁴	2,437[224]	2,086[302]	2,894[524]	2,492[6]	2,094[133]
- By full investigation⁵	247[187]	126	155[76]	163[61]	169
- By mediation⁶	0	3	7	22[16]	22
(c) Percentage processed = (b) / (a)	85.5%	81.4%	84.1%	86.1%	85.1%
(d) Carried forward = (a) – (b)	970	1,094	1,030	848	948
Direct investigations completed	6	7	6	5	6

Note 1. From 1 April to 31 March of the next year.

Note 2. Including 96, 34 and 26 re-opened cases in 2009/10, 2010/11 and 2011/12 respectively.

Note 3. Outside our jurisdiction or restricted by The Ombudsman Ordinance; withdrawn by complainant, discontinued or not undertaken by the Office, e.g. *subjudice* or lack of *prima facie* evidence

Note 4. Pursued under section 11A of the Ordinance, for general cases.

Note 5. Pursued under section 12 of the Ordinance, for complex cases possibly involving serious maladministration, systemic flaws, etc.

Note 6. Pursued under section 11B of the Ordinance, for cases involving no, or only minor, maladministration.

[ ] Number of topical cases.

- See “Glossary of Terms” at Annex 1 for detailed definitions of the above terms.

Table 2 Enquiries/Complaints Received

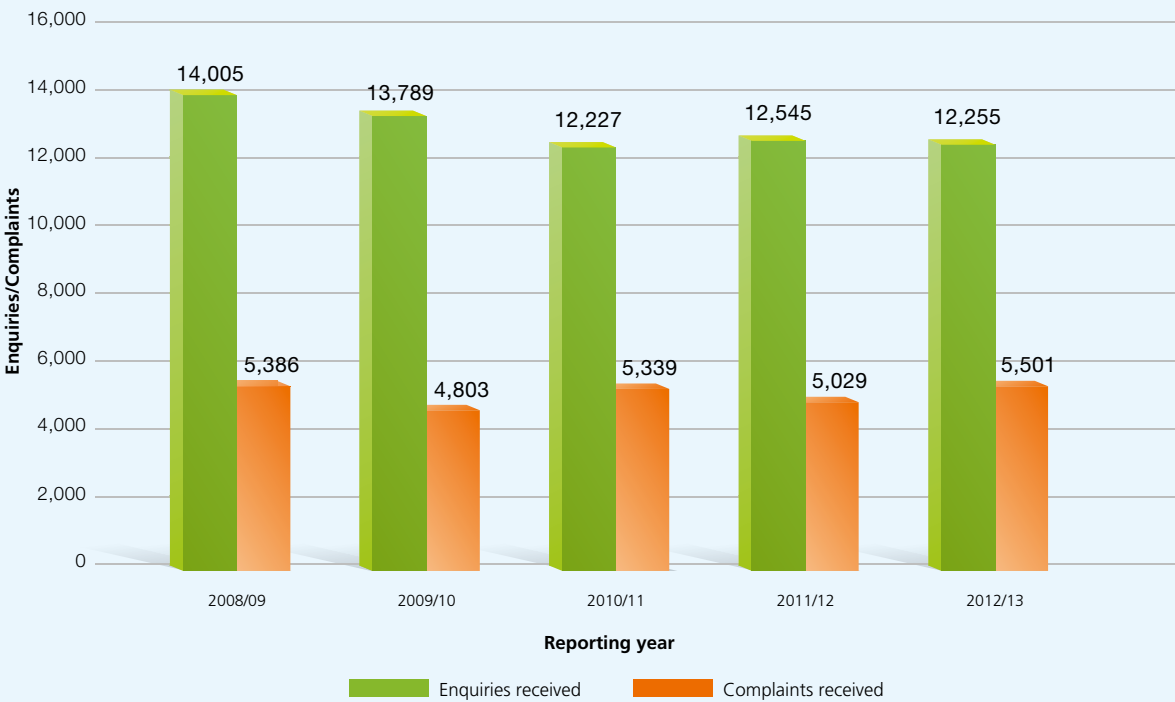
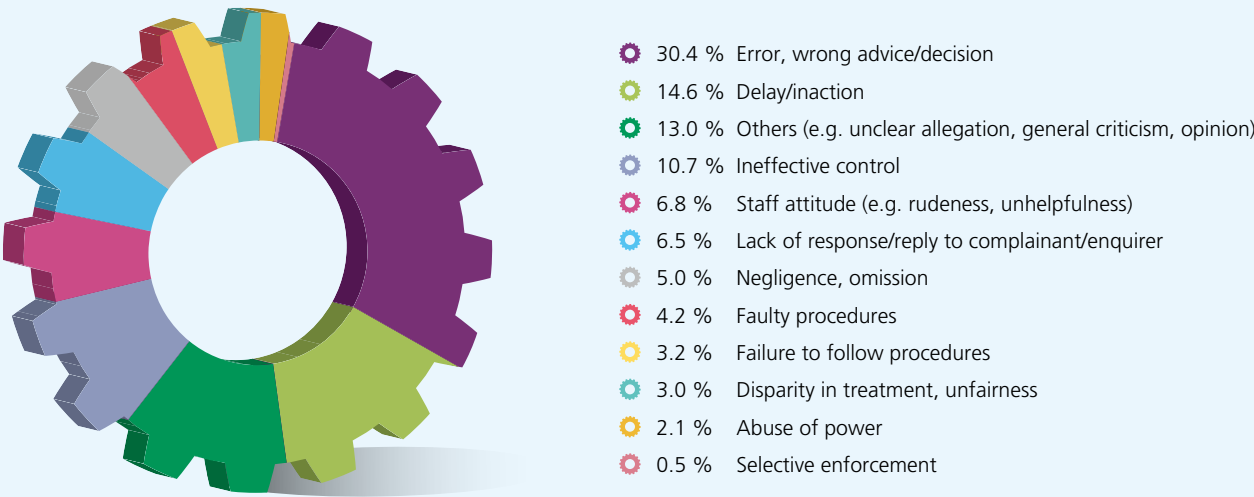


Table 3 Nature of Complaints Processed



**Table 4** Distribution of Enquiries/Complaints Received

Organisation		Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	(AFCD)	48	166
Airport Authority	(AA)	2	4
Architectural Services Department	(Arch SD)	8	11
Audit Commission	(Aud)	3	2
Auxiliary Medical Service	(AMS)	2	4
Buildings Department	(BD)	298	260
Census and Statistics Department	(C & SD)	2	6
Civil Aid Service	(CAS)	1	1
Civil Aviation Department	(CAD)	5	6
Civil Engineering and Development Department	(CEDD)	6	13
Companies Registry	(CR)	32	41
Consumer Council	(CC)	62	26
Correctional Services Department	(CSD)	25	82
Customs and Excise Department	(C&ED)	42	22
Department of Health	(DH)	62	40
Department of Justice	(D of J)	21	31
Drainage Services Department	(DSD)	24	33
Electrical and Mechanical Services Department	(E & MSD)	34	33
Employees Retraining Board	(ERB)	20	16
Environmental Protection Department	(EPD)	64	51
Equal Opportunities Commission	(EOC)	42	36
Estate Agents Authority	(EAA)	17	10
Fire Services Department	(FSD)	60	68
Food and Environmental Hygiene Department	(FEHD)	625	611
General Office of the Chief Executive's Office	(GOCEO)	10	13
Government Flying Service	(GFS)	1	0
Government Laboratory	(Govt Lab)	1	0
Government Logistics Department	(GLD)	2	1

Organisation		Enquiries	Complaints
Government Property Agency	(GPA)	3	5
Government Secretariat			
- Chief Secretary for Administration's Office	(GS-CS)	196	141
- Civil Service Bureau	(GS-CSB)	8	12
- Commerce and Economic Development Bureau	(GS-CEDB)	78	162
- Commerce, Industry and Technology Bureau	(GS-CITB)	1	0
- Constitutional and Mainland Affairs Bureau	(GS-CMAB)	9	4
- Development Bureau	(GS-DEVB)	11	17
- Education Bureau	(GS-EDB)	85	69
- Environment Bureau	(GS-ENB)	3	2
- Financial Secretary's Office	(GS-FS OFF)	2	1
- Financial Services and the Treasury Bureau	(GS-FSTB)	33	25
- Food and Health Bureau	(GS-FHB)	1	5
- Home Affairs Bureau	(GS-HAB)	13	12
- Labour and Welfare Bureau	(GS-LWB)	11	8
- Security Bureau	(GS-SB)	3	3
- Transport and Housing Bureau	(GS-THB)	10	10
Highways Department	(Hy D)	48	56
Home Affairs Department	(HAD)	105	415
Hong Kong Arts Development Council	(HKADC)	1	3
Hong Kong Examinations and Assessment Authority	(HKEAA)	20	17
Hong Kong Housing Authority	(HKHA)	19	8
Hong Kong Housing Society	(HKHS)	31	24
Hong Kong Monetary Authority	(HKMA)	28	30
Hong Kong Observatory	(HKO)	6	4
Hong Kong Police Force	(HKPF)	316	6
Hospital Authority	(HA)	375	200
Housing Department	(HD)	744	486



Organisation		Enquiries	Complaints
Immigration Department	(Imm D)	180	166
Independent Commission Against Corruption	(ICAC)	37	1
Information Services Department	(ISD)	0	2
Inland Revenue Department	(IRD)	89	60
Intellectual Property Department	(IPD)	3	4
Invest Hong Kong	(Invest HK)	0	2
Judiciary Administrator	(JA)	94	66
Kowloon-Canton Railway Corporation	(KCRC)	1	1
Labour Department	(LD)	199	115
Land Registry	(LR)	6	9
Lands Department	(Lands D)	294	334
Legal Aid Department	(LAD)	127	69
Legislative Council Secretariat	(LCS)	5	7
Leisure and Cultural Services Department	(LCSD)	216	216
Mandatory Provident Fund Schemes Authority	(MPFA)	29	17
Marine Department	(MD)	12	12
Office of the Communications Authority	(OFCA)	43	47
Office of the Telecommunications Authority	(OFTA)	1	0
Official Receiver's Office	(ORO)	35	191
Planning Department	(Plan D)	12	16
Post Office	(PO)	92	65
Privacy Commissioner for Personal Data	(PCPD)	56	38
Radio Television Hong Kong	(RTHK)	15	18
Rating and Valuation Department	(RVD)	17	19
Registration and Electoral Office	(REO)	39	22
Standing Commission on Civil Service Salaries and Conditions of Service, Secretariat	(SCCS)	1	0
Securities and Futures Commission	(SFC)	20	15

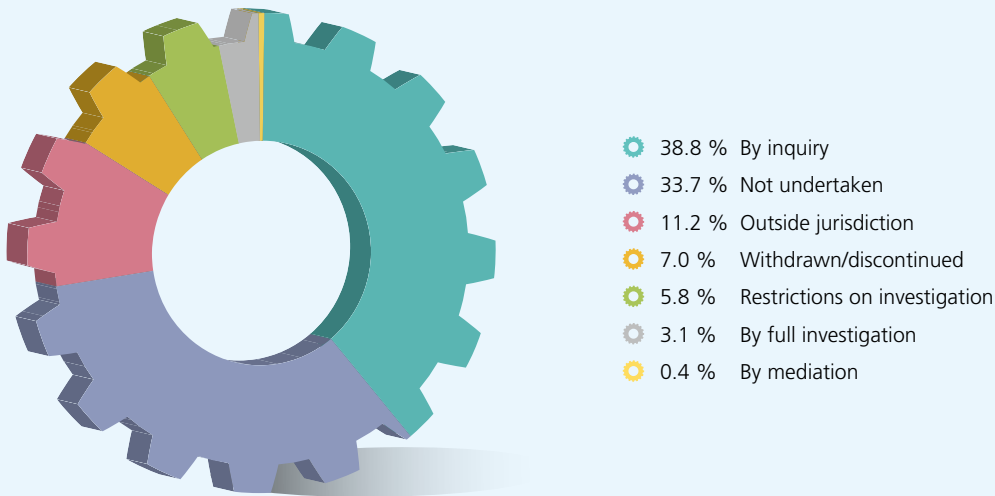
Organisation		Enquiries	Complaints
Social Welfare Department	(SWD)	375	210
Student Financial Assistance Agency	(SFAA)	59	33
Trade and Industry Department	(TID)	3	1
Transport Department	(TD)	231	216
Treasury	(Try)	5	4
University Grants Committee, Secretariat	(UGC)	2	0
Urban Renewal Authority	(URA)	24	16
Vocational Training Council	(VTC)	16	11
Water Supplies Department	(WSD)	111	89
<b>Total</b>		<b>6,128</b>	<b>5,404</b>

Note 1. The total number of enquiries and complaints received in Table 1 are 12,255 and 5,501 respectively. They are different from the figures shown in Table 4 because -

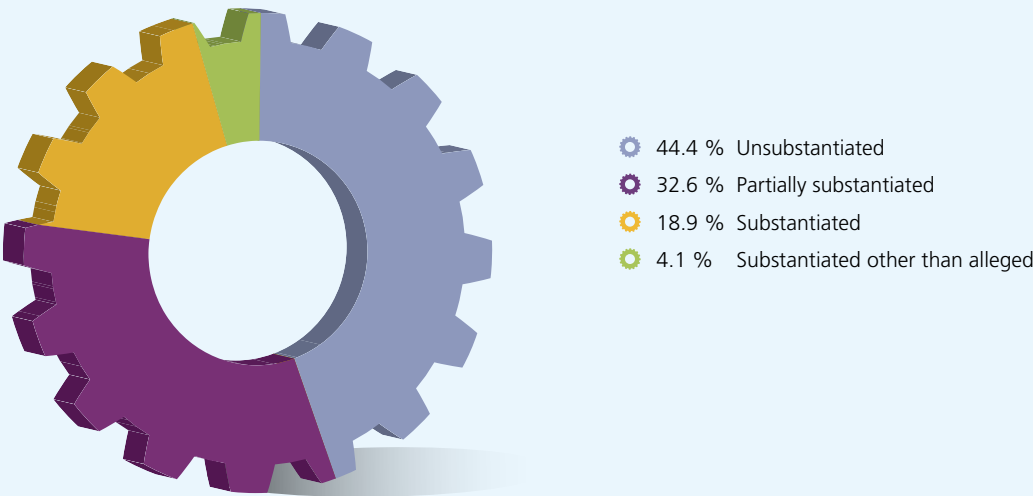
- (i) enquiries/complaints involving bodies outside The Ombudsman's jurisdiction; and
- (ii) complaints involving organisations under Part II of Schedule 1 to The Ombudsman Ordinance but unrelated to The Code on Access to Information are not shown in Table 4.

Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

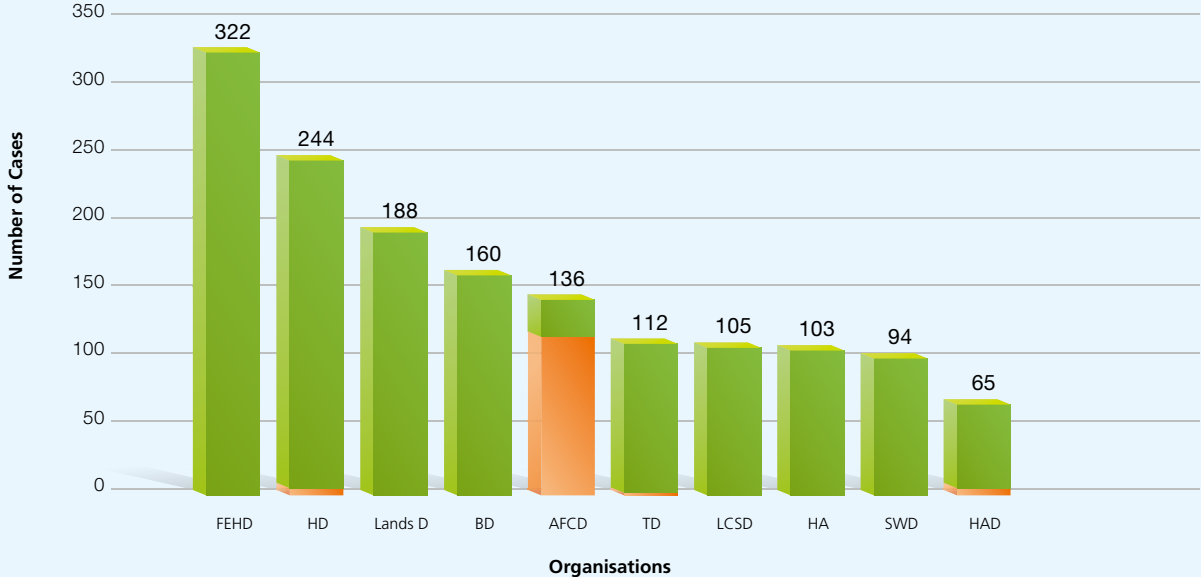
**Table 5** Distribution of Complaints Processed:  
5,401 Cases



**Table 7** Results of Complaints Concluded by  
Full Investigation: 169 Cases

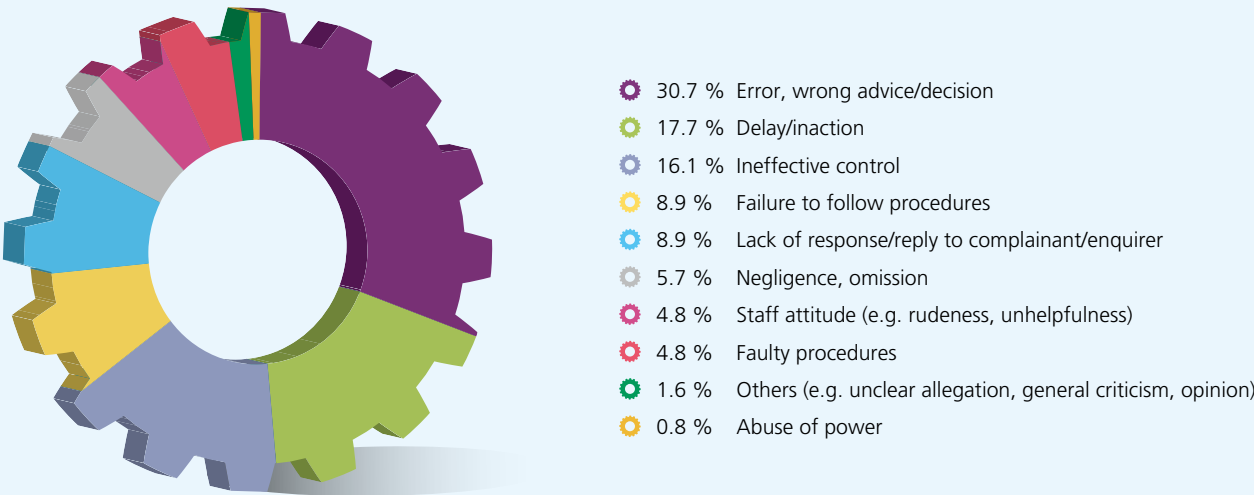


**Table 6** Complaints Pursued and Concluded:  
Top Ten Organisations



Note 1. "Complaints Pursued and Concluded" are cases handled by way of inquiry, full investigation or mediation.  
 Note 2. These top ten organisations accounted for 66.9% of the 2,285 complaints pursued and concluded.  
 Note 3. ■ signifies topical complaints (arising from the same social topics).

**Table 8** Forms of Maladministration  
Substantiated by Full Investigation



**Table 9** Results of Complaints Concluded by Inquiry

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found	No. of Ombudsman's suggestions for improvement
Agriculture, Fisheries and Conservation Department	134	117	2
Airport Authority	3	1	0
Architectural Services Department	3	2	1
Audit Commission	1	0	0
Buildings Department	145	44	3
Census and Statistics Department	1	0	0
Civil Aid Service	1	1	0
Civil Aviation Department	3	0	0
Civil Engineering and Development Department	5	1	0
Companies Registry	5	2	0
Consumer Council	8	2	2
Correctional Services Department	32	0	1
Customs and Excise Department	5	0	0
Department of Health	24	10	0
Department of Justice	3	0	1
Drainage Services Department	19	0	0
Electrical and Mechanical Services Department	9	4	0
Employees Retraining Board	5	1	0
Environmental Protection Department	19	6	2
Equal Opportunities Commission	3	0	0
Estate Agents Authority	9	2	0
Fire Services Department	14	4	0
Food and Environmental Hygiene Department	288	159	5
General Office of the Chief Executive's Office	2	1	0
Government Property Agency	1	0	0

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found	No. of Ombudsman's suggestions for improvement
Government Secretariat			
- Chief Secretary for Administration's Office	35	8	8
- Commerce and Economic Development Bureau	3	0	0
- Constitutional and Mainland Affairs Bureau	2	0	0
- Civil Service Bureau	2	1	0
- Development Bureau	4	0	0
- Education Bureau	36	8	1
- Financial Services and the Treasury Bureau	10	2	0
- Food and Health Bureau	4	2	0
- Home Affairs Bureau	1	1	0
- Labour and Welfare Bureau	2	1	1
- Transport and Housing Bureau	4	0	0
Highways Department	27	2	1
Home Affairs Department	56	6	0
Hong Kong Examinations and Assessment Authority	8	2	0
Hong Kong Housing Authority	4	1	0
Hong Kong Housing Society	6	0	0
Hong Kong Monetary Authority	14	3	0
Hong Kong Police Force	4	1	0
Hospital Authority	100	31	0
Housing Department	237	39	4
Immigration Department	29	4	1
Inland Revenue Department	33	14	6
Intellectual Property Department	2	1	1
Judiciary Administrator	12	0	1
Labour Department	43	3	0



### Organisation

No. of  
complaints

Cases with  
inadequacies/  
deficiencies  
found

No. of  
Ombudsman's  
suggestions for  
improvement

Lands Department	165	47	5
Legal Aid Department	30	7	0
Leisure and Cultural Services Department	99	31	13
Mandatory Provident Fund Schemes Authority	5	3	0
Marine Department	4	0	0
Office of the Communications Authority	9	2	0
Office of the Telecommunications Authority	1	0	0
Official Receiver's Office	9	2	0
Planning Department	6	0	0
Post Office	36	19	2
Privacy Commissioner for Personal Data	11	2	0
Radio Television Hong Kong	6	1	0
Rating and Valuation Department	6	2	0
Registration and Electoral Office	13	5	0
Securities and Futures Commission	4	0	0
Social Welfare Department	87	16	0
Student Financial Assistance Agency	13	5	1
Television and Entertainment Licensing Authority	1	0	0
Transport Department	104	23	8
Treasury	1	1	0
Urban Renewal Authority	8	3	1
Vocational Training Council	5	3	1
Water Supplies Department	50	11	0
West Kowloon Culture District Authority	1	1	1
<b>Total</b>	<b>2,094</b>	<b>671</b>	<b>73</b>

Note 1. Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by inquiry are not shown.

Note 2. The Ombudsman may suggest any number of improvement measures in a case, irrespective of whether inadequacies or deficiencies are found after inquiry.

**Table 10** Complaint Processing Time

### Overall

YEAR	08/09	09/10	10/11	11/12	12/13
TIME					
Less than 3 months	72.5%	65.3%	80.1%	83.9%	88.6%
3 – 6 months	26.0%	33.1%	19.3%	15.4%	10.7%
More than 6 months	1.5%	1.6%	0.6%	0.7%	0.7%
<b>Total</b>	<b>5,701</b>	<b>4,775</b>	<b>5,437</b>	<b>5,237</b>	<b>5,401</b>

### By Full Investigation and Other Modes

YEAR	08/09	09/10	10/11	11/12	12/13
TIME					
<b>Full investigation</b>					
Less than 3 months	10.9%	0.8%	50.3%	4.9%	2.4%
3 – 6 months	73.7%	54.0%	29.0%	77.9%	78.7%
More than 6 months	15.4%	45.2%	20.7%	17.2%	18.9%
<b>Number of complaints</b>	<b>247</b>	<b>126</b>	<b>155</b>	<b>163</b>	<b>169</b>
<b>Other modes</b>					
Less than 3 months	75.3%	67.0%	80.9%	86.4%	91.4%
3 – 6 months	23.9%	32.6%	19.0%	13.4%	8.5%
More than 6 months	0.8%	0.4%	0.1%	0.2%	0.1%
<b>Number of complaints</b>	<b>5,454</b>	<b>4,649</b>	<b>5,282</b>	<b>5,074</b>	<b>5,232</b>



# **Financial Statements**

for the year ended 31 March 2013

## Independent auditor's report to The Ombudsman

*(Established in Hong Kong pursuant to The Ombudsman Ordinance)*

We have audited the financial statements of The Ombudsman set out on pages 3 to 22, which comprise the balance sheet as at 31 March 2013, the statement of income and expenditure, statement of comprehensive income, statement of changes in funds and cash flow statement for the year then ended and a summary of significant accounting policies and other explanatory information.

### The Ombudsman's responsibility for the financial statements

The Ombudsman is responsible for the preparation of financial statements that give a true and fair view in accordance with Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants and for such internal control as The Ombudsman determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. This report is made solely to you, in accordance with our agreed terms of engagement, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

We conducted our audit in accordance with Hong Kong Standards on Auditing issued by the Hong Kong Institute of Certified Public Accountants. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation of the financial statements that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by The Ombudsman, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## Independent auditor's report to The Ombudsman (continued)

*(Established in Hong Kong pursuant to The Ombudsman Ordinance)*

### Opinion

In our opinion, the financial statements give a true and fair view of the state of affairs of The Ombudsman as at 31 March 2013 and of its surplus and cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards.

### KPMG

Certified Public Accountants

8th Floor, Prince's Building  
10 Chater Road  
Central, Hong Kong

16 May 2013



## Statement of income and expenditure for the year ended 31 March 2013

(Expressed in Hong Kong dollars)

	Note	2013	2012
<b>Income</b>			
Government subventions	3	\$ 98,985,000	\$ 94,157,111
Amortisation of deferred Government subventions	3	2,312,382	2,965,041
Interest income on bank deposits		6,294,324	5,615,522
Other income		45,905	294,246
		<u>\$ 107,637,611</u>	<u>\$ 103,031,920</u>
<b>Expenditure</b>			
Operating expenses	4	(92,999,795)	(84,439,725)
<b>Surplus for the year</b>		<u><b>\$ 14,637,816</b></u>	<u><b>\$ 18,592,195</b></u>

## Statement of comprehensive income for the year ended 31 March 2013

The Ombudsman had no components of comprehensive income other than "surplus for the year" in either of the periods presented. Accordingly, no separate statement of comprehensive income is presented as The Ombudsman's "total comprehensive income" was the same as the "surplus for the year" in both periods.

The notes on pages 9 to 22 form part of these financial statements.

## Balance sheet at 31 March 2013

(Expressed in Hong Kong dollars)

	Note	2013	2012
<b>ASSETS</b>			
<b>Non-current asset</b>			
Property, plant and equipment	7	\$ 74,197,078	\$ 77,050,384
<b>Current assets</b>			
Deposits and prepayments		\$ 2,647,194	\$ 667,929
Interest receivable		1,987,288	2,899,494
Time deposits with original maturity over three months		320,712,000	305,327,000
Cash and cash equivalents	8	9,327,656	9,532,837
		<u>\$ 334,674,138</u>	<u>\$ 318,427,260</u>
<b>Total assets</b>		<u><b>\$ 408,871,216</b></u>	<u><b>\$ 395,477,644</b></u>
<b>LIABILITIES</b>			
<b>Non-current liabilities</b>			
Contract gratuity payable - non-current	9	\$ 4,616,944	\$ 3,677,790
Deferred Government subventions - non-current	3	69,785,758	71,599,978
		<u>\$ 74,402,702</u>	<u>\$ 75,277,768</u>
<b>Current liabilities</b>			
Other payables and accruals		\$ 2,154,195	\$ 2,084,017
Contract gratuity payable - current	9	4,640,248	4,581,442
Deferred Government subventions - current	3	1,814,220	2,312,382
		<u>\$ 8,608,663</u>	<u>\$ 8,977,841</u>
<b>Total liabilities</b>		<u><b>\$ 83,011,365</b></u>	<u><b>\$ 84,255,609</b></u>

## Balance sheet at 31 March 2013 (continued)

(Expressed in Hong Kong dollars)

	Note	2013	2012
<b>FUNDS</b>			
Accumulated funds		\$ 325,859,851	\$ 311,222,035
<b>Total funds</b>		<b>\$ 325,859,851</b>	<b>\$ 311,222,035</b>
<b>Total funds and liabilities</b>		<b>\$ 408,871,216</b>	<b>\$ 395,477,644</b>

Approved and authorised for issue by

**Mr Alan N Lai**  
**The Ombudsman**

16 May 2013

The notes on pages 9 to 22 form part of these financial statements.

## Statement of changes in funds for the year ended 31 March 2013

(Expressed in Hong Kong dollars)

	Accumulated funds
<b>Balance at 1 April 2011</b>	<b>\$ 292,629,840</b>
<b>Change in funds for 2011/2012:</b>	
Surplus and total comprehensive income for the year	18,592,195
<b>Balance at 31 March 2012 and 1 April 2012</b>	<b>\$ 311,222,035</b>
<b>Change in funds for 2012/2013:</b>	
Surplus and total comprehensive income for the year	14,637,816
<b>Balance at 31 March 2013</b>	<b>\$ 325,859,851</b>

The notes on pages 9 to 22 form part of these financial statements.

## Cash flow statement for the year ended 31 March 2013

(Expressed in Hong Kong dollars)

	Note	2013	2012
<b>Operating activities</b>			
Surplus for the year		\$ 14,637,816	\$ 18,592,195
Adjustments for:			
Interest income		(6,294,324)	(5,615,522)
Depreciation		3,158,273	3,880,453
Amortisation of deferred Government subventions		(2,312,382)	(2,965,041)
(Gain)/loss on disposal of property, plant and equipment		(4,679)	2,179
<b>Operating surplus before changes in working capital</b>		<b>\$ 9,184,704</b>	<b>\$ 13,894,264</b>
Increase in deposits and prepayments		(1,979,265)	(58,515)
Increase in other payables and accruals		70,178	300,040
Increase in contract gratuity payable		997,960	937,594
<b>Net cash generated from operating activities</b>		<b>\$ 8,273,577</b>	<b>\$ 15,073,383</b>
<b>Investing activities</b>			
Interest received		\$ 7,206,530	\$ 4,159,376
Payments for purchase of property, plant and equipment		(306,426)	(1,423,042)
Proceeds from disposal of property, plant and equipment		6,138	-
Increase of time deposits with original maturity over three months		(320,712,000)	(305,327,000)
Time deposits with original maturity over three months matured		305,327,000	289,367,000
<b>Net cash used in investing activities</b>		<b>\$ (8,478,758)</b>	<b>\$ (13,223,666)</b>

## Cash flow statement for the year ended 31 March 2013 (continued)

(Expressed in Hong Kong dollars)

	Note	2013	2012
<b>Net (decrease)/increase in cash and cash equivalents</b>		\$ (205,181)	\$ 1,849,717
<b>Cash and cash equivalents at beginning of the year</b>	8	9,532,837	7,683,120
<b>Cash and cash equivalents at end of the year</b>	8	<b>\$ 9,327,656</b>	<b>\$ 9,532,837</b>

The notes on pages 9 to 22 form part of these financial statements.



# Notes to the financial statements

(Expressed in Hong Kong dollars unless otherwise indicated)

## 1 Status of The Ombudsman

The Ombudsman was established as a corporation by statute on 19 December 2001. The functions of The Ombudsman are prescribed by the Ombudsman Ordinance.

The address of its registered office is 30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong.

## 2 Significant accounting policies

### (a) Statement of compliance

These financial statements have been prepared in accordance with all applicable Hong Kong Financial Reporting Standards (“HKFRSs”), which collective term includes all applicable individual Hong Kong Financial Reporting Standards, Hong Kong Accounting Standards (“HKASs”) and Interpretations issued by the Hong Kong Institute of Certified Public Accountants (“HKICPA”) and accounting principles generally accepted in Hong Kong. A summary of the significant accounting policies adopted by The Ombudsman is set out below.

The HKICPA has issued several amendments to HKFRSs that are first effective for the current accounting period of The Ombudsman. However, none of these developments are relevant to The Ombudsman’s financial statements and The Ombudsman has not applied any new standard or interpretation that is not yet effective for the current accounting period (see note 14).

### (b) Basis of preparation of the financial statements

The measurement basis used in the preparation of the financial statements is the historical cost basis.

The preparation of financial statements in conformity with HKFRSs requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets, liabilities, income and expenditure. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgements about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

## 2 Significant accounting policies (continued)

### (c) Property, plant and equipment

Property, plant and equipment are stated at cost less accumulated depreciation and impairment losses.

Depreciation is calculated to write off the cost of items of property, plant and equipment, less their estimated residual value, if any, using the straight line method over their estimated useful lives as follows:

– Interest in leasehold land held for own use under finance leases	Over unexpired term of lease, which is 54 years
– Building	40 years
– Leasehold improvements	10 years
– Office furniture	5 years
– Office equipment	5 years
– Computer equipment	4 years
– Motor vehicles	5 years

Both the useful life of an asset and its residual value, if any, are reviewed annually.

The carrying amounts of property, plant and equipment are reviewed for indications of impairment at each balance sheet date. An impairment loss is recognised in the statement of income and expenditure if the carrying amount of an asset, or the cash-generating unit to which it belongs, exceeds its recoverable amount. The recoverable amount of an asset, or of the cash-generating unit to which it belongs, is the greater of its fair value less costs to sell and value in use. In assessing value in use, the estimated future cash flows are discounted to their present values using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the assets. An impairment loss is reversed if there has been a favourable change in the estimates used to determine the recoverable amount.

Gains or losses arising from the retirement or disposal of an item of property, plant and equipment are determined as the difference between the net disposal proceeds and the carrying amount of the item and are recognised in the statement of income and expenditure on the date of retirement or disposal.

## 2 Significant accounting policies (continued)

### (d) Leased assets

An arrangement, comprising a transaction or a series of transactions, is or contains a lease if The Ombudsman determines that the arrangement conveys a right to use a specific asset or assets for an agreed period of time in return for a payment or a series of payments. Such a determination is made based on an evaluation of the substance of the arrangement and is regardless of whether the arrangement takes the legal form of a lease.

#### (i) *Classification of assets leased to The Ombudsman*

Assets that are held by The Ombudsman under leases which transfer to The Ombudsman substantially all the risks and rewards of ownership are classified as being held under finance leases. Leases which do not transfer substantially all the risks and rewards of ownership to The Ombudsman are classified as operating leases.

#### (ii) *Assets acquired under finance leases*

Where The Ombudsman acquires the use of assets under finance leases, the amounts representing the fair value of the leased asset, or, if lower, the present value of the minimum lease payments, of such assets are included in property, plant and equipment and the corresponding liabilities, net of finance charges, are recorded as obligations under finance leases. Depreciation is provided at rates which write off the cost of the assets over the term of the relevant lease or, where it is likely The Ombudsman will obtain ownership of the asset, the life of the asset, as set out in note 2(c). Impairment losses are accounted for in accordance with the accounting policy as set out in note 2(c).

#### (iii) *Operating lease charges*

Where The Ombudsman has the use of other assets under operating leases, payments made under the leases are charged to the statement of income and expenditure in equal instalments over the accounting periods covered by the lease term, except where an alternative basis is more representative of the pattern of benefits to be derived from the leased asset. Lease incentives received are recognised in statement of income and expenditure as an integral part of the aggregate net lease payments made.

## 2 Significant accounting policies (continued)

### (e) Receivables

Receivables are initially recognised at fair value and thereafter stated at amortised cost using the effective interest method, less allowance for impairment of doubtful debts, except where the effect of discounting would be immaterial. In such cases, the receivables are stated at cost less allowance for impairment of doubtful debts.

Impairment losses for bad and doubtful debts are recognised when there is objective evidence of impairment and are measured as the difference between the carrying amount of the financial asset and the estimated future cash flows, discounted at the asset's original effective interest rate where the effect of discounting is material. Objective evidence of impairment includes observable data that come to the attention of The Ombudsman about events that have an impact on the asset's estimated future cash flows such as significant financial difficulty of the debtor.

Impairment losses for receivables whose recovery is considered doubtful but not remote are recorded using an allowance account. When The Ombudsman is satisfied that recovery is remote, the amount considered irrecoverable is written off against the receivable directly and any amounts held in the allowance account relating to that debt are reversed. Subsequent recoveries of amounts previously charged to the allowance account are reversed against the allowance account. Other changes in the allowance account and subsequent recoveries of amounts previously written off directly are recognised in the statement of income and expenditure.

### (f) Other payables and accruals

Other payables and accruals are initially recognised at fair value and thereafter stated at amortised cost unless the effect of discounting would be immaterial, in which case they are stated at cost.

### (g) Cash and cash equivalents

Cash and cash equivalents comprise cash at bank and in hand, demand deposits with banks and other financial institutions, and short-term, highly liquid investments that are readily convertible into known amounts of cash and which are subject to an insignificant risk of changes in value, having been within three months of maturity at acquisition.

## 2 Significant accounting policies (continued)

### (h) Employee benefits

Salaries, gratuities, paid annual leave, leave passage and the cost to The Ombudsman of non-monetary employee benefits are accrued in the year in which the associated services are rendered by employees of The Ombudsman. Where payment or settlement is deferred and the effect would be material, these amounts are stated at their present values.

Contributions to Mandatory Provident Fund ("MPF") as required under the Hong Kong Mandatory Provident Fund Schemes Ordinance are recognised as an expenditure in the statement of income and expenditure as incurred.

### (i) Provisions and contingent liabilities

Provisions are recognised for liabilities of uncertain timing or amount when The Ombudsman has a legal or constructive obligation arising as a result of a past event, it is probable that an outflow of economic benefits will be required to settle the obligation and a reliable estimate can be made. Where the time value of money is material, provisions are stated at the present value of the expenditure expected to settle the obligation.

Where it is not probable that an outflow of economic benefits will be required, or the amount cannot be estimated reliably, the obligation is disclosed as a contingent liability, unless the probability of outflow of economic benefits is remote. Possible obligations, whose existence will only be confirmed by the occurrence or non-occurrence of one or more future events are also disclosed as contingent liabilities unless the probability of outflow of economic benefits is remote.

### (j) Income recognition

Income is measured at the fair value of the consideration received or receivable. Provided it is probable that the economic benefits will flow to The Ombudsman and the income and expenditure, if applicable, can be measured reliably, income is recognised in the statement of income and expenditure as follows:

#### (i) Government subventions

An unconditional Government subvention is recognised as income in the statement of income and expenditure when the grant becomes receivable. Other Government subventions are recognised in the balance sheet initially when there is reasonable assurance that they will be received and that The Ombudsman will comply with the conditions attaching to them. Subventions that compensate The Ombudsman for expenses incurred are recognised as income in the statement of income and expenditure on a systematic basis in the same periods in which the expenses are incurred. Subventions that compensate The Ombudsman for the cost of an asset are included in the balance sheet as deferred Government subventions and recognised in the statement of income and expenditure over the period of the lease term or useful life of the related asset on a basis consistent with the depreciation policy as set out in note 2(c).

## 2 Significant accounting policies (continued)

### (j) Income recognition (continued)

#### (ii) Interest income

Interest income is recognised as it accrues using the effective interest method.

#### (iii) Other income

Other income is recognised on an accrual basis.

### (k) Related parties

- (a) A person, or a close member of that person's family, is related to The Ombudsman if that person:
  - (i) has control or joint control over The Ombudsman;
  - (ii) has significant influence over The Ombudsman; or
  - (iii) is a member of the key management personnel of The Ombudsman.
- (b) An entity is related to The Ombudsman if any of the following conditions applies:
  - (i) The entity and The Ombudsman are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).
  - (ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).
  - (iii) Both entities are joint ventures of the same third party.
  - (iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.
  - (v) The entity is a post-employment benefit plan for the benefit of employees of either The Ombudsman or an entity related to The Ombudsman.
  - (vi) The entity is controlled or jointly controlled by a person identified in (k)(a).
  - (vii) A person identified in (k)(a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).

Close members of the family of a person are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity.



### 3 Government subventions and deferred Government subventions

Government subventions represent the funds granted by the Government for daily operations of The Ombudsman.

Deferred Government subventions represent the funds granted by the Government for prepaid lease payments, the purchase of building and certain leasehold improvements. Amortisation of deferred Government subventions is recognised on a straight line basis over the period of the lease term of 54 years of interest in leasehold land held for own use under finance lease for prepaid lease payments, and the useful lives of 40 years and 10 years of building and leasehold improvements respectively in accordance with the accounting policies set out in notes 2(c) and (j)(i).

At 31 March 2013, the deferred Government subventions are expected to be amortised as follows:

	2013	2012
Within one year and included in current liabilities	\$ 1,814,220	\$ 2,312,382
After one year and included in non-current liabilities	69,785,758	71,599,978
	<b>\$ 71,599,978</b>	<b>\$ 73,912,360</b>

### 4 Operating expenses

	2013	2012
Employee benefit expenses (note 5)	\$ 76,564,593	\$ 71,020,138
Depreciation of property, plant and equipment	3,158,273	3,880,453
Rates and management fee	2,511,309	2,289,512
Operating lease rentals in respect of parking spaces	91,200	91,200
Auditor's remuneration	66,600	60,000
Announcement of public interest expense	6,412,140	3,138,151
Video production expense	-	550,000
Other expenses	4,195,680	3,410,271
	<b>\$ 92,999,795</b>	<b>\$ 84,439,725</b>

### 5 Employee benefit expenses

	2013	2012
Salaries and allowances	\$ 67,110,767	\$ 62,456,923
Contract gratuity	6,614,740	6,055,812
Pension costs - MPF scheme	1,489,791	1,244,382
Unutilised annual leave	126,494	144,233
Other employee benefit expenses	1,222,801	1,118,788
	<b>\$ 76,564,593</b>	<b>\$ 71,020,138</b>

### 6 Key management compensation

	2013	2012
Short-term employee benefits	\$ 12,765,359	\$ 12,132,192
Post-employment benefits	1,909,387	1,780,238
	<b>\$ 14,674,746</b>	<b>\$ 13,912,430</b>

7 Property, plant and equipment

	Interest in leasehold land held for own use under finance leases							
	Building	Leasehold improvements	Office furniture	Office equipment	Computer equipment	Motor vehicles	Total	
Cost:								
At 1 April 2011	\$ 74,900,000	\$ 16,800,000	\$ 12,770,387	\$ 523,923	\$ 733,339	\$ 2,826,450	\$ 179,801	\$ 108,733,900
Additions	-	-	1,143,058	45,784	98,866	135,334	-	1,423,042
Disposals	-	-	-	(1,773)	(2,920)	(16,272)	-	(20,965)
At 31 March 2012	\$ 74,900,000	\$ 16,800,000	\$ 13,913,445	\$ 567,934	\$ 829,285	\$ 2,945,512	\$ 179,801	\$ 110,135,977
Accumulated depreciation:								
At 1 April 2011	\$ 12,669,144	\$ 3,802,438	\$ 9,975,198	\$ 240,422	\$ 416,702	\$ 2,051,550	\$ 68,472	\$ 29,223,926
Charge for the year	1,394,220	420,000	1,355,050	107,851	139,193	428,179	35,960	3,880,453
Written back on disposals	-	-	-	(1,028)	(1,985)	(15,773)	-	(18,786)
At 31 March 2012	\$ 14,063,364	\$ 4,222,438	\$ 11,330,248	\$ 347,245	\$ 553,910	\$ 2,463,956	\$ 104,432	\$ 33,085,593
Net book value:								
At 31 March 2012	\$ 60,836,636	\$ 12,577,562	\$ 2,583,197	\$ 220,689	\$ 275,375	\$ 481,556	\$ 75,369	\$ 77,050,384

7 Property, plant and equipment (continued)

	Interest in leasehold land held for own use under finance leases															
		Building	Leasehold improvements	Office furniture	Office equipment	Computer equipment	Motor vehicles	Total								
Cost:																
At 1 April 2012	\$	74,900,000	\$	16,800,000	\$	13,913,445	\$	567,934	\$	829,285	\$	2,945,512	\$	179,801	\$	110,135,977
Additions		-		-		65,728		21,055		117,927		101,716		-		306,426
Disposals		-		-		-		(660)		(59,006)		(34,455)		-		(94,121)
At 31 March 2013	\$	74,900,000	\$	16,800,000	\$	13,979,173	\$	588,329	\$	888,206	\$	3,012,773	\$	179,801	\$	110,348,282
Accumulated depreciation:																
At 1 April 2012	\$	14,063,364	\$	4,222,438	\$	11,330,248	\$	347,245	\$	553,910	\$	2,463,956	\$	104,432	\$	33,085,593
Charge for the year		1,394,220		420,000		742,329		110,349		144,368		311,047		35,960		3,158,273
Written back on disposals		-		-		-		(528)		(58,760)		(33,374)		-		(92,662)
At 31 March 2013	\$	15,457,584	\$	4,642,438	\$	12,072,577	\$	457,066	\$	639,518	\$	2,741,629	\$	140,392	\$	36,151,204
Net book value:																
At 31 March 2013	\$	59,442,416	\$	12,157,562	\$	1,906,596	\$	131,263	\$	248,688	\$	271,144	\$	39,409	\$	74,197,078

The Ombudsman’s interest in leasehold land is held under long lease.

## 8 Cash and cash equivalents

	2013	2012
Cash at bank	\$ 9,322,656	\$ 9,527,837
Cash in hand	5,000	5,000
	<b>\$ 9,327,656</b>	<b>\$ 9,532,837</b>

## 9 Contract gratuity payable

The amount represents the gratuity payable to staff on expiry of their employment contracts. The amount of gratuity ranges from 10% to 25% (2012: 10% to 25%) of the basic salary less employer's contributions to MPF.

## 10 Taxation

The Ombudsman is exempted from taxation in respect of the Inland Revenue Ordinance in accordance with Schedule 1A Section 5(1) of the Ombudsman Ordinance.

## 11 Commitments

- (a) Capital commitments outstanding at 31 March 2013 not provided for in the financial statements were as follows:

	2013	2012
Contracted for	\$ 372,243	\$ -

- (b) At 31 March 2013, the total future aggregate minimum lease payments under non-cancellable operating leases in respect of parking spaces are payable as follows:

	2013	2012
Within 1 year	\$ 7,600	\$ 7,600

## 12 Management of accumulated funds

The Ombudsman's primary objective when managing its accumulated funds is to safeguard The Ombudsman's ability to continue as a going concern. The Ombudsman is not subject to externally imposed requirements relating to its accumulated funds.

## 13 Financial risk management and fair values

Risk management is carried out by the accounting department under policies approved by The Ombudsman. The accounting department identifies and evaluates financial risks in close co-operation with the operating units. The Ombudsman provides written principles for overall risk management such as interest-rate risk, use of financial instruments and investing excess liquidity.

The Ombudsman's exposure to credit, liquidity, interest rate and currency risks are described below:

### (a) Credit risk

The Ombudsman's credit risk is primarily attributable to time deposits and cash and cash equivalents. Management has a credit policy in place and the exposure to this credit risk is monitored on an ongoing basis.

Cash is deposited with financial institutions with sound credit ratings to minimise credit exposure.

The maximum exposure to credit risk is represented by the carrying amount of each financial asset in the balance sheet. The Ombudsman does not provide any guarantees which would expose The Ombudsman to credit risk.

### (b) Liquidity risk

The Ombudsman's policy is to regularly monitor its current and expected liquidity requirements and to ensure that it maintains sufficient reserves of cash to meet its liquidity requirements in the short and longer term.

The following table shows the remaining contractual maturities at the balance sheet date of The Ombudsman's financial liabilities, which are based on contractual undiscounted cash flows and the earliest date The Ombudsman can be required to pay:

2013					
Contractual undiscounted cash outflow					
	Within 1 year or on demand	More than 1 year but less than 2 years	More than 2 years but less than 5 years	Total contractual undiscounted cash flows	Carrying amount
Contract gratuity payable	\$ (4,640,248)	\$ (2,338,424)	\$ (2,278,520)	\$ (9,257,192)	\$ (9,257,192)
Other payables and accruals	(2,154,195)	-	-	(2,154,195)	(2,154,195)
	<b>\$ (6,794,443)</b>	<b>\$ (2,338,424)</b>	<b>\$ (2,278,520)</b>	<b>\$ (11,411,387)</b>	<b>\$ (11,411,387)</b>



### 13 Financial risk management and fair values (continued)

#### (b) Liquidity risk (continued)

2012

#### Contractual undiscounted cash outflow

	Within 1 year or on demand	More than 1 year but less than 2 years	More than 2 years but less than 5 years	Total contractual undiscounted cash flows	Carrying amount
Contract gratuity payable	\$ (4,581,442)	\$ (3,228,667)	\$ (449,123)	\$ (8,259,232)	\$ (8,259,232)
Other payables and accruals	(2,084,017)	-	-	(2,084,017)	(2,084,017)
	<u>\$ (6,665,459)</u>	<u>\$ (3,228,667)</u>	<u>\$ (449,123)</u>	<u>\$ (10,343,249)</u>	<u>\$ (10,343,249)</u>

#### (c) Interest rate risk

Interest rate risk is the risk that the value of a financial instrument will fluctuate due to changes in market interest rates. The Ombudsman's only exposure to interest rate risk is via its bank balances which bear interest at market rates.

##### *Sensitivity analysis*

At 31 March 2013, it is estimated that a general increase/decrease of 100 (2012: 100) basis points in interest rates, with all other variables held constant, would have increased/decreased The Ombudsman's surplus and accumulated funds by approximately \$3,300,000 (2012: \$3,149,000).

The sensitivity analysis above has been determined assuming that the change in interest rates had occurred at the balance sheet date and had been applied to the financial instruments which expose The Ombudsman to interest rate risk at that date. The 100 basis points increase or decrease represents management's assessment of a reasonably possible change in interest rates over the period until the next annual balance sheet date. The analysis is performed on the same basis for 2012.

#### (d) Currency risk

The Ombudsman has no exposure to currency risk as all of The Ombudsman's transactions are denominated in Hong Kong dollars.

#### (e) Fair values

All financial instruments are carried at amounts not materially different from their fair values as at 31 March 2013 and 2012.

### 14 Possible impact of amendments, new standards and interpretations issued but not yet effective for the year ended 31 March 2013

Up to the date of issue of these financial statements, the HKICPA has issued a number of amendments and new standards which are not yet effective for the year ended 31 March 2013 and which have not been adopted in these financial statements.

The Ombudsman is in the process of making an assessment of what the impact of these amendments is expected to be in the period of initial application. So far it has concluded that the adoption of them is unlikely to have a significant impact on The Ombudsman's results of operations and financial position.

