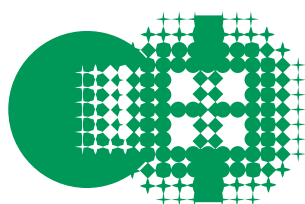
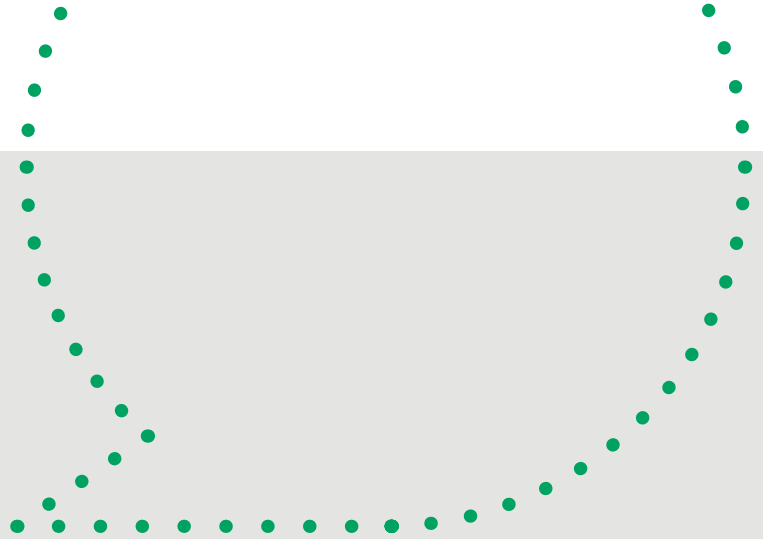


**Positive**  
Complaint Culture  
for **Better**  
Administration



The Ombudsman, Hong Kong  
2019 Annual Report



**Positive**  
Complaint Culture  
for **Better**  
Administration



The Ombudsman, Hong Kong  
2019 Annual Report

## The Ombudsman, Hong Kong Annual Report 2019

The design concept for this year's Annual Report uses "speech balloons" as a basic idea to highlight the importance of an effective communication mechanism in building better public administration. The front cover shows a cluster of speech balloons in different shapes, forming a big square to depict the open, fair and impartial manner of the Office of The Ombudsman in complaint handling and investigations. Through effective communication, the Office can join hands with Government departments and public organisations to establish a better administrative system, thus enhancing the quality and standards of public services.

## 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



# Contents

## History in Brief

P.6

## The Ombudsman's Review

P.10

### Chapter 1

#### Our Role, Powers and Obligations

P.16

Jurisdiction	P.16
Matters Not for Investigation	P.16
Restrictions	P.17
Powers of Investigation, Recommendation and Report	P.17
Secrecy Requirement and Transparency	P.17

### Chapter 2

#### Our Procedures

P.18

Complaint Handling	P.18
• Modes of Complaint	
• Assessment	
• Inquiry	
• Mediation	
• Full Investigation	
• Review	
Direct Investigation	P.20
• Preliminary Inquiry	
• Investigation Methodology	
Publication of Reports	P.21
Implementation of Recommendations	P.21



**Chapter 3****Performance and Results****P.22**

Enquiries and Complaints Processing	P.22
• Topical Complaints	
• Mode of Lodging Complaints	
• Complaints Handled	
Major Causes for Complaint	P.23
Most Popular Targets of Complaint	P.24
Outcome of Investigations and Inquiries	P.24
Direct Investigation	P.24
Recommendations	P.24
Our Performance	P.25
Overview	P.25

**Chapter 4****Reward and Challenge****P.26**

Enhancing Quality Administration	P.26
Mediating Disputes	P.26
Transparent Government and Access to Information	P.27
Issues Examined by Direct Investigations	P.28
Challenges from Parties	P.28
• Re-assessment of Cases	
• Review of Cases	
• Judicial Review and Litigation	
• Challenging Complainant Behaviours	
• Response Time of Organisations	
Overview	P.29

## Chapter 5

### Office Administration

P.30

Staffing	P.30
Training	P.30
Occupational Health and Safety	P.31
Complaints against the Office	P.31

## Chapter 6

### Publicity and External Relations

P.32

Public Education and Promotion	P.32
• New Publicity Campaign	
• Media Events	
• Talks for Departments and Organisations	
Working with Professionals, Community Leaders, etc.	P.35
• Advisers and JPs	
• Legislative Councillors	
• The Ombudsman's Awards	
Overseas Liaison	P.38
Looking Ahead	P.38

## One Year at a Glance

P.40

## Annexes

Annex 1	List of Scheduled Organisations	P.46
Annex 2	Circumstances where Complaints are not Followed up or Investigated	P.50
Annex 3	Statistics	
Annex 3.1	Caseload	P.51
Annex 3.2	Enquiries/Complaints Received	P.52
Annex 3.3	Nature of Complaints Processed	P.52
Annex 3.4	Distribution of Enquiries/Complaints Received	P.53
Annex 3.5	Distribution of Complaints Completed	P.56
Annex 3.6	Complaints Pursued and Concluded: Top Ten Organisations	P.56
Annex 3.7	Results of Complaints Concluded by Full Investigation	P.57
Annex 3.8	Forms of Maladministration Substantiated by Full Investigation	P.57
Annex 3.9	Results of Complaints Concluded by Inquiry	P.58
Annex 3.10	Achievement of Performance Pledges	P.61
Annex 4	Flow Chart on Handling of a Complaint	P.62
Annex 5	Index of Direct Investigations Completed	P.63
Annex 6	Summaries of Selected Reports of Direct Investigations	P.64
Annex 7	Index of Cases Concluded by Full Investigation	P.80
Annex 8	Summaries of Selected Cases Concluded by Full Investigation	P.100
Annex 9	Summaries of Selected Cases on Code on Access to Information	P.122
Annex 10	Examples of Improvement Measures Introduced by Organisations	P.132
	Following our Direct or Full Investigation	
Annex 11	Organisation Chart	P.138
Annex 12	Panel of Advisers	P.139
Annex 13	Visits to the Office of The Ombudsman	P.140

## Financial Statements for the Year Ended 31 March 2019

P.144

## Glossary of Terms

## Complainants Charter

### 1988

#### 20 July

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

### 1993

#### 21 July

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

### 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*

### 1994

#### 1 February

Second Commissioner Mr Andrew So, SBS, OBE, JP assumed office



*Second Commissioner  
Mr Andrew So, SBS, OBE, JP*

#### 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 Pacific Ombudsman Region ("APOR") Conference and the International Ombudsman Symposium



*APOR Conference in 1995*

## 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

## 1999



*Third Ombudsman  
Ms Alice Tai, GBS, OBE, JP*

### 1 April

Third Ombudsman Ms Alice Tai, GBS, OBE, JP assumed office

### 22 July

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

## 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

## 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

## 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

## 2004

### 1 April

Ms Alice Tai, GBS, OBE, 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

## 2008

### 5-8 November

The Ombudsman hosted the Board of Directors Meeting of the IOI

## 2010

### 19 October

The Ombudsman was elected Treasurer of the IOI

## 2011

### 8 December

The Ombudsman was re-elected Secretary of the AOA

## 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 working relationship with Government

### 28 November - 1 December

The Ombudsman hosted the 9th AOA Conference

## 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

### 12 June

Ms Alice Tai, GBS, OBE, JP was awarded IOI Honorary Life Membership

## 2012

### 6-9 May

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



*Signing of MAA*



*Fourth Ombudsman  
Mr Alan Lai Nin, GBS, JP*

### 2 November

Ms Alice Tai, GBS, OBE, JP was awarded AOA Honorary Life Membership

### 22-25 May

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



## 2014

### 1 April

Fifth Ombudsman Ms Connie Lau, JP assumed office



*Fifth Ombudsman  
Ms Connie Lau, JP*

## 2018

### 1 May

The Ombudsman attended the 40th Anniversary Celebrations of IOI in New York and IOI Board Meeting in Toronto

### 30 October

In the capacity as Secretary of the AOA, The Ombudsman attended the AOA Board of Directors Meeting in Baku, Azerbaijan

Ms Connie Lau, JP was awarded AOA Honorary Life Membership

### 28 November

The Ombudsman, as President, chaired the 30th APOR Conference

## 2015

### 20 January

Mr Alan Lai, GBS, JP was awarded IOI Honorary Life Membership

### 20 August

The Ombudsman was elected Director of the IOI (APOR)

### 22 September

Mr Alan Lai, GBS, JP was appointed to the Pool of Experts of the IOI

## 2017

### 28 November

The Ombudsman, as President, chaired the 29th APOR Conference

### 25 November

Mr Alan Lai, GBS, JP was awarded AOA Honorary Life Membership

The Ombudsman was re-elected Secretary of the AOA

## 2016

### 15 November

The Ombudsman was elected Regional President of the APOR

### 1 December

The Apology Ordinance advocated by The Ombudsman came into effect

## 2019

### 22 February

Government announced the appointment of Ms Winnie Chiu, PDSM, PMSM as The Ombudsman for the next five-year term starting 1 April 2019



*IOI World Conference*



*AOA Board of Directors Meeting*



*APOR Conference*



*Sixth Ombudsman  
Ms Winnie Chiu, PDSM, PMSM*



*The Office of The Ombudsman turned thirty on 1 March 2019. Retiring today, I take pride in having had the prestige of serving the people of Hong Kong in the position of The Ombudsman for five of those thirty years. Celebrations apart, I find it opportune to reflect upon the role and functions of my Office.*

While affirming its traditional and principal role of watchdog of public administration, I have more and more regarded the Office as a “collaborator”. Rather than being a foe of Government departments and public bodies, the Office should be to them a sounding board to show and tell them whether they have been acting correctly or properly, what has triggered complaints and what improvements are called for. The Office has, therefore, been painstakingly trying to help them identify problems, some of which hitherto not brought to their attention. A case in point is our direct investigation into the Leisure and Cultural Services Department’s procurement and withdrawal of library materials. Where a problem is a much discussed topic by the community, the Office could probe into the roots of the problem, with a view to recommending a comprehensive solution or more effective improvement measures. That happened, for instance, in the case of our direct investigations completed in 2018 on the Food and Environmental Hygiene Department’s rental management and regulation of market stalls.



And where a Government department/public body has become a target of public criticism by some observers, the Office may also find it worthwhile to initiate a direct investigation. This is not to jump on the bandwagon, but to uncover all the true facts to the public, using the Office's statutory powers of investigation, which are not available to those observers. That was precisely the purpose of the Office's direct investigation, completed in early 2019, on the Lands Department's felling of two trees outside the University of Hong Kong.

Over the years, the Office remains to be one of the popular avenues of complaint due to its unique status and statutory powers. We are well aware what the public usually seek is expeditious and effective resolution of their problems. The Office has, therefore, been striving to streamline its complaint handling procedures for higher efficiency. For the past five years, our rate of concluding complaint cases in less than three months has been consistently maintained at 84% or above, surpassing our performance pledge of 60%. We have also been making conscious efforts to use the method of mediation for prompt solutions to complainants' problems, for cases where no or only minor maladministration is involved. Cases concluded by mediation numbered 205 in 2018/19, as compared with 38 in 2013/14 before I took up the office of Ombudsman.

Increasingly, the Office has been receiving "complaints" from members of the public based on their observations of unreasonable, improper or inefficient acts or systems of administration in Government departments or public bodies. According to The Ombudsman Ordinance, we may not be able to treat those as complaint cases since the "complainants" themselves may not have suffered from the maladministration, and hence not the aggrieved person under the above law. Nevertheless we would not give up their "complaints" which often provide us with useful information for reference and food for thought. Where due, we would exercise our power of direct investigation to make some inquiry to assess the need or suitability for a direct investigation. It is my view that the Office should conduct more direct investigations, which, compared with complaint investigations, are usually more capable of effecting systemic improvements in public administration. To this end, the Office has completed 12 direct investigations in 2018/19, doubling the figure of six in 2013/14.

I hope my explanation above helps the public's understanding of the role and functions of my Office.

Before I conclude this Review, I would also like to highlight two areas of concern.

The first is access to information. The number of complaints received in this regard remains high. Recent cases handled by this Office have shown that many Government departments turn away requests for information for multiple reasons: the department does not keep the statistics, to compile the information would require substantial resources, or the departments are bound by the terms stated in their agreements with third parties (e.g. contractors or tenants) to keep everything confidential. While such reasons are among those prescribed by the Code on Access to Information for refusing requests for information, I think it is high time for Government departments to critically review their stance. Where the types of information requested are subjects of significant public interest or concern, there is no reason why the department(s) concerned should continue to refrain from keeping the relevant statistics or making extra efforts to compile them. Also, if some terms of agreement are obstacles to openness and accountability making the Government difficult to come clean, such terms should be removed from future agreements altogether, unless they are genuinely necessary for protecting sensitive information.

I agree on the other hand that the public's right to information is not absolute. For example, I would regard it as an abuse if someone makes a huge amount of requests for frivolous information. Although taking each request on its own, a Government department may not have a valid reason under the Code to refuse disclosure, I would accept that putting the matter in perspective, Government departments may turn down such requests when they have clearly become vexatious and would result in unreasonable diversion of the departments' resources.

Our Office has been advocating the enactment of legislation on access to information in Hong Kong since 2014. I am pleased that the Law Reform Commission eventually issued a consultation paper on this subject in December 2018. It is my earnest hope that legislation would be introduced soon to underpin citizens' right of access to information.

My second area of concern is that more and more problems have surfaced concerning the Government's outsourcing of its work or services, including, among others, the Food and Environmental Hygiene Department's management of markets, the Housing Department's engagement of cleaning contractors, the Environmental Protection Department's operation of landfill plants through contractors and the Social Welfare Department's provision of public services through subvention to non-governmental organisations. At the risk of boring people with the cliché, I must stress again that Government departments can outsource its services but not its responsibility. Paying somebody else to do the job is not the end of the story; it is just the beginning, for that is where the department's responsibility of close monitoring and supervision begins. In the final analysis, it is always the Government that has to be accountable to the public, not so much the contractor or the subvented organisation concerned.

For me, five long and fruitful years have come to an end. My deep gratitude goes to my dedicated and hardworking colleagues, my learned and expert Advisers, the media, the public and legislators who have given me so much support and encouragement, and all Government departments and public bodies for their cooperation and understanding. I wish them well.

**Connie Lau**

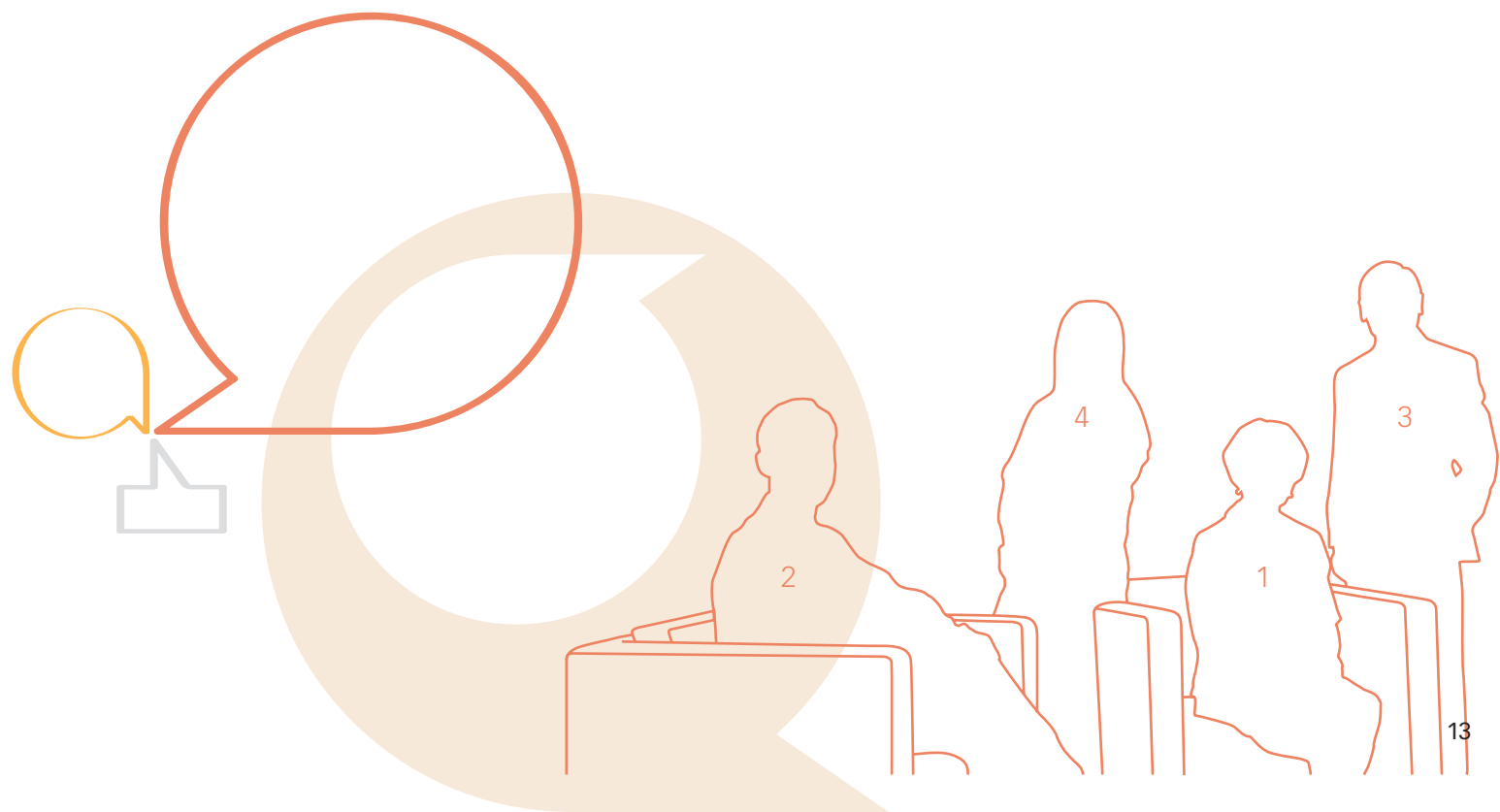
The Ombudsman

31 March 2019



## Directorate

- 1 Ms Connie Lau, The Ombudsman
- 2 Mr K S So, Deputy Ombudsman
- 3 Mr Frederick Tong, Assistant Ombudsman
- 4 Ms Belinda Kwan, Assistant Ombudsman







# CHAPTERS

Annual Report of The Ombudsman, Hong Kong 2019



# Our Role, Powers and Obligations

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 of Government departments and public bodies to identify 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 1**). We are always on the lookout, and maintain close contact with the Government, for possible additions to the Schedule.

1.3 Besides investigating complaints received, The Ombudsman may, of her 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 While some organisations such as the Hong Kong Police Force and the Independent Commission Against Corruption are not included in Part I of Schedule 1 to the Ordinance, they are nevertheless subject to our investigation with regard to cases of non-compliance with the Code on Access to Information<sup>1</sup>. These organisations are listed in Part II of Schedule 1 to the Ordinance (see **Annex 1**).



1.6 In December 2018, the Law Reform Commission published a consultation paper on access to information, in which it is recommended that legislation should be introduced to implement an access to information regime with statutory backing. It is also recommended that the Office of The Ombudsman should be given the jurisdiction in the review mechanism of the access to information regime. The Ombudsman welcomes these recommendations.

## Matters Not for Investigation

1.7 The Ombudsman is prohibited by law from investigating certain kinds of matters. For example, cases related 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 2**.

1.8 The Ordinance does not preclude us from investigating **policy** matters, and the way policies are formulated or implemented certainly falls within our ambit; but if a policy is made with proper authority and

<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.



has gone through a due process with wide public consultation and publicity, we normally will not investigate actions that are taken fully in accordance with such a policy. Nevertheless, if The Ombudsman thinks that grave injustice appears to be involved in a policy, our Office will not hesitate to start an inquiry and ask the organisation concerned for an explanation. Where a policy is found outdated or inequitable, we will urge the organisation to conduct a review.

1.9 Similarly, our Office will not investigate an organisation's action or decision based purely on **professional judgement**, because such action or decision is not taken in the exercise of the organisation's administrative functions. However, if the actions/decisions involving professional judgement also involve, to some extent, managerial/administrative aspects, it would come within The Ombudsman's jurisdiction. Where necessary, we may consult members of our Panel of Advisers, which comprises experts with good standing in various fields (see **Annex 12**).



## Restrictions

1.10 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, or is anonymous, unidentifiable or not traceable, or is neither the person aggrieved nor a suitable representative of that person. Such restrictions are also detailed at **Annex 2**.

1.11 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, Recommendation and Report

1.12 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.

1.13 While an investigation shall not affect any action or decision taken or to be taken by the organisation under complaint, The Ombudsman may, upon completion of an investigation, report her findings and make recommendations to the organisation for redress or improvement. Where an organisation does not adequately act upon her recommendation, The Ombudsman may submit a report to the Chief Executive of the Hong Kong Special Administrative Region.

1.14 Where a serious irregularity or injustice is found, The Ombudsman may make a 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.

## Secrecy Requirement and Transparency

1.15 The Ombudsman, staff and Advisers are all bound by the Ordinance, under penalty of a fine and imprisonment, to maintain secrecy on all matters that arise from any investigation or complaint and come to our knowledge in the exercise and execution of our functions.

1.16 However, the Ordinance allows The Ombudsman to publish a report on any of her investigations in such manner as she thinks fit, if she is of the opinion that it is in the public interest to do so.

1.17 Subject to the statutory requirement mentioned in **para. 1.15**, we consider it our obligation to adopt a policy of openness and transparency. As regards requests for access to information of our Office, we handle them in accordance with the Office's policy on Access to Information, which is drawn up along the lines of the Government's Code on Access to Information<sup>1</sup>.

## 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 cases where the facts are simple.

2.2 We can communicate with complainants by email if they so prefer. However, we require complainants to provide us with their postal address for traceability (see **para. 1.10**), because an email address does not provide sufficient information on the whereabouts of the sender.



### Assessment

2.3 All incoming complaints are screened, within a day or two, to examine whether they come within the statutory purview of The Ombudsman (see **paras. 1.2–1.10**) 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 the number of persons making the complaint or the complainant's persistence.

2.4 If it is obvious that a person is making a complaint out of misunderstanding of the role, jurisdiction, policy or procedures of an organisation or of the relevant legislation, we will, instead of bothering the organisation concerned, reply to the person straightaway to clear his/her misunderstanding.

2.5 If a person complains to us because he/she seems to be dissatisfied with the routine operation or frontline service of an organisation, we may, instead of starting an inquiry or investigation right away, suggest that the person complain direct to the organisation first if he/she has not done so. We believe that direct communication between the public and Government departments/public bodies is the most effective way to resolve dispute and instigate improvements or remedies. If the person, after complaining to the organisation concerned, remains dissatisfied, he/she is welcome to approach us again, and we will consider what action to take on the merits of his/her complaint.

2.6 The above assessment procedures and criteria explain why every year around 40% of the complaints that we receive are not automatically passed to the organisations concerned for response.

2.7 The Ordinance requires that a complaint be made by the person aggrieved (i.e. the person who may have sustained injustice in consequence of the alleged maladministration), unless that person is unable to act for himself/herself and has to be represented (see **para. 1.10**).

2.8 Some people believe that as taxpayers or citizens, they have a right to feel aggrieved and complain about any act of maladministration they have observed, even if they have not personally suffered injustice in consequence of the alleged maladministration (see **para. 2.7**). We understand the sentiments, but we cannot deal with such "complaints" as if they were from the persons aggrieved, since that would be against the clear intention of the law. Moreover, where such "complaints" concern other people's privacy and/or personal data, we are constrained from informing the "complainants" of our findings. However, we take such "complaints" as information based on which we may consider initiating a direct investigation if the case touches upon major or systemic issues (see **para. 1.3**).



2.9 Cases screened in for complaint investigation will, depending on their nature and complexity, be pursued by inquiry, mediation or full investigation.

2.10 For cases screened out, the complainants may appeal to us, stating their grounds, and we will re-assess such cases for decision as to whether they 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. 2.17–2.20**), The Ombudsman may conduct such “preliminary inquiries” as she 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 Sometimes, substantial relevant information comes with the complaint and/or is available in our previous case files or in publications of the organisation under complaint. It may, therefore, suffice for us to study and analyse such information and then give the complainant a concluding reply.



2.13 Where appropriate, we may ask the organisation under complaint to respond to us and, to the complainant in parallel. We will examine such response, the complainant’s views, 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 redress or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.

### Mediation

2.14 Alternatively, with the consent of both the complainant and the organisation under complaint, The Ombudsman may try to settle a case by mediation. This dispute resolution method 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.

2.15 For efficiency and convenience to the parties concerned, we also often conduct mediation by telephone and subsequently confirm in writing the agreement reached by the parties.

2.16 If mediation fails to resolve the matter, or the complainant asks for reactivation of his/her complaint, our Office will assign another investigation officer to start an inquiry or a full investigation afresh. This is to ensure objective processing not influenced by prior knowledge from the mediation process.



## Full Investigation

2.17 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, our Office will conduct a full investigation.

2.18 This is an extensive and intensive process of probing to establish the facts. Besides examining documents, we may summon witnesses, counter-check data with parties and conduct site inspections. Where necessary, we will consult our Advisers.



2.19 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 if any.

2.20 In our investigation reports, we usually conclude complaint cases as “substantiated”, “partially substantiated” or “unsubstantiated”. In some other cases, although the specific allegations in the complaint are unsubstantiated, other significant acts or aspects of maladministration are identified. Such cases are concluded as “unsubstantiated but other inadequacies found”<sup>1</sup>.

## Review

2.21 All our concluding letters (in the case of inquiry) and investigation reports (in the case of full investigation) are cleared with a directorate officer of this Office before issue. They represent the stance of this Office on the case.

2.22 Nevertheless, complainants disagreeing 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 the request and whether the request should be entertained; if so, he/she 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

2.23 The Ombudsman’s power to conduct direct investigations (“DIs”) in the absence of complaints enables her to look at matters at a macro level as opposed to individual cases, and to pursue issues raised by people not personally aggrieved but pointing to possible systemic deficiencies (see **para. 2.8**). A DI may be prompted by significant topical issues of community concern or repeated complaints of particular matters.

## Preliminary Inquiry

2.24 Before deciding whether or not to launch a DI against an organisation, we may conduct a preliminary inquiry<sup>2</sup>, a means that we also frequently use to handle complaint cases (see **para. 2.11**). In the process, we seek, on a confidential basis as in investigations (see **para. 1.15**), information/explanation from the organisation concerned. If the inquiry points to the need for further study, we will formally notify the head of the organisation concerned and initiate a DI.

<sup>1</sup> Formerly termed “substantiated other than alleged”.

<sup>2</sup> We used to call such work “DI assessment”.

## Investigation Methodology

2.25 The procedures for DI are largely akin to those for complaint investigation (see **paras. 2.18–2.19**). However, unlike the latter, we may, depending on the nature of the subject under study, invite views on the subject from relevant sectors and experts, and sometimes the community at large. If so, we will inform the public of the initiation of our investigation.

2.26 We often discuss our observations and views with senior officers of the organisation under investigation, at the outset as well as before conclusion. Such exchanges are useful in clarifying points of doubt and furthering insight into the issues.

## Publication of Reports

2.27 The Ordinance requires us to issue a report upon completion of our investigation.

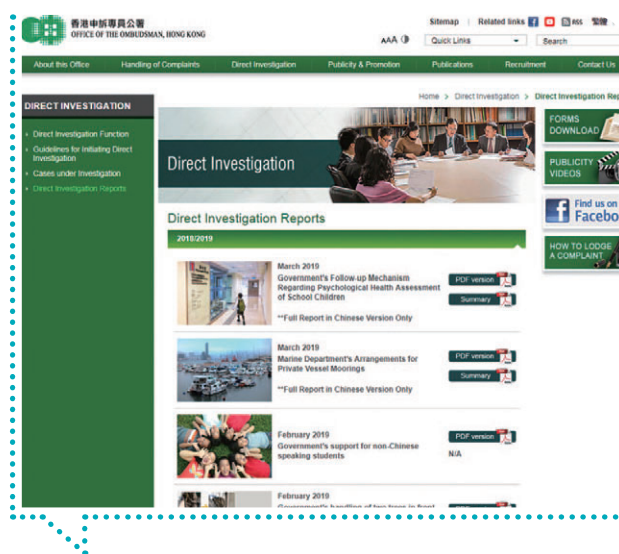
2.28 As empowered by the Ordinance (see **para. 1.16**), if The Ombudsman considers it to be in the public interest to do so, she may announce at media conferences or place on our website DI reports and anonymised reports on complaint investigation, or where appropriate, summaries of the reports. As far as possible, our Office will also answer related enquiries from the media, withholding names and other personal data.

2.29 Naturally, DIs may not all come to a conclusion that there is serious maladministration on the part of the organisation(s) concerned, and some organisations may have taken remedial/improvement measures in the course of our investigation. Nevertheless, the public would wish to know what we have done and what we have found. Hence, with the exception of those DIs on single incidents of little concern to the public, all our DI reports are published in one way or another.

## Implementation of Recommendations

2.30 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. The organisation is expected to act adequately upon our recommendation(s) and inform us should it encounter any difficulty in implementing the recommendation(s). We monitor progress at regular intervals.

2.31 Where an organisation does not adequately act upon a recommendation, we may submit a report to the Chief Executive (see **para. 1.13**) or, if the circumstances warrant it, initiate another investigation for more intensive probing.



## Performance and Results

### Enquiries and Complaints Processing

3.1 During the year under report we received 4,991 complaints, including 349 secondary cases<sup>1</sup> in *topical complaints*. Together with 817 complaint cases brought forward from last year, we had a total of 5,808 complaints for processing this year. We also received 10,403 enquiries during the year.

Table 3a

Enquiries and Complaints Received			
Year	Enquiries	Complaints	
		Total	Excluding secondary cases
2014/15	12,940	5,339	4,911
2015/16	12,159	5,244	5,031
2016/17	11,564	4,862	4,788
2017/18	11,424	4,829	4,761
2018/19	10,403	4,991	4,642

3.2 A breakdown on the number of enquiries and complaints received and processed in the past five years is given in **Annex 3.1**.

Table 3b

Mode of Lodging Complaints					
Mode	2014/15	2015/16	2016/17	2017/18	2018/19
In person	527	545	515	517	453
In writing –					
by complaint form	361	294	244	255	272
by letter through post	918	1,069	887	818	735
by fax	485	403	355	283	262
by email	2,617	2,507	2,550	2,682	3,052
By telephone	431	426	311	274	217
<b>TOTAL</b>	<b>5,339</b>	<b>5,244</b>	<b>4,862</b>	<b>4,829</b>	<b>4,991</b>

### Topical Complaints

3.3 The number of topical complaints received this year is the highest in recent years, with 349 secondary cases compared to 68 last year. The two relatively significant groups of topical complaints concerned the delay in provision of HPV vaccine (with 155 secondary cases) and an educational video concerning rebates offered by estates agents (with 150 secondary cases).



### Mode of Lodging Complaints

3.4 Complaint by email (including by the e-complaint form of our official website) continued to surpass all other modes of complaint lodging, with 3,052 cases (61.2%) being lodged through this channel. Complaint by letter through post remained the second most popular mode, bringing in 735 (14.7%) complaints.

<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".



## Complaints Handled

3.5 We completed processing 4,838 (83.3%) of all cases received during the year or brought forward from last year. Among these, 2,912 (60.2%) were pursued and concluded by way of inquiry, full investigation or mediation. The rest (1,926, 39.8%) were closed after assessment due to the fact that there was insufficient ground to pursue the complaint, or for jurisdictional or legal restriction reasons.

3.6 As in the past, the chief mode of our complaint handling was inquiry, comprising about 86% of all cases pursued and concluded. Yet, a significant proportion of the cases were concluded by full investigation (7%) and mediation (7%) this year (see **Table 3c**). Among those assessed and closed, slightly over half were due to the fact that there was insufficient ground to pursue the complaint (see **Table 3d**).



Table 3c

Complaints Pursued and Concluded in 2018/19		
	No. of cases	Percentage <sup>2</sup>
By inquiry	2,502	85.9%
By full investigation	205	7.0%
By mediation	205	7.0%
<b>Total</b>	<b>2,912</b>	<b>100.0%</b>

Table 3d

Complaints Assessed and Closed in 2018/19		
	No. of cases	Percentage
Insufficient ground to pursue	1,037	53.8%
Legally bound	889	46.2%
<b>Total</b>	<b>1,926</b>	<b>100.0%</b>

## Major Causes for Complaint

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

- error, wrong advice/decision (33.5%);
- delay/inaction (13.3%);
- ineffective control (12.8%);
- lack of response/reply to complainant/enquirer (7.1%); and
- failure to follow procedures (5.0%).

More details are given in **Annex 3.3**.

3.8 Based on the outcome of full investigations, the top five forms of maladministration were:

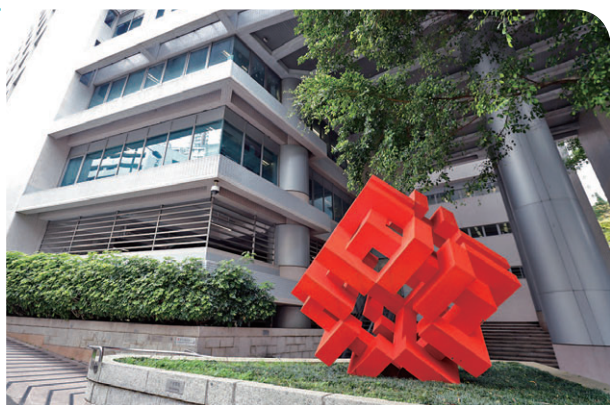
- error, wrong advice/decision (38.5%);
- failure to follow procedures (15.6%);
- delay/inaction (13.6%);
- ineffective control (13.6%); and
- lack of response/reply to complainant/enquirer (7.3%).

More details are given in **Annex 3.8**.

<sup>2</sup> After rounding off, the total may not be equal to 100%.

## Most Popular Targets of Complaint

3.9 The most popular targets of complaint based on the number of complaints pursued and concluded during the year are presented by the league of “Top Ten Organisations” in **Annex 3.6**. The Housing Department and the Food and Environmental Hygiene Department remain as the first and second in the league.



## Outcome of Investigations and Inquiries

3.10 Among the 205 complaints we concluded by full investigation, including 18 secondary cases from topical complaints, 89 (43.4%) were *substantiated*, *partially substantiated* or *unsubstantiated but other inadequacies found*. The outcome of our full investigations is summarised in **Table 3e**.

Table 3e

Substantiation Rates of Complaints Concluded by Full Investigation		
Classification	No. of Complaints	Percentage <sup>2</sup>
Substantiated	17	8.3%
Partially substantiated	41	20.0%
Unsubstantiated but other inadequacies found	31	15.1%
Unsubstantiated	108	52.7%
Inconclusive	4	2.0%
Withdrawn/discontinued	4	2.0%
<b>Total</b>	<b>205</b>	<b>100.0%</b>

3.11 Among the 2,502 inquiry cases concluded, inadequacies or deficiencies were found in 326 (13%). Details are in **Annex 3.9**.

## Direct Investigation

3.12 During the year we completed 12 direct investigations, with eight reports publicly announced at press conferences. The reports of all direct investigations were uploaded on our website. A full list of direct investigations completed is in **Annex 5**.

## Recommendations

3.13 We made 175 recommendations on completion of 205 full investigations and 78 recommendations in 12 direct investigations, giving a total of 253 recommendations. Of these, 233 (92.1%) have been accepted by the organisations for implementation and 20 (7.9%) were under consideration as at 31 March 2019.



## Our Performance

3.14 This year we continued to be able to fully comply with our pledged timeframes in arranging talks and answering all enquiries. On acknowledging receipt of complaints, we issued acknowledgement within five working days in 99.3% of all complaints received.

3.15 On complaint processing, we concluded 98% of the cases falling outside jurisdiction or under restriction within ten working days (our performance pledge is not less than 70%). No case exceeded the target timeframe of 15 working days (see **Table 3f**). For other cases, we concluded 85.8% within three months (against our pledge of not less than 60%). We had 0.6% of cases not concluded within our pledge timeframe of six months for reasons such as case complexity (see **Table 3g**).

3.16 Our performance pledges and record of achievement are listed in **Annex 3.10**.

Table 3f

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
2014/15	90.9%	8.6%	0.5%
2015/16	98.4%	1.6%	0.0%
2016/17	97.3%	2.6%	0.1%
2017/18	97.3%	2.7%	0.0%
2018/19	98.0%	2.0%	0.0%

Table 3g

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
2014/15	86.3%	13.1%	0.6%
2015/16	84.8%	14.7%	0.5%
2016/17	87.6%	12.2%	0.2%
2017/18	88.3%	11.3%	0.4%
2018/19	85.8%	13.6%	0.6%

## Overview

3.17 The number of complaints received this year has increased slightly compared with last year, with a relatively high number of topical complaints. Meanwhile, we continued our effort in conducting direct investigations, completing 12 in 2018/19, with another 10 still going on. Compared with the record high of 237 cases concluded by mediation last year, the number of mediation cases concluded this year has dropped slightly to 205. Nevertheless, it remains our goal to promote mediation as a means to resolve suitable complaints with minor or no maladministration.



## Reward and Challenge

### Enhancing Quality Administration

4.1 Making recommendations to public organisations is an important tool for us to help improve public administration. A great majority of our recommendations are accepted by the departments/organisations (see **para. 3.13 in Chapter 3**). We monitor their progress regularly until the recommendations are fully implemented. **Annex 10** gives a list of examples of the improvement measures implemented in the year under report in response to our recommendations.



### Mediating Disputes

4.2 This year saw another fruitful year of our mediation work. Among the 2,912 cases pursued and concluded, 205 cases (7%) were concluded by mediation, which is the second highest in the history of the Office.

4.3 The number of Government departments and public organisations participating in mediation (26) is similar to that of last year (see **Table 4a**). Among them, five participated in mediation for the first time. This shows that more organisations have become receptive to this mode of complaint resolution. Same as last year, Housing Department has the largest number of mediation cases, comprising 28.8% of the total. The Food and Environmental Hygiene Department and Buildings Department have both surpassed the Leisure and Cultural Services Department to come in second and third, with 19.0% and 12.2% of the total respectively.

Table 4a

Successfully Mediated Cases by Organisation (2018/19)	
Organisation(s)	No. of Cases
Housing Department	59
Food and Environmental Hygiene Department	39
Buildings Department	25
Leisure and Cultural Services Department	17
Transport Department	12
Post Office	8
Water Supplies Department	7
Immigration Department	6
Lands Department	5
Department of Health	4
Highways Department	6
Social Welfare Department	
(each with 3 cases)	
Hospital Authority	6
Home Affairs Department	
Hong Kong Housing Society	
(each with 2 cases)	11
Census and Statistics Department	
Department of Justice	
Government Logistics Department	
Education Bureau	
Transport and Housing Bureau	
Inland Revenue Department	
Labour Department	
Mandatory Provident Fund Schemes Authority	
The Treasury	
Urban Renewal Authority	
Working Family and Student Financial Assistance Agency	
(each with 1 case)	205
<b>Total</b>	



4.4 Most of the successfully mediated cases concerned complaints about delay/inaction (76 cases) (see **Table 4b**). The subject matters under complaint covered a wide spectrum of livelihood issues, such as public housing estate management, water seepage/dripping, noise nuisance, public transport, sports and recreational facilities, postal services, and illegal smoking.

Table 4b

Successfully Mediated Cases by Nature of Complaint (2018/19)	
Nature of Complaint	No. of Cases*
Delay/inaction	76
Error, wrong advice/decision	55
Ineffective control	37
Lack of response to complaint	30
Poor staff attitude (rudeness, unhelpfulness)	14
Faulty procedures	11
Failure to follow procedures	10
Others <sup>#</sup>	9
<b>Total</b>	<b>242</b>

\* One complaint case may have more than one nature.

<sup>#</sup> "Others" include: "Disparity in treatment, unfairness", "Negligence, Omission".

4.5 The modes of mediation included face-to-face meetings for more complex cases and telephone mediation for simpler ones. The average processing time was 12.8 days. 92% of the cases were resolved within a month, and over 30% of them were resolved within 5 days.

4.6 We sent questionnaires to the participating parties on successful conclusion of the cases to obtain their feedback. Among those complainants who had returned the questionnaire, over 90% were satisfied with the work of our mediators. All organisations which had responded to our survey were positive with the outcome of the mediation and the work of our mediators. The comments given by both sides were mostly encouraging. They appreciated the platform we provided for both parties to enhance their communication and resolve the disputes in a speedy manner.

4.7 There were two cases not successfully mediated, which were subsequently handled by full investigation and inquiry.

## Transparent Government and Access to Information

4.8 During the year, we received a total of 87 complaints about access to information ("ATI") (see **Table 4c**), a 55% increase compared with the figure five years ago. Amongst those complaints, 79 were complaints against Government departments or agencies covered by the Code on Access to Information ("the Code") and 8 were complaints against public organisations not covered by the Code.

4.9 Of the 92 ATI cases concluded (including those carried forward from last year), the most common failing was non-compliance with specific provisions of the Code, including failure to consider provision of part of a record, to meet target response time, to provide reasons for refusal, to inform the requester channel of review or complaint, or in seeking third party consent. Other common failings were wrong application or interpretation of the Code and unreasonable refusal. This shows that there was still reluctance among public organisations in releasing information, or at least a lack of thorough understanding of the spirit and principles of the Code, as highlighted in the cases in **Annex 9**.

4.10 In March 2014, upon completion of a direct investigation on ATI, we recommended that the Government consider introducing a law to underpin citizens' right of access to information. We are pleased to note that the Law Reform Commission published two consultation papers in December 2018 on the reform of the ATI regime and archives law, which had taken into account and responded to the Office's views expressed in our 2014 direct investigation reports on these subjects.



Table 4c

Number of Access-to-Information Complaints Received in the Past Five Years		
Year	No. of Complaints Received	
	Organisations covered by the Code	Organisations not covered by the Code
2014/15	47*	9
2015/16	60*	6
2016/17	72	13
2017/18	89	4*
2018/19	79	8

\* The figures include cases (two each in 2014/15, 2015/16 and 2017/18) not recognised as such complaints in the year when they were received but so classified on conclusion in subsequent years.

## Issues Examined by Direct Investigations

4.11 During the year we completed 12 direct investigations on a wide range of systemic issues in public administration. Their full reports have been uploaded on our website. The findings of eight were publicly announced at press conferences, the summaries of which are given in **Annex 6**. For the remaining four, we issued press releases to inform the public.

Table 4d

Outcome of Review Cases					
Result \ Reason	New Evidence		New Perspective		Total
	Yes	No	Yes	No	
Decision varied	1	–	1	–	2
Decision upheld	–	53	–	–	53
					<b>55</b>

## Challenges from Parties

### Re-assessment of Cases

4.12 All incoming complaints are first assessed as to whether we can or should take up in accordance with the provision of The Ombudsman Ordinance. Complaints that are legally out of bounds or otherwise inappropriate for us to investigate will be screened out. Complainants disagreeing with our decision may provide supplementary information and request to have their cases re-assessed.

4.13 During the year we received 249 requests for re-assessment, with 115 subsequently re-opened for inquiry.

### Review of Cases

4.14 For cases concluded after we have examined the issues under complaint, complainants dissatisfied with our findings or conclusions may seek a review. If the complainants provide material new facts or arguments, a review will be conducted.

4.15 This year we received 63 requests for review. We declined 8 requests and conducted 55 reviews. I varied my decision in 2 cases after review and upheld my original decision for the remaining 53, as shown in **Table 4d**.

### Judicial Review and Litigation

4.16 A complainant not satisfied with my decision may, apart from requesting a review by me, seek a judicial review by the court. During the year, two complainants applied for judicial review against my decision on their complaints. One application was refused by the judge in December 2018, while the other application is scheduled to be heard by court in June 2019.

4.17 Another complainant accused me of violating the Disability Discrimination Ordinance as four of his complaints against the Equal Opportunities Commission were either not taken up or concluded as unsubstantiated. The case was scheduled to be heard in the District Court in April 2019.

### Challenging Complainant Behaviours

4.18 Complainants with challenging behaviours could consume an inordinate amount of our investigative and support resources. Such behaviours may take the form of verbal abuse and even threats to our officers, or refusing to leave our office until their demands were acceded to. Some complainants would lodge complaints against our staff when they were not satisfied with our conclusions or views and insisted on changing the case officer. We also had complainants, refusing to accept our findings or conclusions, kept pressing us for review of their cases without any new evidence or arguments.

4.19 We understand that such behaviours are a common feature of any complaint handling work. As always, we respond to the challenges with professionalism and ensure that our staff are provided with adequate training and support.

### Response Time of Organisations

4.20 Most organisations are very cooperative and provide full and fast responses to our inquiries. At times, unfortunately, we did encounter inadequate and tardy replies, taking months on a few occasions. Apart from impressing upon the senior management of the organisations the importance of timely replies to our inquiries, we would also meet with their operational staff to facilitate a better understanding of the matters at issue and hence a quicker and more pertinent response.



### Overview

4.21 We continue to encourage the use of mediation as a means to resolve disputes. The number of mediation cases concluded this year (205) remained at a high level, increased by more than four-fold compared with the figure (38) five years ago.

4.22 We completed 12 direct investigations this year. The recommendations we made generally received positive response from the organisations concerned. Besides, we highly appreciate the initiative by some organisations in making improvement measures during the course of our investigation.

4.23 We also dealt with a relatively high number of ATI complaints, which shows an increasing trend in recent years. With the consultation paper on ATI published by the Law Reform Commission in December 2018, we hope that the Government would speed up its process to introduce legislation on this subject.

## Staffing

5.1 We continued to build a solid base of home-grown talents and develop a healthy contingent of investigation officers. At the same time, we brought in talents with requisite experience to meet our operational demands.

5.2 At the directorate level, Ms Belinda Kwan was promoted to the rank of Assistant Ombudsman in October 2018, to take over from Mr Tony Ma, who left the office after 15 years' dedicated service in the post. We are grateful to Mr Ma for the invaluable contributions he has made in the promotion of good public administration.

5.3 Apart from the above, we appointed five investigation staff (one at Chief Investigation Officer level, one at Investigation Officer level, and three at entry level) through open recruitment and internal promotion. Our organisation chart is at **Annex 11**.

Table 5a

Staff Complement			
Staff Category	As at 31.3.2017	As at 31.3.2018	As at 31.3.2019
Directorate	4	4	4
Investigation	65	65	65
Administrative & Support	51	51	51
<b>Total establishment</b>	<b>120</b>	<b>120</b>	<b>120</b>



Workshop on presentation skills

## Training

5.4 As an ongoing effort to equip our staff with the skills required for efficient and effective discharge of duties, we organised our own vocational training workshops and sponsored officers to attend training programmes available in the market.

5.5 During the year, we organised a customer service workshop for investigation staff to equip them with the techniques in fortifying a positive and creative mindset in complaint handling. Another workshop was held to enhance our staff's communication and presentation skills.

5.6 We have a Duty Officer Scheme to serve members of the public who come to this Office to lodge complaints in person. A sharing session on the Scheme was arranged for investigation staff to exchange their experience as Duty Officer in complaint handling.

5.7 On our invitation, the Mandatory Provident Fund Schemes Authority ("MPFA") conducted a workshop for our staff on retirement planning. We also arranged staff to attend IT training to enhance their techniques and skills in PowerPoint presentation.

5.8 To enhance our exposure to best practices in complaint handling in different jurisdictions, two officers attended the 30th Australasian and Pacific Ombudsman Region Conference in Auckland, New Zealand in November 2018.



Customer service workshop



## Occupational Health and Safety

5.9 In the year, we continued implementing the Employee Assistance Programme to promote and offer necessary coaching and counselling to our staff in achieving personal and professional effectiveness as well as work-life balance. Two wellness promotion workshops were held to equip staff with techniques and tips in staying healthy.

5.10 To ensure a healthy working environment for our staff, we have participated in the Indoor Air Quality Certification Scheme for Offices and Public Places since 2014 and have continued to attain the “Good” class certification.

## Complaints against the Office

5.11 This year, we concluded 34 complaints lodged against the manner of our staff and/or our work procedures. Of these, inadequacies on the part of our staff were found in four cases. On each occasion, we provided appropriate counselling to the officers concerned.

5.12 Over 50% of the complaints against this Office arose from complainants’ dissatisfaction with our conclusions and decisions on their cases against Government

departments and public organisations. We explained to the complainants that these were the comments on our findings and did not reflect on the quality of our inquiries/ investigations. Where there are reasonable grounds for re-assessment or review, we will do so according to our established procedures. In any event, we take complaints most seriously as each complaint provides us with an opportunity to review our work systems and practices. We treasure the lessons learned and are always ready to improve our services to the community.

Table 5b

### Complaints against the Office concluded in 2018/19

Classification	No. of	
	Complaints	Percentage <sup>1</sup>
Unsubstantiated	30	88.2%
Substantiated	1	2.9%
Partially-substantiated	2	5.9%
Unsubstantiated but other inadequacies found	1	2.9%
<b>Total</b>	<b>34</b>	<b>100.0%</b>



Sharing session on Duty Officer Scheme



MPFA workshop

<sup>1</sup> After rounding off, the total may not be equal to 100%.

## Publicity and External Relations

6.1 We are committed to promoting good public administration and cultivating a positive complaint culture. This year, we embarked on a new publicity campaign and an array of public and media events. We also actively engaged stakeholders from different sectors and learnt from our counterparts around the world.

### Public Education and Promotion

#### New Publicity Campaign

6.2 This year, we rolled out a new publicity campaign with the theme of “Positive Complaint Culture for Better Administration”. In the campaign, we encouraged positive attitude towards complaints and promoted tripartite synergy among citizens, Government departments/public organisations and this Office to achieve better public administration. Our commercials and print advertisements were shown on local television channels, online media platforms and public transport facilities such as train bodies, carriages and bus stations shelters.

#### Media Events

6.3 We work closely with the media to promote our work. This year, we hosted five press conferences and issued press releases to announce the results of 13 direct investigations<sup>1</sup> and one selected complaint case. We also issued media statements to declare initiation of five direct investigations for gauging public opinions and to respond to matters of public concern. On 17 July 2018, we held a media gathering to introduce our Annual Report and answered media enquiries on our work. Before the completion of my term of office, I attended a number of media interviews and organised a media gathering to share my views on public administration. I am pleased to see that our work received wide media coverage and positive feedback.



Bus body advertisement



Train carriage advertisement



Press Conference



Media Gathering



<sup>1</sup> One direct investigation report was completed in 2017/18.

Table 6a

Press Conferences/Media Events	
17 April 2018	Announcement of findings of direct investigation on: (i) Water Supplies Department's maintenance of government water mains and risk management (ii) Government Departments' handling of the problem of air-conditioner dripping
4 June 2018	Declaration of direct investigation into Government's handling of the two trees in front of Tang Chi Ngong Building of the University of Hong Kong
11 June 2018	Announcement of findings of direct investigation on Immigration Department's mechanism for following up cases of unregistered birth
26 June 2018	Declaration of direct investigation into Education Bureau's mechanism for approving applications for school fee revision
17 July 2018	Media gathering: briefing on Annual Report 2017/18
17 July 2018	Declaration of direct investigation into Leisure and Cultural Services Department's allocation of swimming lanes in public swimming pools and its monitoring mechanism
2 August 2018	Declaration of direct investigation into Buildings Department's implementation of Mandatory Window Inspection Scheme
30 August 2018	Announcement of findings of direct investigation on: (i) Food and Environmental Hygiene Department's rental management of market stalls (ii) Food and Environmental Hygiene Department's regulation of market stalls
18 October 2018	Announcement of findings of: (i) Direct investigation on Housing Department's Arrangement for using idle spaces in public housing estates (ii) Full investigation report on Transport Department's improper arrangement for implementation of two-way toll collection at the Lantau Link That caused serious traffic congestion
19 October 2018	Press Statement – Ombudsman appoints Assistant Ombudsman
7 November 2018	Declaration of direct investigation into the effectiveness of Joint Office for Investigation of Water Seepage Complaints in handling water seepage complaints
14 November 2018	Announcement of findings of direct investigation on regulation of illegal burials outside "Permitted Burial Grounds" by Home Affairs Department and Lands Department
6 December 2018	Press Statement – The Ombudsman welcomes the Law Reform Commission's publication of consultation papers on archives law and access to information
13 December 2018	Announcement of findings of direct investigation on: (i) Social Welfare Department's monitoring of services of residential care homes for the elderly (ii) Government's regulation of proprietary chinese medicine

Press Conferences/Media Events (continued)	
31 January 2019	Press Statement – Ombudsman publishes Brief Report 2018
11 February 2019	Interview by RTHK
13 February 2019	Interview by Now TV
14 February 2019	Interview by HK01
19 February 2019	Announcement of findings of direct investigation on: (i) Government's support for non-Chinese speaking students (ii) Government's handling of two trees in front of Tang Chi Ngong Building of University of Hong Kong
20 February 2019	Interview by HKET
21 February 2019	Interview by Oriental Daily
22 February 2019	Interview by South China Morning Post
26 February 2019	Interview by Apple Daily
27 February 2019	Interview by Kinliu.hk
6 March 2019	Interview by Citizen News
7 March 2019	Interview by OurTV.hk
9 March 2019	Interview by Commercial Radio Hong Kong
12 March 2019	Announcement of findings of direct investigation on: (i) Government's Follow-up Mechanism Regarding Psychological Health Assessment of School Children (ii) Marine Department's Arrangements for Private Vessel Moorings
14 March 2019	Interview by Sing Tao Daily
18 March 2019	Interview by TVB
19 March 2019	Interview by RTHK – Letter to Hong Kong
19 March 2019	Interview by Phoenix TV
27 March 2019	Interview by The Standard
28 March 2019	Media Gathering
28 March 2019	Interview by RTHK – The Pulse
29 March 2019	Interview by Metro Finance



## Talks for Departments and Organisations

6.4 Our work requires frequent communication with and cooperation from Government departments and public organisations. To enhance mutual understanding, we conducted 5 outreach talks to share with public officers on how we handle complaints and our complaint handling experience.



*Talk for Government department*



*Talk for public organisation*

6.5 Invited by Department of Justice, I gave a speech at the Mediation Conference 2018 on 18 May 2018. I shared with the attending professionals the role our Office played in the formulation of the Apology Ordinance.

## Working with Professionals, Community Leaders, etc.

### Advisers and JPs

6.6 We are grateful to our Advisers and the many Justices of the Peace (“JPs”) under our “JPs Assistance Scheme” for their unfailing support, which facilitated the effective discharge of our statutory functions. Advisers from various professions offered their valuable advice at our request on cases with technical complications. On 7 June 2018, we organised a seminar with the Post Office (“PO”). PO arranged a guided tour in which attending advisers and JPs were introduced to the Central Mail Centre’s equipment, frontline postal services as well as the mail delivery procedures. PO also shared with them the new challenges in recent years, while the participants exchanged their views regarding the services of PO, the needs of the general public and the trend in mail delivery.



*Seminar on Postal Services*

### Legislative Councillors

6.7 Every year, I meet Members of the Legislative Council to give an update on our work. At this year's meeting on 7 December 2018, we had constructive discussions with Council members on matters of public concern.

### The Ombudsman's Awards

6.8 The Ombudsman's Awards are presented annually to Government departments/public organisations and public officers to recognise their excellent performance in

complaint handling and customer service. This year, we introduced a new organisation award on mediation to encourage Government departments and public organisations to resolve disputes by way of mediation. The presentation ceremony was held on 2 November 2018. The Agriculture, Fisheries and Conservation Department won the Grand Award, whereas the Customs and Excise Department and the Fire Services Department were the runners-up. The newly introduced Award on Mediation was presented to the Housing Department. 55 public officers received individual awards for their effort in exemplary public service.



*The Ombudsman's Awards presentation ceremony*

Table 6b

#### Winning Organisations for 2018

Agriculture, Fisheries and Conservation Department – Grand Award

Fire Services Department

Customs and Excise Department

Housing Department – Award for Mediation

Table 6c

<b>Individual Awards for 2018</b>	
<b>Organisation</b>	<b>No. of Awardees</b>
1823, Efficiency Unit	1
Airport Authority	2
Buildings Department	2
Civil Engineering and Development Department	2
Companies Registry	1
Consumer Council	1
Correctional Services Department	1
Customs and Excise Department	2
Drainage Services Department	2
Electrical and Mechanical Services Department	1
Environmental Protection Department	1
Estate Agents Authority	2
Fire Services Department	1
Food and Environmental Hygiene Department	1
Highways Department	2
Home Affairs Department	2
Hong Kong Monetary Authority	1
Hospital Authority	2
Housing Department	1
Immigration Department	2
Insurance Authority	1
Judiciary	1
Land Registry	2
Legal Aid Department	2
Mandatory Provident Fund Schemes Authority	2
Office of the Privacy Commissioner for Personal Data	2
Planning Department	1
Post Office	2
Securities and Futures Commission	1
The Hong Kong Examinations and Assessment Authority	2
Trade and Industry Department	1
Transport Department	2
Urban Renewal Authority	2
Water Supplies Department	2
Working Family and Student Financial Assistance Agency	2



## Overseas Liaison

6.9 We build good rapport with ombudsmen from other parts of the world. As Secretary in the Asian Ombudsman Association (“AOA”), I attended the AOA Board meeting in Baku, Azerbaijan on 30 October 2018. In the interactive discussion session of the meeting, I shared my thoughts with members on mediation and enactment of the Apology Ordinance in Hong Kong.



AOA Board Meeting in Baku, Azerbaijan

6.10 As Regional President of Australasia and Pacific Region (“APOR”) of the International Ombudsman Institute (“IOI”), I joined the 40th Anniversary Celebrations of IOI in New York, USA on 30 April 2018 and attended the IOI Board meeting and APOR Board meeting in Toronto, Canada on 1-3 May 2018.

6.11 I also worked closely with the other two Directors in the APOR to strengthen ties among members and to provide training opportunities for them. On 28–29 November 2018, an APOR Conference themed “Holding governments to account in a changing climate” with training programme, was held in Auckland, New Zealand. I chaired also a business meeting with APOR members with fruitful results.



APOR Conference and Business Meeting in Auckland, New Zealand

6.12 We keep close connection with our counterpart in Macao SAR. On 9 January 2019, I accompanied by my deputy and two colleagues visited the Commission Against Corruption of Macao upon their invitation. Received by the Commissioner, Mr Cheong Weng Chon, we shared with each other the two offices’ practices on handling complaints of maladministration.

6.13 During the year under report, we received 24 group visits. We welcome delegations from other parts of the world to share our experience, widen our eyesight and enrich our knowledge. The list of visitors is at **Annex 13**.



Visit of a delegation from Mainland China

## Looking Ahead

6.14 This year marks the 30th Anniversary of the Office. To commemorate this occasion, we produced a set of stamps which draws reference to the covers of our annual reports as well as our publicity activities in recent years. We look forward to further collaboration with our stakeholders in promoting a fair and efficient public administration.



30th Anniversary Stamp Set



香港申訴專員公署  
OFFICE OF THE OMBUDSMAN  
HONG KONG



申訴專員公署  
Office of the Ombudsman

市民  
Citizens

政府部門及公營機構  
Government departments and  
Public organisations

# 正面看投訴 共建好制度

Positive Complaint Culture for Better Administration

網址 Website : [www.ombudsman.hk](http://www.ombudsman.hk)

電話 Hotline : (852) 2629 0555





# One Year at a Glance



Press Conference on 18 Oct 2018



Visit from Petitions Committee of the Federal German Parliament on 25 Oct 2018



Seminar on Hong Kong Postal Services on 7 Jun 2018



Graduation Ceremony of Pentecostal Gin Mao Sheng Primary School on 7 Jul 2018



Media Gathering on 17 Jul 2018



40th Anniversary Celebrations of IOI in New York, USA and IOI Board Meeting in Toronto, Canada





Press Conference on 30 Aug 2018



Mediation Conference 2018 on 18 May 2018



AOA Board of Directors Meeting in Baku, Azerbaijan on 30 Oct 2018



Press Conference on 17 Apr 2018





Press Conference on 13 Dec 2018



Media Gathering on 28 Mar 2019



Visit from Mr Xiong Xuanguo, Vice Minister of Justice on 26 Mar 2019



Presentation Ceremony of The Ombudsman's Awards on 2 Nov 2018



Luncheon invited by Chung Chi College of the Chinese University of Hong Kong on 15 Feb 2019



Visit to Commission Against Corruption of Macao on 9 Jan 2019





APOR Conference and Members Meeting in Auckland, New Zealand on 28-29 Nov 2018



Interview by Now TV on 13 Feb 2019



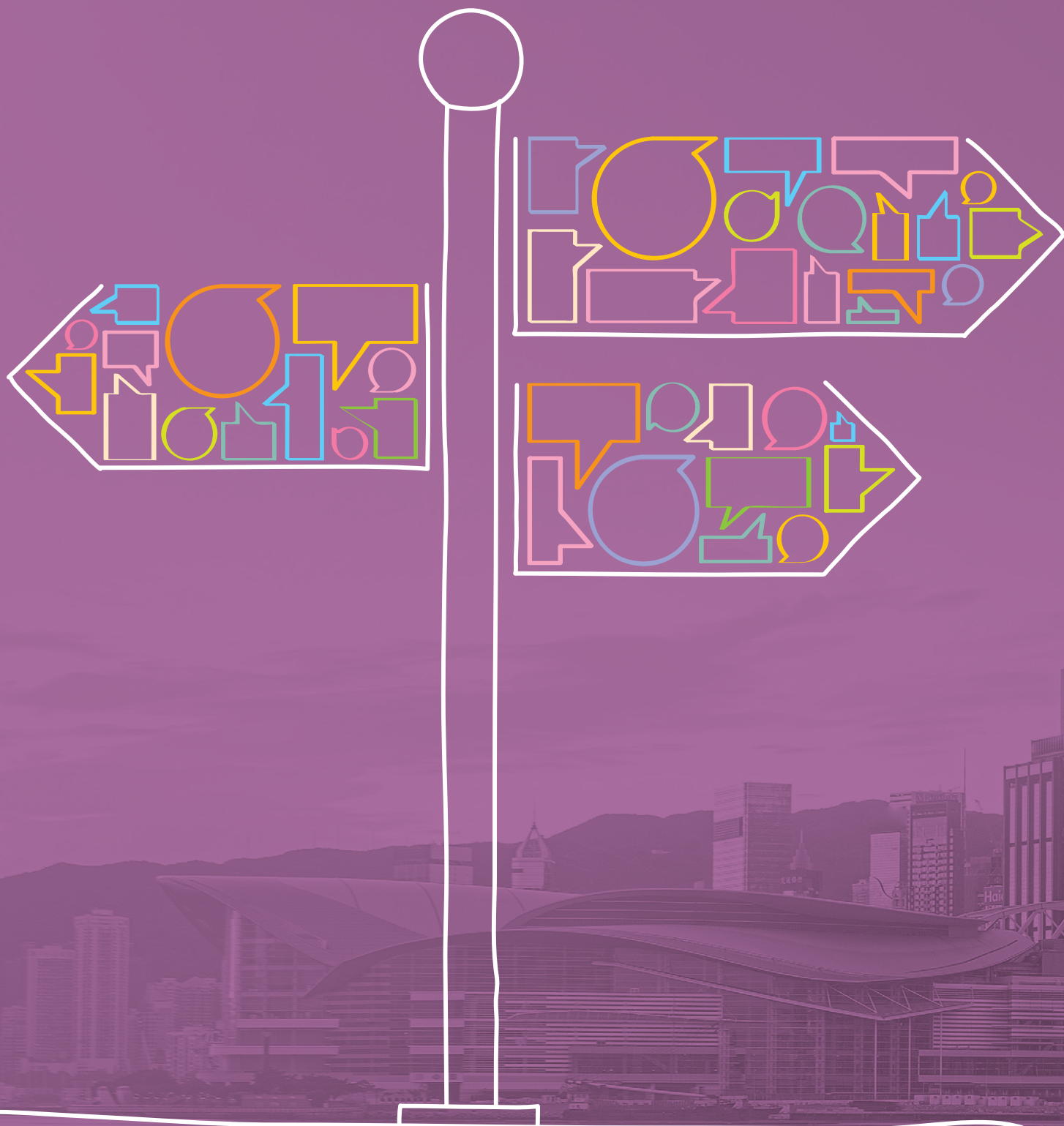
Interview by HK01 on 14 Feb 2019



Interview by RTHK on 11 Feb 2019



The Ombudsman received a hand-made gift from the staff for her retirement





# ANNEXES

Annual Report of The Ombudsman, Hong Kong 2019



# List of Scheduled Organisations



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

	Organisation	Abbreviation
1.	Agriculture, Fisheries and Conservation Department	AFCD
2.	Airport Authority	AA
3.	All registries and administrative offices of courts and tribunals for which the Judiciary Administrator has responsibility	JA
4.	Architectural Services Department	ArchSD
5.	Audit Commission	Aud
6.	Auxiliary Medical Service	AMS
7.	Auxiliary Medical Service (Government department)	AMS
8.	Buildings Department	BD
9.	Census and Statistics Department	C&SD
10.	Civil Aid Service	CAS
11.	Civil Aid Service (Government department)	CAS
12.	Civil Aviation Department	CAD
13.	Civil Engineering and Development Department	CEDD

	Organisation	Abbreviation
14.	Companies Registry	CR
15.	Competition Commission	ComC
16.	Consumer Council	CC
17.	Correctional Services Department	CSD
18.	Customs and Excise Department	C&ED
19.	Department of Health	DH
20.	Department of Justice	DoJ
21.	Drainage Services Department	DSD
22.	Electrical and Mechanical Services Department	EMSD
23.	Employees Retraining Board	ERB
24.	Environmental Protection Department	EPD
25.	Equal Opportunities Commission	EOC
26.	Estate Agents Authority	EAA
27.	Financial Reporting Council	FRC
28.	Fire Services Department	FSD
29.	Food and Environmental Hygiene Department	FEHD
30.	General Office of the Chief Executive's Office	CEO
31.	Government Flying Service	GFS
32.	Government Laboratory	GovtLab
33.	Government Logistics Department	GLD
34.	Government Property Agency	GPA
	Government Secretariat	GS
35.	– Chief Secretary for Administration's Private Office	CSPO
36.	– Chief Secretary for Administration's Office	CSO
37.	– Civil Service Bureau	CSB
38.	– Commerce and Economic Development Bureau	CEDB
39.	– Constitutional and Mainland Affairs Bureau	CMAB
40.	– Development Bureau	DEVB
41.	– Education Bureau	EDB
42.	– Environment Bureau	ENB
43.	– Financial Secretary's Private Office	FSPO
44.	– Financial Secretary's Office	FSO
45.	– Financial Services and the Treasury Bureau	FSTB
46.	– Food and Health Bureau	FHB

	Organisation	Abbreviation
47.	– Home Affairs Bureau	HAB
48.	– Innovation and Technology Bureau	ITB
49.	– Labour and Welfare Bureau	LWB
50.	– Security Bureau	SB
51.	– Transport and Housing Bureau	THB
52.	Highways Department	HyD
53.	Home Affairs Department	HAD
54.	Hong Kong Arts Development Council	HKADC
55.	Hong Kong Housing Authority	HKHA
56.	Hong Kong Housing Society	HKHS
57.	Hong Kong Monetary Authority	HKMA
58.	Hong Kong Observatory	HKO
59.	Hong Kong Sports Institute Limited	HKSIL
60.	Hospital Authority	HA
61.	Housing Department	HD
62.	Immigration Department	ImmD
63.	Information Services Department	ISD
64.	Inland Revenue Department	IRD
65.	Insurance Authority	IA
66.	Intellectual Property Department	IPD
67.	Invest Hong Kong	InvestHK
68.	Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service	JSSCS
69.	Kowloon-Canton Railway Corporation	KCRC
70.	Labour Department	LD
71.	Land Registry	LR
72.	Lands Department	LandsD
73.	Legal Aid Department	LAD
74.	Legislative Council Secretariat	LCS
75.	Leisure and Cultural Services Department	LCSD
76.	Mandatory Provident Fund Schemes Authority	MPFA
77.	Marine Department	MD
78.	Office of the Communications Authority	OFCA
79.	Official Receiver's Office	ORO



	Organisation	Abbreviation
80.	Planning Department	PlanD
81.	Post Office	PO
82.	Privacy Commissioner for Personal Data	PCPD
83.	Property Management Services Authority	PMSA
84.	Radio Television Hong Kong	RTHK
85.	Rating and Valuation Department	RVD
86.	Registration and Electoral Office	REO
87.	Securities and Futures Commission	SFC
88.	Social Welfare Department	SWD
89.	The Hong Kong Examinations and Assessment Authority	HKEAA
90.	Trade and Industry Department	TID
91.	Transport Department	TD
92.	Treasury	Try
93.	University Grants Committee, Secretariat	UGC
94.	Urban Renewal Authority	URA
95.	Vocational Training Council	VTC
96.	Water Supplies Department	WSD
97.	West Kowloon Cultural District Authority	WKCDA
98.	Working Family and Student Financial Assistance Agency	WFSFAA

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

	Organisation	Abbreviation
1.	Independent Commission Against Corruption	ICAC
2.	Hong Kong Auxiliary Police Force	HKAPF
3.	Hong Kong Police Force	HKPF
4.	Secretariat of the Public Service Commission	PSC

## 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 Buy-backs
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

# Caseload

	Reporting year <sup>1</sup>				
	14/15	15/16	16/17	17/18	18/19
<b>Enquiries</b>	<b>12,940</b>	<b>12,159</b>	<b>11,564</b>	<b>11,424</b>	<b>10,403</b>
<b>Complaints</b>					
<b>(a) For processing</b>	<b>6,241</b>	<b>6,112</b>	<b>5,732</b>	<b>5,587</b>	<b>5,808</b>
– Received	5,339[428]	5,244[213]	4,862[74]	4,829[68]	4,991[349]
– Brought forward	902	868	870	758	817
<b>(b) Completed</b>	<b>5,373[472]</b>	<b>5,242[224]</b>	<b>4,974[74]</b>	<b>4,770[61]</b>	<b>4,838[353]</b>
<b>Pursued and concluded</b>	<b>3,025[203]</b>	<b>3,100[205]</b>	<b>2,907[40]</b>	<b>2,724[52]</b>	<b>2,912[344]</b>
– By inquiry <sup>2</sup>	2,573[78]	2,740[175]	2,556[16]	2,292[37]	2,502[326]
– By full investigation <sup>3</sup>	314[125]	226[30]	218[24]	195[15]	205[18]
– By mediation <sup>4</sup>	138	134	133	237	205
<b>Assessed and closed</b>	<b>2,348[269]</b>	<b>2,142[19]</b>	<b>2,067[34]</b>	<b>2,046[9]</b>	<b>1,926[9]</b>
– Insufficient grounds to pursue <sup>5</sup>	1,091[1]	1,187[4]	1,102	1,099	1,037[9]
– Legally bound <sup>6</sup>	1,257[268]	955[15]	965[34]	947[9]	889
<b>(c) Percentage completed = (b) / (a)</b>	<b>86.1%</b>	<b>85.8%</b>	<b>86.8%</b>	<b>85.4%</b>	<b>83.3%</b>
<b>(d) Carried forward = (a) – (b)</b>	<b>868</b>	<b>870</b>	<b>758</b>	<b>817</b>	<b>970</b>
<b>Direct investigations completed</b>	<b>7</b>	<b>8</b>	<b>11</b>	<b>12</b>	<b>12</b>

Note 1. From 1 April to 31 March of the next year.

Note 2. Pursued under section 11A of The Ombudsman Ordinance, for general cases.

Note 3. Pursued under section 12 of The Ombudsman Ordinance, for complex cases possibly involving serious maladministration, systemic flaws, etc.

Note 4. Pursued under section 11B of The Ombudsman Ordinance, for cases involving no, or only minor, maladministration.

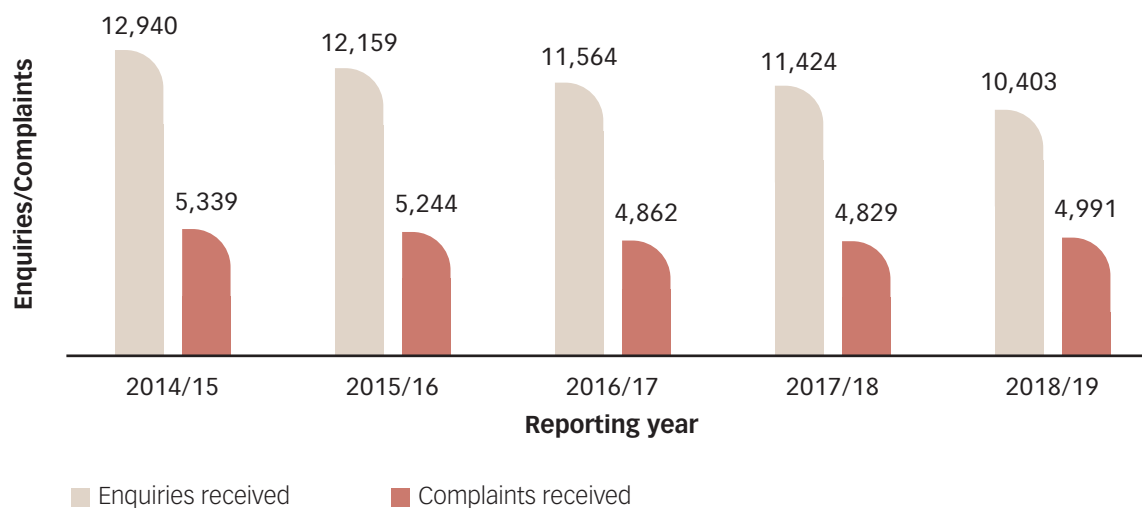
Note 5. Not pursued but closed for reasons such as lack of *prima facie* evidence, organisation concerned is taking action, mere expression of opinion.

Note 6. Outside the Office's jurisdiction or restricted by The Ombudsman Ordinance.

[ ] Number of topical complaints.

– See "Glossary of Terms" for detailed definitions of the above terms

## Enquiries/Complaints Received



## Nature of Complaints Processed



- **33.5%** Error, wrong advice/decision
- **13.3%** Delay/inaction
- **12.8%** Ineffective control
- **10.4%** Others (e.g. unclear allegation, general criticism, opinion)
- **7.1%** Lack of response/reply to complainant/enquirer
- **5.0%** Failure to follow procedures
- **4.9%** Poor staff attitude (e.g. rudeness, unhelpfulness)
- **4.8%** Disparity in treatment, unfairness
- **3.5%** Faulty procedures
- **2.9%** Negligence, omission
- **1.8%** Abuse of power



## Distribution of Enquiries/Complaints Received

Organisation	Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	43	57[7]
Airport Authority	12	13
Architectural Services Department	20	17
Auxiliary Medical Service	4	4
Buildings Department	466	295[3]
Census and Statistics Department	0	2
Civil Aid Service	1	3
Civil Aviation Department	2	3
Civil Engineering and Development Department	6	20
Companies Registry	19	10
Competition Commission	2	4
Consumer Council	30	19
Correctional Services Department	30	104
Customs and Excise Department	61	52
Department of Health	73	72
Department of Justice	13	21
Drainage Services Department	13	13
Electrical and Mechanical Services Department	33	18
Employees Retraining Board	6	3
Environmental Protection Department	49	46
Equal Opportunities Commission	21	31
Estate Agents Authority	18	172[150]
Fire Services Department	55	47
Food and Environmental Hygiene Department	731	485
General Office of the Chief Executive's Office	5	7
Government Laboratory	0	1
Government Logistics Department	0	4
Government Property Agency	3	6
Government Secretariat		
– Chief Secretary for Administration's Office	9	3
– Civil Service Bureau	16	13
– Commerce and Economic Development Bureau	2	0
– Constitutional and Mainland Affairs Bureau	1	4
– Development Bureau	14	9
– Education Bureau	81	83[4]

Organisation	Enquiries	Complaints
– Environment Bureau	1	0
– Financial Secretary's Office	4	1
– Financial Services and the Treasury Bureau	2	5
– Food and Health Bureau	4	5
– Home Affairs Bureau	3	7
– Innovation and Technology Bureau	55	37
– Labour and Welfare Bureau	8	7
– Security Bureau	5	9
– Transport and Housing Bureau	14	28
Highways Department	48	71[3]
Home Affairs Department	81	88[1]
Hong Kong Arts Development Council	3	0
Hong Kong Housing Authority	15	11
Hong Kong Housing Society	42	33
Hong Kong Monetary Authority	36	24
Hong Kong Observatory	5	2
Hong Kong Police Force	290	161
Hong Kong Sports Institute Limited	1	2
Hospital Authority	333	171
Housing Department	838	570
Immigration Department	145	113
Independent Commission Against Corruption	19	6
Information Services Department	3	0
Inland Revenue Department	87	74
Insurance Authority	15	11
Intellectual Property Department	1	2
Invest Hong Kong	0	2
Judiciary Administrator	66	57
Labour Department	96	60
Land Registry	3	3
Lands Department	204	278
Legal Aid Department	95	49
Legislative Council Secretariat	3	3
Leisure and Cultural Services Department	168	198
Mandatory Provident Fund Schemes Authority	19	14

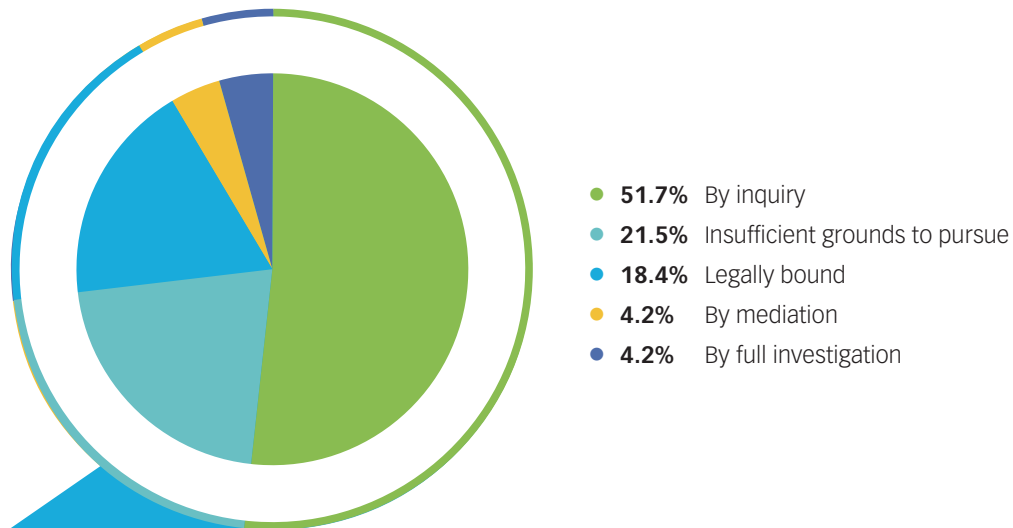
Organisation	Enquiries	Complaints
Marine Department	14	10
Office of the Communications Authority	25	19
Official Receiver's Office	23	10
Planning Department	10	16
Post Office	73	74
Privacy Commissioner for Personal Data	12	11
Property Management Services Authority	1	0
Radio Television Hong Kong	6	10
Rating and Valuation Department	27	19
Registration and Electoral Office	6	7
Securities and Futures Commission	14	13
Social Welfare Department	342	162
The Hong Kong Examinations and Assessment Authority	10	10
Trade and Industry Department	4	3
Transport Department	193	262[17]
Treasury	6	4
Urban Renewal Authority	15	21[9]
Vocational Training Council	8	8
Water Supplies Department	118	93
West Kowloon Cultural District Authority	1	1
Working Family and Student Financial Assistance Agency	67	39
<b>Total</b>	<b>5,526</b>	<b>4,535</b>

Note 1. The total number of enquiries and complaints shown above are different from the figures shown in Annex 3.1 (enquiries: 10,403, complaints: 4,991) because enquiries/complaints involving organisations not falling within Schedule 1 to The Ombudsman Ordinance are not shown in the above table.

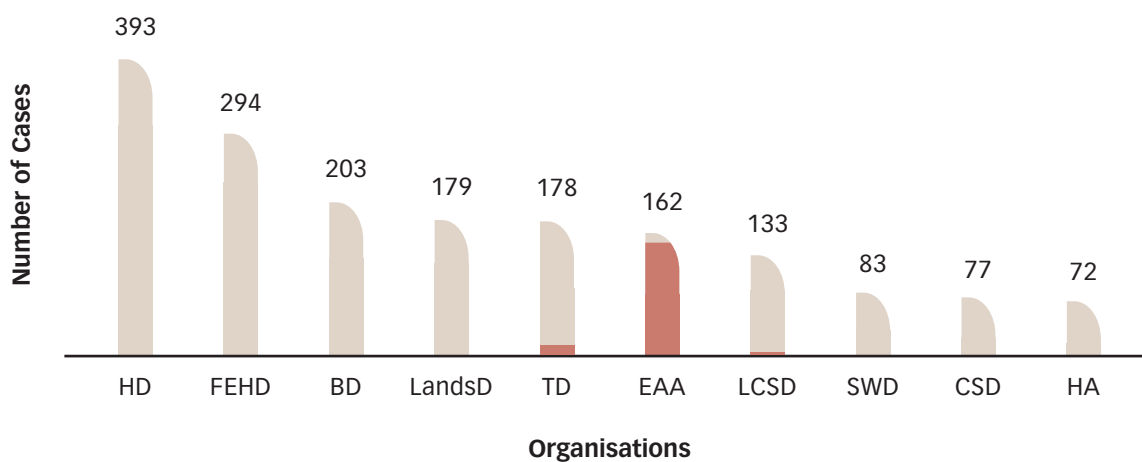
Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

[ ] Number of topical complaints

## Distribution of Complaints Completed: 4,838 Cases



## Complaints Pursued and Concluded: Top Ten Organisations



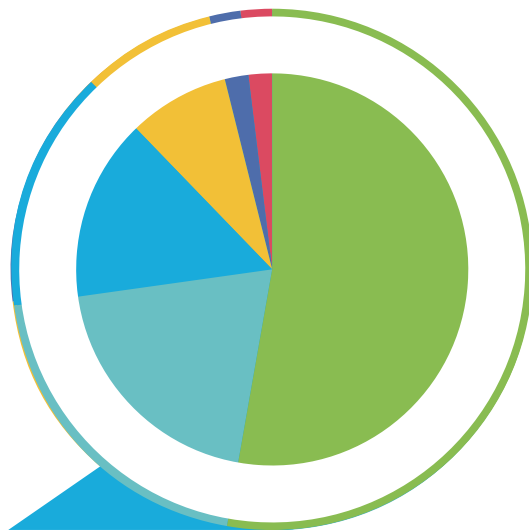
Note 1. "Complaints Pursued and Concluded" are cases handled by way of inquiry, full investigation or mediation.

Note 2. These top ten organisations accounted for 60.9% of the 2,912 complaints pursued and concluded.

Note 3. ■ signifies topical complaints.



## Results of Complaints Concluded by Full Investigation: 205 Cases



- **52.7%** Unsubstantiated
- **20.0%** Partially substantiated
- **15.0%** Unsubstantiated but other inadequacies found
- **8.3%** Substantiated
- **2.0%** Inconclusive
- **2.0%** Withdrawn/Discontinued

## Forms of Maladministration Substantiated by Full Investigation



- **38.5%** Error, wrong advice/decision
- **15.6%** Failure to follow procedures
- **13.6%** Delay/inaction
- **13.6%** Ineffective control
- **7.3%** Lack of response/reply to complainant/enquirer
- **5.2%** Negligence, omission
- **3.1%** Faulty procedures
- **2.1%** Abuse of power
- **1.0%** Disparity in treatment, unfairness

## Results of Complaints Concluded by Inquiry

Organisation	No. of Complaints	Cases with inadequacies/ deficiencies found
Agriculture, Fisheries and Conservation Department	28	2
Airport Authority	6	1
Architectural Services Department	3	2
Buildings Department	168	35
Civil Aviation Department	2	1
Civil Engineering and Development Department	7	0
Competition Commission	3	3
Companies Registry	3	0
Consumer Council	5	1
Correctional Services Department	74	0
Census and Statistics Department	1	0
Customs and Excise Department	20	2
Department of Health	34	5
Department of Justice	6	3
Drainage Services Department	7	0
Electrical and Mechanical Services Department	12	1
Environmental Protection Department	24	2
Equal Opportunities Commission	15	2
Estate Agents Authority	162	0
Fire Services Department	24	0
Food and Environmental Hygiene Department	234	45
General Office of the Chief Executive's Office	4	0
Government Property Agency	2	0
Government Secretariat		
– Chief Secretary for Administration's Office	4	0
– Civil Service Bureau	3	1
– Commerce and Economic Development Bureau	1	0
– Constitutional and Mainland Affairs Bureau	3	0
– Development Bureau	8	1
– Education Bureau	38	2
– Financial Secretary's Office	1	0
– Financial Services and the Treasury Bureau	2	0

Organisation	No. of Complaints	Cases with inadequacies/ deficiencies found
– Food and Health Bureau	2	1
– Home Affairs Bureau	4	0
– Innovation and Technology Bureau	20	4
– Labour and Welfare Bureau	5	0
– Security Bureau	2	0
– Transport and Housing Bureau	14	2
Highways Department	32	3
Home Affairs Department	51	3
Hong Kong Housing Authority	8	0
Hong Kong Housing Society	19	2
Hong Kong Monetary Authority	16	1
Hong Kong Observatory	1	0
Hong Kong Police Force	19	3
Hong Kong Sports Institute Limited	1	0
Hospital Authority	68	20
Housing Department	322	36
Immigration Department	58	4
Independent Commission Against Corruption	1	0
Inland Revenue Department	32	11
Insurance Authority	5	0
Intellectual Property Department	2	0
Judiciary Administrator	23	5
Labour Department	22	2
Land Registry	3	1
Lands Department	164	25
Legal Aid Department	27	4
Legislative Council Secretariat	1	0
Leisure and Cultural Services Department	113	16
Mandatory Provident Fund Schemes Authority	7	2
Marine Department	8	1
Office of the Communications Authority	12	1
Official Receiver's Office	5	0

Organisation	No. of Complaints	Cases with inadequacies/ deficiencies found
Other Organisations	162	0
Planning Department	9	0
Post Office	49	13
Privacy Commissioner for Personal Data	6	4
Radio Television Hong Kong	1	0
Rating and Valuation Department	6	2
Registration and Electoral Office	5	1
Securities and Futures Commission	5	1
Social Welfare Department	67	10
The Hong Kong Examinations and Assessment Authority	5	0
Transport Department	150	28
Urban Renewal Authority	3	0
Vocational Training Council	3	0
Water Supplies Department	49	9
Working Family and Student Financial Assistance Agency	11	2
<b>Total</b>	<b>2,502</b>	<b>326</b>

Note 1. "Other Organisations" are organisations falling outside Schedule 1 to The Ombudsman Ordinance.

Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by inquiry are not shown.



# Achievement of Performance Pledges

## (A) Enquiries

	Response Time		
	Immediate	Within 30 minutes	More than 30 minutes
By telephone or in person	9,999 (100.0%)	0	0
In writing	Within 5 working days	Within 6–10 working days	More than 10 working days
	398 (98.5%)	5 (1.2%)	1 (0.3%)

## (B) Complaints\*

	Response Time	
	Within 5 working days	More than 5 working days
Acknowledgement	4,508 (99.3%)	33 (0.7%)

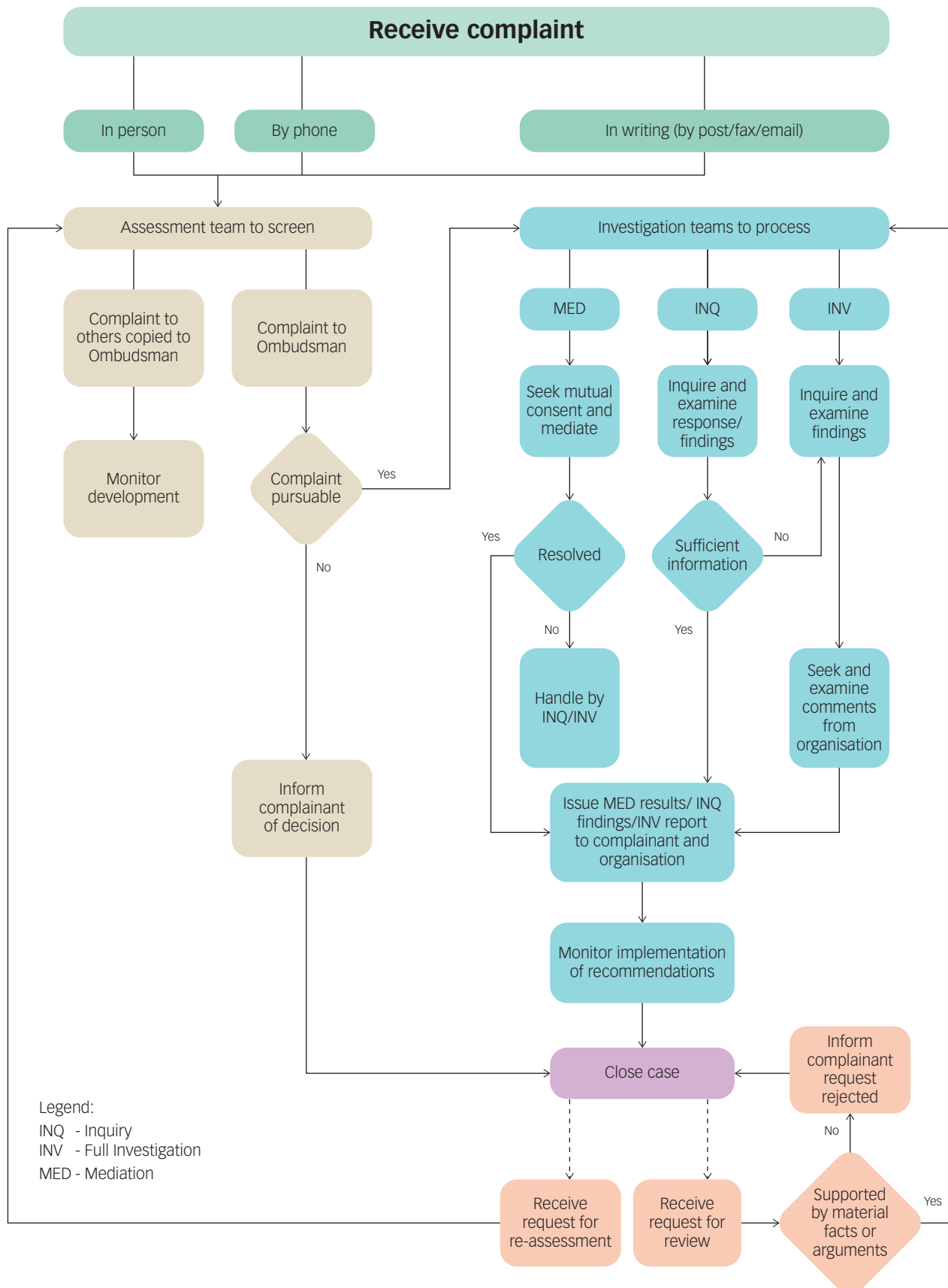
\* Excluding cases where acknowledgement is not necessary or practicable.

	Cases outside jurisdiction or under restriction			Other cases		
	Within 10 working days	Within 11–15 working days	More than 15 working days	Less than 3 months	Within 3–6 months	More than 6 months
Cases concluded	871 (98.0%)	18 (2.0%)	0	3,388 (85.8%)	539 (13.6%)	22 (0.6%)
Target	Not less than 70%	Not more than 30%	–	Not less than 60%	Not more than 40%	–

## (C) Outreach Talks

	Response Time	
	Within 10 working days	More than 10 working days
Requests for outreach talks	5 (100.0%)	0

# Flow Chart on Handling of a Complaint



## Index of Direct Investigations Completed

Direct Investigations	
OMB/DI/391	Immigration Department's Mechanism for Following up Cases of Unregistered Birth
OMB/DI/398	Social Welfare Department's Monitoring of Services of Residential Care Homes for the Elderly
OMB/DI/402	Government's Regulation of Proprietary Chinese Medicine
OMB/DI/403	Food and Environmental Hygiene Department's Rental Management of Market Stalls
OMB/DI/411	Government's Follow-up Mechanism Regarding Psychological Health Assessment of School Children
OMB/DI/413	Housing Department's Arrangement for Using Idle Spaces in Public Housing Estates
OMB/DI/414	Government Departments' Handling of the Problem of Air-conditioner Dripping
OMB/DI/416	Food and Environmental Hygiene Department's Regulation of Market Stalls
OMB/DI/417	Regulation of Illegal Burials Outside Permitted Burial Grounds by the Home Affairs Department and the Lands Department
OMB/DI/418	Marine Department's Arrangements for Private Vessel Moorings
OMB/DI/422	Government's Support for Non-Chinese Speaking Students
OMB/DI/423	Government's Handling of Two Trees in front of Tang Chi Ngong Building of University of Hong Kong

# Summaries of Selected Reports of Direct Investigations



## Department of Health ("DH") and Education Bureau ("EDB")

Case No. OMB/DI/411

### Government's Follow-up Mechanism Regarding Psychological Health Assessment of School Children

(Investigation declared on 3 April 2017 and completed on 8 March 2019, full report [Chinese version only] available at [www.ombudsman.hk](http://www.ombudsman.hk))

## Background

To safeguard the physical and psychological health of school children, DH launched the Student Health Service Programme ("the Programme"), under which students are given an annual health assessment at a Student Health Service Centre ("SHSC"), including psychological health assessment, that match their different stages of development.

## Our Findings and Comments

2. Our direct investigation has found inadequacies in the implementation of the Programme in the following three areas.

### I. Failing to Adopt Specific Measures to Boost Low Student Attendance Rate

#### *Failing to Examine the Reasons for Absence from the Annual Assessment Sessions*

3. In the past few years, only around 65% of the enrolled students attended their annual assessment sessions. The attendance rate of secondary students was

even as low as 50%. Nevertheless, DH has never looked into the reasons behind their absence. Such low attendance rate would not only undermine the Programme's effectiveness, but also cast doubt on whether the resources have been properly utilised.

#### *Failing to Provide Schools and EDB with Information on Student Attendance Rate*

4. At present, DH would not notify the schools/EDB about students' attendance of the annual assessment. We recommend DH to release to each school information on the attendance rates of its students, and release to EDB the overall attendance rate of each school. If any school is found to have a persistently low attendance rate, EDB should work with the school concerned to take improvement measures.

#### *To Enhance the Appeal of the Programme*

5. DH may consider providing among its online services more basic health information and medical records of students (such as vaccination records), making the Programme become the students' personal growth and physical development/health records, thereby increasing the appeal of the Programme and boosting its attendance rate.

### II. Failing to Ensure that Parents Know their Children's Assessment Results

#### *Failing to Effectively Notify Parents Who Have Not Attended Their Children's Annual Assessment of the Assessment Results*

6. Our investigation found that many students were not accompanied by their parents when attending assessment sessions. For students who had been assessed to have psychological health issues that required attention, but were not accompanied by parents when attending assessments, SHSCs would only ask the students to deliver the assessment reports to their parents. Nevertheless, we are concerned about whether young students are capable of accurately conveying to their parents the explanation and recommendations of the medical staff. DH should consider more reliable ways to notify parents of their children's assessment results.



### ***Psychological Health Assessment Reports Fail to Reflect Details of Students' Assessment Results***

7. The report on "Personal Health Assessment Results and Recommendations" prepared by SHSCs includes only some general advice on health, such as "develop good hobbies", without reflecting any details about any particular issues or areas of concerns of the students. In our view, DH should review the contents of the report and set out the areas of concern and causes in a clearer manner.

### **III. Insufficient Follow-up Action on Case Referrals**

#### ***Undesirable Practice of "Reviewing Case Referrals by Next Annual Assessment"***

8. Currently, when an SHSC considers that a student has a psychological problem and follow-up action is needed, it will refer the case to different specialist units/organisations based on the nature of the problem. Once a case is referred, the SHSC will suspend its follow-up action until the student's next annual assessment. Nevertheless, DH's data show that quite many of the students referred did not attend the next annual assessment. In such circumstances, SHSCs simply would not know how those students are doing.

9. Upon our investigation, DH and the Hospital Authority ("HA") launched a pilot scheme at four SHSCs to enhance its supports for students referred to psychiatric specialists of HA. We consider that SHSCs should actively follow up and offer assistance if the students referred do not show up for their next annual assessment.

#### ***Inadequate Communication with Organisations Referred***

10. At present, only a small number of organisations receiving case referrals from SHSCs would keep the SHSCs concerned updated on the condition of the students referred. DH should consider setting up a reminder system to actively remind the organisations referred to provide such information as appropriate.

#### ***Better Compilation and Utilisation of Statistics***

11. We consider that DH should make good use of the rich database of The Programme, being the student health service with the widest coverage in Hong Kong, to assist the Government in formulating appropriate policies and deploying resources.

## **Recommendations**

12. In the light of the above, The Ombudsman makes the following recommendations to DH and EDB:

### **DH and EDB**

- (1) DH to provide schools and EDB with information on student attendance rates. EDB should work with those schools with a consistently low attendance rate to take improvement measures;

### **DH**

- (2) gather information on the reasons for students being absent from their annual assessment in a bid to formulate specific measures to boost the attendance rate;
- (3) provide more information about the health condition and medical records of students online;
- (4) allow parents to fill in the questionnaire about their children's psychological health online;
- (5) review the content of the "Personal Health Assessment Results and Recommendations";
- (6) monitor closely the effectiveness of the pilot scheme implemented jointly with HA for strengthening support for students referred, and extend the new measure to other SHSCs as soon as possible;
- (7) contact the student/parents if the student referred is found to have missed the next annual assessment;
- (8) set up a reminder system to regularly remind organisations referred to update the situation of the referred cases; and
- (9) compile more useful statistics on students' psychological condition.



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

**Case No. OMB/DI/403**

**Food and Environmental Hygiene Department's Rental Management of Market Stalls**

(Investigation declared on 7 January 2016 and completed on 24 August 2018; full report [Chinese version only] available at [www.ombudsman.hk](http://www.ombudsman.hk))

## Background

There are 99 public markets managed by FEHD. The overall occupancy rate of stalls in those markets stands at 90%. However, there are in reality serious problems of idling stalls. Many stalls are either not operating or only used for storage, without selling foods or commodities to the public.

## Our Findings

2. Our direct investigation has identified five inadequacies regarding FEHD's rental management of market stalls.

### I. Low Level of and Great Disparity among Stall Rentals Result in Unlevel Playing Field for Tenants

3. Markets stalls have been let through different means: some stalls have been let to previous itinerant hawkers at concessionary rentals at a very low level while some are let out through auctions where the upset prices are below the reference open market rental ("OMR") as assessed by the Rating and Valuation Department. Hence,

there could be a great disparity in rentals among stalls. A case revealed that the disparity in rentals among stalls in the same market, selling commodities at more or less the same price levels, could be up to 90 times. In other words, the benefits of low rentals are actually not passed on to consumers.

4. We consider that FEHD should devise an effective and step-by-step rental adjustment mechanism in a comprehensive manner, with a view to resolving the problems relating to market stall rentals, so as to foster a healthier business environment enabling fair competition.

### II. Automatic Tenancy Renewal Diminishes Chances for Others to Rent Stalls

5. Under the current tenancy renewal system, FEHD generally allows a tenant to renew his/her tenancy if he/she so wishes upon expiry of an existing tenancy. This means that the stall concerned would not be put up for open auction. Such a system of automatic tenancy renewal, diminishing the chance for others to secure market stalls by open auction, may also undermine the motivation of stall tenants to improve their performance. This would in turn affect the competitiveness of public markets. FEHD should review this system of perpetual renewal of tenancy.

### III. Succession Still Allowed for Most Stalls, Thus Affecting Other People's Right to Bid for Those Stalls

6. Currently, there are four versions of tenancy agreements for stalls in public markets. Three of them stipulate that if a tenant passes away during the tenancy period, his/her designated successor or next of kin can apply to FEHD for succession of tenancy of the market stall concerned. We consider that this affects the public's right to bid for the operation of market stalls. FEHD should set up a database on the records of approved succession applications, so as to assess how much the tenancy succession system actually affects people's right to bid for the operation of market stalls. FEHD should also review its processing of tenancy succession applications and consider the need to make suitable adjustments to keep up with the times.

#### IV. No Limit on the Number of Stalls to be Rented by a Single Tenant Gives Rise to Abuses and Reduces Consumers' Points of Purchase

7. FEHD sets no limit on the number of stalls that can be rented by a single person. This allows a tenant to rent multiple stalls in close proximity and/or sell the same category of commodities, within the same market. In one case, a tenant rented as many as 23 stalls but used them only for storage. There was another case where two tenants occupied 45% of the wet goods stalls of a market all for floral business. Such practice has indeed given rise to abuse of stalls and reduced customer choice.

#### V. "Frozen Stalls" Left Idle for Years, Resulting in Serious Wastage of Public Resources

8. About 8% of public market stalls are withheld by FEHD for such reasons as relocation of existing tenants who are affected by large-scale works being carried out in markets. Some of those stalls have been thus "frozen" for as long as 23 years. Cases show that FEHD could not successfully carry out improvement works in certain markets because the tenants had refused to relocate to other stalls. However, it is in fact stated in three versions of tenancy agreements that when the Government carries out maintenance, repairs or improvement works in public markets, tenants should at the Government's request close their stalls or relocate to other stalls. In our view, if a tenant unreasonably refuses to relocate to another stall, FEHD is obliged to take enforcement action in accordance with the tenancy conditions so as to avoid wastage of public resources.

#### Our Recommendations

9. The Ombudsman recommends that FEHD:
  - (1) review the practice of setting upset prices below the OMR level at auctions;
  - (2) devise a comprehensive and effective rental adjustment mechanism;
  - (3) review the current tenancy renewal system to allow more opportunities for the public to bid for stall tenancies, while giving priority to existing tenants with satisfactory performance;

- (4) set up a database to keep records of tenancy succession applications and review the processing of such applications;
- (5) set a reasonable limit to the number of stalls that a tenant can rent in a market, taking into account the actual situation of individual markets; and
- (6) include the same clause in all versions of tenancy agreements to spell out the Government's power and responsibility for carrying out works in public markets, and set out the requirements and rules for tenants.



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

Case No. OMB/DI/416

#### Food and Environmental Hygiene Department's Regulation of Market Stalls

(Investigation declared on 7 January 2016 and completed on 24 August 2018; full report [Chinese version only] available at [www.ombudsman.hk](http://www.ombudsman.hk))

#### Background

In recent years, this Office has received from time to time public complaints about serious irregularities at public market stalls managed by FEHD. Many of those irregularities are perennial or recurrent.

## Our Findings

2. Stall tenants in public markets must abide by the relevant legislation and their tenancy agreements. FEHD is empowered to terminate the tenancy of a stall if the tenant has been convicted of market offences for four times within a period of 12 months, or is found in breach of the tenancy agreement for the fourth time after having already received three warning letters for breaching the tenancy agreement within a period of six months.

3. Our direct investigation has identified four common types of irregularities at public market stalls, and inadequacies in FEHD's enforcement actions.

### Irregularity (1): Occupation of Public Passageways

4. Both the legislation and the tenancy agreements prohibit occupation of public passageways. In most public markets, stall boundaries are marked by yellow lines or display counters in front of or on one side of the stall. Any tenant who places commodities beyond the boundaries violates the rule.

5. However, owing to FEHD's lenient enforcement, tenants have developed a misconception that there is nothing wrong with such violation of the rule. A case showed that FEHD staff had been issuing two verbal warnings to a tenant almost every day for several months. Notwithstanding that, the tenant still occupied the public passageway and the breach persisted.

### Irregularity (2): Unauthorised Change of Use of Stalls

6. It is stipulated in the tenancy agreements that tenants, without prior permission, shall not use their stalls for purposes other than the prescribed use. Besides, the legislation provides that tenants, without prior permission, shall not carry out alterations to their stalls or any fixtures or fittings of their stalls.

7. Some tenants had altered their stalls designated for selling food into office, cold storage and workshop. However, FEHD's frontline staff turned a blind eye to such obvious irregularities. Some tenants just used a small part of their stalls for displaying prescribed commodities and/or trading counters, and FEHD easily accepted the irregularities as having been rectified. Moreover, some tenants who changed the use of their stalls had also made unauthorised alterations to stall fixtures or fittings, such as setup of electrical connections or installation of ceiling boards, but FEHD staff did not take any action.

### Irregularity (3): Inadequate Business Hours

8. It is stipulated in the tenancy agreements that tenants shall not close the stall or suspend operation for seven days or more in any month unless written permission from the Government is obtained. A case revealed that FEHD did not take any enforcement action against quite a number of stalls that had violated the above clause of the tenancy agreement. Furthermore, FEHD had failed to formulate guidelines on enforcement against fake operation of stalls, for example, displaying only a small quantity of commodities outside the stalls without any person selling them. It had also failed to deal with the problem of inadequate business hours arising from the "single tenant, multiple stalls" scenario.

9. The current tenancy agreements do not stipulate the number of daily business hours for stalls. FEHD had once proposed to add a clause to the tenancy agreements prescribing the number of daily business hours for stalls. Owing to strong objections from tenants, it subsequently dropped the proposal. We consider that FEHD should continue exploring the feasibility of introducing such a clause to the tenancy agreements, and must eradicate the problem of idling stalls.



### Irregularity (4): Subletting of Stalls

10. It is stipulated in the tenancy agreements that tenants shall not sublet their stalls. Besides, tenants who engage assistants to carry on business at their stalls must have them registered with the Government. Nevertheless, FEHD has not set any restrictions on the number and identity of registered assistants. This has created a systemic loophole as tenants may simply sublet their stalls and the sublessees then operate the stalls in the guise of registered assistants.

11. FEHD primarily relies on the registered name on the business registration ("BR") certificate to judge whether a stall has been sublet. However, two of the four versions of tenancy agreements for public market stalls do not include any requirement on tenants to display BR certificates at their stalls. This has caused difficulties to frontline staff in detecting any irregularities in their daily inspections.

### Conclusion

12. To conclude, we have identified the following inadequacies in FEHD's regulation of public market stalls:

- (1) Inspections are too lax to effectively ensure tenants' compliance with the rules and regulations.
- (2) Proactive follow-up actions are infrequent, thereby allowing irregularities to persist.
- (3) Enforcement actions are too lenient to produce any deterrent effect.
- (4) Incomplete enforcement actions fail to tackle all related irregularities.
- (5) Inadequate supervision of contractors leads to ineffective regulation of tenants.

### Our Recommendations

13. The Ombudsman recommends that FEHD:

#### Overall Recommendations

- (1) review the existing items for daily inspection and redetermine a suitable inspection frequency for each item, and step up its monitoring of frontline staff;
- (2) strictly instruct market management staff at all levels to actively tackle and diligently follow up on all irregularities found at market stalls;
- (3) fully review the *modus operandi* of its staff and those of the contractors, and require all staff to rigorously inspect and pursue cases of tenants persistently and/or seriously in breach of the rules and regulations, and to strictly adhere to the established enforcement guidelines;
- (4) strengthen supervision of and remind market management staff at all levels to carry out thorough enforcement actions against all irregularities detected at the stalls;

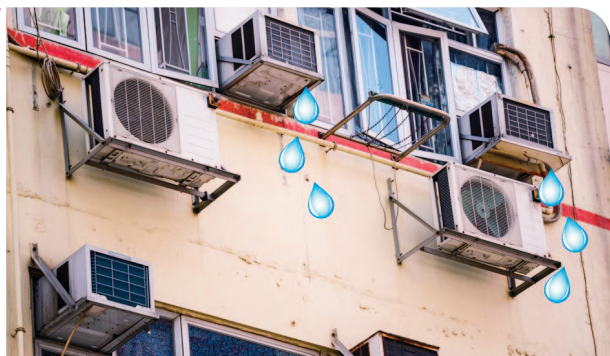
#### Recommendations for Tackling Specific Irregularities

##### *Inadequate Business Hours*

- (5) continue studying the feasibility of stipulating minimum daily business hours of stalls in tenancy agreements;
- (6) study why some stalls have been idling for prolonged periods and formulate a strategy to tackle the problem;

##### *Subletting of Stalls*

- (7) review the registered assistants system and consider setting suitable conditions and restrictions on the identity of registered assistants; and
- (8) by way of revising the tenancy agreements, require all tenants to display their BR certificates at their stalls.



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

Case No. OMB/DI/414

### Government Departments' Handling of the Problem of Air-conditioner Dripping

(Investigation declared on 15 September 2017 and completed on 11 April 2018; full report available at [www.ombudsman.hk](http://www.ombudsman.hk))

## Background

Every year, this Office receives many complaints against FEHD for failing to properly follow up on cases of air-conditioner dripping.

## Our Findings, Comments and Recommendations

### Regarding FEHD

2. Our direct investigation has identified five inadequacies in FEHD's handling of complaints about air-conditioner dripping.

#### ***I. Failing to Conduct Test on Air-conditioner after Issuance of Nuisance Notice***

3. In the course of investigating/following up on cases of air-conditioner dripping, FEHD staff tend not to test the air-conditioners concerned when the weather turns cooler and the air-conditioners are not in use then. The dripping problem is actually not fixed and would recur in the following summer. The complainant will then have to lodge a complaint again and FEHD to start its investigation afresh. Handled in this manner, a dripping problem could remain unresolved for years.

#### ***II. Failing to Set a Standard Duration for Testing Air-conditioners***

4. FEHD had not set any standard duration for testing air-conditioners.

5. We understand that the time needed for an air-conditioner test to produce a valid result may vary from case to case. FEHD should, nevertheless, set a reasonable standard duration for testing in order to produce more accurate and convincing test results. For cases where water dripping occurs shortly after a test begins, there is of course no need to carry on testing. Otherwise, the test should continue, say, for 30 minutes. If after assessing the circumstances the FEHD staff decide that the test should continue even further, they could certainly extend the duration of the test according to their judgement.

#### ***III. Failing to Conduct Inspections at the Usual Time of the Dripping as Reported by the Complainant***

6. In some cases, FEHD had failed to conduct inspections at the usual time of the dripping as reported by the complainant. As a result, no dripping from air-conditioners had been found. Such inspections were not only futile and a waste of efforts, but also did not conform to FEHD's own operational guidelines.

#### ***IV. Failing to Take Follow-up Actions in Accordance with the Operational Guidelines after Issuing Notices of Appointment***

7. In some other cases, FEHD had failed to take actions according to its operational guidelines. After issuing a Notice of Appointment, it did not follow up in a timely manner to enter the premises concerned to test if the air-conditioner had a dripping problem.

#### ***V. Failing to Properly Record Observations Made in Inspections***

8. Some cases have revealed that FEHD staff did not always record whether they had conducted any air-conditioner test during inspections. That not only reflect negligence on the part of the inspection officers; their supervisors and the senior management should also be held accountable.

9. The Ombudsman makes a number of recommendations for improvement to FEHD, including:

- (1) to require its staff, in the course of investigating/following up on cases of air-conditioner dripping, to enter the premises concerned to test the air-conditioners, unless they have already observed clearly from the outside that the air-conditioners are dripping;

- (2) to always continue its investigation of cases not yet concluded by late summer/early autumn, so as to obviate the need for the complainant to lodge a complaint again when summer comes again and for FEHD to spend extra resources to conduct investigation afresh;
- (3) to set a reasonable standard duration for testing air-conditioners;
- (4) to adopt more flexible staff deployment, conduct inspections as far as possible at the usual time of dripping as reported by complainants, and remind its staff to adhere strictly to the Department's operational guidelines in handling complaints about air-conditioner dripping; and
- (5) to provide a pro forma in its Complaints Management Information System for staff to record observations made in inspections, and explore how to enhance its efficiency, with the help of the System, in following up on complaints about air-conditioner dripping.

### Regarding BD

10. We also note that installation of communal drainage pipes for disposing of condensate from air-conditioners ("Communal Drainage Pipes") would better resolve the problem of air-conditioner dripping. Currently, there is no law that requires buildings to install Communal Drainage Pipes and old buildings are generally not fitted with such pipes. In this light, we have in this direct investigation explored with BD whether there are ways to prompt/encourage the inclusion of installation of Communal Drainage Pipes in the comprehensive maintenance programmes of buildings.

11. BD agreed that it would be opportune and cost-effective to install Communal Drainage Pipes when repair works on external walls are carried out.

12. The Ombudsman recommends that BD:

- (1) prompt/encourage building owners, through its Building Safety Loan Scheme, to include installation of Communal Drainage Pipes in the comprehensive maintenance programmes of their buildings; and

- (2) issue Practice Notes to remind Authorised Persons involved in external wall repairs to recommend building owners taking the opportunity of such works to install Communal Drainage Pipes.



### Food and Health Bureau ("FHB") and Department of Health ("DH")

**Case No. OMB/DI/402**

#### **Government's Regulation of Proprietary Chinese Medicine**

(Investigation declared on 8 June 2017 and completed on 10 December 2018; full report [Chinese version only] available at [www.ombudsman.hk](http://www.ombudsman.hk))

### Background

Since the provisions in the Chinese Medicine Ordinance ("CMO") covering registration of proprietary Chinese medicine ("pCm") took effect in 2003, only a small portion of applications for registration of pCm have been issued the Certificate of Registration ("HKC"). Meanwhile, many purported "health food products" have appeared in the market, their main ingredients being Chinese herbal medicines. However, as long as other non-Chinese medicine ingredients such as wheat and minerals are added to these products, they can be on sale in the market without registration under the CMO. People are thus concerned about the quality and safety of such "Chinese medicine health food products" ("CM health products").

## Our Findings

2. Our investigation has revealed inadequacies on the part of FHB and DH in the following four areas.

### I. Definition under CMO Leaves Loopholes in Regulation

3. In the CMO, the words “composed solely of” were added to the definition of pCm, which has caused loopholes in regulation. We have compared a number of registered pCm in the market with “CM health products” bearing similar names but are not required to be registered. We found that with identical names, similar ingredients and purported effects, and even the same manufacturer as pCm, those “CM health products” can circumvent regulation under the CMO as long as ingredients other than Chinese medicines (e.g. grape seed) are added to the products, regardless of their composition and efficacy. Moreover, some of those products contain Chinese herbal medicines with strong toxicity listed in Schedule 1 of the CMO, which may be hazardous to people’s health.

4. The Government agrees that there should be more stringent regulation of those purported “CM health products”. In this light, the Medicines Board under the Chinese Medicine Council of Hong Kong (“CMCHK”) has set up a task force to conduct a comprehensive review and give comments regarding amendment to the definition of pCm (including its scope).

### II. Slow Progress of Registration

5. There are three types of certificate/notice in the registration of pCm, namely: (1) HKC; (2) the Notice of confirmation of transitional registration of proprietary Chinese medicine (“HKP”); and (3) the Notice of confirmation of (non-transitional) registration application of proprietary Chinese medicine (“HKNT”). HKP and HKNT are intended to be transitional arrangements for the registration system. Since the provisions requiring mandatory registration of pCm under the CMO took effect in 2010, these transitional arrangements have been in place for eight years already. As at 30 June 2018, there were over 18,000 applications for registration of pCm, but

only less than 10% succeeded in obtaining HKC. More than one-third are still holding transitional registration (i.e. HKP or HKNT). For HKP, only those pCm manufactured, sold or supplied for sale in Hong Kong on or before 1 March 1999 can apply. In other words, most of the HKP holders have been on sale for nearly 20 years and yet they still could not get HKC.

6. In our view, that so many applicants are still holding HKP and HKNT after a long period indicates that the Government has not set any clear objective and time schedule for transforming the transitional cases into HKC.

### III. Inadequate Support and Lack of Communication with the Trade

7. People in the Chinese medicine trade have expressed a lot of opinions regarding the current regulatory system and registration requirements, notably shortage of qualified laboratories, harsh registration requirements, and the high costs involved. Although DH has adopted a number of measures to support the trade, the traders generally consider the technical support from the Government still inadequate. The Government’s failure to address this issue may hinder the long-term development of pCm.

### IV. Consider Setting up a Certification System for Chinese Medicine Pharmacists

8. Several universities in Hong Kong offer programmes in Chinese medicine. However, Chinese medicine pharmacist has not been recognised as a professional qualification. There is currently no registration or certification system for Chinese medicine pharmacists in Hong Kong. Meanwhile, our neighbour Macao will soon set up a new registration system for Chinese medicine pharmacists to establish their legal status and professional recognition. Its development is ahead of Hong Kong.

9. On the other hand, more than 6,000 HKP holders are still in the process of transforming into HKC. It is essential for the Government to review the manpower arrangements to expedite the process.



## Conclusion

10. The CMO was enacted with the intent of preventing unregistered pCm from spreading in the market and thus endangering people's health. Regrettably, since its enactment in July 1999, nearly two decades have passed and yet over 80% of the registered pCm have not been issued HKC, while pCm holding transitional registration are still available for sale. FHB and DH should be held accountable for the slow progress. What is more worrying is that some manufacturers have taken advantage of the legal loopholes by adulterating certain pCm, which are required to be registered, with non-Chinese medicine ingredients. As a result, the pCm was "transformed" into health food products, thereby circumventing regulation under the CMO. This loophole must be blocked as soon as possible, otherwise, the proliferation of "CM health products" in the market may become a threat to people's health.

## Our Recommendations

11. In the light of the above, The Ombudsman makes 12 improvement recommendations to the Government:

### Review of Current Legislation

- (1) FHB should quickly review whether any amendments to the relevant provisions of the CMO are necessary, and plug the legal loopholes in the definition of pCm as soon as possible;
- (2) FHB should impose more stringent regulation on those health food products containing Chinese medicines with stronger toxicity listed in Schedule 1 of the CMO, making it mandatory for these products to obtain registration;
- (3) FHB should restrict "CM health products" from using the same names as pCm;
- (4) FHB should require all products containing Chinese medicine to adopt the Chinese and English names given in the Schedules of the CMO when listing out their ingredients;
- (5) FHB should regulate the efficacy claims of "CM health products";

## Addressing the Registration System

- (6) DH should help the CMCHK in reviewing the current registration system, and implement effective measures focusing on assisting those applicants to obtain full registration as soon as possible;
- (7) DH should review any need for more staff to handle the vetting and approval work for transforming transitional registration into full registration;
- (8) DH should consider engaging more specialists in Chinese medicines to assist the CMCHK in devising the registration system and vetting applications;

## Strengthening Communication with the Trade and Offering More Support

- (9) DH should strengthen its communication with the trade and various stakeholders (including academics and laboratories);
- (10) DH should provide more assistance to the trade in resolving the problems in pCm registration, such as expanding the number of accredited Mainland drug testing institutes;
- (11) FHB should take reference from the experience of other cities and consider establishing a registration/certification system for Chinese medicine pharmacists, so as to enhance their professional status and recognition; and

## Publicity and Public Education

- (12) DH should step up its publicity efforts to educate the public to differentiate between pCm and "CM health products".



## Housing Department ("HD")

**Case No. OMB/DI/413**

### **Housing Department's Arrangement for Using Idle Spaces in Public Housing Estates**

(Investigation declared on 26 July 2017 and completed on 15 October 2018; full report [Chinese version only] available at [www.ombudsman.hk](http://www.ombudsman.hk))

## Background

The building designs of some public housing estates ("PHE") completed in earlier years have often included idle spaces scattered around the estate buildings. Over the years, HD has used those idle spaces as storerooms for letting out to public housing tenants, service providers or mutual aid committees for storage purposes.

2. Our investigation found that as at 31 August 2017, there were a total of 959 vacant storerooms in 87 PHE throughout the territory, representing a vacancy rate of 39%. Some of those vacant storerooms have a large area of more than 700 square feet.

## Our Findings

3. This direct investigation revealed inadequacies on the part of HD and room for improvement in three areas: conversion of storerooms into public housing units ("PHU"), use of storerooms for other purposes, and provision of information.

## I. Actively Study Conversion of Storerooms into PHU

4. In view of the deteriorating living area and environment of many people in Hong Kong over the past years, HD should accord top priority to converting those idle spaces into PHU where possible. Nevertheless, it was not until early 2015 that HD started a feasibility study. This showed that HD had failed to actively convert those storerooms into PHU.

5. We understand that not all the storerooms are suitable for conversion into PHU. However, based on the advice we have sought from professionals in building and architecture, HD can consider taking remedial measures for storerooms with only minor inadequacies (such as slightly insufficient natural lighting or ventilation). In fact, since HD had adopted this practice, eight applications for conversion of storerooms previously rejected have been reviewed and converted to PHU successfully. HD expects that the revised principle could be applied to 42 more storerooms for conversion into PHU.

6. Moreover, we found in some PHE buildings a large number of empty bays with sizes and conditions similar to their adjacent PHU. Upon our intervention, HD successfully converted three empty bays into PHU. Yet, HD has not compiled any records or statistics on their quantity, size and distribution.

7. We consider that HD should carefully review the current conditions of all storerooms and proactively explore ways to remedy their inadequacies so that they could be converted into PHU. HD should also take stock of and compile records on such empty bays in all PHE, and actively explore the possibility to convert those empty bays into PHU.

## II. Explore Other Possible Uses of Storerooms

8. For those storerooms that are not suitable for conversion into PHU, if the storerooms are located within the domestic area (i.e. those inside the security gate) HD will only rent them out to tenants of the same building for security and management reasons. Under such constraints, only a limited number of tenants would be eligible to rent those storerooms, and such storerooms will probably remain vacant, resulting in undue wastage of precious land resources.

9. We have received suggestions from a number of social welfare agencies and building professionals on how to better utilise those vacant storerooms located within the domestic area (such as using them for social welfare purpose or open space). In our view, HD should review whether those storerooms can be put to other uses (including renting to social welfare agencies/organisations) for the benefit of the community.

### III. Enhance Transparency and Provision of Information

10. Currently, where there are vacant storerooms available for renting, HD would only put up notices in the Estate Offices or at the lobby of the estate buildings to invite applications. As HD provides little information and the channels disseminating such information are very limited, it is difficult for interested agencies/organisations to have a comprehensive picture of the vacant storerooms in different PHE.

11. We consider that enhanced transparency in the information about storerooms would help encourage stakeholders and interested parties to put forward more innovative proposals to the Government. With collective wisdom, idle spaces in PHE can be better utilised for more diversified purposes.

### Our Recommendations

12. In the light of the above, The Ombudsman makes five recommendations to HD for improvement:

- (1) to follow up closely the conversion progress of those storerooms and empty bays already approved for converting into PHU, and examine as soon as possible the feasibility of applying similar principles to other suitable storerooms for conversion;
- (2) to review the conditions of all storerooms, both vacant and rented, with a view to actively examining whether there are alternative ways to convert those storerooms into PHU;
- (3) to record and compile statistics on all the empty bays within the domestic areas of PHE, and vigorously examine the conversion of these empty bays into PHU;
- (4) to proactively review the feasibility of putting those vacant storerooms which cannot be converted into PHU to other uses; and

- (5) to enhance the transparency and dissemination of information about vacant storerooms.



### Marine Department ("MD")

**Case No. OMB/DI/418**

#### **Marine Department's Arrangements for Private Vessel Moorings**

(Investigation declared on 15 February 2018 and completed on 8 March 2019, full report [Chinese version only] available at [www.ombudsman.hk](http://www.ombudsman.hk))

### Background

MD has designated 43 areas for private vessel moorings ("PM areas") within Hong Kong waters. Vessel owners may apply for written permissions from MD for laying private moorings ("PMs") in those areas as fixed spaces ("PM spaces") for mooring their private vessels.

### Our Findings and Comments

2. This direct investigation has found inadequacies on the part of MD in regulating the subletting activities of PMs, and in its arrangements for allocation of PM spaces. As the demand for PM spaces exceeds the supply, it has indirectly engendered other problems such as illegal mooring buoys, occupation of typhoon shelters and berth renting business of shipyards.

#### **I. Problems in Regulation of PM Subletting**

##### **Lack of Enforcement Action Resulting in 40% of Unauthorised PMs**

3. Before December 2017, the written permissions issued by MD (except for those issued to yacht clubs) contained a standard clause stipulating that the PM was for the exclusive use of a "designated vessel". In other

words, the PM could not be sublet/lent for use by another vessel. However, MD's investigation in 2013 found that more than 40% of PMs (excluding those laid by yacht clubs) were not used for mooring the PM owners' vessels. It reflects that subletting/lending is quite common. Nevertheless, between 2008 and 2013, MD had taken no enforcement action against the subletting cases.

### ***Inability to Regulate Subletting Activities under Existing Legal Framework***

4. In 2013, after seeking legal advice, MD held that its former condition of "designated vessel" is ultra vires. Consequently, MD removed the relevant condition in December 2017. We consider that the locations in the waters available for laying PMs are limited public resources. If MD allows subletting of PMs, our precious public resources will be abused by the PM owners for profits and the original "first-come, first-served" system for allocating PM spaces will be disrupted. In our view, what is "legal" is not necessarily "reasonable". If subletting of PMs is not illegal under the existing legal framework, MD should review and consider amending the relevant legislation.

## **II. Arrangements for Allocation of PM Spaces and Waiting List**

### ***Low Turnover Rates with Cases Waiting for over 10 Years***

5. As at 30 June 2018, 41 of the 43 PM areas had been fully occupied, and there were more than 500 outstanding cases on the waiting list. In eight PM areas, the applicants at the top of the waiting lists had been waiting for more than a decade, with the longest waiting time being 14 years. We consider that MD should examine its arrangement in allocating PM spaces with a view to increasing their turnover. MD should also explore other methods in allocating PM spaces (such as balloting and tender).

### ***Administration Fee Not Adjusted for 24 Years***

6. MD has not adjusted the administration fee for laying PMs since 1995. The existing administration fee is far below the market rates of PMs, making subletting of PMs a profitable business. In our view, if MD cannot increase the administration fee under the existing legal framework, it should explore other possible charging mechanisms and modes.

### ***Yacht Clubs Allowed to Lay Large Number of PMs for Profits***

7. Four yacht clubs (together they hold more than 800 PM spaces) have been allowed to lay and rent out large numbers of PMs for profits. MD is in effect subsidising the PM renting business of those yacht clubs with precious public resources. We consider it necessary for MD to review whether the existing arrangements are appropriate. For example, it should consider whether periodic open tenders are necessary.

### ***Unclear Targets for Inspections***

8. MD has not set any targets for inspection of PMs. As a result, the number of spot checks conducted every year fluctuated significantly. Between 2014 and 2016, MD inspected only 121 to 449 PMs each year. Given that there are nearly 2,000 PMs throughout the territory, the number of inspections was hardly adequate.

## **III. Enforcement against Illegal Mooring Buoys Lacked Deterrent Effects**

9. Our investigation found that MD's enforcement against illegal mooring buoys lacked deterrent effects. Offenders could get away without any consequences so long as they temporarily removed the buoys in question before the date specified on the Removal Notice. Moreover, because of difficulties in gathering evidence, MD had never instituted any prosecutions in the past. This Office considers that MD should review its enforcement strategies and consider shortening the notice period and exploring other methods (e.g. deploying decoys) to track down the owners of illegal buoys. It should also examine the viability of detaining the vessels moored to illegal buoys or prosecuting the vessel owners.

## **IV. Pontoons "Occupying Berthing Spaces" at Typhoon Shelters for Profits**

10. There had been media reports that pontoons were being used to occupy berthing spaces at Kwun Tong Typhoon Shelter for providing berthing services to yachts for a fee. Our field observations also discovered a number of yachts berthing at pontoons. MD asserted that it was not illegal for pontoons to provide water, electricity and berthing services to yachts for a fee. Our concern is whether the right of other vessels to the fair use of typhoon shelters had been affected.



## V. Shipyards Profiteered by Renting out Berthing Spaces against Regulations

11. The sites of local shipyards are leased out by the Lands Department ("Lands D") in the form of short term tenancies. There were media reports that several shipyards allegedly violated the land use conditions by renting out slipways for yachts to berth. While enforcement of short term tenancies is Lands D's responsibility, we are concerned that if shipyards often rent out their slipways, maintenance and support services for local vessels would suffer in the long run.

## Recommendations

12. In the light of the above, The Ombudsman makes the following recommendations to MD:

- (1) to review and consider amending the relevant legislation so that MD can re-enforce the requirement that restricts the use of PMs to only "designated vessels";
- (2) to review the waiting situation and examine ways to expedite the turnover of PM spaces (e.g. specifying a validity period in permissions);
- (3) to review the allocation arrangement for PM spaces and explore whether other methods (such as balloting) should be used to allocate PM spaces;
- (4) to review the charging mechanism and mode for laying PMs;
- (5) to review the situation in which yacht clubs hold for a long time a huge number of PM spaces for profits, and consider the need for periodic public tenders;
- (6) to review the current arrangement for conducting spot checks of PMs and consider setting inspection targets;
- (7) to review the current enforcement strategies against illegal mooring buoys and consider shortening the notice period;
- (8) to take active measures to track down owners of illegal mooring buoys (such as by deploying decoys), and examine the viability of detaining vessels berthed at illegal buoys or prosecuting the vessel owners;

- (9) to closely monitor whether the fair chance of using typhoon shelters would be affected by those fee-charging pontoons for berthing; and join forces with the Police to combat illegal activities to drive away other vessels; and
- (10) to discuss further with Lands D long-term measures to monitor shipyards and stop them from renting out berthing spaces.



## Social Welfare Department ("SWD")

Case No. OMB/DI/398

### Social Welfare Department's Monitoring of Services of Residential Care Homes for the Elderly

(Investigation declared on 18 October 2016 and completed on 10 December 2018; full report [Chinese version only] available at [www.ombudsman.hk](http://www.ombudsman.hk))

## Background

There have been media reports from time to time alleging that some residential care homes for the elderly ("RCHes") treated residents with neglect or even uncovering incidences of elder abuse in RCHes. The society at large demands that the Government strengthen its monitoring of RCHes and improve the existing legislation to prevent recurrence of such problems.

## Our Findings

2. In this direct investigation, we have found inadequacies in the following four aspects on the part of SWD in monitoring the services provided by RCHes.

## I. Current Laws Antiquated, Incomprehensive and with Limited Effects

3. Since the enactment of the Residential Care Homes (Elderly Persons) Ordinance ("the Ordinance") and the Residential Care Homes (Elderly Persons) Regulation ("the Regulation"), for over 22 years, no amendments have ever been made to the important requirements specified therein regarding staffing level and other operational matters of RCHEs. The various serious breaches by some RCHEs (such as infringement of the residents' privacy, wrong administration of drugs, improper use of restraints, etc.), which may result in physical and mental harm in residents, are not indictable offences under the Ordinance and the Regulation. Besides, the scope of monitoring under the current legal framework does not cover such regular services as escorting residents and accompanying them to attend medical consultations outside the RCHE premises. We consider that SWD should also review this issue with a view to ensuring that residents are properly taken care of by RCHE staff when they go out for medical consultations.

## II. Lax Enforcement

4. SWD's enforcement against under-performing RCHEs or those RCHEs committing the offences under the Ordinance has been lax.

- (1) During the four years between 2014/15 and 2017/18, SWD had given advice to RCHEs for 2,000 to 3,000 times and issued 100 to 400 warnings each year on average. Yet it had not cancelled any RCHE licence.
- (2) Although the number of conviction cases had increased from zero to 23 during the aforesaid four years, the prosecution and conviction rates were still rather low.
- (3) SWD has not set any deadline for implementing improvement measures, nor a timetable for conducting follow-up inspections after issuing a warning for a case of a serious nature (such as failing to meet staffing requirement).
- (4) Another case revealed that SWD issued a warning to an RCHE for failure to meet staffing requirement more than five months after an inspection. Besides, SWD had not conducted an in-depth investigation into the suspected falsified staff duty roster submitted by the RCHE in question.

- (5) Currently, elder abuse is not an offence under the Ordinance/Regulation. Nevertheless, SWD can issue a "direction on remedial measures" ("DRM") to the RCHE in question, requiring the latter to improve or rectify the situation. SWD can institute prosecution should the RCHE fail to comply with the DRM. Moreover, under the Ordinance, SWD may take enforcement action against an RCHE on the ground that its licence holder has been convicted of an offence under the Ordinance or any indictable offence. In one suspected elder abuse case where an RCHE resident died, there was no record showing that SWD had actively enquired of the Police and the coroner's court of their findings so as to decide what enforcement action should be taken against the RCHE in question.

## III. Inspection Mechanism

5. The Licensing Office of Residential Care Homes for the Elderly ("LORCHE") under SWD is responsible for processing all applications for and renewal of RCHE licences as well as conducting inspections to examine all aspects prescribed in the licences. The inspection mechanism has the following inadequacies:

- (1) The comprehensive inspections of RCHEs conducted by LORCHE involve a number of aspects, but they are usually carried out by one or two inspectors and completed within half a day or one day. It is questionable whether the inspectors can conduct a comprehensive, in-depth and effective inspection of an RCHE's operation within such a short period of time.
- (2) For subvented RCHEs, LORCHE's inspections in the aspects of social work and health care and hygiene used to be only at least once every three years. Since April 2017, LORCHE has increased the frequency of inspections of subvented RCHEs to at least once a year. Yet, it is still less frequent than the inspections of private RCHEs, which is at least three times a year.

#### IV. Provision of Information on Non-compliance by RCHES

6. In the past, SWD only posted on its website the conviction records of RCHES in breach of the Ordinance/Regulation. Since April 2018, SWD has started to upload on its website the records of warnings and DRMs issued to RCHES with irregularities for public viewing. In our view, the information released is not comprehensive, and SWD should also disclose to the public its licence enforcement actions taken, including suspension of RCHE licence and refusal to renew the licence.

#### Our Recommendations

7. The Ombudsman makes the following recommendations to SWD:

##### Reviewing and Amending the Ordinance

- (1) SWD, jointly with the policy bureaux concerned, should initiate amendments to the Ordinance as soon as possible, including considering extension of the legislative scope to cover offences currently not within the purview of the Ordinance and the Regulation (such as infringement of the privacy of residents, wrong administration of drugs, improper application of restraints, elder abuse, etc.), and explore the viability of bringing under its supervision the services of escorting residents and accompanying them to attend medical consultations provided by RCHE staff;

##### Strengthening Enforcement Actions

- (2) SWD should strengthen its enforcement actions, including taking enforcement actions in a timely and rigorous manner against RCHES with irregularities. It should also step up prosecution and/or licence enforcement actions, such as cancellation of licence, against those RCHES which have repeatedly and seriously violated the relevant legislation/licensing requirements;

- (3) all suspected elder abuse cases should be followed up diligently. For serious incidents (such as death of a resident), SWD should actively and regularly follow up on such cases with the Police and/or the court, so as to take timely and corresponding action against the RCHES in question once the Police or the court has reached a conclusion;

##### Stepping up Inspections

- (4) the operation and effectiveness of comprehensive inspections should be reviewed. Where necessary, SWD should augment and/or deploy manpower resources to conduct comprehensive inspections to ensure that its inspections of RCHES are truly comprehensive, in-depth and effective;
- (5) SWD should continue to strengthen its follow-up inspections after issuing warnings and DRMs, and set a deadline for RCHES with warnings issued to rectify the relevant irregularities and a timetable for LORCHE to conduct follow-up inspections at those RCHES;
- (6) the inspections of subvented RCHES should be further strengthened; and

##### Enhancing Information Transparency

- (7) apart from publishing its record of warnings and DRMs issued and convictions of RCHES, SWD should also post on its website information about other enforcement actions (such as suspension of RCHE licence, refusal to renew the licence, etc.), both for public reference and to urge the RCHES concerned to improve their services.

# Index of Cases Concluded by Full Investigation

(An asterisk (\*) at the end of a case number indicates that a relevant case summary is available in Annex 8 or Annex 9)

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Airport Authority			
2018/0969*	(1) Failing to explain to the complainant that his complaint would be handled by its subsidiary company (substantiated);	Partially substantiated	0
	(2) Improperly allowing the subsidiary company to handle his complaint (unsubstantiated); and		
	(3) Unfairly allowing a crew member to jump the queue for security screening at a designated channel (unsubstantiated)		
Architectural Services Department			
2017/2801(I)	Mishandling the complainant’s request for records of a seepage complaint	Substantiated	1
2017/2972	Failing to solve the seepage problem of a Government staff quarter	Partially substantiated	5
Buildings Department			
2017/3831*	Failing to properly handle the complainant’s report on unauthorised building works for subdivision of a flat	Partially substantiated	2
2018/0729(I)	Unreasonably requesting the complainant to pay the copying charge for a seepage investigation report at the rate of \$7.8 per page	Unsubstantiated but another inadequacy found	0
2018/0773	(1) Failing to act seriously in removing an illegal structure at a flat (partially substantiated); and	Partially substantiated	1
	(2) Failing to take enforcement action against the flat’s current occupier and allowing the illegal structure to remain (partially substantiated)		
2018/1109*	Failing to take enforcement action against some illegal structures on the flat roof of a building	Partially substantiated	2
2018/1153B	Failing to remove a suspended metal staircase which occupied the pavement	Unsubstantiated	0
2018/2300(I)	Unreasonably refusing to provide information related to the granting of occupation permit for a former Government building	Unsubstantiated	1
2018/2727	Delay in taking enforcement action against unauthorised structures in a building	Partially substantiated	1
2018/3105B	Failing to endeavour to enforce an Abatement Order	Unsubstantiated	0
2018/3423B	Failing to properly follow up a complaint about constant effluent seepage from a retaining wall behind the complainant’s estate	Unsubstantiated	0
2018/4498	Failing to efficiently resolve the obstruction of pavement by the wooden hoardings of a shop	Partially substantiated	1



Case No.	Complaint	Overall Conclusion	No. of Recommendations
Civil Engineering and Development Department			
2018/1615B	Lack of reply to a complaint about illegal use of agricultural land	Unsubstantiated	0
Companies Registry			
2017/4199	(1) Delay in handling a complaint against a company director (unsubstantiated); and	Partially substantiated	1
	(2) Failing to properly investigate a complaint about a false address provided by a company director (substantiated)		
2018/0650	(1) Improper procedures of registering the address of a company (unsubstantiated); and	Partially substantiated	0
	(2) Ineffective handling of a complaint (substantiated)		
Correctional Services Department			
2018/1235	Unreasonably posting the complainant's letters to overseas destinations by surface mail instead of airmail	Unsubstantiated but other inadequacies found	1
2018/2214(I)	Failing to properly handle the complainant's request for information	Substantiated	1
2018/4563(I)	Failing to provide information as requested by the complainant	Unsubstantiated	0
Customs and Excise Department			
2017/3705	(1) Unreasonably intercepting the complainant for baggage examination (unsubstantiated);	Inconclusive	0
	(2) Improper staff behaviour (unsubstantiated); and		
	(3) Unreasonably carrying out a body cavity search on the complainant (inconclusive)		
2018/0139	Improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Unsubstantiated	0
2018/0682	Failing to properly perform customs clearance for the complainant	Unsubstantiated	0
2018/1277	Failing to properly perform customs clearance for the complainant and failing to properly handle his complaint	Unsubstantiated	0
2018/2093	Unreasonably stopping the complainant for personal search, and poor staff manner during customs clearance	Unsubstantiated	0
2018/3063	Improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Unsubstantiated	0
2018/3064	Improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2018/3065	Improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Unsubstantiated	0
2018/3066	Improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Unsubstantiated	0
2018/3067	Improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Unsubstantiated	0
2018/3068	Improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Unsubstantiated	0
2018/3069	Improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Unsubstantiated	0
2018/3070	Improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Unsubstantiated	0
2018/3071	Improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Unsubstantiated	0
2018/3072	Improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Unsubstantiated	0
2018/3492	Improper handling of a complaint about contravention of the Trade Descriptions Ordinance	Unsubstantiated	0
Department of Health			
2018/0612	(1) Refusing to change the medication for the complainant (unsubstantiated); and	Unsubstantiated	1
	(2) Failing to reply to the complainant on the change of the appointment date at a hospital (unsubstantiated)		
Department of Justice			
2017/4657A	Failing to properly handle the complainant’s request for waiving the interest charge on late repayment	Unsubstantiated	0
2017/5061A	Delay in handling the complainant’s compensation claim regarding a traffic accident	Partially substantiated	1
2018/3193	(1) Failing to comply with the Victims of Crime Charter in not informing the complainant of the progress of a criminal case in which he was the victim (unsubstantiated); and	Partially substantiated	1
	(2) Lack of response to the complainant’s written enquiries (substantiated)		

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Drainage Services Department			
2018/0298A	Shirking of responsibility when handling a complaint about illegal landfilling and unauthorised building works	Unsubstantiated	1
2018/3423C	Failing to properly follow up a complaint about constant effluent seepage from a retaining wall behind the complainant’s estate	Unsubstantiated	0
Electrical and Mechanical Services Department			
2018/1530B	Failing to resolve the frequent malfunctions of escalators in a market and ineffective monitoring of the progress of repair works	Unsubstantiated	1
2018/1883A*	(1) Failing to remove an unauthorised cooling tower installed by a restaurant (unsubstantiated); and	Unsubstantiated	1
	(2) Shifting responsibility onto other departments when handling the complaint (unsubstantiated)		
Environmental Protection Department			
2018/0100(I)*	Unreasonably refusing to provide information regarding a project	Unsubstantiated	1
2018/2223	(1) Unreasonably requiring the complainant to make prior application before covering news at the EcoPark (unsubstantiated); and	Unsubstantiated	0
	(2) EcoPark security staff unreasonably stopping the complainant from leaving, and some of them not wearing uniforms when performing duties (unsubstantiated)		
Equal Opportunities Commission			
2018/2200	(1) Failing to acknowledge a complaint in writing or by email (partially substantiated);	Partially substantiated	2
	(2) Failing to inform the complainant that it may decide not to conduct an investigation into a complaint if the incident under complaint took place more than 12 months ago (substantiated);		
	(3) Failing to inform the complainant of its decision and the reasons in writing when deciding not to investigate his complaint (substantiated); and		
	(4) Wrongly refusing to investigate his complaint on the grounds that the incident under complaint took place more than 12 months ago (substantiated)		

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Fire Services Department</b>			
2017/3804	Making a forcible entry into the complainant's flat without any justifiable grounds	Unsubstantiated	0
2018/2623	Turning a blind eye to the fire safety problems caused by unauthorised structures in a building, and delay in handling the relevant complaint	Unsubstantiated	0
<b>Food and Environmental Hygiene Department</b>			
2017/4558	Failing to seriously assess and handle a garbage problem	Unsubstantiated	0
2017/4990	Unreasonably rejecting the complainant's application for relocating the urn grave of his father	Unsubstantiated	1
2017/5028*	(1) Unreasonably approving an application for transfer of hawker licence (inconclusive); and	Inconclusive	0
	(2) Providing false information about an application for transfer of hawker licence (unsubstantiated)		
2018/0029	Failing to take effective enforcement action to tackle the obstruction problem caused by on-street commercial promotional activities	Partially substantiated	1
2018/0207*	(1) Failing to discover that the filtration tanks of a swimming pool had been replaced and altered despite numerous inspections (substantiated);	Partially substantiated	3
	(2) Rashly approving renewal of the swimming pool licence (unsubstantiated); and		
	(3) Asserting that water quality of the swimming pool was up to statutory standards even though it had been closed many times due to poor water quality (substantiated)		
2018/1178(I)	(1) Impropriety in handling an application for allocation of an urn grave space for the complainant's mother who in fact was still alive (substantiated);	Partially substantiated	2
	(2) Failing to notice the wrong information inscribed on tombstones (unsubstantiated);		
	(3) Refusing to disclose the details and developments of the case (unsubstantiated); and		
	(4) Refusing to disclose the registration information of two urn grave spaces (unsubstantiated)		
2018/1530A	Allowing a contractor to delay the replacement of escalators in a market	Unsubstantiated	1
2018/1604	Failing to properly follow up an incident involving an officer who had allegedly collided with a passer-by when performing duties	Unsubstantiated	0



Case No.	Complaint	Overall Conclusion	No. of Recommendations
2018/1628	Unreasonably issuing a licence to a restaurant which failed to meet the statutory requirements for toilet facilities	Unsubstantiated	0
2018/1629	Unreasonably issuing a licence to a restaurant which failed to meet the statutory requirements for emergency exits	Unsubstantiated	0
2018/1883C*	(1) Failing to remove an unauthorised cooling tower installed by a restaurant (unsubstantiated); and	Unsubstantiated	1
	(2) Shifting responsibility onto other departments when handling the complaint (unsubstantiated)		
2018/2162	Failing to take action against illegal hawking and obstruction on Government land	Unsubstantiated	1
2018/2557	Lax and ineffective enforcement action against street obstruction caused by a vegetable stall	Partially substantiated	1
2018/2945	(1) Failing to take effective steps to combat street obstruction and illegal hawking (unsubstantiated); and	Partially substantiated	1
	(2) Delay in giving a substantive reply to the complainant (substantiated)		
2018/3090	Failing to take effective action against persistent occupation of a parking space by the operator of a bicycle shop with a goods vehicle for operating business	Partially substantiated	2
2018/3105A*	Failing to endeavour to enforce an Abatement Order	Partially substantiated	1
2018/3197	Failing to take enforcement action against the persistent breach of hawker licence conditions by a wall stall	Substantiated	2
2018/3401	Ineffective enforcement action against the street obstruction and hygiene nuisance caused by a vegetable stall	Unsubstantiated	0
2018/3423A	Failing to properly follow up a complaint about constant effluent seepage from a retaining wall behind the complainant's estate	Unsubstantiated	0
2018/3834	Failing to handle a complaint about water dripping from hanging clothes	Unsubstantiated	0
2018/4241	(1) Failing to respond to the complainant's enquiry about the progress of her complaint against a restaurant that she had developed symptoms of vomiting and diarrhoea after consuming its food (unsubstantiated); and	Unsubstantiated but other inadequacies found	0
	(2) Failing to collect the relevant food specimen for laboratory test, casting doubt on whether the Department was trying to cover up for the restaurant (unsubstantiated)		

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Government Logistics Department			
2018/3202	Failing to provide the tender documents in Chinese	Unsubstantiated	0
Government Secretariat — Chief Secretary for Administration’s Office			
2018/0885	(1) Unfairly rejecting an application for research funding (unsubstantiated);	Partially substantiated	1
	(2) Failing to provide constructive advice to assist the complainant to revise his application (unsubstantiated);		
	(3) Failing to select the reviewers nominated by the complainant (unsubstantiated);		
	(4) Failing to give the complainant fresh reasons for upholding the refusal decision (substantiated); and		
	(5) Unnecessarily copying emails to the complainant’s colleagues (unsubstantiated)		
Government Secretariat — Commerce and Economic Development Bureau			
2018/0915	Failing to properly monitor the operation of Kai Tak Cruise Terminal	Unsubstantiated	0
Government Secretariat — Development Bureau			
2018/1387	Disregarding the views of stakeholders on the proposal of converting three berths into a community garden	Unsubstantiated	0
Government Secretariat — Education Bureau			
2018/0221	(1) Misinterpreting Item 7 of the Point System of Primary One Admission System (“POAS”) by saying that it does not apply to civil servants applying for places in government primary schools for their children (unsubstantiated); and	Unsubstantiated	1
	(2) Unreasonably refusing to award 5 points to the children of civil servants under Item 7 of the POAS Point System (unsubstantiated)		
2018/1296(I)	(1) Unreasonably refusing to provide the operational guidelines on the mechanism for random checking of residential address during the Central Allocation stage of the Primary One Admission System (unsubstantiated); and	Partially substantiated	0
	(2) Failing to reply within 21 days and explain why the request for information was rejected according to the Code on Access to Information (substantiated)		

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2018/1377(I)	Refusing to provide the membership of the textbook review panel of the Chinese History subject	Unsubstantiated but other inadequacies found	1
2018/1686(I)	Refusing to provide the membership of the textbook review panel of the History subject	Unsubstantiated but other inadequacies found	1
2018/3493	(1) Unreasonably conducting home visits without prior appointment and requesting the persons under investigation to provide information about their family’s daily routines (unsubstantiated);	Unsubstantiated	0
	(2) Continuing to make home visits and phone calls despite complaints lodged by the complainant, causing nuisance to him and his family (unsubstantiated); and		
	(3) Acting improperly and thus affecting the school allocation result of the complainant’s son (unsubstantiated)		
Government Secretariat — Food and Health Bureau			
2018/3890(I)	Refusing to provide the annual bed occupancy rate of 12 private hospitals between 2014 and 2016	Substantiated	2
Government Secretariat — Home Affairs Bureau			
2018/2704C	Unreasonably requesting the new tenant of a service reservoir roof to maintain the building structures and facilities built by the ex-tenant	Unsubstantiated	0
Government Secretariat — Innovation and Technology Bureau			
2018/1615C	Lack of reply to a complaint about illegal use of agricultural land	Substantiated	3
Government Secretariat — Security Bureau			
2017/3893B*	Lack of response to the complainant’s petition	Substantiated	2
Government Secretariat — Transport and Housing Bureau			
2018/2412	Delay in taking enforcement action against unauthorised building works in a shopping centre	Partially substantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Highways Department</b>			
2017/5069* 2018/0051 2018/0105 2018/0106 and others	Failing to conduct public consultation on the construction of a pedestrian link	Unsubstantiated	1
2018/1097	(1) Delay in installing lighting system for a village footpath (substantiated); and	Partially substantiated	2
	(2) Unreasonably cancelling the relevant works without notifying the villagers (unsubstantiated)		
2018/1135	Failing to conduct proper public consultation on the construction of a pedestrian link	Unsubstantiated	0
2018/2831 2018/2834	Disregarding the local residents' opposition to the construction of a pedestrian crossing	Unsubstantiated	0
<b>Home Affairs Department</b>			
2017/5111(I)	(1) Refusing to provide the complainant with the Model Rules for Rural Committee Elections in full and the constitutions of 27 Rural Committees (partially substantiated); and	Substantiated	2
	(2) Failing to inform the complainant of the reason(s) for partial refusal by quoting the relevant paragraph(s) in Part 2 of the Code on Access to Information (substantiated)		
2018/0034	Unreasonable refusal of a Home Affairs Enquiry Centre to provide oath administration service	Unsubstantiated but other inadequacies found	0
2018/1365	Unreasonably refusing to follow up the problem of an unlicensed guesthouse	Unsubstantiated	0
2018/3717	Failing to take effective enforcement action against the Incorporated Owners of a building which failed to comply with the Building Management Ordinance to procure a third party risks insurance policy for the building	Unsubstantiated	1
<b>Hong Kong Housing Society</b>			
2018/1612(R)*	Refusing to disclose to the complainant the membership of a panel of external advisers appointed for a study	Partially substantiated	4



Case No.	Complaint	Overall Conclusion	No. of Recommendations
Hong Kong Monetary Authority			
2017/4688	(1) Failing to impose on banks requirements that the sales process of investment funds be recorded (unsubstantiated);	Unsubstantiated	0
	(2) Failing to impose on banks requirements that the exact determination date for dividend distribution be provided in offering documents (unsubstantiated); and		
	(3) Failing to take disciplinary action against the bank under complaint or the bank staff concerned (unsubstantiated)		
Hong Kong Police Force			
2017/4607(I)	Refusing to provide the statistical information on the number of suspicious transaction reports relating to human trafficking received from 2012 to 2016	Unsubstantiated but other inadequacies found	1
Hospital Authority			
2017/2362*	(1) Removing the patient’s intravenous lines before the doctor certified his death (unsubstantiated but other inadequacies found);	Unsubstantiated but other inadequacies found	3
	(2) Removing the patient’s pace-maker without the family’s consent (inconclusive); and		
	(3) Failing to respond properly to the complainant’s complaint against the hospital (unsubstantiated)		
2017/5107	Impropriety in handling the complainant’s complaint against a hospital and his request for information	Partially substantiated	3
Housing Department			
2017/4796	Unreasonably prohibiting the organiser of a fund raising event sponsored by the Estate Management Advisory Committee from displaying its name on the stage backdrop	Unsubstantiated but other inadequacies found	1
2018/0130*	Failing to properly handle a complaint about nuisance caused by some dripping flower pots placed by the tenant living above the complainant	Partially substantiated	2
2018/0321	Failing to take enforcement action against smoking in the no-smoking area of a public housing estate	Unsubstantiated but other inadequacies found	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2018/0719	(1) Lack of transparency in the quotation for reinstatement costs of a surrendered public housing unit (unsubstantiated);	Partially substantiated	1
	(2) Inconsistent information provided by different staff members on the reinstatement items (unsubstantiated);		
	(3) Allowing insufficient time for the complainant to carry out the reinstatement works (unsubstantiated);		
	(4) Charging exorbitant fees for the reinstatement items (unsubstantiated);		
	(5) Staff improperly photographing with smart phone the complainant's tenancy agreement which contained personal data (partially substantiated); and		
	(6) Refusing to offset the outstanding payment against the complainant's deposit (substantiated)		
2018/0722	Impropriety in handling a noise nuisance complaint	Unsubstantiated	1
2018/0807	Impropriety in handling the complainant's application for flat transfer	Unsubstantiated but other inadequacies found	1
2018/0835B	Failing to solve the problem of traffic congestion at a roundabout in a public housing estate	Unsubstantiated	0
2018/2094	Failing to properly handle the complainant's transfer request, and lack of response to his staff complaint	Unsubstantiated	0
2018/2364	Failing to resolve noise nuisance from the flat below	Partially substantiated	2
2018/5039	Unreasonably approving an election candidate to make home visits in a public housing estate	Unsubstantiated	0
2018/5072	Unreasonably approving activities conducted within a public housing estate	Unsubstantiated	0
<b>Immigration Department</b>			
2017/3057(l)*	Unreasonably refusing to provide contact information of foreign domestic helpers in debt and failing to take any action against them	Unsubstantiated but other inadequacies found	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Independent Commission Against Corruption</b>			
2018/0672(I)	Refusing to reveal details of the outcome of ICAC's investigation of certain complaints lodged by the complainant against ICAC officers	Unsubstantiated but other inadequacies found	1
2018/0673(I)	Refusing to reveal details of the outcome of ICAC's investigation of certain complaints lodged by the complainant against ICAC officers	Unsubstantiated but other inadequacies found	1
2018/0674(I)	Refusing to reveal details of the outcome of ICAC's investigation of certain complaints lodged by the complainant against ICAC officers	Unsubstantiated but other inadequacies found	1
2018/0675(I)	Refusing to reveal details of the outcome of ICAC's investigation of certain complaints lodged by the complainant against ICAC officers	Unsubstantiated but other inadequacies found	1
2018/0676(I)	Refusing to reveal details of the outcome of ICAC's investigation of certain complaints lodged by the complainant against ICAC officers	Unsubstantiated but other inadequacies found	1
2018/0677(I)	Refusing to reveal details of the outcome of ICAC's investigation of certain complaints lodged by the complainant against ICAC officers	Unsubstantiated but other inadequacies found	1
2018/0984(I)	Refusing to provide the complainant with the requirements and procedures of declaration of conflict of interest that the Commissioner of ICAC needs to observe	Unsubstantiated	0
2018/1002(I)	Refusing to reveal details of the outcome of ICAC's investigation of certain complaints lodged by the complainant against ICAC officers	Unsubstantiated but other inadequacies found	1
2018/1229(I)	Refusing to disclose the security classification of several letters that ICAC sent to the complainant and the security classification of ICAC file(s) pertaining to the reference numbers cited in those letters	Unsubstantiated but other inadequacies found	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Labour Department</b>			
2018/0267(I)	Refusing to provide the name and number of pages of the internal guidelines on handling telephone enquiries from job seekers	Inconclusive but other inadequacies found	1
2018/1237(I)	Refusing to provide the internal guidelines of Job Vacancy Processing Centre and Telephone Employment Service Centre, and failing to fully respond to the complainant's enquiry	Partially substantiated	1
2018/1467	(1) Formulating the Guidance Notes on Prevention of Trapping Hazard of Tail Lifts without proper consultation (unsubstantiated); and	Unsubstantiated	0
	(2) Unreasonably requiring owners of vehicles with tail lifts to install six safety devices (unsubstantiated)		
2018/1620(I)	Failing to respond to the complainant's enquiry about the vetting procedures for the applications for placing recruitment advertisements, and failing to inform the complainant of the review and complaint channels in accordance with the Code on Access to Information	Unsubstantiated	0
2018/1908(I)	Failing to handle the complainant's request for all the information about the overtime work undertaken by the staff of the Labour Department in accordance with the Code on Access to Information, and failing to give a direct response to the request for information	Partially substantiated	2
<b>Land Registry</b>			
2017/5044	(1) Wrongly registering a document against a property on the land register (unsubstantiated);	Unsubstantiated	2
	(2) Failing to notify the complainant, i.e. the property owner concerned, of the application for registering the document (unsubstantiated); and		
	(3) Delay in cancelling the registration of the said document from the land register (unsubstantiated)		



Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Lands Department</b>			
2018/0298B	Shirking of responsibility when handling a complaint about illegal landfilling and unauthorised building works	Unsubstantiated	1
2018/0388(I)	Delay in handling a request for information concerning illegal occupation of Government land	Partially substantiated	1
2018/0659(I)*	Refusing to provide squatter inspection records	Substantiated	1
2018/1153A	Failing to take enforcement action against a suspended metal staircase which occupied the pavement	Unsubstantiated	0
2018/1615A	Lack of reply to a complaint about illegal use of agricultural land	Unsubstantiated	0
2018/2165(I)*	Refusing to disclose the land premium and administration fee for land use modification approved by the Department through a letter of no objection	Unsubstantiated but other inadequacies found	2
2018/2249(I)	Refusing to revise the figures previously provided as per the complainant's request	Substantiated	1
2018/2437	Failing to take enforcement action against illegal occupation of Government land	Partially substantiated	3
2018/2704B	(1) Unreasonably approving the application of short term tenancy for a service reservoir roof (unsubstantiated);	Unsubstantiated	0
	(2) Failing to ask the ex-tenant to remove the structures built on the service reservoir roof (unsubstantiated); and		
	(3) Delay in replying to the complainant's enquiries and comments (unsubstantiated)		
2018/4352	Failing to effectively resolve the illegal occupation of Government land by the wooden hoardings of a shop	Unsubstantiated but other inadequacies found	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Leisure and Cultural Services Department			
2018/0088	Unreasonably allowing private coaches to teach learner swimmers in public swimming pools, causing obstruction to other swimmers	Unsubstantiated but other inadequacies found	1
2018/2918	(1) Unreasonably refusing to set up a register for recording the checking of venue users’ eligibility for enjoying concessionary rates (unsubstantiated but other inadequacies found); and	Unsubstantiated but other inadequacies found	3
	(2) Unreasonably requiring a venue hirer to give at least two days’ prior notice for cancellation of bookings through a booking counter (unsubstantiated but other inadequacies found)		
2018/3209(I)*	Refusing to provide the investigation report submitted by a sports association regarding the allegations against its affiliated clubs for reaping profits by exploiting public resources and the member list of the panel responsible for the investigation	Substantiated	1
Marine Department			
2018/3028(I)	Unreasonably refusing to provide the complainant with a vessel’s certificate of survey	Unsubstantiated	0
2018/3074*	(1) Unreasonably long waiting time for taking a pleasure vessel operator examination (unsubstantiated); and	Unsubstantiated	2
	(2) High examination fee (unsubstantiated)		
Planning Department			
2018/1446	Failing to properly enforce the supplementary conditions stipulated by the Town Planning Board, resulting in the public being denied normal access to the hotel’s podium floors which were required to be opened for public use	Unsubstantiated	0
2018/1940(I)	Refusing to provide digital files of an Outline Zoning Plan	Unsubstantiated but other inadequacies found	2

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Post Office</b>			
2017/4082	(1) Wrongly delivering the complainant's mail to another address (substantiated); and	Partially substantiated	2
	(2) Improprieties in follow-up actions (partially substantiated)		
2017/4628	Failing to provide sufficient stock of a commemorative stamp pack for sale in post offices and online	Partially substantiated	3
2017/4641	Failing to inform the public of the sales quotas on a commemorative stamp pack	Partially substantiated	1
2017/4740	Failing to keep good order of people queuing up to purchase a commemorative stamp pack	Partially substantiated	1
2017/5117	(1) Failing to provide sufficient 10 cents stamps to make up for the postage increment (unsubstantiated);	Unsubstantiated	5
	(2) Providing improper suggestion of buying two 20 cents stamps to make up for the 30 cents postage increment (unsubstantiated);		
	(3) Using inaccurate wordings on the "out of order" notice on the stamp vending machines (unsubstantiated); and		
	(4) Failing to provide updated and/or accurate information about stamps availability at convenient stores (unsubstantiated)		
2017/5119	(1) Failing to provide sufficient 10 cents stamps to make up for the postage increment (unsubstantiated);	Unsubstantiated	5
	(2) Providing improper suggestion of buying two 20 cents stamps to make up for the 30 cents postage increment (unsubstantiated);		
	(3) Using inaccurate wordings on the "out of order" notice on the stamp vending machines (unsubstantiated); and		
	(4) Failing to provide updated and/or accurate information about stamps availability at convenient stores (unsubstantiated)		

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2018/0030	(1) Failing to provide sufficient 10 cents stamps to make up for the postage increment (unsubstantiated);	Unsubstantiated	5
	(2) Providing improper suggestion of buying two 20 cents stamps to make up for the 30 cents postage increment (unsubstantiated);		
	(3) Using inaccurate wordings on the “out of order” notice on the stamp vending machines (unsubstantiated); and		
	(4) Failing to provide updated and/or accurate information about stamps availability at convenient stores (unsubstantiated)		
Social Welfare Department			
2017/4089(I)	Refusing to provide a copy of the manual on the Comprehensive Social Security Assistance Scheme and delay in handling an information request	Substantiated	2
2017/4183(I)	Refusing to provide the bank balances of all the trust funds administered by the Department	Substantiated	2
2018/0163	Failing to set up an Integrated Community Centre for Mental Wellness in Central and Western District	Unsubstantiated	0
2018/0285	Failing to properly handle an application under the Traffic Accident Victims Assistance Scheme	Substantiated	1
2018/0341	Failing to properly handle a complaint about an elderly home	Partially substantiated	1
2018/1436(I)	Refusing to disclose information about complaints against an elderly home and its operator	Unsubstantiated	0
2018/2551	(1) Misplacing the medical certificates of the complainant, resulting in a lesser amount of payment made under the Traffic Accident Victims Assistance Scheme (inconclusive); and	Inconclusive	3
	(2) Improper handling of the complainant’s enquiry about the appeal channel of the Scheme (inconclusive)		
2018/2552	Refusing to provide early education and training to a child with developmental disability who would attend primary school in the next school year	Unsubstantiated	0
2018/3268	Failing to provide financial assistance to a Comprehensive Social Security Assistance recipient who required special examination arrangements in taking the Hong Kong Diploma of Secondary Education Examination	Unsubstantiated	1
2018/5121(I)	Refusing to disclose the Department’s accounting inspection records on an elderly home	Unsubstantiated	0



Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Transport Department</b>			
2017/3319*	Improper arrangement for implementation of two-way toll collection at the Lantau Link that caused serious traffic congestion	Unsubstantiated but other inadequacies found	3
2017/3346	Improper arrangement for implementation of two-way toll collection at the Lantau Link that caused serious traffic congestion	Unsubstantiated but other inadequacies found	3
2018/0295	Failing to properly monitor the breaches of an operator of residents' bus service	Partially substantiated	1
2018/0835A	Unreasonably shelving the proposal of adding an urban taxi stand in a public housing estate	Unsubstantiated	0
2018/1048	Failing to properly tackle the problem of lost trip of a bus route	Unsubstantiated	0
2018/1309	(1) Failing to monitor a training course and its refresher course for trainers of the Driving Improvement Course (unsubstantiated); and	Unsubstantiated but other inadequacies found	1
	(2) Failing to follow up the complainant's comments on the course materials (unsubstantiated but other inadequacies found)		
2018/2208*	Mishandling the complainant's application for re-registration of a motorcycle	Substantiated	0
2018/2438	(1) Unclear requirements for installation of an additional step on minibuses (unsubstantiated);	Unsubstantiated but other inadequacies found	3
	(2) Specifications of the additional step were at the discretion of vehicle examiners (unsubstantiated); and		
	(3) Requirements for the additional step changed frequently (unsubstantiated but other inadequacies found)		
2018/2629 2018/2630 2018/2631 2018/2634 2018/2635	(1) Failing to monitor the service and performance of a public transport operator (unsubstantiated); and	Unsubstantiated	2
	(2) Disregarding the transportation needs of Ma Wan residents (unsubstantiated)		
2018/3195	Delay in repairing a damaged wall at a transport interchange	Partially substantiated	3
2018/3248	(1) Transferring the ownership of the complainant's vehicle to another person without the complainant's consent (unsubstantiated but other inadequacies found); and	Unsubstantiated but other inadequacies found	2
	(2) Refusing to renew the registration of the vehicle (unsubstantiated)		
2018/3343(I)	Refusing to provide the Code of Practice in relation to the annual examination of private cars and light goods vehicles	Substantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Vocational Training Council</b>			
2017/5154*	Providing misleading information and unreasonably refusing to refund an enrolment deposit	Substantiated	2
<b>Water Supplies Department</b>			
2018/0144	(1) Officers unreasonably refusing to provide information to the complainant for registration before entering the building for site inspection (substantiated); and	Partially substantiated	2
	(2) Damaging the cover of a water tank (unsubstantiated)		
2018/1883B*	(1) Failing to remove an unauthorised cooling tower installed by a restaurant (substantiated); and	Substantiated	3
	(2) Shifting responsibility onto other departments when handling the complaint (unsubstantiated)		
2018/1977	(1) Lack of response to the complainant's request for data correction regarding his water bill (unsubstantiated); and	Unsubstantiated	0
	(2) Use of inappropriate language when handling the complainant's telephone complaint (unsubstantiated)		
2018/2704A	(1) Giving unjustified comments about the safety of the structures above a service reservoir without providing any relevant live load data (unsubstantiated);	Unsubstantiated but other inadequacies found	1
	(2) Providing inconsistent information on whether there are structures above a service reservoir (unsubstantiated but other inadequacies found);		
	(3) Failing to answer the complainant's enquiries about potential pollution of the water in the service reservoir (unsubstantiated); and		
	(4) Failing to maintain the condition of the land above the service reservoir (unsubstantiated)		
2018/3121	(1) Failing to take enforcement action against a licensed plumber who did not submit a formal application for carrying out repair works (unsubstantiated); and	Unsubstantiated	0
	(2) Mishandling the post-application of the repair works in question (unsubstantiated)		

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2018/3419	(1) Wrong calculation of the complainant's water charges (substantiated);	Partially substantiated	0
	(2) Failing to properly explain the tariff structure for calculating water charges (unsubstantiated);		
	(3) Failing to reply to the complainant's enquiries on the calculation of water charges (partially substantiated); and		
	(4) Failing to properly explain the calculation of the complainant's water charges (partially substantiated)		
2018/4187	Mistaking the water meter of the complainant's flat for that of the flat below during meter replacement	Unsubstantiated	0
2018/4350	(1) No prosecution taken against an alleged case of illegal taking of water (unsubstantiated); and	Unsubstantiated	0
	(2) Failing to explain the responsible department for the pipe at the location of the alleged illegal taking of water (unsubstantiated)		
2018/4546	Misleading the complainant about his outstanding water charge during a telephone conversation	Unsubstantiated	0
<b>Working Family and Student Financial Assistance Agency</b>			
2017/4657B	Failing to promptly notify the complainant of overdue loan repayments and failing to properly handle her request for waiving the interest charge on late repayment	Unsubstantiated	0
2018/2358	Refusing to provide a complete debtor's deed of indemnity	Unsubstantiated	0
2018/2599	Delay in handling an application for school textbook assistance	Unsubstantiated	0
2018/4319	Unreasonably refusing the complainant's applications for textbook assistance and travel subsidy for his son	Unsubstantiated	0

# Summaries of Selected Cases Concluded by Full Investigation

(The summaries of selected cases in this Annex cover the main allegations and related conclusion of those complaints. For details of the overall conclusion and number of recommendations, please refer to Annex 7)

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



## Airport Authority ("AA")

### Case No. OMB 2018/0969 — Security screening at the Hong Kong International Airport

Allegations: (1) unfairly allowing an airline crew member to jump the queue for security screening — unsubstantiated; (2) failing to explain to the complainant how his complaint about queue-jumping would be handled — substantiated; and (3) wrongly allowing its subsidiary company to handle his complaint — unsubstantiated

## Details of Complaint

When the complainant was queuing for security screening at the Hong Kong International Airport ("the Airport"), the security staff allowed an airline crew member to jump the queue. Afterwards, he made a complaint to AA ("the Complaint"). The Aviation Security Company Limited ("AVSECO"), a subsidiary company of AA, replied to him that under the prevailing policy and procedures, airline crew members had priority to undergo security screening at channels designated for airport staff and airline crews at the Airport.

2. The complainant considered AVSECO's reply unacceptable and, therefore, complained to this Office against AA for:

- (1) unfairly allowing queue-jumping of a crew member for security screening at a channel not designated for airport staff and airline crews;
- (2) failing to explain to him how the Complaint would be handled; and
- (3) wrongly allowing AVSECO to discharge AA's statutory duty and functions in handling the Complaint.

## AA's Explanation

3. AA has delegated its duty to handle complaints relating to security matters to AVSECO, pursuant to the Airport Authority Ordinance and the "Airport Security Programme". Hence, on receipt of the Complaint, AA asked AVSECO to handle it. For better communication with complainants in future, AA had adopted the following improvement measures:

- handle directly any complaint addressed to it against AVSECO's services;
- inform the complainant whether AA or AVSECO would respond to the matter; and
- clear any reply from AVSECO before issuance.

4. It is an international practice for airports to facilitate crew members' movement by providing them with a dedicated priority channel for security screening. In order to minimise passengers' waiting time, AVSECO staff would direct passengers to a designated channel when it was

not busy. On the day in question, at each of the two Departure Halls in Terminal 1 of the Airport, there was a dedicated channel for security screening with dedicated signage showing that priority was being given to departing crew members.

5. At the material time, when a designated channel was not busy, AVSECO staff directed the complainant to the designated channel. While the complainant was placing his carry-on baggage on a tray, an airline crew member turned up at the designated channel and AVSECO staff thus gave the airline crew member priority to be screened.

6. AA would add more signage for designated channels to highlight the priority arrangement to passengers.

## Our Comments

### Allegation (1)

7. Based on AA's explanation in paragraphs 4 and 5 above, the case did not actually involve queue-jumping as the airline crew member concerned was rightfully using a designated channel. Allegation (1) was, therefore, unsubstantiated.

### Allegation (2)

8. We considered that AA or AVSECO should have explained to the complainant at the outset the delegation arrangement of complaint handling so that misunderstanding could be avoided. Therefore, The Ombudsman considered Allegation (2) substantiated.

### Allegation (3)

9. There was nothing improper for AA to authorise its subsidiary company AVSECO to handle the Complaint. Hence, Allegation (3) was unsubstantiated.

## Conclusion

10. Overall, The Ombudsman considered this complaint partially substantiated. We were pleased to note that AA had adopted the improvement measures.

**A case calling for improvement on complaint handling**



## Buildings Department ("BD")

### Case No. OMB 2017/3831 — Unauthorised building works for subdivision of a flat

Main allegation: failing to take enforcement action against unauthorised building works for subdivision of a flat — partially substantiated

## Details of Complaint

The complainant had noticed unauthorised building works ("UBW") for subdivision of a flat on the same floor where he lived and made a complaint to BD in 2016. However, despite a removal order having been issued, for almost a year the UBW items remained. Dissatisfied that BD had failed to take enforcement action, he complained to this Office.

## BD's Explanation

2. BD explained that under its prevailing policy, where there are technical errors in a removal order such as incorrect description of the UBW items concerned, the Department may need to issue a superseding order.

3. In this complaint case, BD first issued an order to the owner of the flat where the UBWs were ("the Owner"), requiring removal of the UBW items and reinstatement works to be carried out. BD's subsequent compliance check on the flat revealed that the UBW items remained and there were newly added works. Hence, BD issued a warning letter to the Owner, and later a superseding order as it considered the additional UBW items a change in the circumstances. As the Owner still failed to comply nearly four months after the issuance of the superseding order, BD issued another warning letter, stating that BD would contemplate prosecution and engage a contractor to carry out removal and reinstatement works at the Owner's costs.



## Our Comments

4. We noted that after issuing the first removal order, BD had tried to inspect the flat before the time limit of compliance expired but in vain. When BD found the additional UBW items during the compliance check, it should have realised that the Owner had no intention to comply with the order and hence a superseding order should have been issued straightaway. However, BD did not do so until seven months later. In our view, that was a substantial delay on the part of BD in taking enforcement action.

5. While BD explained that it had taken longer time to follow up on the case due to the transfer of the case officer, we considered that BD's enforcement action must be efficiently and effectively carried out to deter UBWs.

## Conclusion and Recommendations

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

7. The Ombudsman recommended that BD in future expedite its enforcement action in cases of non-compliance with statutory orders, and in this case, initiate prosecution and removal actions promptly should the Owner disregard its latest warning letter.

## Details of Complaint

The complainant, a company, solely owned the mezzanine floor of a building ("Building A"). Since some ten years ago, the complainant had complained repeatedly to BD about UBW items on the flat roof of two units ("Unit A" and "Unit B") located on the floor above its property. The complainant alleged that the UBW items had caused water seepage on the ceiling of the mezzanine floor and affected environmental hygiene and structural safety of the building. Nevertheless, BD failed to take any enforcement action.

## Our Findings

2. In 2005, Building A was selected as a target building under the Coordinated Maintenance of Buildings Scheme. BD's inspection revealed that Unit A and Unit B each had an actionable UBW item. In August, BD issued removal orders to the two owners concerned, and they subsequently demolished some parts of the UBW items. According to the prevailing enforcement policy, BD suspended its enforcement action and discharged the removal orders.

3. While the complainant repeatedly complained to BD of water seepage from the flat roof to the mezzanine floor, BD, after inspection, considered that there was no obvious danger to the building's structural safety and took no enforcement action under the then prevailing enforcement policy. Instead, BD referred the case to the Joint Office for Investigation of Water Seepage Complaints, and advised the relevant owners and the Owners' Corporation to liaise among themselves for a solution to repair the drainage pipes on the flat roof.

4. In 2011, BD revised its enforcement policy to render all UBW items on rooftops and flat roofs, in yards and lanes also actionable irrespective of whether they constituted a serious safety hazard. In October 2011, BD notified all owners of Building A in writing that the building was selected as a target of the large-scale operation for UBW clearance and maintenance works, and a consultant

### A case of lack of flexibility in enforcement action



### Buildings Department ("BD")

#### Case No. OMB 2018/1109 — Unauthorised building works ("UBW") on flat roof

Allegation: failing to take enforcement action against UBW items on the flat roof of a building — partially substantiated

was appointed to conduct building survey. The consultant submitted a survey report to BD in June 2015, but it failed to identify the UBW item of Unit A in the report. In July 2015, BD issued a removal order against Unit B. In 2018, after our intervention, BD prosecuted the owner of Unit B for failing to comply with the removal order, and issued an order requiring the owner of Unit A to demolish its raised floor and parapet.

### Our Comments and Conclusion

5. Although BD had followed up the complaint of seepage problem, we noted that the consultant appointed by BD in 2011 had taken more than three years to complete the survey report on Building A, and there were omissions in the report. This showed that BD had not properly monitored the consultant's performance, which in turn affected the effectiveness of enforcement. Furthermore, it was not until after our intervention that BD proceeded to prosecute the owner of Unit B for non-compliance with the removal order.

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

### Recommendations

7. The Ombudsman recommended that BD:
- (1) step up its monitoring of the performance of consultants to prevent recurrence of similar incidents; and
  - (2) follow up closely and review in a timely manner whether the owners of the UBW items on the flat roof of Building A have complied with the removal orders, and take further enforcement action against the owners if they fail to do so.

#### A case of ineffective enforcement



### Electrical and Mechanical Services Department ("EMSD"), Water Supplies Department ("WSD") and Food and Environmental Hygiene Department ("FEHD")

#### Case No. OMB 2018/1883A, B & C — Irregularities in fresh water cooling towers

##### Allegations:

EMSD — shifting responsibility to other departments when handling a complaint about fresh water cooling towers and failing to take enforcement action against the owner of the cooling towers — unsubstantiated

WSD — same — substantiated

FEHD — same — unsubstantiated

### Details of Complaint

The complainant found irregularities in the installation of fresh water cooling tower facilities ("the cooling towers") of a restaurant. Worried that it might cause an outbreak of Legionnaires' disease, she made a complaint to EMSD, WSD and FEHD. The three departments, however, shifted the responsibility to one another and failed to take enforcement actions against the owner of the cooling towers.

## Response from the Three Departments

2. EMSD indicated that it had been following up on the cooling towers prior to receipt of this complaint. EMSD found legionella in one of the water samples collected from the cooling towers, but the legionella count was below the upper threshold. EMSD then issued an advisory letter to the restaurant, which then cleaned and disinfected the cooling towers. EMSD also sent an information leaflet and issued a verbal advice to the person in charge of the restaurant.

3. According to WSD, upon receipt of this complaint, it had visited the restaurant several times but was refused entry. Later when WSD was allowed to enter the restaurant, it found that the water pipe of the cooling towers was connected to a tap in the kitchen. The restaurant, however, refused to let WSD conduct further check on the water source of the cooling tower storage tank. In a subsequent site inspection, WSD noticed the pipe originally connected to a tap on the kitchen was cut off and the restaurant claimed that the water inside the cooling towers came from a well in the restaurant. Some two months later, WSD received a referral from FEHD about the suspected use of mains water for the cooling towers by the restaurant, but again WSD was refused entry. After a few days, the restaurant arranged for WSD's entry for inspection, but the Department did not find any irregularities. Finally, WSD obtained from the court a warrant for entry and found that the restaurant had illegally connected the cooling tower storage tank to waterworks. WSD then took enforcement action.

4. FEHD stated that it had taken follow-up actions on the complaint based on its observations from inspections, its investigation findings, relevant laws and restaurant licensing requirements. Such actions included conducting inspections, instigating prosecutions, requiring the restaurant to submit an application for change of plans, etc.

5. EMSD, WSD and FEHD all indicated that they had informed the complainant about their follow-up work in a timely manner.

## Our Comments and Conclusion

6. We considered that EMSD had followed up on the complaint in a timely manner by issuing an advisory letter

to urge the restaurant to disinfect the cooling towers and submit another report of laboratory test on water samples. FEHD had also taken appropriate actions within its ambit of enforcing restaurant licensing requirements and assessing whether there were environmental nuisances caused by the cooling towers. In our view, EMSD and FEHD had followed up on this complaint within their purviews, and they had properly updated the complainant on the case progress. There was no evidence that the two departments had shifted their responsibilities to others.

7. While WSD had not shifted its responsibility to others, its handling of the case was obviously ineffective. The restaurant was extremely uncooperative that it repeatedly rejected WSD's requests for entering the restaurant and investigating the water source of the cooling tower storage tank. In spite of this, WSD continued to make appointment with the restaurant and failed to apply for a warrant from the court or step up its action promptly. It allowed the restaurant to take advantage of such loophole to temporarily remove the water pipe connecting the tank and the waterworks, thereby pre-empting WSD's investigation. Moreover, despite the unconvincing explanation (i.e. water in the cooling tower tank was supplied from a well) given by the restaurant, WSD accepted it readily without any investigation. It was perfunctory of WSD to do so. It had given people an impression that WSD was indecisive in taking enforcement action.

8. Overall, The Ombudsman considered the complaint against WSD substantiated, but the complaint against EMSD and FEHD unsubstantiated.

## Recommendations

9. The Ombudsman recommended that WSD review its practice and examine whether it is necessary to formulate guidelines on the circumstances under which WSD can handle a case by making a prior appointment and circumstances under which WSD should step up action (e.g. applying for a warrant). Besides, WSD should handle promptly the irregularities found in this complaint.

A case of failing to take active follow-up action



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

#### Case No. OMB 2017/5028 — Transfer of hawker licence

Main allegation: improperly approving an application for transfer of hawker licence — inconclusive

### Details of Complaint

The complainant's father ("Mr A") was the holder of a fixed pitch hawker licence. In June 2016, FEHD approved Mr A's application for transferring the licence to the complainant's younger sister ("Ms B"). The complainant contended that Mr A was in poor health after a stroke in 2015 and he could neither clearly convey his wish to FEHD officers nor authorise anyone to complete the procedures for licence transfer, let alone sign the transfer documents himself. The complainant, therefore, alleged that FEHD had improperly approved the transfer of licence.

### FEHD's Explanation

2. FEHD explained that in June 2016, the complainant's mother submitted documents to the local District Environmental Hygiene Office ("DEHO"), stating that Mr A wished to transfer his hawker licence to Ms B. Consequently, two officers of the DEHO visited Mr A at the hospital to help him to complete the transfer procedures, during which they asked Mr A whether he agreed to transfer his hawker licence. Mr A nodded to

indicate his understanding and consent, and then the officers asked him to sign the application form. After confirming the intention of both parties and verifying the relevant documents, FEHD approved the application in view of Mr A's old age and Ms B's eligibility as a transferee.

### Our Comments and Conclusion

3. The crux of the matter was whether Mr A had the mental capacity to sign the application form for licence transfer during his meeting with DEHO officers. According to the hospital records, Mr A was mentally confused with speech loss upon admission to the hospital; on the day of his meeting with DEHO officers, he was in better condition and conscious, while he could only use simple gestures to indicate his thoughts rather than communicate verbally; his right hand had no muscle strength and might not be able to sign documents, but he had better mobility in his left hand. The hospital stated that as it had not arranged for Mr A to undertake mental capacity assessment on the day of the above meeting, it was not in a position to comment whether he had the capacity to understand the matter of licence transfer and make the decision to transfer his licence on that particular day.

4. In view of our findings, we were uncertain whether DEHO officers accepted Mr A's application for licence transfer when he had the required mental capacity. This complaint was, therefore, inconclusive.

### Recommendation

5. We considered that FEHD must exercise caution when handling the signing of licence transfer documents, which entails transfer of benefits. The Ombudsman recommended that FEHD consider drawing up operational guidelines to give staff more instructions on how to deal with applications for licence transfer involving persons who might not have the required mental capacity or could not express their wishes clearly.

A case calling for clearer guidelines for frontline staff





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

### Case No. OMB 2018/0207 — Regulation of swimming pool in a private housing estate

Allegations: (1) perfunctory inspections of the swimming pool, not noticing the discrepancies between the facilities installed and those shown on the approved layout plan — substantiated; (2) approving rashly the renewal of the licence of the swimming pool — unsubstantiated; and (3) ignoring the poor water quality of the swimming pool — substantiated

## Details of Complaint

The complainant, the Owners' Committee of a private housing estate, complained against FEHD for:

- (1) failing to notice that the property management company ("the PMC") had, without prior approval, replaced the filtration tanks of the estate's swimming pool, even though the Department had conducted a number of inspections and checked the layout plan;
- (2) failing to check the swimming pool facilities against the final approved plan before granting its approval for licence renewal, which was rash; and
- (3) ignoring the fact that the swimming pool had been closed urgently due to poor water quality and still maintaining that the water quality was up to the statutory standards.

## Response from FEHD

2. As regards Allegation (1), FEHD explained to us the following: in November 2017, the complainant complained to the Department about the PMC's unauthorised alteration of the swimming pool facilities. Prior to that, FEHD had checked the layout plan seven times within two years or so, but no alteration of the facilities was found. On receipt of the complaint, FEHD checked the approved final layout plan and found that the number of filtration tanks did not match those shown on the plan. Subsequently, the PMC was convicted and fined by the court.

3. As regards Allegation (2), the PMC had only one conviction for violation of the Swimming Pools Regulation and hence did not warrant cancellation of its licence under FEHD's mechanism for licence suspension/cancellation. Accordingly, FEHD approved the PMC's application for licence renewal.

4. Regarding Allegation (3), FEHD stated that it had conducted a total of 11 routine inspections during the swimming seasons of 2016 and 2017, and the swimming pool was open on three occasions. On each of the three occasions, FEHD had collected water samples for testing and analysis and there was only one occasion with the bacteria counts in the samples exceeding the limit. FEHD had accordingly issued a verbal warning to the PMC, and conducted a follow-up inspection a month later to confirm that the water quality met the statutory standards.

## Our Comments

### Allegation (1)

5. According to the information provided by the complainant, the PMC had replaced and installed filtration tanks in 2015 and 2016 respectively. In our view, the replacement of the original five large filtration tanks by 18 small ones should have been easily noticed. It was inconceivable that during the aforesaid seven inspections by FEHD, "no alteration of the facilities was found". We had reasons to believe that the inspections by FEHD staff were perfunctory, and that the staff concerned might have not studied the layout plan or checked the facilities on-site, let alone made any comparison.



### Allegation (2)

6. Under the current mechanism for renewal of swimming pool licence, FEHD had to take into account whether the licensee had been convicted so many times that a cancellation of licence was warranted. However, FEHD was not obliged to check the swimming pool facilities against the approved layout plan. Therefore, whether FEHD had done such checking or not had no bearing on its approval of licence renewal.

### Allegation (3)

7. FEHD stated that the water samples collected during its inspections in the swimming seasons of 2016 and 2017 had failed to meet the standards on one occasion only. However, the swimming pool was in fact closed during many inspections and no water samples had been collected on those occasions. We considered it improper of FEHD to decide that the water quality of the swimming pool met the statutory standards when its staff had failed to follow the guidelines to collect water samples from the swimming pool for testing on a monthly basis.

8. In the light of the above, The Ombudsman considered Allegations (1) and (3) substantiated and Allegation (2) unsubstantiated.

9. Besides, it should be noted that on two occasions FEHD staff had indicated in their inspection records that the swimming pool was “closed” and “the main gate locked”. But in the column “Record of Action Taken by Inspecting Officer”, they stated that the swimming pool was “in order”. Furthermore, according to the complainant, the swimming pool was actually open on the days when the two inspections were carried out.

### Recommendations

10. The Ombudsman recommended that FEHD instruct its staff to conduct inspections of swimming pools carefully. The Department should also investigate thoroughly why there were discrepancies in the inspection records made by its staff. Moreover, the Department should review the mechanism for penalising the management of swimming pools involved in repeated violations of the Regulation so as to ensure water quality for the hygiene and safety of swimmers.



### Food and Environmental Hygiene Department (“FEHD”) — Joint Office for Investigation of Water Seepage Complaints (“JO”)

#### Case No. OMB 2018/3105A — Abatement order against seepage nuisance

Allegation: JO failing to make the best endeavours to execute an abatement order against a seepage nuisance, such that the seepage problem persisted — partially substantiated

### Details of Complaint

The complainant alleged that there had been a seepage problem at the ceiling of her flat since 2012. JO, formed by FEHD and the Buildings Department, had confirmed the upper floor unit as the source of the seepage. In late 2016, the court issued an abatement order, requiring the owner of that flat (“the Owner”) to carry out proper repairs within the period specified to abate the seepage nuisance. The owner did not comply and was subsequently prosecuted by JO in July 2017. Nevertheless, as at August 2018, the summons in relation to the prosecution still could not be successfully served on the Owner. Meanwhile, the hearing for the case was postponed as many as ten times because the Owner did not appear in court. The complainant was aggrieved by JO’s failure to make the best endeavours to execute the abatement order such that the seepage nuisance persisted.

## JO's Response

2. The Owner had once been prosecuted for non-compliance with a nuisance notice issued by JO. She was subsequently convicted and fined by the court in December 2016. The court also issued her a nuisance order (i.e. the abatement order), demanding her to carry out proper repairs at her flat. The Owner paid no heed. JO then decided to prosecute her and requested the court to issue a summons in early July 2017.

3. To serve summons on defendants is a judiciary process in which JO has no statutory role. JO would, however, try different means to obtain the address of the defendant to facilitate this judiciary process. Between July 2017 and July 2018, JO had enquired of the Immigration Department and the Rating and Valuation Department of the address of the Owner and notified the court of the information. The court then tried eight times, all to no avail, to serve the summons on the Owner by post and via bailiffs/the Police, including serving it at different times of the day and at different addresses. The hearing for the case was, therefore, postponed time and again. Finally, at the end of November 2018, after confirming that the Owner still failed to appear in court despite the summons having been successfully served, FEHD applied to the court for an arrest warrant.

4. Regarding why it had waited for so long before applying for an arrest warrant, JO explained that:

- (1) the magistrate may refuse to issue an arrest warrant if the prosecution has not exhausted all viable means to serve a summons;
- (2) before applying for an arrest warrant, other factors, such as the severity of the seepage problem and how the warrant would affect the defendant's personal liberty, should be taken into account;
- (3) the seepage problem in this case does not pose severe dangers to society; and
- (4) the summons was successfully served on the Owner on 9 October 2018. JO then applied to the court for the arrest warrant when the Owner still failed to attend the hearing on 8 November 2018.

5. JO considered that a defendant should be regarded as having no knowledge of being prosecuted or required to appear in court as long as a summons remains unserved. JO considered it legal, reasonable and correct to have refrained from applying for an arrest warrant from the court before the summons was successfully served by the Police.

## Our Comments

6. We considered JO to have tried its best to obtain the address of the Owner. It had advised the court to serve the summons following established procedures and ultimately applied to the court for issue of an arrest warrant. However, we did not agree, for the following reasons, that it was correct and reasonable of JO not to apply for an arrest warrant before the summons was successfully served on 9 October 2018.

- (1) During the 12 months between July 2017 and July 2018, the responsible officers had tried eight times to serve the summons via different means, at different times of the day and at different addresses, but to no avail (see para. 3). As such, the magistrate might accept that the prosecution had used every viable means to serve the summons and hence issue the arrest warrant.
- (2) The court already issued an abatement order in December 2016, but the Owner defied the order. Consequently, the complainant had to endure the persisting seepage.
- (3) Issuing the warrant for the Owner's arrest and subjecting her to the court's punishment should have made her comply with the abatement order promptly.

7. The Owner was obviously an inconsiderate person who showed no regard whatsoever for the court's abatement order and the law. JO failed to consider applying for an arrest warrant as soon as possible when the summons remained unserved after a number of attempts, resulting in the complainant's prolonged distress due to the seepage.

## Conclusion and Recommendation

8. In sum, The Ombudsman considered this complaint partially substantiated.

9. The Ombudsman recommended that JO consider applying for an arrest warrant as soon as possible in cases where the summons remained unserved for long. This should be effective in prompting property owners concerned to discharge their duties in buildings maintenance and solve seepage problems.

### A case of faulty procedures



### Highways Department (“HyD”)

**Case Nos. OMB 2017/5069; OMB 2018/0051; OMB 2018/0105; OMB 2017/0106 and others**  
**— Public consultation on a pedestrian link**

Allegation: failing to conduct proper public consultation on the construction of a pedestrian link — unsubstantiated

## Details of Complaint

A number of residents of a building (“the Building”) in a private estate (“Estate A”) lodged a complaint with this Office against HyD for failing to conduct proper public consultation on a pedestrian link (“the Project”). They were dissatisfied that HyD had:

- (1) put at inconspicuous spots the documents and works plan for the Project (“the Project Information”) during the enquiry period, such that local residents had overlooked their significance;

- (2) failed to provide the Project Information to all the three Owners Corporations (“OCs”) and the three management companies in Estate A. As a result, some residents (including those of the Building) could not have a clear idea about the Project and its possible impacts as early as possible;
- (3) treated the residents’ enquiries lightly in that the HyD staff responsible for answering their enquiries were on vacation leave during the enquiry period;
- (4) misled the residents because HyD once indicated that there was no timetable for gazetting the Project, but in fact the Project Information already contained the date for gazetting; and
- (5) failed to provide the estimated construction costs and data/information on the cost-effectiveness of the Project to the local District Council and to the residents concerned.

## Background

2. The Project was proposed by a committee under the local District Council (“the Committee”) in 2008. HyD subsequently appointed a works consultant (“the Consultant”) to conduct a study and draw up an initial design, which was then revised in 2016. In late September 2017, the Consultant wrote directly to the 29 OCs (including the OC of Estate A)/Owners’ Committees/management offices and other stakeholders along the route of the pedestrian link (“collectively referred to as “the Stakeholders”) regarding the revised design. In October 2017, HyD consulted the Committee on the revised design and gained unanimous support from its members.

## HyD’s Response

### Allegation (1)

3. According to the guidelines and requirements regarding public works, HyD had to conduct public consultations on the Project. Between late November and early December 2017 (“the enquiry period”), HyD posted the Project Information on the notice boards in the local Home Affairs Enquiry Centre for public inspection. Extra

arrangements were also made to post the Project Information at the District Lands Office and mail it to the Stakeholders. To avoid omissions, copies of the Project Information were also displayed at 31 conspicuous spots along the route of the proposed pedestrian link. In fact, some residents contacted HyD upon reading the information at those spots.

### **Allegation (2)**

4 The Consultant initially was not aware that two buildings in Estate A (including the Building) had each set up an OC (i.e. there were three OCs in the Estate). HyD only learned of this upon receipt of an enquiry and notification from the OC of the Building early into the enquiry period. The Project Information was subsequently mailed to the two OCs. HyD also instructed the Consultant to update its mailing list.

### **Allegation (3)**

5. The Project Information contained two telephone numbers for public enquiries about the Project during the enquiry period. HyD indicated that the numbers belonged to two engineers responsible for the Project. They never took leave during the period, and did actually receive and answer a number of telephone enquiries from the public as well as from the OC of the Building.

### **Allegation (4)**

6. It was stated in the Project Information that the Project was “**proposed** to be published... in the Government Gazette in December 2017”. It was a work target set by HyD based on the consultation with and support given by the Committee regarding the Project. The Department subsequently considered it necessary to take into account other people’s views before gazetting. HyD had no intention to mislead and had explained this when answering public enquiries. It stressed that the Project would only be gazetted after consulting the residents and the Committee again.

### **Allegation (5)**

7. HyD explained that the Project was still in the early design stage. Its construction costs could be accurately estimated only when the detailed design was finalised and were, therefore, not available at present. HyD would respond to public concerns and queries as far as possible during consultation. Financial details of the Project would

be submitted to the Finance Committee of the Legislative Council later when applying for funding and approval.

## **Our Observations and Comments**

### **Allegation (1)**

8. In addition to following general requirements to conduct public consultation, HyD also made extra efforts to mail the Project Information to the Stakeholders and display it at 31 spots, such as railings by the roadside, on pavements and on footbridges. Those spots could hardly be described as “inconspicuous”. The fact that some residents contacted HyD after reading the Project Information at those display spots proved that the spots had been effective in attracting public attention.

### **Allegation (2)**

9. The Consultant was not aware initially that there were three OCs in Estate A. On notification, it sent the Project Information to the other two OCs as well. We considered that while the OC of the Building and that of the other building received the information a few days later than the other parties, their chance of raising their views had not been really affected.

### **Allegation (3)**

10. HyD had clarified that the officers responsible for the Project were not on vacation leave during the enquiry period.

### **Allegation (4)**

11. The word “proposed” was indeed used in the Project Information prepared by HyD, indicating that the date for gazetting had yet to be fixed, pending consideration and processing of all relevant views received. There was no misleading on the part of the Department.

### **Allegation (5)**

12. We considered HyD’s explanation reasonable. It was not improper of it not to provide the information about the construction costs of the Project at this stage.

13. Overall, HyD had handled the Project in accordance with established procedures and requirements. Nothing improper was found. This complaint was a result of the incomplete list of OCs initially held by the Consultant.



## Conclusion and Recommendation

14. In the light of the above, we considered this complaint unsubstantiated, but there was room for improvement for HyD.

15. This Office urged HyD to instruct its staff that, in conducting similar public consultations in the future, they should obtain from the local District Office an updated list of OCs/Owners' Committees/management offices to ensure that consultations with all parties concerned can be conducted without any omissions.

### A case of failure to collect complete information



### Hospital Authority ("HA")

#### Case No. OMB 2017/2362 — Failing to properly handle complaints about a hospital

Allegations: (1) nurses removed intravenous lines ("I.V. lines") of patient before he was certified dead by the doctor concerned ("the Doctor") — unsubstantiated but other inadequacies found; (2) inaccurate records about patient's time of death and whether complainant was present at his death — unsubstantiated; (3) Doctor removed cardiac pacemaker ("pacemaker") from the deceased's body despite complainant's objection — inconclusive; (4) patient not yet brain-dead when pacemaker was removed and could still feel pain — unsubstantiated; and (5) on the hospital's claim of no record about complainant having mentioned burial arrangement and objected to removing the pacemaker, the Public Complaints Committee of HA ("the Committee") made no comment on ground of lack of corroborative evidence — unsubstantiated

## Details of Complaint

The complainant's husband ("Mr A") died in a hospital ("Hospital") under HA in early February 2015. Dissatisfied with the nursing staff's handling of several issues surrounding his death, the complainant lodged a complaint with the Committee, which nevertheless failed to give definite answers to her queries.

2. Specifically, the complainant was dissatisfied with the Hospital/Committee for the following:

- (1) Nurses at the ward informed her that Mr A passed away at 2:05 am and they removed all his I.V. lines before the complainant arrived at 2:20 am, but the Doctor had not yet certified him clinically dead then.
- (2) Documents relating to Mr A's death showed that he was certified dead at 4:38 am (time as certified by the Doctor) and the complainant was present at his death. Yet, the nurses said that he had passed away at 2:05 am, when she was not yet there. The complainant alleged that Hospital's records deviated from the facts.
- (3) Despite the complainant's indication to the nurses of burial and objection to removing the pacemaker inside Mr A's body, the Doctor still removed the device and did not explain how it was then disposed of.
- (4) Mr A's pyjamas was badly blood-stained after removal of the pacemaker. The complainant worried that Mr A was not yet completely brain-dead and could still feel the pain when the pacemaker was being removed. She was unable to accept this.
- (5) Ward staff claimed that they had not been notified by Mr A's family that burial would be arranged, contrary to what the complainant had said. The complainant felt aggrieved by the Committee's conclusion that it could not comment on which side was right on the ground of absence of corroborative evidence.



## Our Findings

### Procedures for Death Confirmation

3. Nurses do not have the authority to confirm when a patient dies, but have sufficient professional clinical knowledge to judge whether a patient already shows no vital signs.

4. Normally, doctors would conduct clinical tests on brain stem reflexes and cardio-pulmonary circulation for dying patients ("the assessments"). If no response is registered, they would print a flat-lined electrocardiogram ("ECG") for the record. The time when these procedures finish would be the patient's time of death. Consequently, the time of death as shown on the patient's medical records, etc. is later than the clinical time of death as confirmed by doctors. While the flat-lined ECG can serve as objective evidence of death to prevent arguments later, printing it out is not a required step in death confirmation, and HA had not formulated any guidelines on the procedures.

### Handling a Deceased's Body

5. After a patient dies, the nursing staff would usually remove all the I.V. lines and tidy up his/her appearance. If there is a pacemaker implant and cremation is considered by the family, the device must be removed lest it should explode during cremation. The removed device would not be handed over to the family to prevent spreading infectious diseases or explosion because of improper disposal. Nurses would make a written record and notify the doctor concerned if the patient's family object to removing the pacemaker.

## HA's Response

### Allegation (1)

6. The two nurses on duty that day stated that they removed the I.V. lines only after Mr A had been certified dead by the Doctor (i.e. at 4:38 am). This was different from the complainant's version. HA had no comment on when the I.V. lines of Mr A were removed.

### Allegation (2)

7. At 2:15 am, the nurses found Mr A already not breathing, pulseless and having no signs of circulation. Only the signals of his pacemaker could be seen on the ECG monitor. So they immediately notified the Doctor, who confirmed that he had no vital signs after the assessments. As the Doctor did not know how to stop the pacemaker's signals, he needed to consult a senior medical officer. He also had to take care of other urgent clinical tasks. So, he only returned to the ward to stop the device later, and printed the flat-lined ECG at 4:38 am as medical evidence of Mr A's death.

8. Of the several documents relating to Mr A's death, only the death certificate issued by the Births and Deaths Registry mentioned the relative's presence at Mr A's death. HA believed that this piece of information was recorded at the time when the complainant applied for Mr A's death registration.

### Allegation (3)

9. Both nurses on duty asserted that they had informed Mr A's family that the Doctor was going to remove the pacemaker but the family neither raised objection nor mentioned anything about burial. Since Hospital and the complainant insisted on their own version of events, in the absence of objective evidence, HA could not comment, but stressed that if the family had raised objection or mentioned burial, the nursing staff would exercise discretion.

### Allegation (4)

10. Medical records showed that the Doctor removed the pacemaker after completing the assessments and certifying Mr A dead (i.e. 4:38 am). He also sutured the wound afterwards. HA could not ascertain what was said between him and the family that day, and would not comment whether the pacemaker had been handled properly.

### **Allegation (5)**

11. HA's specialists in internal medicine had re-examined the real-time medical records of Mr A, but found no mention of his family having indicated burial or requested not to remove the pacemaker. Actually, special requests from a patient's family, if received, would normally be filed on record. The Committee stressed time and again that due to the lack of corroborative evidence, it would not accept or comment on the veracity of either side's version. HA opined that the Committee must be fair to both sides involved in a complaint and draw conclusions based on objective evidence.

12. There was a gap of more than two hours between the Doctor's completing the assessments and certifying Mr A dead. HA admitted that it was not satisfactory and might have led to the family's misunderstanding. The incident might have arisen out of miscommunication between the complainant and the ward staff. HA apologised to Mr A's family for the unhappiness thus caused.

### **Our Comments**

13. The crux of this case lay in the time of Mr A's death. Both HA and the Doctor asserted that Mr A was confirmed lifeless at 2:15 am and "already clinically dead", but could only be "certified dead" at 4:38 am because of circumstances then (see para. 7). There was a gap of more than two hours in between. Nevertheless, the Committee failed to reveal this important detail in its several replies to the complainant. This reflected a lack of consideration for the family's doubts (that Mr A was not yet dead when the I.V. lines were removed) and their feelings.

### **Allegation (1)**

14. The complainant and the nurses each told a different version regarding when the I.V. lines of Mr A were removed. Without corroborative evidence, this Office could not confirm what had really happened and would refrain from making a judgement.

15. HA admitted that printing the flat-lined ECG was not a required step in confirming death of a patient. We, therefore, considered that certifying Mr A's death at once when no vital signs were detected would have prevented the alleged delay in the time of death certification and the ensuing arguments. We also queried whether it was just an isolated incident, as HA had claimed.

16. In the light of the above, Allegation (1) was unsubstantiated but other inadequacies were found.

### **Allegation (2)**

17. Based on the facts laid out in paragraph 13 above, we opined that even if the nursing staff did indicate that Mr A had already passed away around 2:00 am or shortly thereafter, it could not be considered an incorrect statement, only that it was not the legal time of death (which was 4:38 am). However, HA and the Committee should have clearly explained this to the complainant to clear her doubts and worries.

18. Based on the legal time of death as registered in the Medical Certificate of the Cause of Death, the complainant was indeed present at the time Mr A died. This Office, therefore, considered Allegation (2) unsubstantiated but there was room for review by HA.

### **Allegation (3)**

19. The complainant and the nursing staff concerned did not agree on whether the family had mentioned burial and objected to removing the pacemaker. The Doctor confirmed that he had not communicated with the family regarding removal of the pacemaker. There was a remark on removal of the pacemaker but not its disposal in Mr A's medical records. We considered it normal for the family of a deceased patient to be concerned about the removal and disposal of the pacemaker inside the body. It was incumbent upon HA to communicate with them and explain the related procedures and risks. That no relevant guidelines had been drawn up then revealed HA's inadequacy.

20. In the lack of corroborative evidence, this Office considered Allegation (3) inconclusive, but found HA's practice then inadequate.

### Allegation (4)

21. Medical records showed that the pacemaker was removed after Mr A had been certified dead by the Doctor. As such, we found it unjustified to claim that Mr A was not completely brain-dead and could still feel pain. Besides, the Doctor also explained that the pacemaker could be removed through a small incision, and the blood circulation of Mr A had long ceased, so massive bleeding should not have occurred. Allegation (4) was, therefore, unsubstantiated. Nevertheless, we urged HA to remind doctors to be considerate of the feelings of the deceased's family and avoid staining the deceased's clothes with blood during removal of a pacemaker.

### Allegation (5)

22. The complainant and the nursing staff insisted on their own versions as to whether the former had indicated arrangements for burial. In the absence of independent corroborative evidence, we considered it not unreasonable of the Committee not to make a conclusive comment. We, therefore, considered Allegation (5) unsubstantiated.

## Conclusion and Recommendations

23. Overall, The Ombudsman considered this complaint unsubstantiated, but there were other inadequacies found.

24. The Ombudsman recommended that HA:

- (1) remind its doctors of the proper procedures for confirming death of patients, including to avoid unnecessary delay in the time of death certification caused by printing out the flat-lined ECG;
- (2) explain clearly in its replies to complainants all the details pertaining to the substantiation or otherwise of their allegations so as to allay their doubts and worries as far as possible; and
- (3) enhance the skills of doctors and nurses in communicating with patients' family and remind them to adopt a patient- and family-orientated approach in handling problems.



### Housing Department ("HD")

#### Case No. OMB 2018/0130 — Handling complaint about dripping flower pots

Allegation: failing to properly handle a complaint about nuisance caused by some dripping flower pots placed on the air-conditioner hoods by a public housing tenant — partially substantiated

### Details of Complaint

The complainant alleged that the tenant of the public housing unit above ("Unit A") had put several flower pots on and dangling under the air-conditioner hoods outside its windows. Water dripping from the flower pots spoiled her laundry. Despite her numerous complaints to HD, the dripping nuisance persisted.

### Response from HD

2. HD noted that the Estate Office had taken follow-up actions on the complaint. Since they did not find any water dripping from the flower pots outside Unit A's windows and the flower pots had not caused danger to others, HD could not take any control action under the Marking Scheme for Estate Management Enforcement or the Tenancy Agreement. However, the Estate Office had issued three advisory letters to Unit A, urging the tenant to remove the flower pots to avoid any accidents. In March 2018, HD issued a warning letter to Unit A, citing public safety concerns. Eventually, the tenant removed all the flower pots from the air-conditioner hoods in late June.

3. In the light of this case, HD would review and revise the relevant Estate Management Division Instruction to stipulate clearer procedures for handling tenants placing potential fallen objects outside the external walls (including those placed on air-conditioner hoods, edge of windows and canopies).

## Our Comments and Conclusion

4. We considered that air-conditioner hoods should be used solely for installation of air-conditioners. It was not only improper for the tenant to put other objects such as flower pots on the hoods, the insecured objects might also fall down and cause injuries to residents and passers-by. HD had indeed failed to consider public safety in stating that there was no potential danger. It should have required the tenant to rectify such misdeed as soon as possible, and referred the case to the Police for further action where necessary.

5. Although the Estate Office had followed up the dripping nuisance complaint, nearly three months had passed before HD issued the warning letter, and it only took further action after we commenced a full investigation. Its attitude in handling this complaint was too slow and unacceptable. Moreover, HD's warning letter lacked deterrent effect as it failed to remind the tenant of the serious consequences of allowing any objects to fall from his unit, which included committing an offence and might result in termination of tenancy. The Ombudsman, therefore, considered this complaint partially substantiated.

## Recommendations

6. The Ombudsman recommended that HD:
- (1) review and revise the relevant Estate Management Division Instruction as soon as possible; and
  - (2) handle in a stringent manner irresponsible behaviours of tenants who wilfully place objects on air-conditioner hoods.

**A case of inadequate consideration  
for public safety**



## Marine Department ("MD")

### Case No. OMB 2018/3074 — Waiting time and fee for taking an examination

Allegations: (1) unreasonably long waiting time for taking a pleasure vessel operator examination — unsubstantiated; and (2) high examination fee — unsubstantiated

## Details of Complaint

The complainant intended to take the Pleasure Vessel Operator Grade 2 Certificate of Competency ("PVOC2") examination. In early August 2018, he checked the examination schedules on MD's website and found that the next available examination date was more than five months away (in mid-January 2019). Besides, he had to pay an examination fee of \$1,255. He then lodged a complaint with this office against MD for the unreasonably long waiting time ("Allegation 1") and high fee for taking the examination ("Allegation 2").

## MD's Response

### Allegation (1)

2. In 2017, the Examination Centre at MD's Headquarters for PVOC2 examination was practically fully utilised in terms of both working days available (at 92.3%, with only 19 days reserved for computer system maintenance, etc.) and capacity (with 28 computer booths accommodating 28 candidates in each written examination session). The average waiting time for taking the PVOC2 examination (i.e. the time between application date and examination date) was about 5.5 months between 2016 and 2018.

3. The total number of PVOC2 candidates varied from year to year and there was no fixed pattern in the fluctuations. Since MD could not make plans for predictable peaks, setting up an additional examination centre would be unjustifiable. Besides, absence of some candidates from the examination had become the norm. For example, between December 2017 and November 2018, the average absence rate was about 22.2%.

4. A candidate may cancel or postpone the taking of PVOC2 examination by written notice at least five working days before the date of the examination. The examination fee paid can either be refunded or be held for his/her future examination. Besides, a candidate may also get a refund of the examination fee upon production of a medical certificate.

5. MD maintains a replacement arrangement, i.e. the examination schedules on MD's website would be updated on an hourly basis to accept new applications upon receipt of cancellation or postponement notices from candidates.

### **Allegation (2)**

6. The examination fee of \$1,255, as stipulated in the relevant rules, is derived on a full cost recovery basis and subject to review from time to time.

## **Our Comments**

### **Allegation (1)**

7. MD had explained the reasons for the long waiting time for taking the PVOC2 examination, especially the fluctuations in the number of candidates, which were beyond its control. To shorten the waiting time, MD had added extra examination sessions in 2018 and 2019, reduced the time slots reserved for maintenance and implemented the replacement arrangement. We, therefore, considered this allegation unsubstantiated.

### **Allegation (2)**

8. The examination fee, which is subject to vetting and approval by the relevant policy bureau, is not for profit-making. As such, we considered this allegation unsubstantiated.

### **Other Observations**

9. Notwithstanding the above, we saw room for improvement with regard to MD's administration of the PVOC2 examination.

10. First of all, MD only required five days' advance notice for cancellation or postponement of the taking of an examination. Under the replacement arrangement, such short notice might result in a low take-up rate of the vacated seats by other candidates. MD should consider stipulating a longer notice period (e.g. two weeks) so that vacated seats would more likely be filled.

11. In addition, an absence rate of over 22% was too high, implying a waste of valuable examination seats. When absentees reapplied to take the examination, the waiting time would be lengthened further. Besides, it was unreasonable that absentees were not held responsible for MD's administration costs. MD should consider formulating improvement measures, such as barring absentees from reapplying to take the examination within a certain period of time, or making absentees forfeit part of the examination fee.

## **Conclusion and Recommendations**

12. Overall, The Ombudsman considered this complaint unsubstantiated.

13. The Ombudsman recommended that MD improve the replacement arrangement (see para. 10) and consider stipulating a longer notice period for cancellation or postponement of examination. Besides, it should introduce measures to reduce the absence rate of candidates (see para. 11).





### Transport Department ("TD")

#### Case No. OMB 2017/3319 — Implementation of two-way toll collection at Lantau Link

Allegation: hastily implementing the two-way toll collection arrangement at the Lantau Link without adequate ancillary measures — unsubstantiated but other inadequacies found

### Details of Complaint

On 20 August 2017, TD implemented the two-way toll collection arrangement at the Lantau Link. The complainant alleged that TD had been poorly prepared for the new toll arrangement, resulting in traffic congestion at the Lantau Link on the morning of 21 August, which was the first working day after implementation of the new arrangement. Many local residents and travellers experienced serious delay in their trips.

### Our Findings

2. A one-way toll collection arrangement was adopted at the Lantau Link since its opening in 1997 until 20 August 2017. Motorists were previously not required to pay when driving towards the airport, but had to pay the toll of a round trip when returning to Kowloon. However, with the expected commissioning of the Hong Kong-Zhuhai-Macao Bridge, the Lantau Link would no longer be the only vehicular access to Lantau, and thus switching to a two-way toll collection arrangement became necessary.

### Prior Planning and Preparation Undertaken by TD

3. To prepare for the two-way toll collection arrangement, TD had to reinstate at the Lantau Toll Plaza the traffic facilities and toll booths on the airport-bound traffic lanes, as well as replace the entire toll collection system. From April 2016 to August 2017, the installation works for 15 of the 20 toll collection lanes had been completed in different phases. TD was of the view that upon enclosure of the remaining three free flow lanes and the two adjacent toll collection lanes on both sides for road works, it was imperative to implement the two-way toll collection concurrently for road safety reasons.

4. Based on the vehicular traffic flow data of different time slots, TD estimated that opening four manual and two Autotoll lanes would be sufficient to process 5,000 vehicles per hour and cope with the peak-hour traffic volume. Regarding the commencement date of two-way toll collection and details of the temporary traffic arrangements ("TTA"), TD had consulted the Legislative Council, the relevant District Councils and the transportation sector, with no objection received.

5. From July 2017, TD had started publicising the new toll arrangement through various channels, including press releases, pamphlets, banners, and variable message signs installed on major motorways. On 9 August, TD conducted a drill simulating the operation of two-way toll collection jointly with the Police, the contractor of the Tsing Ma Control Area, the Highways Department, and the Electrical and Mechanical Services Department. In the early morning hours of Sunday, 20 August, the two-way toll collection arrangement commenced operation and the traffic situation was smooth on the whole.

### The Day of the Incident

6. On 21 August 2017, i.e. the first working day after implementation of two-way toll collection, TD deployed two officers to monitor the situation from 6:00 am at the control room of the Lantau Toll Plaza. At around 7:00 am, they noticed heavier traffic flow and the formation of

vehicle queues. Subsequently, TD called for a meeting at the Toll Plaza with the Police and relevant parties to discuss how to adjust the TTA, and opened one more toll collection lane. Between 7:00 am and 11:00 am, TD kept the public informed of the latest traffic situation by issuing a series of 15 press releases and making announcements through radio broadcast and mobile applications, advising travellers to consider taking the Mass Transit Railway to the airport.

### TD's Analysis and Response

7. TD initially estimated that six toll collection lanes could handle a total of 5,000 vehicles per hour. However, on the morning of the incident, only around 2,900 vehicles passed through the six lanes per hour. After analysis, TD considered the major cause to be poor placement of water-filled barriers at the Toll Plaza, making it difficult for motorists to change traffic lanes. There was also insufficient space for vehicles to wait in line. Consequently, the vehicles queuing up for the manual toll collection lanes blocked the way leading to the Autotoll lanes, thereby reducing the capacity of the toll collection lanes. TD's preset contingency plan did not include making immediate alterations to the TTA. As critical safety considerations were involved in altering the TTA, TD had to meet with relevant parties before deciding on an alternative TTA after 9:00 am, changing the configuration of water-filled barriers. The traffic congestion gradually eased off thereafter.

### Our Comments and Conclusion

8. TD had started the two-way toll collection at the Lantau Link on 20 August 2017 with thorough consideration and planning. It was not a hasty decision. TD had also taken an array of preparatory measures and conducted a drill beforehand. However, the TTA implemented on 21 August, including the placement of water-filled barriers, and the provision of traffic signs and instructions for motorists, could not effectively facilitate the smooth flow of traffic. It was the major technical factor leading to the congestion at the Lantau Link in that morning.

9. Besides, TD's contingency response was evidently inadequate, which reflected badly on its administrative arrangements. As a result, TD failed to control and resolve

the congestion problem as soon as possible, causing the serious congestion in the end. While the two officers on site became aware of the vehicle queues of 2.8 kilometres as early as 7:18 am on that day, the preset contingency plan of opening one more manual toll collection lane was not activated until 8:44 am. What was more was that, it was not until the arrival of relevant officers of TD and the Police for a meeting and instructions issued that adjustments to the TTA were made at 9:19 am. Those two hours were exactly the peak period, and traffic congestion was bound to worsen. It was unacceptable for TD to have failed to react swiftly and take effective contingency measures within those two hours.

10. We considered that TD had not hastily implemented the two-way toll collection with inadequate ancillary measures but had, rather, failed to formulate adequate contingency measures and make immediate adjustments in response to the situation on site. This complaint, therefore, was unsubstantiated, but there were other inadequacies found.

### Recommendations

11. The Ombudsman recommended that TD:

- (1) learn the lessons from this incident, step up staff training on TTA strategies and enhance their ability and sensitivity in activating and adjusting contingency measures;
- (2) review its staff deployment to ensure that authorised officers, who can immediately activate contingency measures and revise the TTA in response to change of circumstances, are stationed on site for the first working day upon implementation of similar TTA in future; and
- (3) where appropriate, consider instituting a contingency U-turn point arrangement as one of the contingency measures such that motorists got stuck in the traffic queues can opt to leave the scene, thereby dissipating the traffic queues more quickly.



### Transport Department ("TD")

#### Case No. OMB 2018/2208 — Rectification of chassis number

Allegation: failing to properly handle an application for rectifying the chassis number of a vehicle, such that the vehicle could not be re-registered — substantiated

### Details of Complaint

In September 2015, the complainant applied to TD for re-registration of a motorcycle ("the motorcycle"). In June 2016, he approached a vehicle examination centre ("the VEC") for vehicle examination, but the vehicle examiner refused to examine the motorcycle because the chassis number stamped on the vehicle was different from that stipulated in the vehicle registration document ("VRD"). He advised the complainant to contact the Driving-offence Points Office ("DoPO") of TD and requested rectification of the chassis number recorded in the VRD. DoPO then instructed him in May and October 2017 to contact the VEC for vehicle examination. If the motorcycle passed the examination, the VEC would stamp the chassis number allocated by the Department on the vehicle. Nevertheless, the VEC again refused to examine the motorcycle for the same reason, while DoPO repeatedly asked him to contact the VEC for vehicle examination.

### Our Findings

2. The motorcycle's registration was cancelled by TD in June 2012. The complainant applied twice to TD's Hong Kong Licensing Office ("HKLO") in September 2015 and June 2016 for re-registration and licensing (the motorcycle must go through a pre-registration examination); thrice to DoPO in November 2016, May and October 2017 for chassis number rectification; and once to another Licensing Office ("the LO") for verification of chassis number in March 2018. Altogether, six applications to TD had been made. By June 2018, when he applied again for re-registration of the motorcycle, HKLO staff still could not process his application because its chassis number was yet to be verified.

### TD's Response

3. TD had referred every one of the complainant's applications to the VEC for examination/inspection. Each time, the VEC staff invariably advised him verbally to contact the relevant TD office. As the three examinations/inspections involved different procedures, the applications and referrals were handled by different TD offices (namely, LOs, DoPO and the VEC). Besides, his various applications were submitted to different offices four to nine months apart. As a result, those offices treated each application as a new case and made a referral afresh. For instance, in June 2017, after completing the chassis number rectification inspection for the motorcycle, the VEC had sent its recommendation for rectification of the number recorded in the VRD by fax to DoPO, which somehow did not receive it. So, when the complainant made the same application again in October, DoPO treated it as a new case and made another referral to the VEC. Had the DoPO staff and the VEC maintained better communication with each other and kept proper records, the application in October would have been processed and completed.

4. TD admitted that there were inadequacies in the communication and coordination of the staff of different units. On the other hand, the delay in this case was to a certain extent beyond TD's control. For example, when HKLO received in September 2015 the complainant's application, it at once issued him a referral memorandum for pre-registration examination at the VEC. Nevertheless, the complainant failed to contact the VEC, and made the same application again to HKLO in June 2016.

## Our Comments and Conclusion

5. We agreed that the complainant himself had indeed procrastinated in the incident, but considered that there was a number of mishandling on the part of TD:

- (1) the VEC failed to confirm DoPO's receipt of its fax in June 2017;
- (2) the VEC did not check its records upon receipt of DoPO's referral for rectification inspection again in October 2017. Therefore, it could not clarify immediately that the chassis number could be rectified;
- (3) when DoPO discovered in November that the motorcycle had already gone through rectification inspection in June and asked VEC for the inspection results again, it did not notify the complainant that re-inspection was unnecessary, or instruct him to proceed with the rectification formalities. We were perplexed by such handling method;
- (4) DoPO, while aware of the above situation, failed to add a remark in its computer system to alert its staff to the latest status of the motorcycle. As a result, when the complainant applied to the LO in March 2018 for verification of the chassis number, the staff treated it as a new application again; and

(5) upon receipt of the LO's enquiry, the VEC failed to check the examination/inspection records of the motorcycle. It only made a reply regarding the verification inspection and did not mention the results of the rectification inspection in June 2017 or the recommendation it made afterwards. That was indeed very undesirable.

6. The complainant had made a number of trips to the TD offices and the VEC, only to be advised time and again to undergo the same procedures. This reflected a lack of proper guidelines for the various units of TD regarding the procedures for different vehicles examinations/inspections and the making of referrals. Communication and coordination were simply inadequate.

7. The Ombudsman considered this complaint substantiated.

## Final Remarks

8. This Office was pleased to note that TD, upon review of the current vehicle examination/inspection procedures, had implemented various improvement measures. For instance, upon completion of the chassis number rectification inspection, VECs would now issue a written notice to the vehicle owner to confirm examination/inspection of his/her vehicle and instruct the owner to contact DoPO as soon as possible. For more efficient communication, email would now replace fax in notifying the relevant TD units of the examination/inspection results. Furthermore, all applications for rectification and verification of chassis number would be centrally processed by DoPO. To simplify the procedures, in suitable circumstances, DoPO would contact HKLO directly for the referral memorandum for pre-registration examination, which would be mailed to the vehicle owner together with the results of the rectification inspection.

**A case of faulty procedures and inadequate communication**



## Vocational Training Council ("VTC")

### Case No. OMB 2017/5154 — Misleading information

Allegation: providing misleading information and unreasonably refusing to refund enrolment deposit — substantiated

## Details of Complaint

Ms A was the complainant in this case. Based on the website information and the programme prospectus of the Vocational Training Council ("VTC") and the advice given by the admissions office staff of the Youth College under VTC, Ms A's daughter had been made to believe that she could progress to VTC's Higher Diploma ("HD") in Child Care and Education ("HD (CCE)") programme after acquiring the Council's Diploma of Vocational Education ("DVE") in Print Media ("DVE (PM)"). Consequently, the daughter applied for enrolment in the DVE (PM) programme as her academic attainment did not meet the entrance requirements for the HD (CCE) programme. Ms A paid \$5,000 as enrolment deposit for her. Afterwards, Ms A learned that there was in fact no articulation arrangement between the two programmes. She, therefore, asked the Youth College for a refund of the enrolment deposit. Her request was rejected.

## VTC's Response

2. VTC explained to us that DVE holders were only eligible for some of the HD programmes, and holders of DVE (PM) were not eligible for the HD (CCE) programme. Such information was clearly provided on VTC's website and in the prospectus, and applicants were reminded to refer to the entrance requirements of specific programmes. VTC also denied that its staff had provided Ms A's daughter with misleading information.

## Our Comments and Conclusion

3. In the absence of corroborative evidence, we were unable to ascertain whether the admissions office staff had given Ms A's daughter wrong advice. However, it was indeed stated in the general information of the DVE (PM) programme that "DVE graduates can apply for HD programmes offered by VTC". That sentence might have misled Ms A's daughter to believe that upon acquiring DVE (PM), she would be eligible for any of the HD programmes offered by VTC. The Ombudsman, therefore, considered the complaint substantiated.

## Recommendations

4. The Ombudsman recommended that VTC:
  - (1) expeditiously review the introductory information of all its DVE programmes and revise any misleading information; and
  - (2) refund the enrolment deposit to Ms A.


A case of inaccurate information



## Summaries of Selected Cases on Code on Access to Information

(The summaries of selected cases in this Annex cover the main allegations and related conclusion of those complaints. For details of the overall conclusion and number of recommendations, please refer to Annex 7)

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



**Environmental Protection Department ("EPD")**

**Case No. OMB 2018/0100(I) — Refusal to release information about a project**

Allegation: unreasonably refusing to provide a breakdown of the cost of an outsourced project — unsubstantiated

### Details of Complaint

The complainant, Mr X, made a request to EPD under the Code on Access to Information ("the Code") for a breakdown of the sum of a contract ("the Contract") that EPD had awarded to a company ("Company A") for the design, construction and operation of waste management facilities ("the Project") into the amounts of the initial capital cost and the annual operation cost for 15 years of the Project ("the Breakdown").

2. EPD informed Mr X of the estimated contract sum of the Project and the estimated capital cost and annual recurrent expenditure approved by the Legislative Council, but refused to release the Breakdown on grounds of "commercial sensitivity" and that the Breakdown was "third party information related to business affairs".

### EPD's Explanation

3. According to EPD, its Notes to Tenderers stated that "it is the practice of (EPD) to publish the amount of the successful tender". The Contract states that the Department may use any information provided by Company A in accordance with the Contract, but such information shall not be divulged except for the purposes of the Contract or for some other specified purposes. EPD may also use any contract rates or related information for the sole purpose of cost estimation or analysis for other work that may or may not be connected with the Contract.

4. EPD refused the complainant's request because the Breakdown was third party information entrusted to and received by EPD on a clear understanding of confidentiality. The complainant's request did not fall within any category of permissible use or disclosure as prescribed in the Notes to Tenderers or the Contract. Nor were there any circumstances in which the public interest in disclosure might outweigh any harm or prejudice that would result.

5. EPD had approached Company A for consent to disclose the Breakdown to Mr X, but Company A refused.

6. Subsequently, Company A changed its position. Accordingly, EPD let Mr X have the Breakdown.

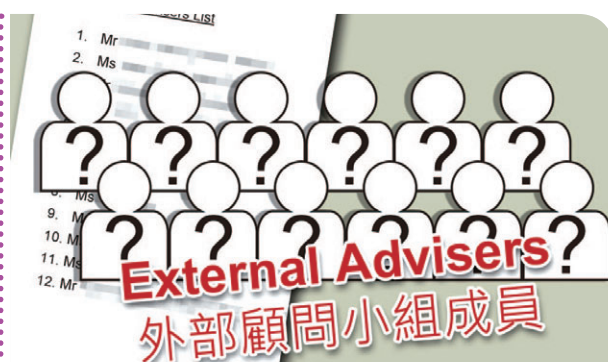
### Our Comments and Recommendation

7. We accepted that the Breakdown was third party information, and the Contract contained provisions governing their confidentiality. Hence, it was not unreasonable of EPD to consider it necessary to seek Company A's consent for disclosure of such information.

8. Nevertheless, we doubted the need to keep such information confidential. In this day and age, the public expects a higher degree of transparency with regard to the operation of the Government than ever before. The fact that Company A eventually consented to disclosure of information showed that such information was not commercially sensitive after all.

9. The Ombudsman considered this complaint unsubstantiated. However, she recommended that EPD review its templates for tender documents and contracts to remove unnecessary obstacles to the Government's provision of information to the public.

### A case of unnecessary restriction



### Hong Kong Housing Society ("HKHS")

#### Case No. OMB 2018/1612(R) — Membership of panel of external advisers

Allegation: refusing to disclose the membership of a panel of external advisers — partially substantiated

### Details of Complaint

Prior to the appointment of a consultant to study the feasibility of housing development on the periphery of country parks, HKHS had invited 12 scholars nominated by local universities to act as external advisers on ecological matters for facilitating the assessment of tender documents and selection of consultant. In November 2017, the complainant requested HKHS to provide the membership of that panel of external advisers, but HKHS refused on the grounds of "third party information".

2. The complainant contended that HKHS should have taken into account the public interest involved and disclosed the information, notwithstanding the confidentiality agreement between HKHS and the external advisers.

### HKHS's Explanation

3. HKHS stated that the study on land use within the country parks, admittedly a subject of immense public concern, would be carried out by the consultant ultimately appointed by HKHS, while the external advisers were only responsible for providing expert advice during the tender exercise. HKHS held that the identity of the external advisers should have no direct bearing on the study itself, nor did it involve any public interest. Disclosing the membership might cause external nuisance and pressure on the panel members, thereby inhibiting the frankness and candour of discussion. Because of this, HKHS had undertaken to keep their identity confidential.

4. After receiving the complainant's request for information, HKHS sent an email to seek consent from the external advisers on disclosure of their identity, but did not receive any reply. HKHS later informed the complainant that the membership could not be disclosed.

### Our Comments

5. The Government's Code on Access to Information ("the Code") is not applicable to HKHS. With reference to the Code, HKHS has drawn up its own Code on Access to Information ("the HKHS Code"). We had reservations on whether the panel membership should be regarded as "third party information", because the list was compiled by HKHS, not held for, or provided by, a third party. Nevertheless, since the list included personal information, HKHS might refuse to disclose any personal information pursuant to paragraph 5(a) of the HKHS Code, and it was not required to consider whether the public interest in disclosure outweighs any harm or prejudice that would result.

6. We did not accept HKHS's argument that it did not need to take heed of public interest in handling requests for access to information. Given that HKHS is a public body, the HKHS Code should also conform to the current social aspirations in fostering an open and accountable corporate culture. We considered that HKHS should have notified the advisers that their identity would be made public when inviting them to join the panel, so that it would not have to worry about violating the law on personal data.

7. We also disagreed to HKHS's claim that no public interest was involved in the identity of the external advisers. The scholars invited were specialists in various academic fields, and they could provide comprehensive and professional advice. Disclosure of the membership would raise public confidence in the study, and allow the public to monitor whether any panel members might have conflicts of interest. Since the complainant only requested the list of membership, rather than the views provided by panel members, we did not think it would inhibit the frankness and candour of discussion.

## Conclusion and Recommendations

8. Given the pre-existing consensus of non-disclosure of membership between HKHS and the external advisers, it was understandable that HKHS rejected the complainant's request before obtaining the consent from individual advisers. However, HKHS wrongly cited "third party information" as the reason for withholding information, and failed to properly seek consent from the external advisers and consider the issue of public interest. The Ombudsman, therefore, considered this complaint partially substantiated.

9. The Ombudsman's relevant recommendations to HKHS included:

- (1) review the complainant's request for information, seek consent from the external advisers again and inform them of this Office's comments, and disclose the panel membership unless there are reasons to justify that the potential harm or prejudice resulted would outweigh the public interest;
- (2) when inviting non-public officers to become members of any advisory or statutory bodies (on a voluntary basis or otherwise) in the future, state from the outset that their identity would be made public; and
- (3) review paragraph 5(a) of the HKHS Code on disclosure of personal information to ensure that it is in line with the principles and spirit of the Code.



## Immigration Department ("ImmD") and Security Bureau ("SB")

**Case Nos. OMB 2017/3057(I); OMB 2017/3893B**  
**— Contact information of foreign domestic helpers in debt**

Allegations: ImmD — unreasonably refusing to provide contact information of foreign domestic helpers in debt — unsubstantiated but other inadequacies found  
 SB — lack of response to the complainant's petition — substantiated

## Details of Complaint

The complainant had offered loans to a number of foreign domestic helpers, some of whom allegedly defaulted on the debts and absconded. The complainant reported to the Police and asked ImmD for the contact information of the absconders ("the Information"), but was refused. The Police, after investigation, also curtailed the case.

2. Dissatisfied, the complainant wrote to the Chief Executive to complain against ImmD and the Police. His letter was forwarded as a petition ("the Petition") to SB, which failed to reply to him substantively after more than a year. He then lodged a complaint against both ImmD and SB with this Office.

## Our Findings

### The Complainant's Case

3. The complainant twice wrote to ImmD in August and October 2015 requesting the Information. ImmD refused both requests, citing paragraph 2.15 (Privacy of the individual) of the Code on Access to Information ("the Code"), which stipulates that the Government may refuse to disclose information about any person other than to the data subject, except under four specified circumstances, including where the data subject agrees to the disclosure.

4. On 3 December 2015, the complainant repeated his request to ImmD, this time with the written consents of some of the absconders. ImmD issued a substantive reply on 17 February 2016 (i.e. 76 calendar days from receipt of request), again citing paragraph 2.15 of the Code as the reason for refusal, without further elaboration, such as why the consents as provided were insufficient to justify disclosure.

5. The Petition was referred to SB for follow-up in early January 2016. After several rounds of exchange with the Police, ImmD and the complainant, SB issued nine interim replies to the complainant between December 2016 and November 2017. In mid-January 2018, SB informed him of its decision to uphold ImmD's decision not to provide the Information and dismiss his complaint against the Police's failure to investigate his report.

### Response from ImmD

6. ImmD explained that in citing paragraph 2.15 of the Code to refuse the complainant's request, it had considered the following:

- (1) the purpose of the complainant's request for the Information not being consistent with the purposes for which the Information was collected;
  - (2) consents of the absconders provided by the complainant being either lacking or questionable;
  - (3) absence of any legal obligation for ImmD to release the Information; and
  - (4) absence of overriding public interest in disclosing the Information.
7. Furthermore, complexity of the case and the legal concerns involved necessitated ImmD's seeking legal advice from the Department of Justice. More processing time was also needed when the complainant provided further information in early February 2016. ImmD claimed that its substantive reply of mid-February was already several days ahead of the target time it had indicated to the complainant in January. By citing paragraph 2.15 of the Code in refusing the complainant's information request, the Code had been complied with.

### Response from SB

8. SB considered the Petition complex and requiring long processing time. However, it admitted that the time taken was too long and undertook to introduce measures to keep track of petitions to prevent recurrence of similar delay in the future.

### Our Comments

9. Contact information, be it telephone number or residential address, clearly concerns privacy of individuals and is caught by paragraph 2.15 of the Code. We agreed that none of the four exceptions set out in that paragraph applied in this case and considered ImmD's refusal in compliance with the Code.

10. However, ImmD failed to meet the target response time in handling the complainant's request, which was clear and required no clarification. His letter of early February 2016 did not ask for more information either. As the maximum response time allowed under the Code is 51 days, which should be taken only in exceptional circumstances, including the need to seek legal advice, and which should be explained to the applicant, ImmD should have answered by 24 January 2016 at the latest.



11. We also considered it better if ImmD had explained in its substantive reply why it still refused the request for the Information despite the consents provided (paragraph 2.15(b) of the Code).

12. We did not intend to intervene in SB's decision regarding the Petition (see para. 5 above), but considered SB's overall response time unreasonably long.

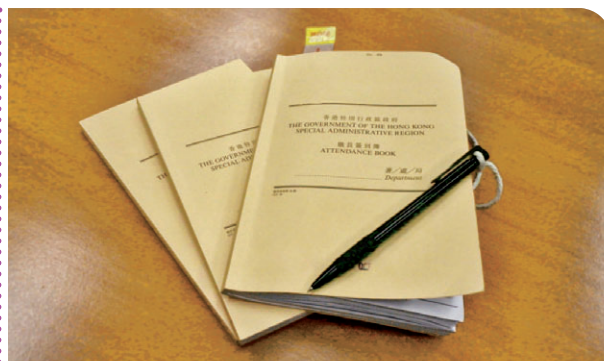
## Conclusion and Recommendations

13. While we found ImmD's refusal to release the Information justified, there was room for improvement regarding its response time and elaboration on its reasons for refusal. The Ombudsman, therefore, considered the complaint against ImmD for unreasonably withholding information unsubstantiated but with other inadequacies found.

14. SB took over a year in giving the complainant a substantive reply and this amounted to unreasonable delay. The complaint against SB was, therefore, substantiated.

15. The Ombudsman recommended that ImmD step up staff training to enhance their understanding of the Code; and that SB remind its staff to adhere to its performance pledge in handling petitions and step up monitoring of outstanding cases.

**A case of inadequate understanding of the Code and delay in reply**



## Lands Department ("LandsD")

### Case No. OMB 2018/0659(I) — Squatter inspection records

Allegation: refusing to provide squatter inspection records — substantiated

## Details of Complaint

The complainant, Mr Y, was a reporter from a media organisation.

2. Mr Y had written to LandsD several times to enquire of the Department about the inspections conducted by its Squatter Control Offices ("SCOs"). In response, LandsD provided information, including the work records of inspection teams from two SCOs ("SCO A" and "SCO B") on two particular days ("Day 1" and "Day 2"). The records contained the time logs of the staff's vehicles leaving and returning to offices, their inspection routes, and the time logs of their "clocking-in" at the inspection points ("clocking-in" refers to SCO officers scanning the sensors on lamp posts with their electronic devices to record inspection time). The media organisation that Mr Y worked for subsequently showed the public the above information in a programme it produced.



3. Afterwards, Mr Y made a request to LandsD under the Code on Access to Information ("the Code") for the inspection records of SCO A and SCO B on four particular days, including Day 1 and Day 2. The inspection records requested included the time logs of the staff's vehicles leaving and returning to offices and their "clocking-in" at each inspection point (the "Requested Information"). LandsD rejected his request by invoking paragraphs 2.6(a) ("Information the disclosure of which would harm or prejudice the administration of justice, including the conduct of any trial and the enforcement or administration of the law") and 2.6(e) ("Information the disclosure of which would harm or prejudice the prevention, investigation and detection of crimes and offences...") of the Code.

## Our Findings

### LandsD's Response

4. LandsD pointed out that in fact it had already provided part of the Requested Information to Mr Y. Disclosure of more of the Requested Information would, however, enable Mr Y to integrate that with the information already provided to him and compile certain information that would undermine the effectiveness of LandsD's law enforcement. Site inspections conducted by its staff are very important, as they serve to effectively prevent intended erection or extension of unauthorised new squatter structures. Although what Mr Y requested was previous records, such information should normally be kept confidential. If details of inspection points, routes and schedules were made available to the public, LandsD's law enforcement might be prejudiced.

### Our Comments

5. Paragraph 2.1.1 of the Guidelines on Interpretation and Application of the Code stipulates that where provisions of Part 2 relating to the "harm or prejudice test" (including paragraphs 2.6(a) and 2.6(e) of the Code) are applicable, the Government department concerned has to consider whether the public interest in disclosure of such information outweighs any harm or prejudice that could result from disclosure.

6. This Office is of the view that the media are watchdogs of Government operations, and hence Government departments should cooperate as far as possible. As a member of the media, Mr Y asked for the Requested Information to better understand how and how well LandsD exercises its squatter control. Obviously, that concerned public interest.

7. Furthermore, what Mr Y requested was merely records of inspections conducted by some teams of LandsD on a few days (and LandsD had already provided part of the Requested Information). The Requested Information was neither about LandsD's inspection plans to be executed nor about irregularities of certain squatter structures, findings of inspections and/or enforcement actions to be taken by LandsD. With the Requested Information being so limited, we doubted whether Mr Y could "integrate that with the information already provided to him and compile certain information that would undermine the effectiveness of LandsD's law enforcement".

8. Besides, before Mr Y made the information request, the media organisation that he worked for had already shown the public part of the information, and there was no sign of any harm or prejudice to the administration of justice or law enforcement by LandsD resulting from that.

## Conclusion and Recommendation

9. Overall, The Ombudsman considered this complaint substantiated.

10. Following our recommendation, LandsD eventually provided Mr Y with the Requested Information.

**A case of unreasonable  
withholding of information**



### Lands Department ("LandsD")

#### Case No. OMB 2018/2165(I) — Information about the relevant fees of a letter of no objection

Allegation: refusing to disclose information about the relevant fees of a letter of no objection — unsubstantiated but other inadequacies found

### Details of Complaint

According to the complainant, Ms A, LandsD had granted approval, in the form of a letter of no objection, to a theme park ("Park X") to hold a concert at its public car park. Under the Code on Access to Information ("the Code"), Ms A requested that LandsD disclose the amounts of the premium and administration fee paid by the lot owner (i.e. Park X) for the change of land use as stated in the letter of no objection ("the relevant fees"). In its reply to Ms A, LandsD cited the reasons for refusal in paragraphs 2.14(a) (third party information) and 2.16 (business affairs) of the Code and informed Ms A that it could not provide information on the relevant fees on grounds that such information was commercially sensitive information relating to the lot owner, whose competitive or financial position might be harmed by disclosure of the information. Moreover, since the lot owner had refused to have the information disclosed, information about the relevant fees should be kept in strict confidence in accordance with the explicit and implicit understanding.

2. Ms A took the view that the information considered by LandsD in processing the application was not "third party information" and that there was no principle of or consensus on confidentiality involved. Besides, the information about the relevant fees was laid down in a contract between the Government and the other party (Park X), which was not commercially sensitive information. Ms A pointed out that LandsD usually granted permission to an application for short-term change of land use in the form of a Short Term Waiver ("STW"), which would be registered with the Land Registry ("LR") and therefore was not confidential or sensitive commercial information. Nevertheless, on this occasion, LandsD granted Park X's application in the form of a letter of no objection, making it unnecessary for the details of the waiver and amounts of the relevant fees to be registered with LR. Such practice was contrary to the Government principles of transparency and accountability. Ms A accused LandsD of unreasonably refusing to provide the relevant information.

### Our Findings

#### Response from LandsD

3. LandsD sought legal advice after we had commenced our investigation into this complaint. Having taken into account all the information and the legal advice obtained, LandsD conceded that there might not be sufficient justification to take the information about the relevant fees as "third party information" under paragraph 2.14(a) of the Code. LandsD also agreed that there might not be explicit or implicit agreement or understanding between the Department and the lot owner that such information should be kept in strict confidence.

4. Nevertheless, LandsD held that the relevant fees should fall into the category of commercial confidence in paragraph 2.16 of the Code, and that the disclosure of such information might impede the lot owner's capacity in negotiating similar commercial activities with its business partners, thus putting the lot owner in a disadvantaged position in organising similar commercial activities in future.

5. LandsD had taken into account the issue of public interest and seen no evidence indicating that the public interest to disclose the relevant fees outweighed the harm that the disclosure might cause to the lot owner. Hence, LandsD considered it unjustifiable to disclose the information.

6. As regards Ms A's saying that "LandsD usually granted permission to an application for short-term change of land use in the form of an STW, which would be registered with LR", LandsD clarified that STWs were applicable to applications for items with a longer duration while letters of no objection were applicable to those one-time or short-term activities. Generally speaking, LandsD would not register with LR any one-time or short-term approval or waiver.

## Our Comments

### **Paragraph 2.14(a) of the Code — Third Party Information**

7. The terms of letters of no objection represent an agreement reached after discussion between LandsD, as the Government agent, and the lot owner, and the relevant fees would finally be decided by LandsD. As LandsD is the owner and holder of such information, the information is not held or provided by the lot owner (a third party). In general, the contents of a contract between a Government department and a third party are not deemed to be information obtained from the third party. In our view, information relating to letters of no objection cannot be regarded as "third party information" under the Code. Hence, it was not appropriate for LandsD to have invoked, at the initial stage, paragraph 2.14(a) as the reason for refusing to disclose information about the relevant fees to Ms A. Indeed, the legal advice sought by Lands D also indicated that the reason set out in paragraph 2.14(a) of the Code did not apply.

### **Paragraph 2.16 of the Code — Business Affairs**

8. We accepted LandsD's view that the relevant fees fell under the category of commercial confidence in paragraph 2.16 of the Code. LandsD explained that the lot owner's competitive position might be harmed if the information was disclosed, and that it did not see any major public interest that justified disclosure of such information. In the circumstances of this case, where there was no prior agreement stating that the information might be disclosed and the concert in question was a one-off event, we found this argument of LandsD not unreasonable.

## Conclusion and Recommendations

9. The Ombudsman considered it acceptable that LandsD invoked paragraph 2.16 of the Code as the reason to refuse disclosure of the relevant fees to Ms A. Nevertheless, it was inappropriate that the Department had initially invoked paragraph 2.14(a) of the Code as one of the reasons for refusal. As such, this complaint was unsubstantiated but other inadequacies were found on the part of LandsD.

10. That said, if LandsD could disclose the relevant fees of an STW by means of registration with LR, we see no reason why LandsD could not set out in letters of no objection in future that similar information could be disclosed.

11. The Ombudsman recommended that LandsD consider adding to letters of no objection in future the terms stating that the Government can disclose information in the letters (including the relevant fees), and take reference from this case and instruct its staff to accurately understand and apply the Code.

**A case of inadequate understanding  
of the requirements of the Code**



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

#### Case No. OMB 2018/3209(I) — Investigation report submitted by a sports association

Allegation: unreasonably refusing to disclose the investigation report submitted by a sports association on alleged profiteering with swimming lanes in public swimming pools ("public swimming lanes") by its affiliated clubs — substantiated

### Details of Complaint

The complainant noted that subsequent to media reports about some registered non-profit-making sports clubs ("affiliated clubs") under a sports association ("the Association") improperly making profits with the public swimming lanes allocated to them, by instructing their students to deposit the swimming course fees into the bank account of a private company, LCSD requested the Association to provide information. In April 2018, the Association submitted an independent investigation report ("the Report") to LCSD. In May, the complainant made a request to LCSD under the Code on Access to Information ("the Code") for the Report and the list of members of the investigation panel ("the List", collectively referred to as "the Information"). LCSD cited section 2.14(a) of the Code (the provision on "third party information") as the reason for refusing to disclose the Information. It only provided the complainant with a summary of the Report ("the Summary").

2. The complainant then sought a review by LCSD of its decision on the grounds that the Summary did not clearly explain the profiteering problem, nor did it include the List. He also held that there were overriding public interests in the disclosure of the Information. Yet, LCSD upheld its decision for refusal after reviewing the case. The complainant considered LCSD's refusal contrary to the Code.

### LCSD's Response

3. LCSD maintained that the Information was "third party information" provided by the Association at its request. Besides, the Association had asked LCSD not to disclose the Report to the media or other parties without its consent. Upon receipt of the complainant's information request, LCSD had sought the view from the Association. Yet, the Association refused to release the Information on the following grounds:

- (1) the Association was not a statutory body and was only accountable to LCSD and the affiliated clubs. It had no obligation to publish the Report;
- (2) the Information contained sensitive personal data, the disclosure of which would bring the affiliated clubs into disrepute; and
- (3) the Summary already explained the investigation results clearly. This could help dissipate any public doubts.

4. LCSD opined that the Report included such sensitive information as the Association's appraisal mechanism for the affiliated clubs, as well as the clubs' rankings and member sizes. The Department could not ascertain whether the public interest in disclosure would outweigh the harm or prejudice that might result (see (2) in para. 3). The List formed part of the Report and, therefore, needed to be considered as a whole. Besides, the Summary provided to the complainant had served to balance and protect the public interest involved.

## Our Comments

5. We accepted that the Information was “third party information” under section 2.14(a) of the Code and that the Association had indicated clearly its objection to disclosure. As such, whether the Information should be disclosed hinged on whether the public interest in disclosure would outweigh the harm or prejudice that might result. This Office considered that:

- (1) the Association receives government subvention every year. Its operation must, therefore, be transparent;
- (2) the affiliated clubs, in the capacity as non-profit-making organisations, were given priority allocation of public swimming lanes at a lower fee. The Association should explain to the public how the public swimming lanes had been used so as to ensure the proper use of public funds;
- (3) public swimming lanes are precious public resources. Their allocation should be subject to public scrutiny. The Association’s investigation into the profiteering problem at LCSD’s request had aroused wide public attention. Disclosure of the Information undoubtedly involved huge public interest;
- (4) the Summary only described the investigation conclusion in very general terms. It revealed no details on the investigation process and the justifications behind the conclusion. That could hardly address public concerns; and

- (5) the Association’s investigation and submission of the Report should serve as a response to the media’s allegations against the affiliated clubs. If the investigation and conclusion had been fair and just, disclosing the Information should not have any unfair impact on the reputation of the Association or its affiliated clubs. Furthermore, LCSD had not considered redacting those sensitive contents before disclosing the Information to the complainant.

6. On the other hand, we noted that the Association had requested LCSD to maintain secrecy for the Information. Yet, the public had legitimate expectation that LCSD would publish the Information so as to see whether the investigation had been conducted in a fair and proper manner. We considered that LCSD should have made it clear from the outset when requesting the Association to conduct the investigation that the Report and the List would normally be made public.

## Conclusion and Recommendation

7. LCSD rejected the complainant’s request for the Information without thorough consideration of whether the Association’s justifications for non-disclosure were adequate. The Ombudsman considered this complaint substantiated.

8. The Ombudsman recommended that LCSD follow the Code to reconsider the complainant’s request and provide the Information to him as appropriate. If certain contents were considered not suitable for disclosure, LCSD should, in accordance with the reason as specified in the Code, consider redacting them and provide the rest of the Information to the complainant.

**A case of inadequate justification  
for non-disclosure**



# Examples of Improvement Measures Introduced by Organisations Following Our Direct or Full Investigation

## (1) Guidelines for Clarity, Consistency or Efficiency in Operation

Organisation (Case reference)	Administrative enhancement
Education Bureau (DI/373)	Specific guidelines formulated for vetting applications for collecting kindergarten application fees above the ceiling in a strict, fair and just manner
Equal Opportunities Commission (2018/2200)	Guidelines reviewed to ensure that enquirers/complainants are informed of the 12-month time limit in lodging complaints with EOC
Environmental Protection Department (2017/3013)	Guidelines revised to give staff clearer directives in handling complaints about noise nuisance caused by shops
Food and Environmental Hygiene Department (2017/4990)	Procedures introduced to review the utilisation of vacant urn graves in the sessions no longer open for allocation
Food and Environmental Hygiene Department (DI/393)	New guidelines issued to instruct staff how to conduct more effective collection of samples of fruits and vegetables in storage compartments of lorries (including those placed deep inside) in order to reduce the chance of problematic fruits and vegetables evading sampling checks
Housing Department (DI/404)	Guidelines revised for better control of tenants' alterations in public housing units
Housing Department (2017/3359)	Departmental instructions reviewed to strengthen enforcement actions of smoking control in public housing estates
Housing Department (2018/0719)	New guideline issued to ensure that tenants ceasing tenancy are timely informed of the required restoration works for the public housing unit and the costs involved
Highways Department (2018/1097)	New guidelines issued requesting contractors to confirm that no obstruction objects are found in the site before a working order is issued, and relevant departments such as HAD and LandsD will be notified once obstruction objects are identified
Lands Department (2017/2623A)	Procedures in handling illegal occupation of roadside metered parking spaces simplified
Leisure and Cultural Services Department (DI/357)	<ul style="list-style-type: none"> <li>Guidelines revised to require each individual library to provide relevant data and justifications to support its proposal in procurement of new materials; and</li> <li>New mechanism set up to facilitate comprehensive assessment of collections of public libraries, and to better coordinate the procurement and withdrawal of library materials to achieve a balanced mix of library collections</li> </ul>
Leisure and Cultural Services Department (DI/368)	New guidelines issued on deployment of substitute lifeguards with a view to maintaining the normal operation of public swimming pools/beaches

## (2) Better Arrangements for Inter-departmental Co-ordination

Organisation (Case reference)	Administrative enhancement
Food and Environmental Hygiene Department & Lands Department (DI/405)	Coordination and mutual referral mechanism for effective regulation of factory canteens set up
Housing Department & Social Welfare Department (2016/3516A&B)	Enhancement measures introduced to the HD/SWD cases referral mechanism to streamline the making of repeated referrals for the same case
Housing Department & Water Supplies Department (DI/408)	Agreement between the two departments updated to improve the efficiency in handling of cases involving transfer of water consumership of units sold under the Tenants Purchase Scheme and non-domestic units in public housing estates
Immigration Department (DI/391)	Communication and coordination with the Hospital Authority strengthened to enhance the efficiency in following up cases with incomplete address on birth returns
Social Welfare Department (2016/2180B)	Measures taken to ensure timely provision of information by SWD to HD regarding cases involving recipients of "CSSA" who are not able to handle their own tenancy matters
Labour Department (2017/2488)	Staff reminded to liaise with the doctor for clarification regarding the discrepancy between the diagnosis as reported on the report form for notifiable occupational diseases and the medical report

## (3) Measures for Better Public Enquiry/Complaint Handling

Organisation (Case reference)	Administrative enhancement
Housing Department (2017/3359)	Posters and signage related to smoking control in public estate reviewed to provide clearer information
Post Office (2017/5117, 2017/5119, 2018/0030)	Preparation of Q&As to frontline staff for handling public enquiries in future postage adjustment exercises

#### (4) Measures for Better Client Services

Organisation (Case reference)	Administrative enhancement
Leisure and Cultural Services Department (DI/357)	Computer information systems of public libraries enhanced for more effective management of library collections
Post Office (2017/5117, 2017/5119, 2018/0030)	<ul style="list-style-type: none"> <li>Upgrading of the procurement system for stamp inventory started (to be completed in the second quarter of 2019) for more timely and effective inventory control;</li> <li>Pilot run of postage label vending machines started and undertook to replace the old stamp vending machines by 2020;</li> <li>Regular communication with convenience stores introduced to ensure that they have sufficient stock of stamp booklet; and</li> <li>Requested the headquarters of convenience stores to remind the franchisees to timely replenish stock</li> </ul>
Transport Department & Highways Department (2017/1220)	Materials and design for the roof shelter of outdoor bus interchange improved to reduce the impact of heat and rain to passengers
Transport Department (2018/1309)	Course materials of the driving improvement instructor course reviewed to rectify inappropriate contents
Lands Department (2017/2550B)	Flushing facilities of a public toilet upgraded

#### (5) Measures for More Effective Regulation or Control

Organisation (Case reference)	Administrative enhancement
Buildings Department (2017/3308, 2017/3734)	Measures taken to actively remove the unauthorised building works under complaint
Correctional Services Department (PDI/123)	Enhanced education to inmates and CSD staff about the complaint mechanism for sexual harassment of inmates
Environmental Protection Department (DI/410)	<ul style="list-style-type: none"> <li>Inspections and enforcement actions against fly-tipping of construction waste on private land outside office hours and on weekends and holidays stepped up; and</li> <li>Proactive inspection plans drawn up for stronger actions against fly-tipping activities on private land</li> </ul>
Food and Environmental Hygiene Department (2017/4576)	Extensive enforcement actions taken against a shop front extension
Food and Environmental Hygiene Department (2018/1178(I))	<ul style="list-style-type: none"> <li>Requiring applicants to provide corroborative evidence in support of their applications for "change of holder of an urn grave" so as to reduce the possibility of providing false information; and</li> <li>Enhanced verification of the information submitted by applicants</li> </ul>

Organisation (Case reference)	Administrative enhancement
Food and Environmental Hygiene Department (DI/393)	To better safeguard public health in Hong Kong, legislative amendment made by adopting Codex Alimentarius Commission's standard for the content of "lead" in leafy vegetables. The amended legislation will become effective in November 2019.
Food and Environmental Hygiene Department (DI/414)	Guidelines issued to require staff, when investigating/following up cases of air-conditioner dripping, to enter premises to test the air-conditioners concerned, unless they could observe clearly from the outside that the air-conditioners are dripping, and follow through cases not yet concluded by late summer/early autumn
Home Affairs Department (DI/354)	Legislative proposals submitted to review the Hotel and Guesthouse Accommodation Ordinance with a view to enhancing the existing regulatory regime
Housing Department (DI/404)	Two new measures implemented to sanction unauthorised alterations of public housing units: <ul style="list-style-type: none"> <li>expediting the follow-up actions on outstanding cases; and</li> <li>allotting penalty points under the Marking Scheme for Estate Management Enforcement in Public Housing Estates to public housing tenants who refuse to reinstate the unauthorised alterations made in their units</li> </ul>
Housing Department (2017/3359)	<ul style="list-style-type: none"> <li>Enforcement actions on smoking control in public housing estate strengthened; and</li> <li>Cooperation with the management of other venues in public housing estate on smoking control strengthened</li> </ul>
Housing Department & Water Supplies Department (DI/408)	<ul style="list-style-type: none"> <li>Guidelines revised on the monitoring and reporting of overdue water bills under the Housing Department's accounts to ensure prompt follow-up actions on outstanding water charges;</li> <li>Guidelines revised to enhance the follow-up actions on those long-standing cases of default on water charges; and</li> <li>Computer system upgraded with guidelines revised to enhance the handling of transfer of water consumership involving units sold under the Tenants Purchase Scheme and non-domestic units in public housing estates</li> </ul>
Immigration Department (DI/391)	New working group set up to initiate early intervention in cases of unregistered birth
Lands Department (2016/1638B)	Land resumption and enforcement action taken against an unauthorised building works
Lands Department (2017/4436)	Remedial measures, including stepping up monitoring of the parking problem and providing shuttle bus service at weekends, introduced to prevent road obstruction caused by an education and recreation facility
Leisure and Cultural Services Department (DI/221)	New measures introduced for more effective monitoring of touting activities of public sports facilities

Organisation (Case reference)	Administrative enhancement
Labour Department (2017/2488)	Letter issued to doctors reminding them to refer to the Department's guidance notes for proper report of notifiable occupational diseases
Planning Department (DI/410)	<ul style="list-style-type: none"> <li>Enforcement procedures reviewed to avoid unnecessary repeat inspections; and</li> <li>Enforcement actions against non-compliance with Reinstatement Notices strengthened</li> </ul>
Social Welfare Department (2016/2180B)	<p>Staff reminded to:</p> <ul style="list-style-type: none"> <li>properly record their communications with counterparts in other departments;</li> <li>handle applications for compassionate rehousing in accordance with the procedures and timeframe set out in the relevant departmental guideline; and</li> <li>pay special attention to cases of non-payment of CSSA (including cases related to the appointment of trustee) as reflected on the monthly register</li> </ul>
Social Welfare Department (2018/0341)	Must interview the resident(s) lodging complaint (who may or may not be staying in the elderly home at the time of investigation) with a view to enhancing the monitoring of elderly homes
Transport Department (2018/3248)	Procedures for handling transfer of vehicle ownership reviewed and relevant guidelines revised to enhance the verification of vehicle ownership

## (6) Clearer and Fairer Rules and Requirements

Organisation (Case reference)	Administrative enhancement
Education Bureau (2018/0221)	Publication revised to point out clearly that the regulation which stipulates that "an applicant child will be awarded 5 points if his/her parent is a member of the organisation which sponsors the operation of the school" would not apply to the Government, government schools and government employees
Environmental Protection Department (2018/0100(I))	Relevant provision added into the templates for tender documents and contracts allowing EPD to disclose to the public the initial capital cost and the operation cost of an EPD-funded project
Housing Department (2014/4562, 2016/3952)	Mechanism for renewal of tenancy of ward offices for District and Legislative Councilors reviewed and revised to avoid "inheritance of tenancy" under joint-tenancy arrangements
Leisure and Cultural Services Department (DI/357)	Annual procurement target for library items reviewed with clearer objectives and criteria of procurement so as to ensure that the procurement targets would be pragmatic and up to date



## (7) Clearer and More Timely Information to the Public

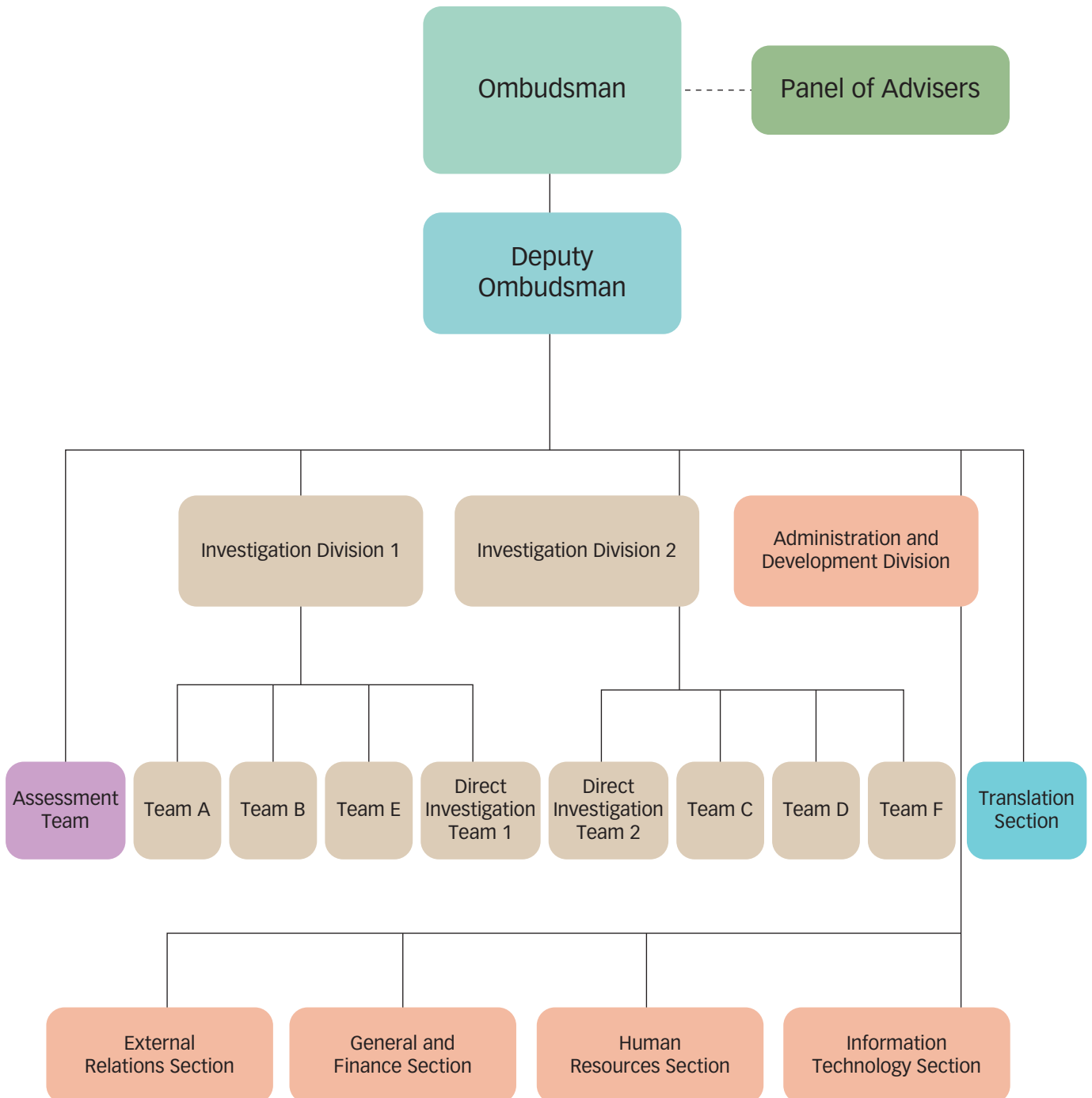
Organisation (Case reference)	Administrative enhancement
Home Affairs Department (2017/3669A)	Liaison with District Council enhanced for better dissemination of information about local consultation in its website
Housing Department (DI/404)	Clearer information to tenants on the regulations about structural alteration works inside public housing units
Leisure and Cultural Services Department (DI/368)	New arrangement introduced whereby partial closure of swimming pool facilities for two days or more will be announced on the Department's website
Transport Department (2015/5159)	For cases of parallel imports, clearer terms introduced to describe the status of vehicles prior to importation
Vocational Training Council (2017/5154)	Information on website revised to alert applicants of the special conditions for admission for individual programmes

## (8) Training for Staff

Organisation (Case reference)	Administrative enhancement
Company Registry (2017/4199)	Staff's investigation skills in handling complaints about company director providing false address enhanced
Hospital Authority (2017/2362)	A sharing session conducted to remind doctors of the proper procedures for certification of death in certain special circumstances
Housing Department (DI/404)	Trainings conducted to enhance staff understanding of the revised guidelines in handling cases involving structural alterations to public housing units
Housing Department (2018/0722)	Training to management contractors conducted on handling of personal data and difficult customers
Highways Department (2016/5045A)	Training enhanced on the relevant laws and guidelines related to mobile crane operation
Leisure and Cultural Services Department (2017/2064(I))	Staff training on Code on Access to Information conducted to enhance staff awareness and understanding of the requirements of the Code
Social Welfare Department (2016/2180B)	Staff training provided to enhance staff's capability in investigating and assessing applications for compassionate rehousing
Social Welfare Department (2017/4089(I))	Staff training enhanced on the application of the Code on Access to Information
Water Supplies Department (2018/0144)	Two workshops conducted to improve customer service

# Organisation Chart

## Office of The Ombudsman



## Panel of Advisers

### Accountancy

Mr Tsai Wing Chung, Philip, BBS, JP

### Architecture, Engineering and Surveying

Ir Chan Chi Chiu, SBS, JP

Sr Chan Yuk Ming, Raymond

Ir Dr Ho Chung Tai, Raymond, SBS, MBE, SBStJ, JP

Dr Hung Wing Tat, MH

Ir Leung Kwong Ho, Edmund, SBS, OBE, JP

Professor Lim Wan Fung, Bernard Vincent, BBS, JP

### Legal

Mr Cheung Tat Ming, Eric

Mr Leung Wai Man, Raymond, SC

Dr Lo Pui Yin

Professor Anne Scully-Johnson

Professor Stephen Thomson

Mr Wong Man Kit, Anson, SC

Ms Wong Pui Sze, Priscilla, BBS, JP

### Medical and Nursing

Professor Chien Wai Tong

Professor Lai Kam Yuk, Claudia

Professor Lo Chung Mau, BBS, JP

Dr Shum Ping Shiu, BBS, JP

Professor Tang Wai King, Grace, SBS, JP

Dr Tsang Fan Kwong

### Social Work and Rehabilitation Services

Professor Chan Lai Wan, Cecilia, JP

Ms Fang Meng Sang, Christine, BBS, JP

Professor Ma Lai Chong, Joyce, JP

Mr Ng Wang Tsang, Andy

\* In alphabetical order

## Visits to the Office of The Ombudsman

Date	Visitors
17 April 2018	Participants of the "Guizhou Province Training Course on Building a Corruption-free Government and Administrative Supervision in Hong Kong"
31 May 2018	Participants of the "56th Training Course for Middle-aged and Young Leading Cadres in Qinghai Province"
1 June 2018	Participants of the "Attachment Programme for Legal Officials under Cooperation Agreements with Mainland Justice Authorities"
6 June 2018	Participants of the "12th Advanced Programme for Chinese Senior Judges"
25 June 2018	Mr Lóránt Csink, Head of the Unit for Constitutional Initiatives, Department for Public Law, Office of the Commissioner for Fundamental Rights, Hungary
27 June 2018	Participants of the "Yunnan Province Advanced Workshop on Administration and Building of Government by Law in Hong Kong"
11 July 2018	Mainland law students
12 September 2018	Delegates from the Shenzhen Municipal Government
13 September 2018	Participants of the "90th Seminar on Economic Management for Middle and Senior Civil Servants"
23 October 2018	Participants of the "13th Advanced Programme for Chinese Senior Judges"
25 October 2018	Delegates from the Petitions Committee of the Federal German Parliament
25 October 2018	Participants of the "Guizhou Province Training Course on Improving Civil Servants' Management Capabilities in Hong Kong"
31 October 2018	Delegates from the Shenzhen Municipal Government
7 November 2018	Participants of the "Training Scheme in Common Law for Legal Officials 2018-2019"
30 November 2018	Participants of the "Guizhou Province Training Course on Improvement of Administration by Law and Cadres' Legal Thinking in Hong Kong"
14 December 2018	Participants of the "57th Training Course for Middle-aged and Young Leading Cadres in Qinghai Province"
4 January 2019	Participants of the "Guizhou Province Training Course on Building a Corruption-free Government and Administrative Supervision in Hong Kong"
10 January 2019	Delegates from mainland China
11 January 2019	Participants of the "Training Course on Improving the Human Resources Management Capabilities for Officials of the Guizhou Provincial Human Resources and Social Security System"
21 January 2019	Participants of the "11th Development Course for Government Officials from Chenzhou, Shaoguan and Ganzhou Municipalities"
21 February 2019	Bangladesh senior Government officials
15 March 2019	Participants of the "Administrative Justice Series 2019"
26 March 2019	Mr Xiong Xuanguo, Vice Minister of Justice
27 March 2019	Participants of the "Advanced Workshop on Improvement of Government Efficiency for Officials from Jinghong Municipality, Yunnan Province in Hong Kong and Macao"









# FINANCIAL STATEMENTS

For the year ended 31 March 2019

Annual Report of The Ombudsman, Hong Kong 2019



# Independent auditor's report to The Ombudsman

(Established in Hong Kong pursuant to the Ombudsman Ordinance)

## Opinion

We have audited the financial statements of The Ombudsman set out on pages 147 to 165, which comprise the statement of financial position as at 31 March 2019, the statement of income and expenditure and other comprehensive income, the statement of changes in funds and the cash flow statement for the year then ended and notes to the financial statements, including a summary of significant accounting policies.

In our opinion, the financial statements give a true and fair view of the financial position of The Ombudsman as at 31 March 2019 and of its financial performance and its cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards ("HKFRSs") issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA").

## Basis for opinion

We conducted our audit in accordance with Hong Kong Standards on Auditing ("HKSA") issued by the HKICPA. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the financial statements* section of our report. We are independent of The Ombudsman in accordance with the HKICPA's *Code of Ethics for Professional Accountants* ("the Code") and we have fulfilled our other ethical responsibilities in accordance with the Code. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

## Information other than the financial statements and auditor's report thereon

The Ombudsman is responsible for the other information. The other information comprises all the information included in the annual report, other than the financial statements and our auditor's report thereon.

Our opinion on the financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated.

If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

## Responsibilities of The Ombudsman for the financial statements

The Ombudsman is responsible for the preparation of the financial statements that give a true and fair view in accordance with HKFRSs issued by the HKICPA 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.

In preparing the financial statements, The Ombudsman is responsible for assessing The Ombudsman's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless The Ombudsman either intend to liquidate The Ombudsman or to cease operations, or have no realistic alternative but to do so.

## Auditor's responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. 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.

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with HKSAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with HKSAs, we exercise professional judgement and maintain professional scepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control.
- Obtain an understanding of internal control relevant to the audit 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 Ombudsman's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by The Ombudsman.
- Conclude on the appropriateness of The Ombudsman's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on The Ombudsman's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause The Ombudsman to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with The Ombudsman regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

**KPMG**

Certified Public Accountants

8th Floor, Prince's Building  
10 Chater Road  
Central, Hong Kong

20 May 2019



# Statement of income and expenditure for the year ended 31 March 2019

(Expressed in Hong Kong dollars)

	Note	2019	2018
<b>Income</b>			
Government subventions	4	\$ 121,546,000	\$ 116,644,000
Amortisation of deferred Government subventions	4	1,814,220	1,814,220
Interest income on bank deposits		7,636,646	4,624,743
Other income		412,904	429,362
		<b>\$ 131,409,770</b>	<b>\$ 123,512,325</b>
<b>Expenditure</b>			
Operating expenses	5	(121,261,762)	(121,181,809)
<b>Surplus for the year</b>		<b>\$ 10,148,008</b>	<b>\$ 2,330,516</b>

## Statement of comprehensive income for the year ended 31 March 2019

The Ombudsman had no components of comprehensive income other than “surplus for the year” in either of the years presented. Accordingly, no separate statement of comprehensive income is presented as The Ombudsman’s “total comprehensive income” was the same as the “surplus” in both years.

The notes on pages 152 to 165 form part of these financial statements.

# Statement of financial position at 31 March 2019

(Expressed in Hong Kong dollars)

	Note	2019	2018
<b>ASSETS</b>			
<b>Non-current asset</b>			
Property, plant and equipment	8	\$ 63,326,759	\$ 65,461,285
<b>Current assets</b>			
Deposits and prepayments		\$ 900,306	\$ 992,324
Interest receivable		1,657,720	1,799,020
Time deposits with original maturity over three months		344,890,000	326,054,000
Cash and cash equivalents	9	30,459,561	38,538,473
		\$ 377,907,587	\$ 367,383,817
<b>Total assets</b>		<b>\$ 441,234,346</b>	<b>\$ 432,845,102</b>
<b>LIABILITIES</b>			
<b>Non-current liabilities</b>			
Contract gratuity payable — non-current	10	\$ 4,254,522	\$ 5,233,475
Deferred Government subventions — non-current	4	58,900,438	60,714,658
		\$ 63,154,960	\$ 65,948,133
<b>Current liabilities</b>			
Other payables and accruals		\$ 3,238,604	\$ 2,668,375
Contract gratuity payable — current	10	8,048,082	7,583,902
Deferred Government subventions — current	4	1,814,220	1,814,220
		\$ 13,100,906	\$ 12,066,497
<b>Total liabilities</b>		<b>\$ 76,255,866</b>	<b>\$ 78,014,630</b>

	Note	2019	2018
<b>FUNDS</b>			
Accumulated funds		\$ 364,978,480	\$ 354,830,472
<b>Total funds</b>		\$ 364,978,480	\$ 354,830,472
<b>Total funds and liabilities</b>		\$ 441,234,346	\$ 432,845,102

Approved and authorised for issue by The Ombudsman on 20 May 2019

**Ms Winnie Chiu**  
**The Ombudsman**

The notes on pages 152 to 165 form part of these financial statements.

# Statement of changes in funds for the year ended 31 March 2019

(Expressed in Hong Kong dollars)

	Accumulated funds
<b>Balance at 1 April 2017</b>	\$ 352,499,956
<b>Change in funds for 2017/2018:</b>	
Surplus and total comprehensive income for the year	2,330,516
<b>Balance at 31 March 2018 and 1 April 2018</b>	\$ 354,830,472
<b>Change in funds for 2018/2019:</b>	
Surplus and total comprehensive income for the year	10,148,008
<b>Balance at 31 March 2019</b>	\$ 364,978,480

The notes on pages 152 to 165 form part of these financial statements.

# Cash flow statement for the year ended 31 March 2019

(Expressed in Hong Kong dollars)

	Note	2019	2018
<b>Operating activities</b>			
Surplus for the year		\$ 10,148,008	\$ 2,330,516
Adjustments for:			
Interest income		(7,636,646)	(4,624,743)
Depreciation	5	2,844,168	3,438,469
Amortisation of deferred Government subventions		(1,814,220)	(1,814,220)
Loss on disposal of property, plant and equipment	5	4,962	2,754
<b>Operating surplus/(deficit) before changes in working capital</b>		\$ 3,546,272	\$ (667,224)
Decrease in deposits and prepayments		92,018	3,233,377
Increase in other payables and accruals		570,229	5,302
(Decrease)/increase in contract gratuity payable		(514,773)	3,676,222
<b>Net cash generated from operating activities</b>		\$ 3,693,746	\$ 6,247,677
<b>Investing activities</b>			
Interest received		\$ 7,777,946	\$ 5,190,490
Payments for purchase of property, plant and equipment		(720,614)	(244,124)
Increase of time deposits with original maturity over three months		(344,890,000)	(326,054,000)
Proceeds from time deposits with original maturity over three months matured		326,054,000	333,389,000
Proceeds from sale of property, plant and equipment		6,010	–
<b>Net cash (used in)/generated from investing activities</b>		\$ (11,772,658)	\$ 12,281,366
<b>Net (decrease)/increase in cash and cash equivalents</b>		\$ (8,078,912)	\$ 18,529,043
<b>Cash and cash equivalents at beginning of the year</b>	9	38,538,473	20,009,430
<b>Cash and cash equivalents at end of the year</b>	9	\$ 30,459,561	\$ 38,538,473

The notes on pages 152 to 165 form part of these financial statements.



# Notes to the financial statements

(Expressed in Hong Kong dollars)

## 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 and changes in accounting policies

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. Significant accounting policies adopted by The Ombudsman are disclosed below.

The HKICPA has issued certain new and revised HKFRSs that are first effective or available for early adoption for the current accounting period of The Ombudsman. Of these, the following developments are relevant to The Ombudsman's financial statements:

- (i) HKFRS 9, *Financial instruments*
- (ii) HKFRS 15, *Revenue from contracts with customers*

The Ombudsman has not applied any new standard or interpretation that is not yet effective for the current accounting period.

#### (i) **HKFRS 9, Financial instruments**

HKFRS 9 replaces HKAS 39, *Financial instruments: recognition and measurement*. It sets out the requirements for recognising and measuring financial assets, financial liabilities and some contracts to buy or sell non-financial items.

Further details of the nature and effect of the changes to previous accounting policies and the transition approach are set out below:

##### a. *Classification of financial assets and financial liabilities*

HKFRS 9 categorises financial assets into three principal classification categories: measured at amortised cost, at fair value through other comprehensive income ("FVOCI") and at fair value through profit or loss ("FVPL"). These supersede HKAS 39's categories of held-to-maturity investments, loans and receivables, available-for-sale financial assets and financial assets measured at FVPL. The classification of financial assets under HKFRS 9 is based on the business model under which the financial asset is managed and its contractual cash flow characteristics.

The measurement categories for all financial liabilities remain the same.

The carrying amounts for all financial liabilities at 1 April 2018 have not been impacted by the initial application of HKFRS 9. The Ombudsman did not designate or de-designate any financial asset or financial liability at FVPL at 1 April 2018.

## 2 Significant accounting policies (continued)

### (a) Statement of compliance and changes in accounting policies (continued)

#### (i) HKFRS 9, Financial instruments (continued)

##### b. Credit losses

HKFRS 9 replaces the “incurred loss” model in HKAS 39 with the “expected credit loss” (“ECL”) model. The ECL model requires an ongoing measurement of credit risk associated with a financial asset and therefore recognises ECLs earlier than under the “incurred loss” accounting model in HKAS 39.

The Ombudsman applies the new ECL model to the financial assets measured at amortised cost, including deposits and prepayments, interest receivable, time deposits with original maturity over three months and cash and cash equivalents.

The adoption of the new ECL model has no significant impact to the financial statements of The Ombudsman.

The adoption of HKFRS 9 does not have any material impact on the financial position and the financial result of The Ombudsman.

#### (ii) HKFRS 15, Revenue from contracts with customers

HKFRS 15 establishes a comprehensive framework for recognising revenue and some costs from contracts with customers. HKFRS 15 replaces HKAS 18, *Revenue*, which covered revenue arising from sale of goods and rendering of services.

HKFRS 15 also introduces additional qualitative and quantitative disclosure requirements which aim to enable users of the financial statements to understand the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers.

The adoption of HKFRS 15 does not have a significant impact on when The Ombudsman recognises income (see note 2(j)).

### (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 expenses. 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.

Judgement made by The Ombudsman in the application of HKFRSs that has significant effect on the financial statements and major source of estimation uncertainty is discussed in note 3.

## 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:

	Over unexpired term of lease
— Interest in leasehold land held for own use under finance leases	
— 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 the end of each reporting period. 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 of disposal 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 recognised as 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 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 the statement of income and expenditure as an integral part of the aggregate net lease payments made.

## 2 Significant accounting policies (continued)

### (e) Receivables

A receivable is recognised when The Ombudsman has an unconditional right to receive consideration. A right to receive consideration is unconditional if only the passage of time is required before payment of that consideration is due. If income has been recognised before The Ombudsman has an unconditional right to receive consideration, the amount is presented as a contract asset.

Receivables are stated at amortised cost using the effective interest method less allowance for credit losses as determined below:

#### (A) Policy applicable from 1 April 2018

The loss allowance is measured at an amount equal to lifetime expected credit losses ("ECLs"), which are those losses that are expected to occur over the expected life of the receivables. For all financial instruments (including deposits and interest receivable), The Ombudsman recognises a loss allowance equal to 12-month ECLs unless there has been a significant increase in credit risk of the financial instrument since initial recognition, in which case the loss allowance is measured at an amount equal to lifetime ECLs.

ECLs are remeasured at each reporting date with any changes recognised as an impairment gain or loss in profit or loss. The Ombudsman recognises an impairment gain or loss with a corresponding adjustment to the carrying amount of receivables through a loss allowance account.

The gross carrying amount of receivable is written off (either partially or in full) to the extent that there is no realistic prospect of recovery. This is generally the case when The Ombudsman determines that the debtor does not have assets or sources of income that could generate sufficient cash flows to repay the amounts subject to the write-off.

#### (B) Policy applicable prior to 1 April 2018

Impairment losses were recognised when there was objective evidence of impairment and were 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 was material. Objective evidence of impairment included observable data that came to the attention of The Ombudsman about events that had an impact on the asset's estimated future cash flows such as significant financial difficulty of the debtor.

### (f) Payables

#### (i) Payables

Payables are initially recognised at fair value. Payables are subsequently 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 on 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.

### (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

#### (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 statement of financial position 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 statement of financial position 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).

#### (ii) Interest income

Interest income is recognised as it accrues using the effective interest method.

#### (iii) Other income

Income of wages in lieu of notice from contract staff, employee insurance compensation and other miscellaneous income are recognised on an accrual basis.

## 2 Significant accounting policies (continued)

### (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 note 2(k)(a).
  - (vii) A person identified in note 2(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).
  - (viii) The entity, or any member of a group of which it is a part, provides key management personnel services to The Ombudsman.

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 Accounting judgement and estimate

In the process of apply The Ombudsman's accounting policies, The Ombudsman has made the following significant accounting judgement:

### Depreciation

Property, plant and equipment is depreciated on a straight line basis over their estimated useful lives. The Ombudsman reviews annually the estimated useful life in order to determine the amount of depreciation expense to be recorded during any reporting period. The useful lives are based on The Ombudsman's historical experience with similar assets taking into account anticipated technological changes. The depreciation expense for future periods is adjusted if there are significant changes from previous estimations.

#### 4 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 and the purchase of building. 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 leases for prepaid lease payments and the useful life of 40 years of building in accordance with the accounting policies set out in notes 2(c) and 2(j)(i).

At 31 March 2019, the deferred Government subventions are expected to be amortised as follows:

	2019	2018
Within one year and included in current liabilities	\$ 1,814,220	\$ 1,814,220
After one year and included in non-current liabilities	58,900,438	60,714,658
	<b>\$ 60,714,658</b>	<b>\$ 62,528,878</b>

#### 5 Operating expenses

	2019	2018
Employee benefit expenses (note 6)	\$ 106,906,640	\$ 106,598,747
Depreciation of property, plant and equipment (note 8)	2,844,168	3,438,469
Rates and management fee	3,186,384	3,143,184
Operating lease rentals in respect of parking spaces	92,800	91,200
Auditor's remuneration	89,900	85,500
Announcement of public interest expense	2,946,500	585,091
Loss on disposal of property, plant and equipment	4,962	2,754
Other expenses	5,190,408	7,236,864
	<b>\$ 121,261,762</b>	<b>\$ 121,181,809</b>

#### 6 Employee benefit expenses

	2019	2018
Salaries and allowances	\$ 92,662,884	\$ 91,717,144
Contract gratuity	9,438,814	9,890,695
Pension costs — MPF scheme	2,562,151	2,577,137
Unutilised annual leave	(113,043)	221,841
Other employee benefit expenses	2,355,834	2,191,930
	<b>\$ 106,906,640</b>	<b>\$ 106,598,747</b>

## 7 Key management compensation

	2019	2018
Short-term employee benefits	\$ 16,601,778	\$ 16,373,847
Post-employment benefits	2,185,693	2,264,622
	<b>\$ 18,787,471</b>	<b>\$ 18,638,469</b>

## 8 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
<b>Cost:</b>								
At 1 April 2017	\$ 74,900,000	\$ 16,800,000	\$ 15,854,550	\$ 825,452	\$ 1,644,481	\$ 6,144,384	\$ 874,801	\$ 117,043,668
Additions	–	–	–	39,454	147,710	56,960	–	244,124
Disposals	–	–	–	(36,067)	(82,969)	(51,937)	–	(170,973)
At 31 March 2018	\$ 74,900,000	\$ 16,800,000	\$ 15,854,550	\$ 828,839	\$ 1,709,222	\$ 6,149,407	\$ 874,801	\$ 117,116,819
<b>Accumulated depreciation:</b>								
At 1 April 2017	\$ 21,034,464	\$ 6,322,438	\$ 13,591,812	\$ 704,491	\$ 1,267,218	\$ 5,134,478	\$ 330,383	\$ 48,385,284
Charge for the year	1,394,220	420,000	423,488	54,718	188,425	818,618	139,000	3,438,469
Written back on disposals	–	–	–	(36,067)	(80,274)	(51,878)	–	(168,219)
At 31 March 2018	\$ 22,428,684	\$ 6,742,438	\$ 14,015,300	\$ 723,142	\$ 1,375,369	\$ 5,901,218	\$ 469,383	\$ 51,655,534
<b>Net book value:</b>								
At 31 March 2018	\$ 52,471,316	\$ 10,057,562	\$ 1,839,250	\$ 105,697	\$ 333,853	\$ 248,189	\$ 405,418	\$ 65,461,285

## 8 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
<b>Cost:</b>								
At 1 April 2018	\$ 74,900,000	\$ 16,800,000	\$ 15,854,550	\$ 828,839	\$ 1,709,222	\$ 6,149,407	\$ 874,801	\$ 117,116,819
Additions	-	-	371,400	78,837	175,887	94,490	-	720,614
Disposals	-	-	-	(55,275)	(119,588)	(57,441)	-	(232,304)
At 31 March 2019	\$ 74,900,000	\$ 16,800,000	\$ 16,225,950	\$ 852,401	\$ 1,765,521	\$ 6,186,456	\$ 874,801	\$ 117,605,129
<b>Accumulated depreciation:</b>								
At 1 April 2018	\$ 22,428,684	\$ 6,742,438	\$ 14,015,300	\$ 723,142	\$ 1,375,369	\$ 5,901,218	\$ 469,383	\$ 51,655,534
Charge for the year	1,394,220	420,000	452,939	60,636	177,600	199,773	139,000	2,844,168
Written back on disposals	-	-	-	(52,860)	(111,031)	(57,441)	-	(221,332)
At 31 March 2019	\$ 23,822,904	\$ 7,162,438	\$ 14,468,239	\$ 730,918	\$ 1,441,938	\$ 6,043,550	\$ 608,383	\$ 54,278,370
<b>Net book value:</b>								
At 31 March 2019	\$ 51,077,096	\$ 9,637,562	\$ 1,757,711	\$ 121,483	\$ 323,583	\$ 142,906	\$ 266,418	\$ 63,326,759

The Ombudsman's interest in leasehold land is held under long lease.



## 9 Cash and cash equivalents

	2019	2018
Time deposit with original maturity within three months	\$ –	\$ 24,231,000
Cash at bank	<b>30,454,561</b>	14,302,473
Cash in hand	<b>5,000</b>	5,000
	<b>\$ 30,459,561</b>	\$ 38,538,473

## 10 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% (2018: 10% to 25%) of the basic salary less employer's contributions to MPF.

## 11 Taxation

The Ombudsman is exempt from taxation in respect of the Inland Revenue Ordinance in accordance with Schedule 1A Section 5(1) of the Ombudsman Ordinance.

## 12 Commitments

At 31 March 2019, the total future aggregate minimum lease payments under non-cancellable operating leases in respect of parking spaces are payable as follows:

	2019	2018
Within 1 year	<b>\$ 8,400</b>	\$ 7,600

The leases remain in force unless terminated by giving notice in writing of not less than one calendar month.

## 13 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.

## 14 Financial risk management and fair values of financial instruments

Risk management is carried out by the General and Finance Department under policies approved by The Ombudsman. The General and Finance Department identifies and evaluates financial risks in close co-operation with the operating units. The Ombudsman's exposure to credit, liquidity, interest rate and currency risks are described below:

### (a) Credit risk

Credit risk refers to the risk that a counter party will default on its contractual obligations resulting in a financial loss to The Ombudsman. The Ombudsman's credit risk is primarily attributable to time deposits and cash and cash equivalents. The Ombudsman 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 statement of financial position. 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 end of the reporting period 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:

	2019				
	Contractual undiscounted cash outflow				Carrying amount
	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	
Contract gratuity payable	\$ 8,048,082	\$ 3,002,166	\$ 1,252,356	\$ 12,302,604	\$ 12,302,604
Other payables and accruals	3,238,604	–	–	3,238,604	3,238,604
	\$ 11,286,686	\$ 3,002,166	\$ 1,252,356	\$ 15,541,208	\$ 15,541,208

## 14 Financial risk management and fair values of financial instruments (continued)

### (b) Liquidity risk (continued)

	2018				
	Contractual undiscounted cash outflow				Carrying amount
	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	
Contract gratuity payable	\$ 7,583,902	\$ 4,162,688	\$ 1,070,787	\$ 12,817,377	\$ 12,817,377
Other payables and accruals	2,668,375	–	–	2,668,375	2,668,375
	\$ 10,252,277	\$ 4,162,688	\$ 1,070,787	\$ 15,485,752	\$ 15,485,752

### (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 2019, it is estimated that a general increase/decrease of 100 (2018: 100) basis points in interest rates, with all other variables held constant, would have increased The Ombudsman's surplus and accumulated funds by approximately \$3,752,000 (2018: \$3,645,125).

The sensitivity analysis above has been determined assuming that the change in interest rates had occurred at the end of the reporting period 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 The Ombudsman's assessment of a reasonably possible change in interest rates over the period until the next annual reporting period. The analysis is performed on the same basis for 2018.

### (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 value measurement

The carrying amounts of The Ombudsman's financial instruments carried at cost or amortised cost were not materially different from their fair values at 31 March 2019 and 2018.

## 15 Material related party transactions

### Transactions with key management personnel

Remuneration of all members of key management personnel is disclosed in note 7.

## 16 Possible impact of amendments, new standards and interpretations issued but not yet effective for the year ended 31 March 2019

Up to the date of issue of these financial statements, the HKICPA has issued a number of amendments, new standards and interpretations which are not yet effective for the year ended 31 March 2019 and which have not been adopted in these financial statements. These include the following which may be relevant to the company.

	Effective for accounting periods beginning on or after
HKFRS 16, <i>Leases</i>	1 January 2019
Annual Improvements to HKFRSs 2015–2017 Cycle	1 January 2019

The Ombudsman is in the process of making an assessment of what the impact of these amendments, new standards and interpretations is expected to be in the period of initial application. So far The Ombudsman has not identified any aspect of the new standards which may have a significant impact on the financial statements.

# Glossary of Terms

## Complaint

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

## Consent from Complainant

To facilitate The Ombudsman's processing of a complaint, the complainant is required to give consent for: The Ombudsman to copy his/her complaint and any other information, including his/her personal data, to any party concerned; and any party concerned to provide the complainant's personal and other relevant information to The Ombudsman. The complainant may, by stating his/her wish clearly, withhold consent to the disclosure of his/her identity to the party under complaint. However, in this circumstance, The Ombudsman may not be able to process the complaint satisfactorily or at all.

## 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 issues of community concern.

## 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, with recommendations for improvement or remedy, where warranted, upon conclusion.

## Inconclusive

We classify the outcome of our full investigation into a complaint or allegation as inconclusive where, on completion of the investigation, The Ombudsman is not prepared to determine whether the complaint or allegation is substantiated or not, because the evidence is conflicting, irreconcilable, incomplete or uncorroborated.

## Inquiry

This is the procedure we use to handle general complaint cases, with the aim 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, and the complainant's view on it where 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 discuss the complaint at a meeting or through the telephone, and to explore mutually acceptable solutions. Investigation officers 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, Partially Substantiated and Unsubstantiated**

These are classifications of the outcome of our full investigations reflecting the varying degrees of culpability of an organisation under complaint.

### **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.

### **Unsubstantiated but other Inadequacies Found**

This is the classification of the outcome of our full investigation where a complainant's allegations are unsubstantiated but The Ombudsman discovers other aspects of significant maladministration.

### **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.



## 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

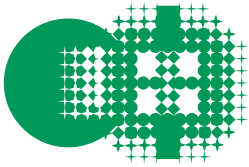
- Handle complaints in a professional, impartial and efficient manner
- Keep complainants informed of the progress and outcome of our inquiries
- Explain our decisions clearly
- Protect complainants' privacy
- Treat the public with courtesy and respect

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.



## Office of The Ombudsman, Hong Kong

Address	30/F, China Merchants Tower Shun Tak Centre 168-200 Connaught Road Central Hong Kong
Post Box	G.P.O. Box No. 3300, Hong Kong
Enquiry and Complaint Hotline	(852) 2629 0555
Fax	(852) 2882 8149
Website	<a href="http://www.ombudsman.hk">http://www.ombudsman.hk</a>
Enquiry email address	<a href="mailto:enquiry@ombudsman.hk">enquiry@ombudsman.hk</a>
Complaint email address	<a href="mailto:complaints@ombudsman.hk">complaints@ombudsman.hk</a>



This annual report is printed on environmentally friendly paper