

FIRST FULL YEAR SINCE DELINKING

1.1 Established in 1989, the Office of The Ombudsman had been operating like a Government department, staffed by civil servants on loan from the Administration and bound by all the Government's administrative and financial regulations. The year 2002/03 was the first full year of operation since the delinking of my Office on 19 December 2001 from Government systems, procedures and practices. We have established our own administrative systems and steadily reduced our reliance on services provided by Government departments save for those more cost-effective to continue using.

MEMORANDUM OF ADMINISTRATIVE ARRANGEMENTS (MAA)

1.2 I have completed discussions with the Administration to arrive at a final draft MAA as a guide for the administrative arrangements for my Office and its working relationship with the Administration. However, the Administration has yet to effect the formal exchange, due probably to the introduction of new financial arrangements for Government departments and publicly funded organisations. I am awaiting word from the Administration. This delay has not affected the operations of my Office as an independent corporation sole.

FINANCIAL ARRANGEMENTS

1.3 The Administration's measures to contain the growth of public expenditure have impacted on the operation of my Office. To cope with an anticipated reduction of resources for the next few years, I have

aborted the recruitment exercise for Chief Investigation Officers and redistributed the duties among the existing staff. With the increase in caseload in recent years, my staff are also expected to work under greater pressure in meeting our performance pledges, particularly when there is a sudden influx of complaints. As necessary, I will continue to engage temporary staff to supplement my regular force.

1.4 The salary component of my annual provision has been reduced in line with the civil service pay cut. As my staff are engaged on contract terms, I have given them an option to accept the revised salaries before effecting any pay reduction.

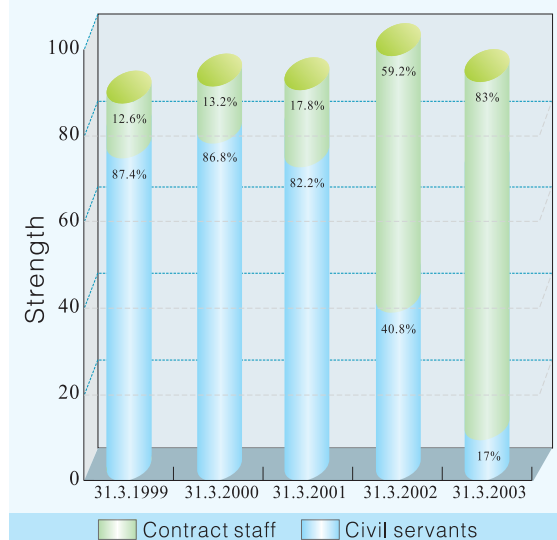
1.5 My aim is to maintain the current level of service by prudent use of available resources and regular review of our operations, staffing structure and work practices. Meanwhile, through building up a reserve from savings achieved, I hope to provide for development in the longer term.

STAFFING

1.6 As at 31 March 2003, there were 76 staff members on contract (out of a total of 92), representing 83% of the entire workforce. About 75% of investigation officers have been replaced. The pace of replacement has had to be balanced against the need to maintain an adequate level of experience. I anticipate that the remaining 16 civil servants will be phased out completely within 2003/04 and my entire workforce will then be contract staff appointed under The Ombudsman Ordinance. I take this opportunity to record my appreciation for the dedication and

professionalism of all civil servants serving in our Office over the years.

Fig. 1.1 Contract staff in the Office



1.7 My two Assistant Ombudsmen, seconded from the civil service, are due to retire. I have successfully recruited through open competition two replacements, to report for duty in April and June 2003.

1.8 I have continued to employ temporary staff to deal with seasonal fluctuations of our caseload and to augment the shortfall in expertise resulting from the release of experienced civil servants. Such staff are remunerated either on a daily or case basis, depending on the operational requirements of the Office.

REVIEW OF REMUNERATION OF SENIOR STAFF

1.9 In January 2002, Government initiated an internal review of the remuneration of senior executives of 20 selected publicly funded organisations, including my Office.

This resulted in Government deciding in February 2003 *inter alia* to maintain the structure, ranking, number and remuneration arrangements for the four top positions of my Office : i.e. my own post, my Deputy and the two Assistant Ombudsmen.

STAFF TRAINING

1.10 Our training and development strategy aims to provide for the continuing development of my staff. With most of them being new recruits, considerable efforts are required to upgrade their expertise. To this end, the strategy has been drawn up, to include an induction for new entrants, refresher on recurrent subjects and special sessions on such matters as aspects of our law or certain requisite skills. The programmes will be carried out or co-ordinated essentially by my administrative team and by the more experienced investigation officers.

1.11 Apart from using the Civil Service Training and Development Institute as our training agent, we will continue to engage outside agencies. Other than job-related training, workshops or experience sharing sessions such as our annual Professional Development Conference, we also have regular gatherings dubbed as "Ombuds Hours" when lighter issues are discussed or shared by all staff.

1.12 I am determined to develop my staff to be a competent team committed to contributing towards fair and open, transparent and accountable public administration.

ACCOMMODATION

1.13 We moved to our permanent premises at Shun Tak Centre on 6 September 2002. Ideally, the whole office should be accommodated on the same or at least adjoining floors. However, such an option would have cost much more. In the end, I decided to purchase premises on two separate floors at competitive prices. My directorate and all investigation staff are now accommodated on 30/F of the east tower, with the Resource Centre and my administration units on 25/F of the west tower. The purchase prices for these premises turned out to be record low for both towers. The inconvenience of operating from two towers is minimised by computer link, including webcams for conferences between the premises.

Fig. 1.2 Reception counter of the new Office



COMPLAINTS AGAINST THE OFFICE

1.14 This year, we received eight complaints against staff manners and working procedures. My administrative staff have critically examined these complaints and I personally considered the findings before authorising the reply and follow-up action.

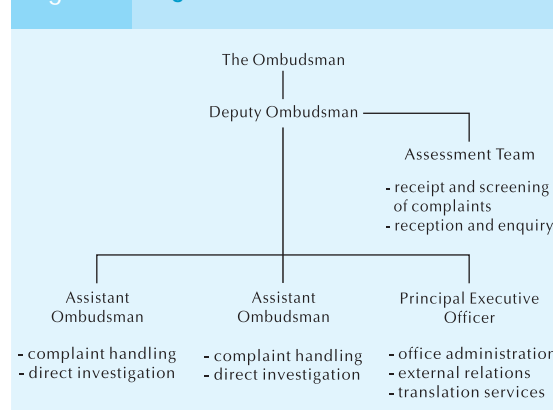
Fig. 1.3 Complaints against the Office				
Conclusions Nature of complaints	Substantiated	Partially substantiated	Un-substantiated	Incapable of determination
Staff manners (including delay and negligence)	1	-	4	2
Working procedures	-	1	-	-
Total	8			

We take such complaints most seriously as each provides us with the opportunity to review our services to the public. We treasure the lessons learned and are always ready to improve our work practices and procedures. However, allegations against staff are often due to dissatisfaction with my decisions on investigation results. As such, they do not necessarily reflect on the performance of my staff.

ORGANISATION

1.15 My Office is simply structured:

Fig. 1.4 Organisation



An organisation chart, in greater detail, is at **Annex 1**. My practice of keeping as trim a team as possible will continue.



AUTHORITY AND RESTRICTIONS

2.1 Appointed by the Chief Executive of the Hong Kong Special Administrative Region Government, The Ombudsman has statutory authority to operate with complete independence. The enabling legislation is The Ombudsman Ordinance (the Ordinance), Cap 397, Laws of Hong Kong.

POWERS AND FUNCTIONS

2.2 The Ombudsman has a duty to investigate into maladministration, by the public organisations in Schedule 1 to the Ordinance, through processing of complaints or by initiating direct investigation. On 1 July 2002, under the Accountability System, the Chief Executive appointed Directors of Bureaux and Permanent Secretaries in the reorganisation of the Government Secretariat. These changes initially did not affect our jurisdiction as hitherto all Bureaux were classified under "Government Secretariat" in Schedule 1 to the Ordinance. In February 2003, the functions of the Education Department were transferred to the Education and Manpower Bureau and the department ceased to exist. Complaints against the former Education Department will henceforth be recorded under "Government Secretariat". It is likely that other cases of reorganisation under the Accountability System will follow. It is evident from the Education and Manpower Bureau reorganisation that Government wishes to keep The Ombudsman's jurisdiction intact.

2.3 As with most Ombudsman institutions the world over, The Ombudsman has wide investigative powers : e.g. access to all information and summoning of witnesses for

cases under investigation. Upon completion of investigation, The Ombudsman ensures that all recommendations are implemented for more efficient and effective services to our community.

Fig. 2.1 Definition of maladministration - Section 2 of the Ordinance

"Maladministration" means inefficient, bad or improper administration and, without derogation from the generality of the foregoing, includes -

- (a) unreasonable conduct, including delay, discourtesy and lack of consideration for a person affected by any action;
- (b) abuse of any power (including any discretionary power) or authority including any action which -
 - (i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or
 - (ii) was based wholly or partly on a mistake of law or fact; or
- (c) unreasonable, unjust, oppressive or improperly discriminatory procedures

2.4 The Ombudsman's Office is not a Court of Law and, unlike Court verdicts, The Ombudsman's recommendations are not binding. However, organisations concerned generally respond positively to my recommendations.

RESTRICTIONS

2.5 The Ombudsman's purview is not all pervasive. Section 10 of the Ordinance prescribes restrictions on investigation while Schedule 2 to the Ordinance specifies actions not subject to The Ombudsman's investigation.

Fig. 2.2

Major restrictions on investigation of complaint - Section 10 of the Ordinance

- Complainant having knowledge of subject of complaint for more than two years
- Complaint made anonymously
- Complainant not identified or traced
- Complaint not made by person aggrieved or suitable representative
- Subject of complaint and complainant having no connection with Hong Kong
- Statutory right of appeal or remedy by way of legal proceedings (except judicial review) available to complainant
- Complaint of trivial, frivolous, vexatious or malicious nature

Fig. 2.3

Examples of actions not subject to investigation - Schedule 2 to the Ordinance

- Actions in relation to security, defence or international relations
- Legal proceedings or prosecution decisions

- Exercise of power to pardon criminals
- Contractual or commercial transactions
- Personnel matters
- Grant of honours, awards or privileges by Government
- Actions by the Chief Executive personally
- Imposition or variation of conditions of land grant
- Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases
- Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

My Office critically examines all in-coming complaints to establish whether they come within my statutory purview. If not, we promptly explain why we cannot pursue the complaints; where possible, we point out the appropriate avenues for redress.

2.6 It is not always easy to demarcate the boundaries prescribed in Schedule 2 to the Ordinance. I take a liberal approach, by "screening in" all points which are administrative in nature.

INVESTIGATION PROCESS

2.7 I am assisted by my Deputy, two Assistant Ombudsmen and seven operational teams. I have delegated to each level

specific authority within which they act on my behalf. As a general rule, the work of investigation officers is carefully vetted and monitored by team leaders. Reports and replies are scrutinised by the directorate and then finalised by me. We have a computerised complaint management system, which provides information on individual cases and facilitates compilation of statistics. Since 2000, we have enhanced it to give readier access to information. With its assistance, my directorate and I can monitor the processing of our investigations more closely.

INTERNAL MONITORING

2.8 My investigation teams, therefore, work under close scrutiny. My Deputy and the Assistant Ombudsmen hold meetings regularly with individual teams, to keep tabs on cases under processing. These sessions provide a forum for frank exchange of views and analysis of facts, debate on contentious points and directions for follow-up action. Above all, they ensure consistency in case work and provide opportunities for experience-sharing.

2.9 To keep myself well posted on our operations, I attend meetings of each team at least once a month. In this way, I directly guide investigations, clear uncertainties and discuss strategies on complex cases.

2.10 From time to time, I convene open forums to update staff on concepts, principles and philosophy on matters within my purview. These help to promote mutual understanding and enhance *esprit de corps*. Through these discussions, we refine operational processes and standardise practices.

SECRECY REQUIREMENT

2.11 The law requires that all members of my Office, including myself, must abide by a secrecy code. We must keep the strictest confidentiality on all matters that come to our knowledge in the exercise and execution of our functions. Breach of this code is a criminal offence, which carries a maximum penalty of a fine of \$50,000 and imprisonment for two years.

2.12 From time to time, Councillors and civic leaders, members of the public and the media refer complaints to me in the expectation that they would be informed of the progress of processing. We sincerely appreciate their support and warmly welcome their referral. However, we are duty-bound by law not to discuss with, or to disclose to, third parties the processing or the outcome of any case. Except for official publication of an investigation report in anonymised form, we cannot and will not respond to any enquiry on individual complaints other than from the authorised parties. Here, I take the opportunity to thank all who have referred complaints to my Office for their understanding and their respect for our secrecy code.

2.13 Before initiating inquiries, we always seek the complainants' consent to obtain their personal data from organisations concerned and to reproduce their documents to relevant organisations for the purpose of processing their cases.

2.14 The secrecy code is the cornerstone of the Ombudsman system. It is strictly observed by all of us in discharging our duties. The aim is to enable any person or organisation providing information to the

Office can do so without reserve and without fear of possible consequences from the disclosure of their identity or information.

THE OMBUDSMAN'S DISCRETION

2.15 Section 9 of the Ordinance gives The Ombudsman wide discretion to undertake or not, continue or discontinue an investigation. This means that I may decide not to pursue a complaint if the subject matter is trivial, frivolous, vexatious or not made in good faith. The same applies to complaints which I consider to be not of maladministration. Exercise of this discretion enables me to maximise the use of resources and hence our services to the community. It also prevents the abuse or misuse of the complaint machinery detailed in **Chapter 5**.

2.16 In view of my statutory independence, my decision on a case is final. Anyone not satisfied with my decision may request my Office to review a case or apply to the Courts for judicial review.



DIRECT INVESTIGATION

3.1 Since 1994, The Ombudsman has been empowered to initiate direct investigation notwithstanding the absence of a complaint.

SELECTION OF ISSUES

3.2 From time to time, my Office identifies issues of community interest which call for review of administrative systems and procedures or practices. These may be prompted by new or revised Government policies, topical issues or repeated complaints to me on particular matters. I attach great importance to this function because it enables me to conduct independent review of matters of moment at a macro level.

3.3 Selection of areas for direct investigation is a rigorous process undertaken by a standing panel chaired by my Deputy. Matters for direct investigation are generally :

- of community interest, aspiration or expectation;
- not for the courts or tribunals;
- not under examination or study by another agency; and
- of macro magnitude.

AIMS AND OBJECTS

3.4 My direct investigations aim :

- (a) to follow through systemic problems which investigation of individual complaints cannot resolve;
- (b) to forestall complaints or eliminate problems; and

- (c) to address fundamental problems believed or suspected to be the underlying cause for complaint.

3.5 With direct investigations, we endeavour to improve the quality of public administration and to promote accountability. This should help Government to appreciate public aspirations better and to improve services accordingly.

INVESTIGATIONS OVER THE YEARS

3.6 Since conferment of direct investigation powers in 1994, this Office has completed 41 direct investigations leading to 540 recommendations. The full list of investigations is at **Annex 6**.

3.7 This year, my Office has completed six direct investigations. These cover a range of issues of community concern.

Fig.3.1 Direct investigation reports published

17 May 2002

- Education Department's Contingency and Relief Measures for the secondary school places allocation exercise 2001

13 August 2002

- Funding of sports programmes by Hong Kong Sports Development Board

4 October 2002

- Administration of vehicle registration marks auctions

29 November 2002

- Mechanism for handling missing patients in Hospital Authority hospitals

27 February 2003

- Monitoring of charitable fund-raising activities

27 March 2003

- Role of Home Affairs Department in facilitating the formation of Owners' Corporations

Fig. 3.2 Direct investigations in progress

Declared on 4 October 2002

- Operation of the Integrated Call Centre

Declared on 29 November 2002

- Enforcement of Education Ordinance on universal basic education



COMPLAINT HANDLING

LODGING OF COMPLAINTS

4.1 Most complaints come in by post. Some complainants visit our Office in person and are received by my counter staff. If appropriate, duty officers will interview them and take down details of their cases direct. We also accept complaints via e-mail and for simple initial cases, complaints by telephone¹.

Fig. 4.1 Mode of lodging complaint	
Mode	Number
In person	425
In writing -	
by letter	682
by complaint form	1,270
by fax	978
by e-mail	613
By phone	414
TOTAL	4,382

Regardless of the mode of complaint, we require the names and contact addresses of the complainants. We must be satisfied, too, that they are the aggrieved parties. These are requirements prescribed by The Ombudsman Ordinance.

ASSESSMENT

4.2 My counter staff, duty officers and Assessment Team constitute the front-line of

my Office. Members of the team scrutinise all in-coming complaints and enquiries. Where a matter is subject to restrictions (Fig. 2.2) or falls outside my purview (Fig. 2.3) under the Ordinance, we aim to notify complainants within 15 working days. Where possible, we will try to help and advise where they may seek assistance or redress.

4.3 Complaints within my purview are "screened in" and passed to a designated investigation team for examination. Each team is headed by a Chief Investigation Officer working to one of my two Assistant Ombudsmen.

4.4 To determine whether to undertake an investigation, we conduct preliminary inquiries for relevant facts and information. Where warranted, further action may then be by alternative dispute resolution or full investigation. Whichever method is employed, we endeavour to help as much as we can. Where we cannot investigate, we will still counsel as a social worker would.

ALTERNATIVE DISPUTE RESOLUTION

4.5 With relatively simple and straightforward complaints, we adopt more flexible and amicable methods for readier resolution:

- Internal Complaint Handling Programme (INCH);
- Rendering Assistance/Clarification (RAC); and
- Mediation.

¹ General conditions for complaints by telephone:

- complainant must provide name and correspondence address;
- complaint can be explained in less than 15 minutes;
- complaint should not involve more than two organisations; and
- conversation would be tape recorded.

Fig. 4.2 **Alternative dispute resolution**

Type	Method	Cases concluded
INCH	With the consent of complainants, simple cases are referred to organisations for investigation and reply. The Ombudsman monitors the process and intervenes where the reply is not satisfactory.	176
RAC	The Office conducts extensive preliminary inquiries and presents findings with observations to the complainant. The Ombudsman may suggest improvement on systemic problems.	1,996
Mediation	This is a voluntary process where complainants and representatives of the organisations concerned agree to meet. Investigators from this Office act as impartial facilitators of the dialogue.	6

The organisations under complaint are directly involved in varying degrees. For INCH cases, they have the opportunity to conduct their own investigation and initiate direct dialogue with the complainants under The Ombudsman's watching brief.

FULL INVESTIGATION

4.6 For cases that are complex or involve issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, I will direct a full investigation. The process involves extensive inquiries, evidence collection and at times consultation with members of our Panel of Professional Advisers. They are experts of excellent standing in the legal, medical and engineering fields (**Annex 13**) whom I have appointed under Section 6A of the Ordinance to advise and assist me.

Fig. 4.3 **Powers of investigation**

- Entry on premises
- Summoning of witnesses
- Access to documents including classified documents
- Penalty for not cooperating with The Ombudsman's investigation

4.7 The organisation under complaint is given every opportunity to comment and to make representations on my draft investigation report. Individuals subject to our criticism are specifically given an opportunity to be heard. Where appropriate, we recommend administrative remedies for

improvement. Our aim is to make for more open and client-oriented, transparent and accountable public administration. Heads of organisations have a duty to report to me at regular intervals the progress of their implementation of my recommendations.

CODE ON ACCESS TO INFORMATION

4.8 In March 1995, Government introduced an administrative Code on Access to Information on a pilot basis in furtherance of open and accountable government. The Code was extended progressively to all Government bureaux and departments in December 1996.

4.9 Where a bureau or department fails to comply with the Code, an applicant may lodge a complaint with me to seek a review of the initial decision by the organisation in receipt of the request for information. During the reporting period, we dealt with four such complaints by way of RAC.

INTER-DEPARTMENTAL CO-ORDINATION

4.10 Whilst we examine each case independently, there are occasions where the "pattern" of complaints calls for a more global review of continuing problems.

Seepage : A Misconception of Responsibilities

4.11 We mentioned seepage in our 2001/02 Annual Report. This continues to be a

"popular" complaint. Three departments - Food and Environmental Hygiene, Buildings and Water Supplies - each has a specific role for different aspects of seepage. Invariably, they do what they can within their purview. However, members of the public are often not aware of (or not willing to accept) the division and limitation of their responsibilities: readily and regrettably, they form the impression that the departments are "passing the buck".

4.12 We remain of the view that property owners have a primary responsibility to maintain their own premises, including repair to seepage. Mutual co-operation among neighbours is most important for identifying the source of seepage and arranging the solution.

"Buck-passing"

4.13 From time to time, implementation of policies calls for inter-departmental co-ordination. Generally speaking, departmental responsibilities are defined and procedures for co-ordination also drawn up by Government. However, these procedures cannot possibly cover all conceivable situations. When grey areas surface, departments disclaim responsibilities and engage in bureaucratic "buck-passing". Meanwhile, complainants receive cold shoulders pending resolution of responsibilities and naturally, become frustrated and aggrieved.

Fig. 4.4 A typical case

- Complainant requested assistance from Drainage Services Department (DSD) on repair of damaged stream bank/retaining wall adjacent to his house.
- DSD referred case to Home Affairs Department (HAD) pursuant to a Technical Circular issued by then Works Bureau.
- HAD disclaimed responsibility.
- Protracted argument over the responsibility between DSD and HAD.
- Case referred to Lands Department (Lands D) without checking the land status at the outset.
- Lands D adopted "wait-and-see" attitude, spanning about 11 months.
- After 17 months of argument, confirmed that the problem fall within Systematic Identification of Maintenance Responsibility of Slope records. Technical Circular not applicable.
- Responsibility of repair by Lands D finally confirmed by Civil Engineering Department.

(Case summary at **Annex 12**)

Protracted Consultation

4.14 Another scenario depicts repeated and protracted inter-departmental "consultation" to the point of procrastinating and holding up action for an excessively long period. This suggests that the departments concerned are afraid of taking decisions and hope to find some "reason" for an excuse not to act.

Fig. 4.5 A typical case

- An athletic association applied to Lands Department (Lands D) to change the terms of the short-term tenancy for the addition of driving range facilities in their sportsground.
- Lands D examined the application in consultation with Government departments concerned.
- Lands D repeatedly asked departments for clarification of issues on which they had already made clear their position:
 - (a) consulted Planning Department several times on the same issue even after the latter had stated that planning permission for the proposed use of the sportsground was not required;
 - (b) consulted Home Affairs Bureau even after the latter had stated its view about auditing the financial statements of the association.

- Home Affairs Department conducted consultation with local residents repeatedly.
- With several rounds of inter-departmental meetings and numerous exchanges of correspondence, the application was rejected 26 months after its submission.

(Case summary at **Annex 12**)

4.15 Neither scenario is conducive to efficient or effective administration. Both cases point to reluctance to take a further step in the public interest and a lack of consideration for the complainants or the community. Such tactics and inter-departmental debates reflect poorly on Government. In such cases, this Office has had to raise matters with the policy bureaux to iron out the bureaucratic red tape among departments.

REPORTS TO THE CHIEF EXECUTIVE

4.16 The problem of unauthorised building works (UBW) in the New Territories was the subject of a direct investigation in 1996 on which The Ombudsman made a number of recommendations to curb the problem. Our investigation into a recent complaint (Case summary at **Annex 12**) suggested that the problem might have reached an unacceptable level. This case indicated that the Housing, Planning and Lands Bureau (HPLB), Buildings Department and Lands Department had not adequately implemented our recommendations. My concern is that massive disregard for law enforcement would breed disrespect for the

law and the Administration. Consequently, I invoked Section 16(3) of The Ombudsman Ordinance and reported the matter in October 2002 to the Chief Executive, who directed HPLB to follow up. By the end of this reporting year, my Office was in active discussion with the Bureau. Depending on its response, I may make a further report to the Chief Executive and consider another direct investigation into the problem.

Fig. 4.6

Section 16(3) of The Ombudsman Ordinance

Where a report under subsection (1) to a head of the organisation is not, in the opinion of The Ombudsman, adequately acted upon -

- (a) within the time specified in the report; or
- (b) if no time is specified in the report, within such times as The Ombudsman is of the opinion is reasonable in all the circumstances,

The Ombudsman may submit the report and recommendations, together with such further observations as he thinks fit to make, to the Chief Executive.

4.17 We completed an investigation into a complaint against Leisure and Cultural Services Department on the use of public swimming pools. Our recommendations called for the right balance on the use of facilities by both swimming clubs and members of the public. Following my announcement of the investigation in July 2002, an association of swimming coaches made representations to the Chief Executive

Chapter

4

to question the propriety of our findings. Accordingly, I presented my observations to the Chief Executive (Case summary at **Annex 12**).



CASELOAD AND CHALLENGES

5.1 For the year 2002/03, our reporting period was adjusted for the first time, to run from 1 April to 31 March to coincide with the financial year. This report, therefore, covers 12 months - not 10½ months for last year².

CASELOAD

5.2 Caseload for the year is summarised below:

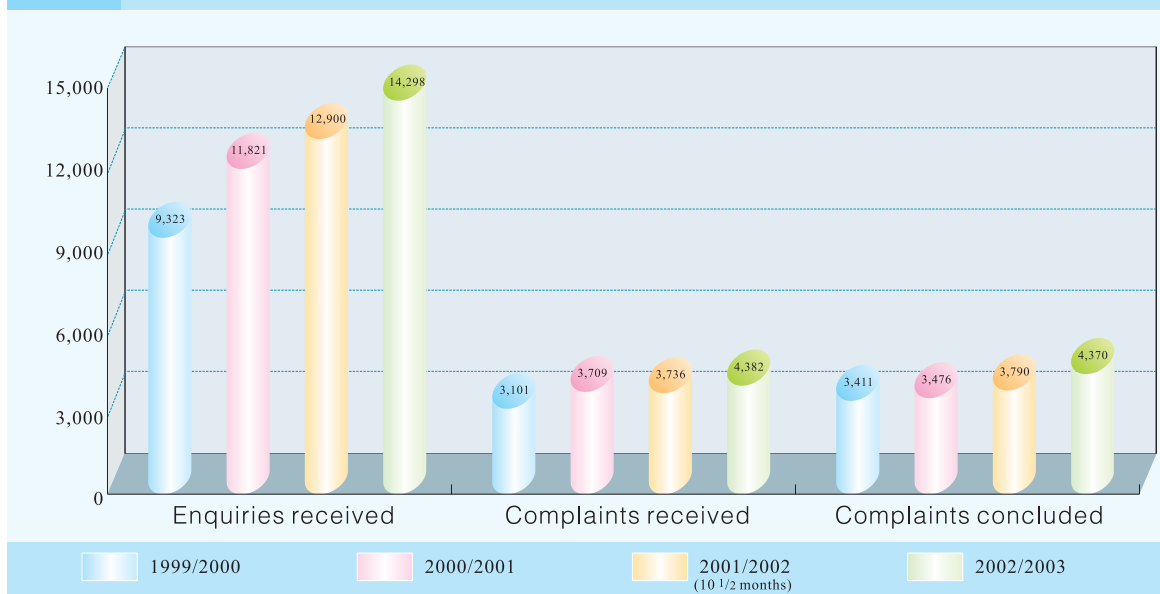
- 14,298 enquiries received;
- 4,382 complaints received; and
- 4,370 complaints concluded.

There was a slight increase in in-coming complaints for the year despite a decrease since February 2003. It is difficult to ascertain why there should be a drop but some contributing factors come to mind: the Lunar New Year festive period followed by community pre-occupation with "Severe Acute Respiratory Syndrome" (SARS).

5.3 There were 20 complaints outstanding with the Hospital Authority by 31 March 2003 and I have given them extension of time for response in recognition of the need for concentrating efforts on the combat against SARS. We have informed the complainants and they have generally shown understanding of this exceptional situation.

² The last report was for 16 May 2001 to 31 March 2002 on re-alignment of reporting period due to delinking from Government systems and practices. Previously, the reporting period was from mid-May to mid-May of the following year.

Fig. 5.1 Enquiries and complaints for the past four years



PERFORMANCE PLEDGES

5.4 Our performance pledges are set out below :

Fig. 5.2 Performance pledges

Enquiries

	Standard response time	Maximum response time
By telephone or in person	Immediate	For complicated enquiries, within 30 minutes
In writing	Within 5 working days	For complicated enquiries, within 6-10 working days

Complaints

	Standard response time	Maximum response time
Initial assessment and acknowledgement	All complaints will be initially screened and acknowledged - Within 5 working days (target: 80%)	Within 6-10 working days (target: 20%)
Cases concluded	Acknowledgment with a full reply declining investigation will be sent -	
- Cases outside jurisdiction or under restriction	Within 10 working days (target: 70%)	Within 11-15 working days (target: 30%)
- Other cases	Less than 3 months (target: 60%)	Within 3-6 months (target: 40%)

Group visits and talks

	Response time
Requests for guided group visits	Within 5 working days
Requests for outreaching talks	Within 10 working days

As our performance pledges have remained unchanged, the heavier caseload (particularly during the first half of the reporting year) has exerted greater pressure on my investigation teams. Notwithstanding this pressure, we have endeavoured to complete cases within the pledges and have made improvement. The number and percentage of completed cases not meeting the performance pledges during the reporting period are 75 (or 2.84%), compared to 206 (or 9.3%) respectively for the previous reporting year. The contributing features included:

- (a) highly complex cases necessitating more elaborate investigation process;
- (b) suspension of investigation as a result of court proceedings or law enforcement action;
- (c) emergence of new developments mid-stream; and
- (d) challenges, as described in the following paragraphs.

5.5 To overcome seasonal peaks, I have continued to engage temporary case officers. These are officers with extensive experience in public administration and are trawled from a continuous recruitment process. The flexibility afforded by such insures that I can draw from a pool of ready expertise for relief at times of particular pressure. Temporary case officers are remunerated on the basis of the number and complexity of their assignments. They are subject to the same code of ethics and the strict secrecy requirement as for my full-time staff.

CHALLENGES

5.6 Organisations and complainants occasionally challenge our decisions or actions. Such challenges spread virtually across all stages of our operations, as outlined below.

Jurisdiction

5.7 Organisations at times challenge the propriety of our intervention, occasionally with legal arguments. This is particularly so where the issues stem from restrictions in Schedule 2 to The Ombudsman Ordinance, eg. personnel or contractual matters. We would examine only such administrative aspects as may be present in those cases. Organisations would then query why we take up the case at all. Invariably, we simply address aspects of procedures and practices. We are careful not to over-step our purview. By this prudent but liberal approach, I hope to maximise our contribution to open government and minimise injustice to the common citizen.

5.8 On the other hand, complainants sometimes question my decision to screen out their cases. Although we give specific reasons as to why we cannot pursue their cases, some complainants just would not accept that their issues fall outside our jurisdiction. Wherever practicable, we redirect them to the appropriate authorities or channels for advice, assistance or redress. All proposals to screen out complaints are approved by me personally.

Evidence Collection

5.9 In the course of our inquiries, organisations may refuse to provide material

for our examination, notably on grounds of secrecy or data privacy. We will always explain our statutory right to access any information relevant to a case. I am grateful that all organisations generally co-operate with my Office, although occasionally with some persuasion. I have not had to summon witnesses during the reporting period.

Decisions

5.10 I am required by law to inform organisations, normally in the form of draft investigation reports, of any criticism or adverse remarks against them or their staff. Now and then, organisations raise reservations or even take exception to our observations, especially when the complaints are substantiated. Page after page of contentions and counter-points, followed by lengthy hearings, are common fare for my investigation officers. We always provide organisations and their officers ample opportunities to make representations, which we critically examine before finalising our conclusions. Where their representations are reasonable, we incorporate them into the final report. Where they cannot be accepted, we still record their comments with reasons for non-acceptance.

Revived Cases

5.11 From time to time, complainants are dissatisfied with our investigation results, particularly if their complaints are found to be unsubstantiated. In their disappointment, some have raised allegations against individual investigation officers, for being biased, incomplete or incompetent. Quite a few request for review of their cases. As all investigation reports are subject to my personal approval, such allegations can only be seen as complaints against my decisions, not my officers.

5.12 We treat each and every objection as an appeal. We review the case for any fresh evidence or new angle. We apply special procedures in handling revived cases. Generally speaking, whilst an initial investigator will be required to comment on the complainant's grounds for review, the actual review will be carried out by another investigation officer or by the Chief Investigation Officer. As a general rule, draft replies to requests for review are scrutinised by my Deputy and finally by me before issue.

5.13 In the reporting period, we received 280 requests for review, compared to 237 in

Fig. 5.3 Revived cases

Reason Result	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	3	-	2	-	-	5
Decision upheld	-	234	-	-	41	275
						280

the last reporting period of 10½ months. Most complainants simply reiterated their arguments and expressed dissatisfaction over our conclusions. Where they produced new materials, we studied afresh.

5.14 Factors prompting complainants to seek review may be summarised as follows :

- (a) rising expectations of the quality of public services;
- (b) an intuitive conviction that their complaints are justified;
- (c) an expectation that The Ombudsman should advocate a complainant's cause only; and
- (d) a desire to put pressure on organisations concerned.

A few persistent complainants have chosen to voice their discontent and objections through a continuous stream of letters or by numerous daily telephone calls to my staff at different ranks. We understand, and even sympathise, with their sentiments. However, our primary duty is to ensure fairness to both the complainants and the organisations concerned. This is the spirit of the Ordinance and the intent of our institution. It does not accord with justice or a proper use of public resources to enter into endless debate over the same points. As a general rule, we will review on the basis of new evidence or fresh arguments but do not respond indefinitely to repeated requests for review of my decision.

OUR VIEW

5.15 In general, we regard challenge of our views or conclusions as a healthy reminder to sharpen our vigilance and to enhance our professionalism. We endeavour always to ensure that our investigations are thorough and impartial. We are ready to take a further look at objective facts from different angles. However, what we cannot do is to bow to pressure, submit to irrationality or aid and abet in personal vendetta: such "use" of the complaint system, in our view, is tantamount to misuse or even abuse.

"USE" OF THE OMBUDSMAN SYSTEM

5.16 In my last report, I alluded to "some complainants have their own agenda and 'use' my Office to press for their desired outcome". Broadly speaking, such cases may be grouped as follows :

- (a) seeking to bypass normal administrative processes and to obtain from a department/agency certain personal gains to which, on the face of it, the complainant is not entitled;
- (b) seeking to stop enforcement actions or investigations by law enforcement agencies;
- (c) seeking to involve regulatory authority to intercede on his behalf with commercial service providers;
- (d) using departments or agencies as a tool in pursuing personal vendetta against third parties; and
- (e) using the complaint procedures to delay departmental actions.

Chapter

5

5.17 If these attempts are allowed to go unchecked, it could have the following undesirable consequences :

- (a) creating unfairness for other citizens - given that public resources are limited, allowing someone to "jump the queue" or obtain undeserved personal gains would necessarily mean that someone else is being deprived of his right;
- (b) creating a new form of maladministration - bowing to pressure to the point of disregarding policies, as opposed to being unreasonably rigid; and
- (c) creating disruption to services - the nuisance caused by the persistence and unreasonableness of a small handful of complainants could seriously disrupt the operation of a department/agency.

5.18 There are still some cases of apparent "abuse" but the situation is not serious. During the reporting year, there were at least 20 cases which in our view contained irrational agendas. We processed these complaints in the usual manner and with an open mind. In the event of our system being misused, we would not hesitate to make the point to the complainant and the organisation concerned.

Fig. 5.4 Some examples

Case A

- An accountant complained against the Companies Registry (CR) for mishandling applications filed on behalf of his clients.

- After due inquiry, The Ombudsman rejected his claim for lack of credible evidence and for the complainant's own misinterpretation of section 291 of the Companies Ordinance.
- Complainant thereafter wrote in 26 times to seek reversal of the decision but still produced no acceptable argument in support.
- Both CR and The Ombudsman advised him to seek determination from the Courts on the issues in dispute.
- Renewed efforts to engage this Office in endless debate, evidently to put pressure on CR.

Case B

- Housing Department (HD) launched two phases of Phased Service Transfer Programme (PSTP) for property management contracts together with the Voluntary Departure Scheme (VDS) for its staff.
- Successful bidders of outsourcing contracts under PSTP had to employ a quota (staff count) of VDS participants, who in turn would be given a "sign-up bonus" by HD under certain conditions.
- Complainant had left HD under VDS and claimed he could not find employment during the first phase of PSTP because HD had not issued to him a "Certificate of First Staff Count".

He tried to put pressure on HD to award him with a sign-up bonus by complaining to this Office.

- HD had never issued any "Certificate of First Staff Count". Case totally unfounded.

(Case summary at **Annex 10**)

Case C

- A subscriber involved in a fee dispute for mobile telephone service claimed that his service provider "threatened" him to pay up on three occasions.
- He was charged a total of \$3.60 for three calls.
- He complained to the Office of the Telecommunications Office (OFTA) but allegedly to no avail.
- Inquiry by The Ombudsman confirmed that OFTA had actually and actively pursued the case by writing to or calling the service provider over 14 times.
- Complainant had been kept informed of progress.
- The service provider also agreed to waive the \$3.60 charges.
- Complainant should have raised the matter under the terms of his service agreement with the service provider. He should have considered seeking

assistance from the Police if in genuine belief of falling victim to criminal intimidation.

(Case summary at **Annex 10**)

Case D

- Complainant felt greatly embittered at his unsuccessful attempt to request a song to be broadcast in a Radio Television Hong Kong (RTHK) mid-night programme.
- The song was aired two days later but complainant remained dissatisfied.
- Complainant thereafter staged a telephone campaign against RTHK staff concerned including those in the directorate for explanation to his satisfaction.
- Feeling that RTHK had ignored the matter, complainant turned to The Ombudsman for assistance.
- Due inquiry revealed no administrative impropriety by RTHK.
- A similar telephone campaign then began against staff of The Ombudsman with some calls lasting for over an hour.
- The Ombudsman eventually decided not to pursue further complaints over the matter because its trivial nature.

(Case summary at **Annex 10**)

Case E

- A prisoner complained against Legal Aid Department (LAD) for failing to inform him of the progress of his legal aid application.
- He applied for legal aid to claim damages for medical negligence. In his initial application, he signed all documents, including a statutory declaration, in the name of A.
- When he applied for a medical report from the hospital concerned, he produced a copy of Mr. B's identity card, which was not accepted by LAD as proof of his identity.
- Complainant alleged that his name was in fact C, with A as pseudonym and B the name of his brother; but he could not produce any documentary evidence to show that he was C.

- When he produced a copy of Mr. C's identity card, LAD told him to re-apply in the name of C.
- LAD was not able to inform him of progress, because it was still investigating into his identity.
- Eventually, LAD refused A's application on the grounds that the personal details in the application form did not tally with the proof of identity.
- LAD also informed C that his application would be rejected on grounds of failure to show reasonable grounds for taking proceedings.

(Case summary at **Annex 10**)



FRUITS OF INVESTIGATION

THE OMBUDSMAN'S RECOMMENDATIONS

6.1 The Ombudsman Ordinance empowers The Ombudsman, after an investigation, to report findings, to give opinions with reasons and to make recommendations. My recommendations fall broadly into two categories, namely :

- (a) Redress of grievances —
to right specific wrongs, including remedial measures and issue of apologies;
- (b) Administrative improvement —
to improve the administration of an organisation in general or in specific areas, including changes to procedures and practices to remove administrative errors, loopholes or deficiencies.

While I respect the relevant authorities for formulation of policies, I do from time to time comment on policies: to help focus on possibly outdated aspects or to generate public debate.

6.2 A substantial number of complaints is directed against the actions or attitude of individual officers. With the objective of enhancing the quality of public administration, our investigations are generally geared to rehabilitative, preventive rather than punitive results. Accordingly, we rarely propose disciplinary action against individual officers as we believe this is a matter for the heads of the organisations. In short, we seek to improve rather than to disapprove, to comment

constructively and not just to carp critically.

6.3 If an investigation report is, in my opinion, not adequately acted upon by the head of the organisation concerned, The Ombudsman Ordinance provides that I may submit my report and recommendations together with any further observations to the Chief Executive. I may also make a further report to the Chief Executive if I consider a serious irregularity or injustice to have taken place and a copy of such further report shall be laid before the Legislative Council. During the year, I have made one report to the Chief Executive (see **para. 4.16**).

THE GOVERNMENT MINUTE ON IMPLEMENTATION

6.4 Since 1995, the Administration has been submitting a Government Minute to the Legislative Council within three months after the tabling of The Ombudsman's Annual Report. This summarises the follow-up actions taken by Government departments and statutory organisations to implement The Ombudsman's recommendations. It is a measure of the seriousness with which the Administration views the role of The Ombudsman in promoting open and fair, responsive and responsible government.

ENHANCEMENT OF QUALITY ADMINISTRATION

6.5 Properly conducted investigations and carefully considered recommendations are key to our work processes. An important indicator of our achievement is the number of recommendations for improvement made by me and adopted for implementation by the organisations. In the 2002/03 reporting

year, my Office completed full investigation³ of 124 cases and six direct investigations, with a total of 173 and 72 recommendations respectively. Over 95% of the recommendations have been accepted by the organisations concerned. Each recommendation, when implemented, results in an improvement to public administration. It is note-worthy that oftentimes, organisations would conduct its own internal audit and even introduce improvement measures in the course of our investigation. We appreciate the "head start" by the organisations and see ourselves as carrying considerable catalytic influence. In this light, we must pay tribute to complainants for bringing their case forward and thus contributing to the improvement of public services.

- 3 As opposed to alternative dispute resolution: INCH (176 cases), RAC (1,996 cases) and mediation (6 cases) with a total of 134 suggestions (see Chapter 4).

Fig. 6.1 Number of recommendations



ACKNOWLEDGEMENT OF OUR SERVICES

6.6 From time to time, we receive letters of appreciation from complainants and organisations, e.g. on the thoroughness and

Fig. 6.2 Extracts from letters of appreciation



impartiality of our investigations. We value such acknowledgement as encouragement for our further improvement. We also welcome any constructive comment on our services.

POSITIVE COMPLAINT CULTURE

6.7 Unquestionably, complaints originate from grievance or dissatisfaction but this does not render complaints necessarily a negative product. A complaint made in good faith is due exercise of a citizen's rights. A valid complaint enables Government to re-visit policies, procedures and practices with The Ombudsman as referee. Complaints are opportunities to review and revamp, redress and reform. Public administration could and should evolve, develop and improve.

6.8 Over the years, we have been promoting a positive complaint culture with both the public and the organisations in Schedule 1 to the Ordinance. Our activities for public awareness and education are described in **Chapter 7**.



COMMUNITY RELATIONS

7.1 During the year, my Office mounted a diversified multi-media programme of public information and education :

- to reach out to our community;
- to publicise our services;
- to promote a positive complaint culture among Hong Kong people; and
- to foster a culture of service among public officers.

PUBLICITY

7.2 From experience, the most effective means of publicity is the mass media. We have an "Announcement of Public Interest" (API) or short film clip for broadcast on our local TV with a sound track for radio to advise the public on what, where and how to lodge complaints with The Ombudsman.

7.3 Other publicity efforts include posters, leaflets, roving exhibitions, advertising on buses and information panels in railway stations and carriages. From September to November 2002, we launched publicity to coincide with our removal to the new office. The purpose was to ensure that the public

Fig. 7.2 Advertising on buses



visit the right place for our services and not suffer inconvenience from ignorance of our whereabouts.

7.4 I attend interviews with media reporters on an *ad hoc* basis. The aim is to maintain public awareness of our institution and our services.

7.5 "Ombuds News", our periodical newsletter, announces selected anonymised investigation reports as well as our new initiatives and recent developments. We release them on a regular basis at media conferences and usually attract good coverage. Such media reports help to inform our community of improvement to public organisations, supported by actual examples.

Fig. 7.1 Roving exhibitions



Fig. 7.3 Ombuds News



Fig.7.4 Press conferences held in 2002/03

17 May 2002

- Announcement of direct investigation report into Education Department's contingency and relief measures for the secondary school places allocation exercise 2001.
- Declaration of two direct investigations into:
 - the administration of vehicle registration marks auctions.
 - the role of Home Affairs Department in facilitating the formation of Owners' Corporations.

3 July 2002

- Announcement of 14th Annual Report of The Ombudsman.
- Announcement of two anonymised complaint investigation reports.

13 August 2002

- Announcement of direct investigation report into the funding of sports programmes by Hong Kong Sports Development Board.
- Announcement of two anonymised complaint investigation reports.

4 October 2002

- Announcement of direct investigation report into the administration of vehicle registration marks auctions.

- Announcement of an anonymised complaint investigation report.
- Declaration of direct investigation into the operation of the Integrated Call Centre.

29 November 2002

- Announcement of direct investigation report into the mechanism for handling missing patients in Hospital Authority hospitals.
- Announcement of two anonymised complaint investigation reports.
- Declaration of direct investigation into the enforcement of the Education Ordinance on universal basic education.

27 February 2003

- Announcement of direct investigation report into the monitoring of charitable fund-raising activities.
- Announcement of two anonymised complaint investigation reports.

27 March 2003

- Announcement of direct investigation report into the role of Home Affairs Department in facilitating the formation of Owners' Corporations
- Announcement of an anonymised complaint investigation report.

MEETING WITH LEGISLATIVE COUNCILLORS

7.6 We continued our liaison with major public and community organisations. I attended a meeting with Members of the Legislative Council in December 2002 to update them on our developments and initiatives.

MEETING WITH CHAIRMEN OF DISTRICT COUNCILS

7.7 Following the success in 2002, I organised another joint meeting with the Chairmen and Vice-Chairmen of District Councils in February 2003 with the assistance of the Permanent Secretary for Home Affairs. The meeting enabled me to explain our functions to district leaders, update them on developments and to exchange views on issues of common concern. I appreciate their keen interest in our work and their ready support for our cause.

ASSISTANCE FROM JUSTICES OF THE PEACE

7.8 The Justices of the Peace (JPs) Assistance Scheme was launched in 1996 to promote understanding of the work of this Office. At present, 374 JPs have enrolled. Some have participated actively in visits organised by this Office. We appreciate their warm support and their suggestions on various aspects of our services.

7.9 During the reporting period, we arranged four orientation visits for the JPs — one to the Stonecutters Island Sewage Treatment Works of the Drainage Services Department, two visits to the Airport Terminal of the Customs and Excise

Department and one to the Public Health Laboratory Centre of Food and Environmental Hygiene Department. Participants found these visits useful in enhancing their insight into different facets of Government activity.

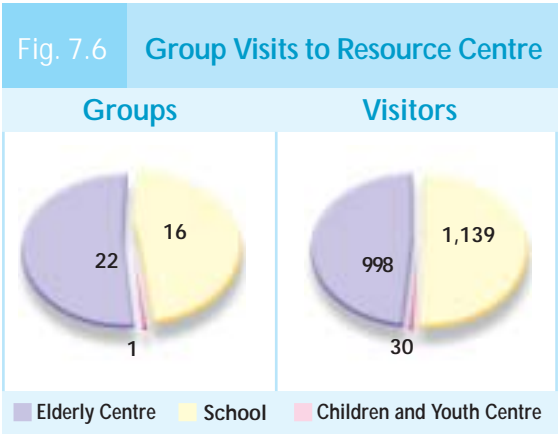
Fig. 7.5 JPs visiting the Customs and Excise Department



RESOURCE CENTRE

7.10 We welcome individuals and community groups to visit our Resource Centre, which houses a rich collection of Ombudsman-related literature. A group visit normally comprises a tour to the Centre, followed by a briefing and exchange of views with representatives of this Office. For the younger visitors, we are producing an interactive computer game for their education and entertainment at the conclusion of their visit. This game takes the form of quiz aimed at enhancing understanding of the work of this Office. The game, expected to be available in May 2003, will be posted in our website and will be available as CD-ROM for distribution to visitors. A total of 2,167 persons from 39 groups visited the Centre in the reporting year, compared to 3,101 and 66 respectively in the previous year. In view of the office removal, we closed the Centre in August and September 2002. In March 2003, most

scheduled visits had to be cancelled as a result of the onset of SARS. These account for the drop in the number of visits to the Centre.



INFORMATION VIDEOS

7.11 In 1998, we produced a ten-minute video in the form of a drama to introduce our work. With jurisdictional changes and the expansion of our activities⁴, we have decided to produce a new video. This is expected to be available later in 2003.

7.12 Meanwhile, the video produced in 2001 on our telephone complaint service is still in service.

THE OMBUDSMAN AWARDS

7.13 *For organisations* — In recognition of the professional and positive approach to complaint management by public organisations, Ombudsman Awards have been introduced since July 1997.

4 Since 1998, 14 organisations have been added to, and 13 deleted from, Schedule 1 to The Ombudsman Ordinance. In 2001 we introduced the telephone complaints service and accepted complaints via e-mail.

Organisations are adjudged on the basis of their handling of complaints referred to them by this Office and their commitment to improving the quality of their services, including implementation of The Ombudsman’s recommendations. These annual awards are highly regarded as open acknowledgement of the organisations concerned as open and accountable. The awards have been well received by public organisations and the general public.



7.14 *For individuals* — These annual awards are for individual public officers exemplary in achieving a good standard of customer service or have made significant contribution to improve the quality of public administration in handling complaints over a sustained period of time. Twenty-three public officers from 12 organisations received the awards during the reporting period.

Fig. 7.8 Individual awards in 2002

Organisation	No. of awardees
Customs & Excise Department	3
Education Department	1
Food and Environmental Hygiene Department	2
Hospital Authority	3
Housing Department	3
Immigration Department	2
Inland Revenue Department	3
Judiciary	1
Labour Department	1
Marine Department	1
Student Financial Assistance Agency	2
Water Supplies Department	1

7.15 Nominations for the awards in 2003 are underway.

SURVEY ON OUR SERVICES

7.16 We keep our fingers on the pulse of our public from time to time for feedback to improve our services. With the assistance of the Census and Statistics Department, we initiated a survey in 1996 on public awareness of my Office and the effectiveness of our services. This was repeated in 1999/2000. Commencing in March 2003, about 8,000 households are enumerated. The report will be published later this year. The findings of the survey will assist us to gauge public expectations and to meet their aspirations for quality public administration. The report will also guide us in our public information and education strategies.

COMPLAINT MANAGEMENT WORKSHOP

7.17 Our annual Complaint Management Workshop has become a significant feature for our positive interface with public organisations. We had made considerable preparation for the event on 3 April 2003, firming up the programme and reserving the venue. By the end of March 2003, nearly 800 public officers had indicated their interest to attend. Regrettably, the workshop had to be postponed in view of SARS.

INDUCTION AND IN-SERVICE TRAINING

7.18 Complaint handling is now an integral part of public services. Most public officers, particularly for those in the frontline, have to deal with complaints in the course of their career and may even become subjects of complaint themselves. To meet their operational needs, we conduct talks for departmental recruits and serving officers. During the reporting year, we made ten addresses.

Fig. 7.9 Briefing at Executive Officers Induction Course



INSTITUTIONAL LIAISON

7.19 My Office is a member of the International Ombudsman Institute (IOI). Successive Ombudsmen participate in international ombudsman activities. Since 1996(except 1999)The Hong Kong Ombudsman has been a Director of the IOI - representing the Australasian and Pacific region. In October 2002, I was elected Secretary to the IOI.

7.20 Apart from attending the Institute's Board of Directors' Meeting in Tunis, Republic of Tunisia, I attended in November 2002 the 20th Australasian and Pacific Ombudsman Conference of the Institute in Sydney, Australia and led a discussion on "Conducting Effective Investigations".

7.21 This Office is also a founding member of the Asian Ombudsman Association, of which I am also the Secretary. In May, I attended the 7th Association meeting in Beijing.

Fig. 7.10 The Ombudsman at the 7th Conference of the Asian Ombudsman Association



7.22 We have an exchange programme with the China Supervision Institute. In 2002, this Office sent a delegation to the Mainland in May and the Institute visited Hong Kong in December. Representatives of this Office also attended the 10th Anniversary Seminar of the Commission Against Corruption in the Macau Special Administrative Region, with which we maintain close liaison.

7.23 2002 saw a sharp increase in the number of visitors from Ombudsman institutions in overseas jurisdictions and representatives of the Ministry of Supervision of China. From time to time, groups of Mainland officials attend training courses in Hong Kong, which invariably include a half-day visit to this Office. Our directorate officers give talks to these visiting groups. During the reporting period, we received 42 overseas visitors, 133 representatives from the Ministry of Supervision and delivered talks to 15 other groups comprising 410 members. This compared to 11, 54, 13 and 354 respectively in 2001/02. We welcome such contacts and learn from the experience.

Caseload

Table

1

	Reporting years [#]			
	1999-2000	2000-01	2001-02 (10½ months)	2002-03
(A) Enquiries received	9,323	11,821	12,900	14,298
(B) Complaints received	3,101	3,709	3,736	4,382
(C) Complaints brought forward	891	581	814	760
(D) Complaints for processing = (B) + (C)	3,992	4,290	4,550	5,142
(E) Complaints concluded	3,411	3,476	3,790	4,370
By referral to complainee departments/ organisations for replies (INCH)	467	364	353	176
By rendering assistance/clarification (RAC)	969	700	1,214	1,996
By mediation	10	29	19	6
By investigation	194	161	331	124
- Withdrawn/Discontinued	11	-	6	2
- Substantiated	22	28	18	15
- Partially substantiated	100	41	263	39
- Unsubstantiated	61	80	42	68
- Incapable of determination	-	12	2	0
Complaints screened out	1,417	1,859	1,563	1,729
- Restrictions on investigation	592	795	685	971
- Outside jurisdiction	825	1,064	878	758
Complaints withdrawn/discontinued	354	363	310	339
(F) Percentage of complaints concluded = (E) ÷ (D)	85%	81%	83%	85%
(G) Total cases carried forward = (D) - (E)	581	814	760	772
(H) Number of direct investigations completed	3	5	4	6

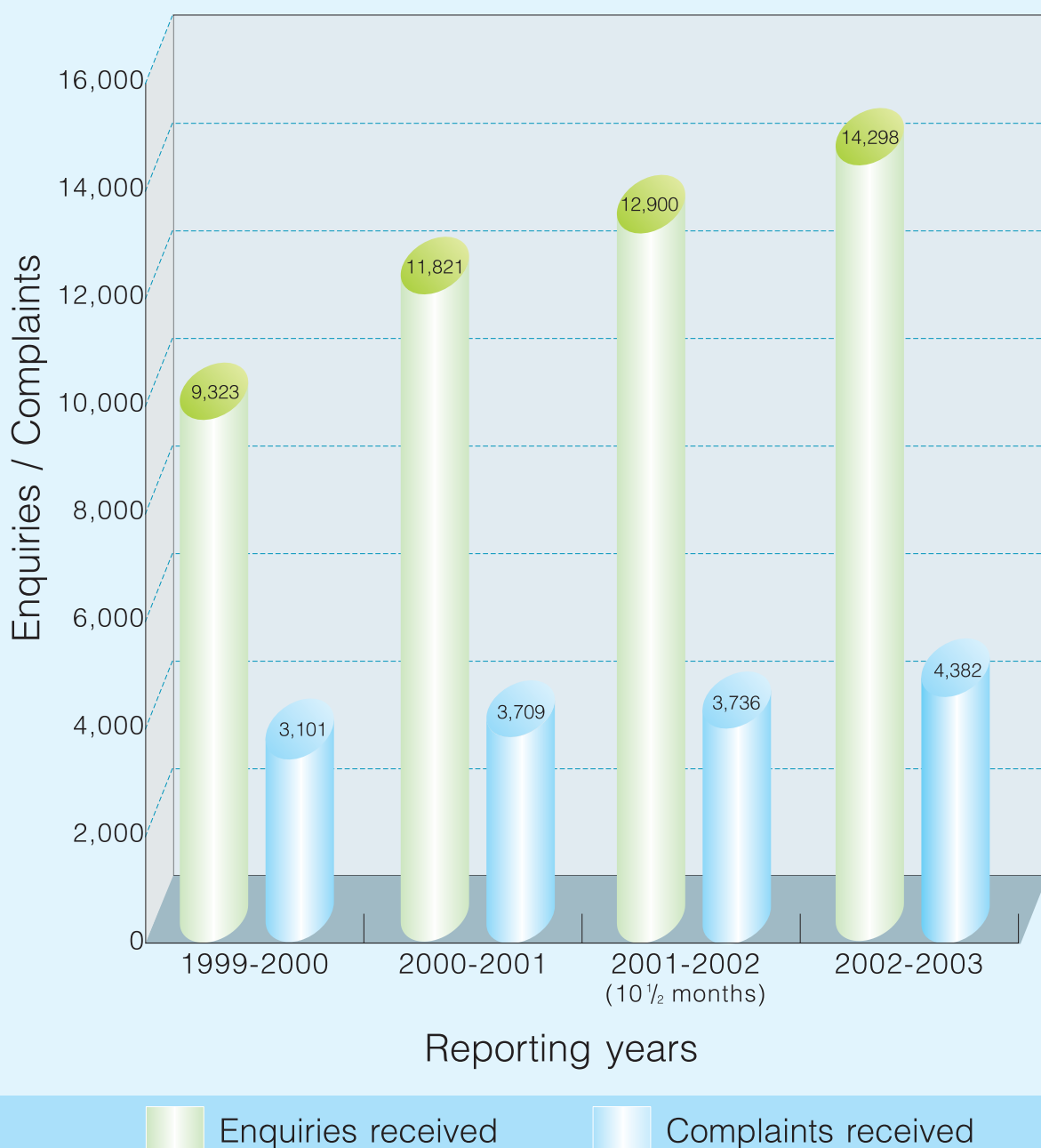
Period of Reporting Years
 99/00 : 16.5.99 - 15.5.00 00/01 : 16.5.00 - 15.5.01
 01/02 : 16.5.01 - 31.3.02 02/03 : 1.4.02 - 31.3.03

From 2001/02, the reporting year ends on 31 March to coincide with the end of financial year.

Enquiries / Complaints Received

Table

2



Distribution of Enquiries / Complaints

Table

3

Organisations	Enquiries	Complaints
Agriculture, Fisheries and Conservation Department (AFCD)	70	41
Airport Authority (AA)	5	4
Architectural Services Department (Arch SD)	31	19
Auxiliary Medical Service (AMS)	0	1
Buildings Department (BD)	282	135
Census and Statistics Department (C & SD)	6	7
Civil Aid Service (CAS)	1	4
Civil Aviation Department (CAD)	1	3
Civil Engineering Department (CED)	12	7
Companies Registry (CR)	21	12
Correctional Services Department (CSD)	47	328
Customs and Excise Department (C & ED)	77	33
Department of Health (DH)	58	42
Department of Justice (D of J)	14	18
Drainage Services Department (DSD)	42	30
Education Department (ED)	245	104
Electrical and Mechanical Services Department (E & MSD)	26	13
Employees Retraining Board (ERB)	18	5
Environmental Protection Department (EPD)	73	45
Equal Opportunities Commission (EOC)	30	8
Fire Services Department (FSD)	47	22
Food and Environmental Hygiene Department (FEHD)	475	436
General Office of the Chief Executive's Office (GOCEO)	0	11
Government Laboratory (Govt Lab)	1	0
Government Land Transport Agency (GLTA)	2	0
Government Property Agency (GPA)	17	26
Government Secretariat (GS)	94	109
Government Supplies Department (GSD)	10	5
Highways Department (Hy D)	68	35
Home Affairs Department (HAD)	99	276
Hong Kong Arts Development Council (HKADC)	4	2
Hong Kong Examinations and Assessment Authority (HKEA)	17	10
Hong Kong Housing Authority (HKHA)	57	51
Hong Kong Housing Society (HKHS)	56	33
Hong Kong Monetary Authority (HKMA)	26	14
Hong Kong Observatory (HKO)	2	1
Hong Kong Sports Development Board (HKSDDB)	7	5
Hospital Authority (HA)	321	144
Housing Department (HD)	886	441
Immigration Department (Imm D)	216	84
Information Services Department (ISD)	1	0
Information Technology Services Department (ITSD)	1	1
Inland Revenue Department (IRD)	147	66

Table

3

Organisations	Enquiries	Complaints
Intellectual Property Department (IPD)	6	4
Judiciary Administrator (JA)	242	70
Kowloon-Canton Railway Corporation (KCRC)	38	21
Labour Department (LD)	258	75
Land Registry (LR)	6	6
Lands Department (Lands D)	241	204
Legal Aid Department (LAD)	217	83
Legislative Council Secretariat (LCS)	2	1
Leisure and Cultural Services Department (LCSD)	176	130
Mandatory Provident Fund Schemes Authority (MPFSA)	68	13
Marine Department (MD)	21	13
Office of the Telecommunications Authority (OFTA)	31	15
Official Receiver's Office (ORO)	59	29
Planning Department (Plan D)	8	15
Post Office (PO)	97	56
Privacy Commissioner for Personal Data (PCO)	28	15
Radio Television Hong Kong (RTHK)	10	6
Rating and Valuation Department (RVD)	47	23
Registration and Electoral Office (REO)	1	1
Securities and Futures Commission (SFC)	30	16
Social Welfare Department (SWD)	360	132
Student Financial Assistance Agency (SFAA)	94	15
Television and Entertainment Licensing Authority (T & ELA)	10	12
Territory Development Department (TDD)	10	11
Trade and Industry Department (TID)	14	6
Transport Department (TD)	216	159
Treasury (Try)	6	4
University Grants Committee (UGC)	0	1
Urban Renewal Authority (URA)	28	15
Vocational Training Council (VTC)	25	11
Water Supplies Department (WSD)	196	117
Total	6,158	3,910

Note 1. The total number of enquiries and complaints received in Table 1 are 14,298 and 4,382 respectively. They are different from the figures shown in Table 3 for the following reasons:

- An enquiry / complaint involving more than one organisation is shown against each of the organisation.
- Enquiries / complaints involving bodies outside The Ombudsman's jurisdiction are not shown.

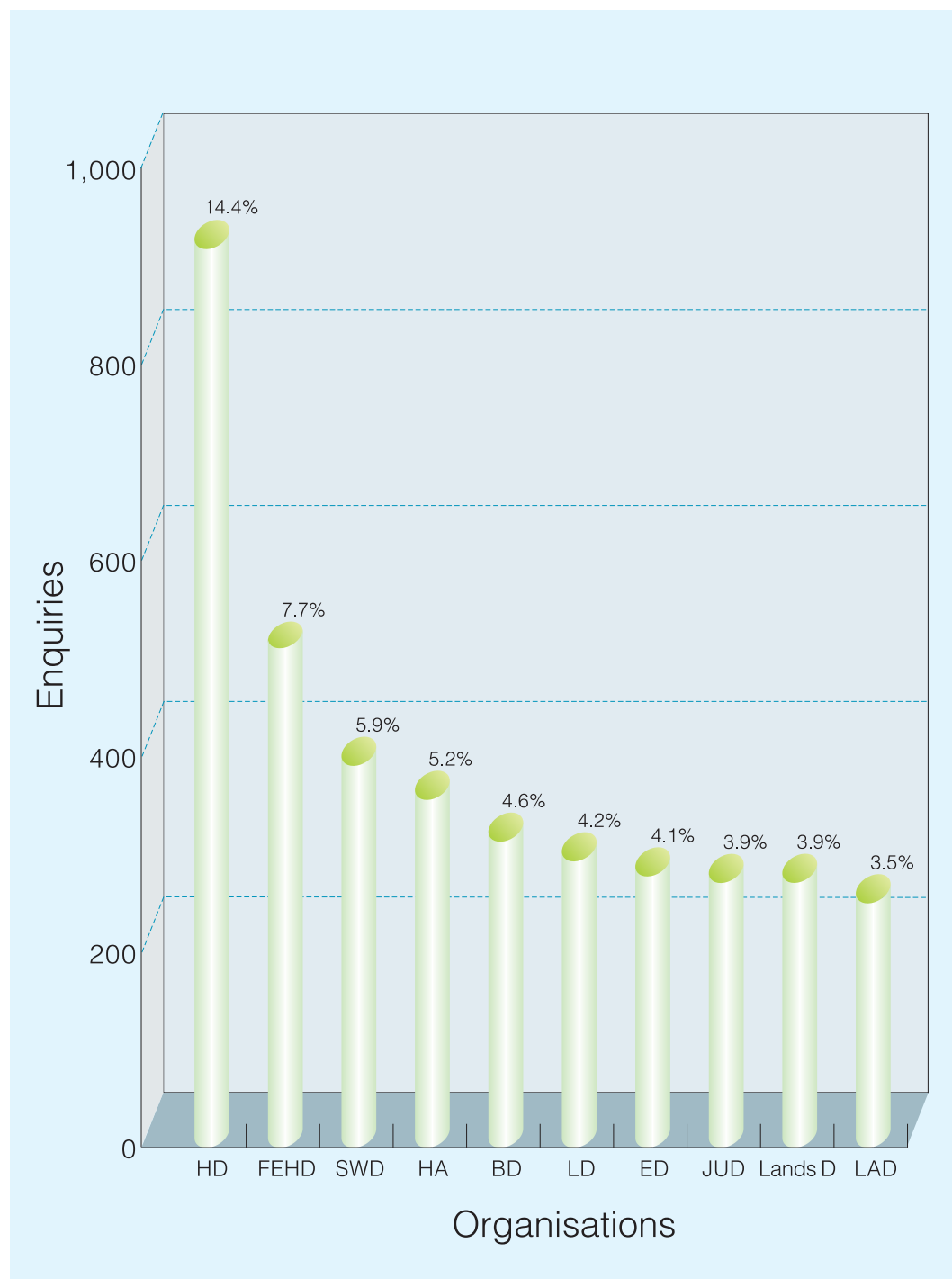
Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

Note 3. On 28 February 2003, the functions of the Education Department (ED) were transferred to the Education and Manpower Bureau (EMB) and the department ceased to exist. Complaints against ED on and after this date were treated as complaints against EMB and counted towards Government Secretariat.

Enquiries : Top Ten Organisations

Table

4



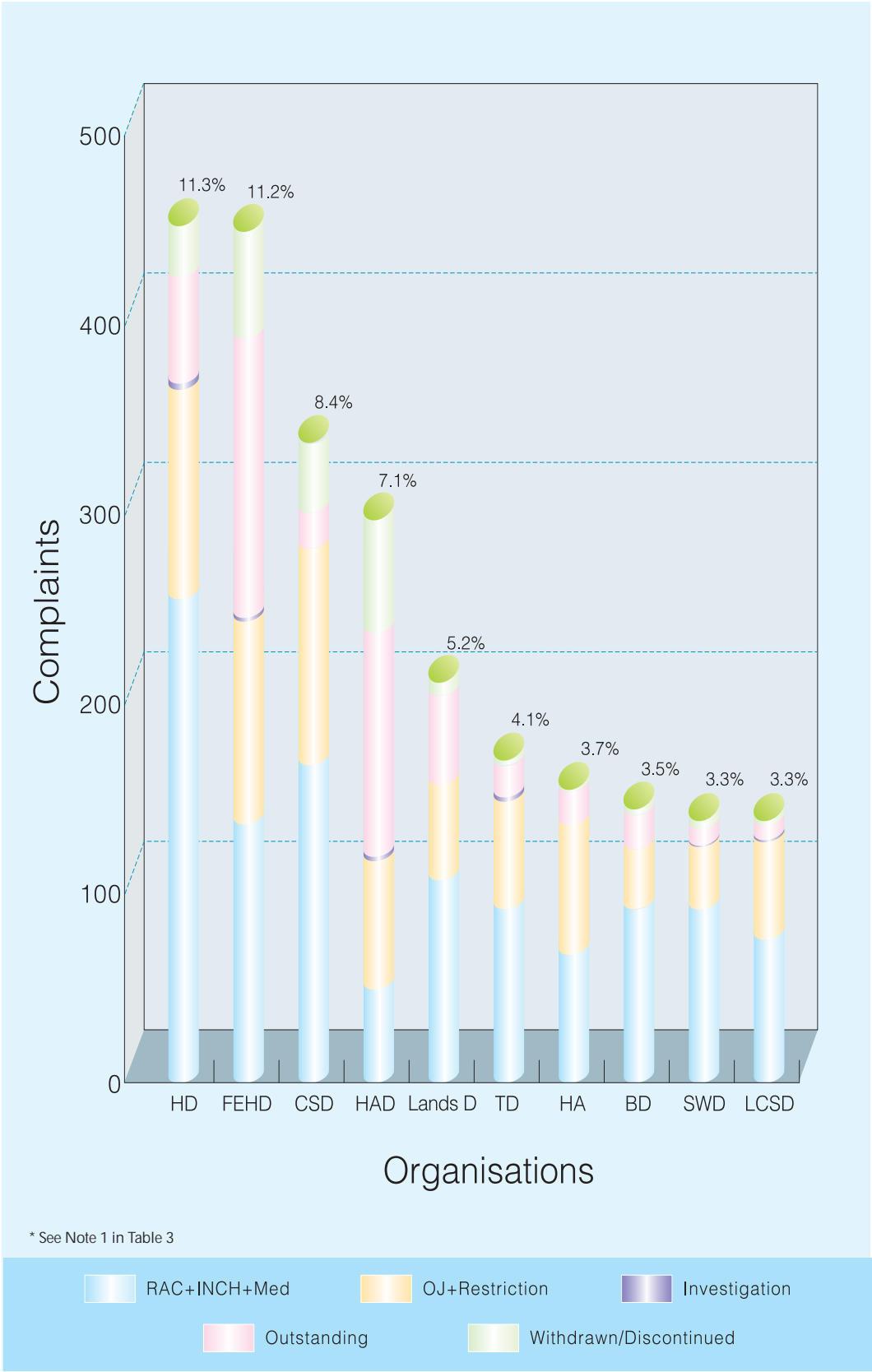
Note 1. See also Note 1 in Table 3

Note 2. On 28 February 2003, the functions of the Education Department (ED) were transferred to the Education and Manpower Bureau (EMB) and the department ceased to exist. Complaints against ED on and after this date were treated as complaints against EMB and counted towards Government Secretariat.

Complaints* : Top Ten Organisations

Table

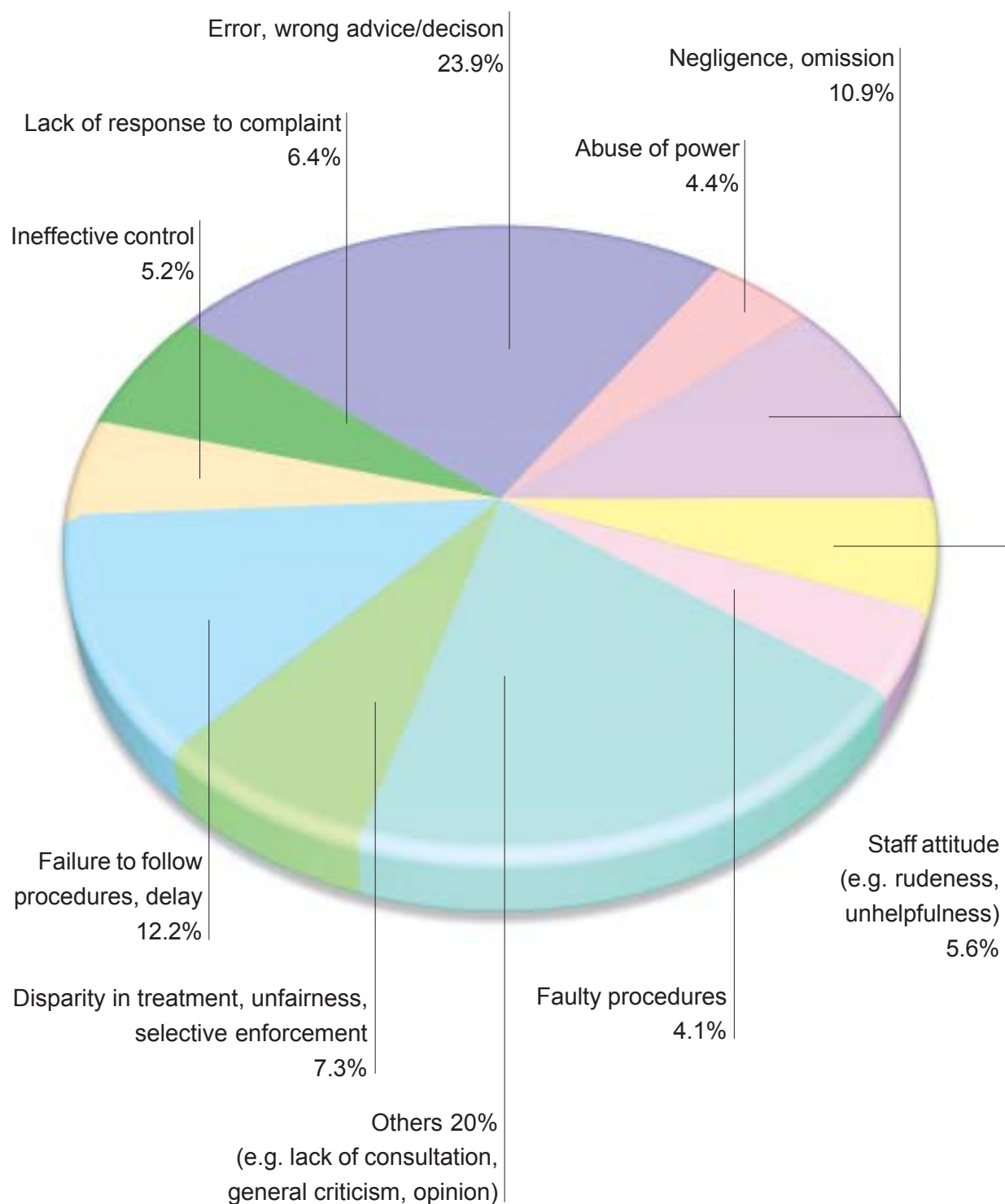
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Nature of Complaints Concluded : 4,370 Cases

Table

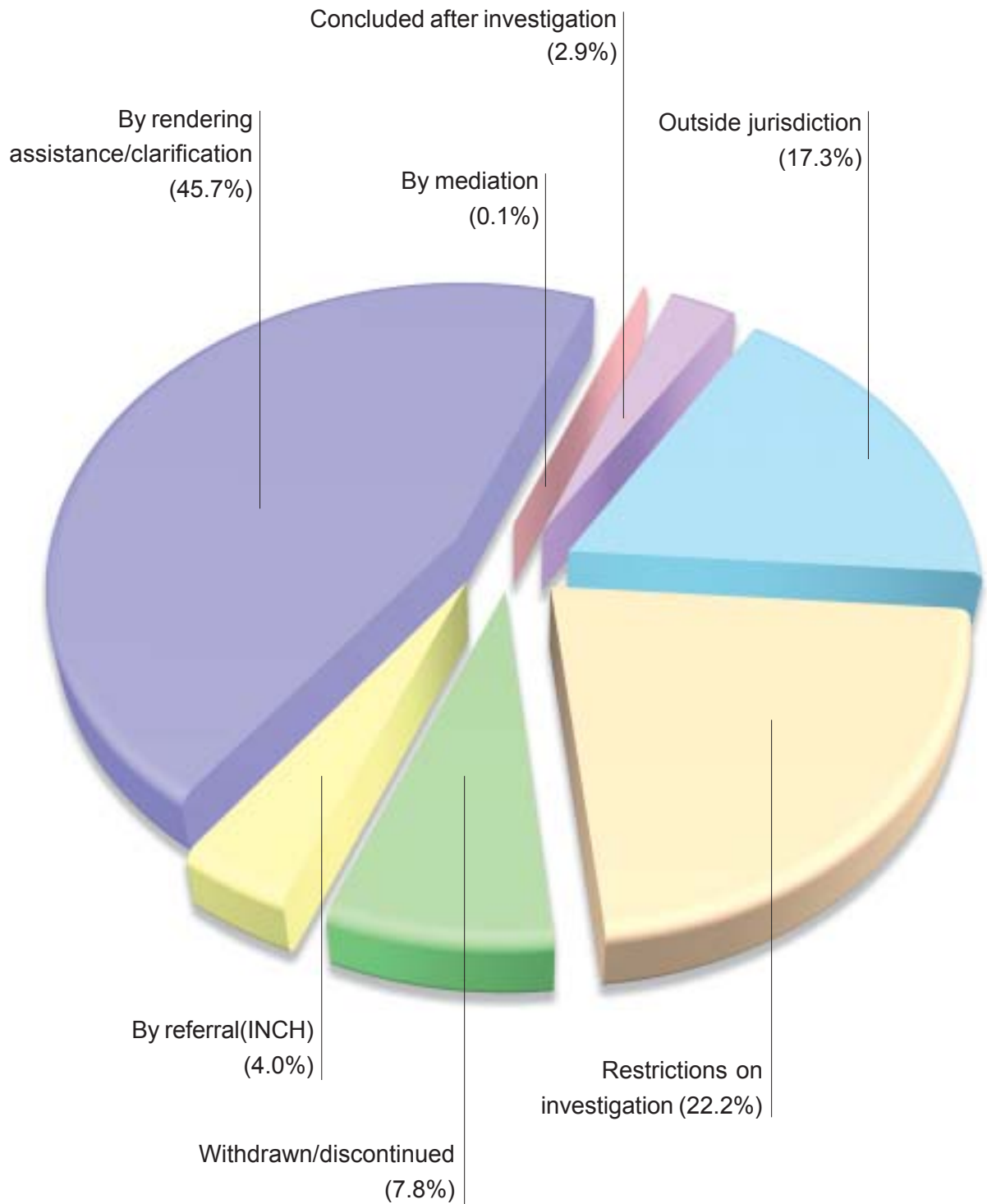
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Classification of Complaints Concluded :4,370 Cases

Table

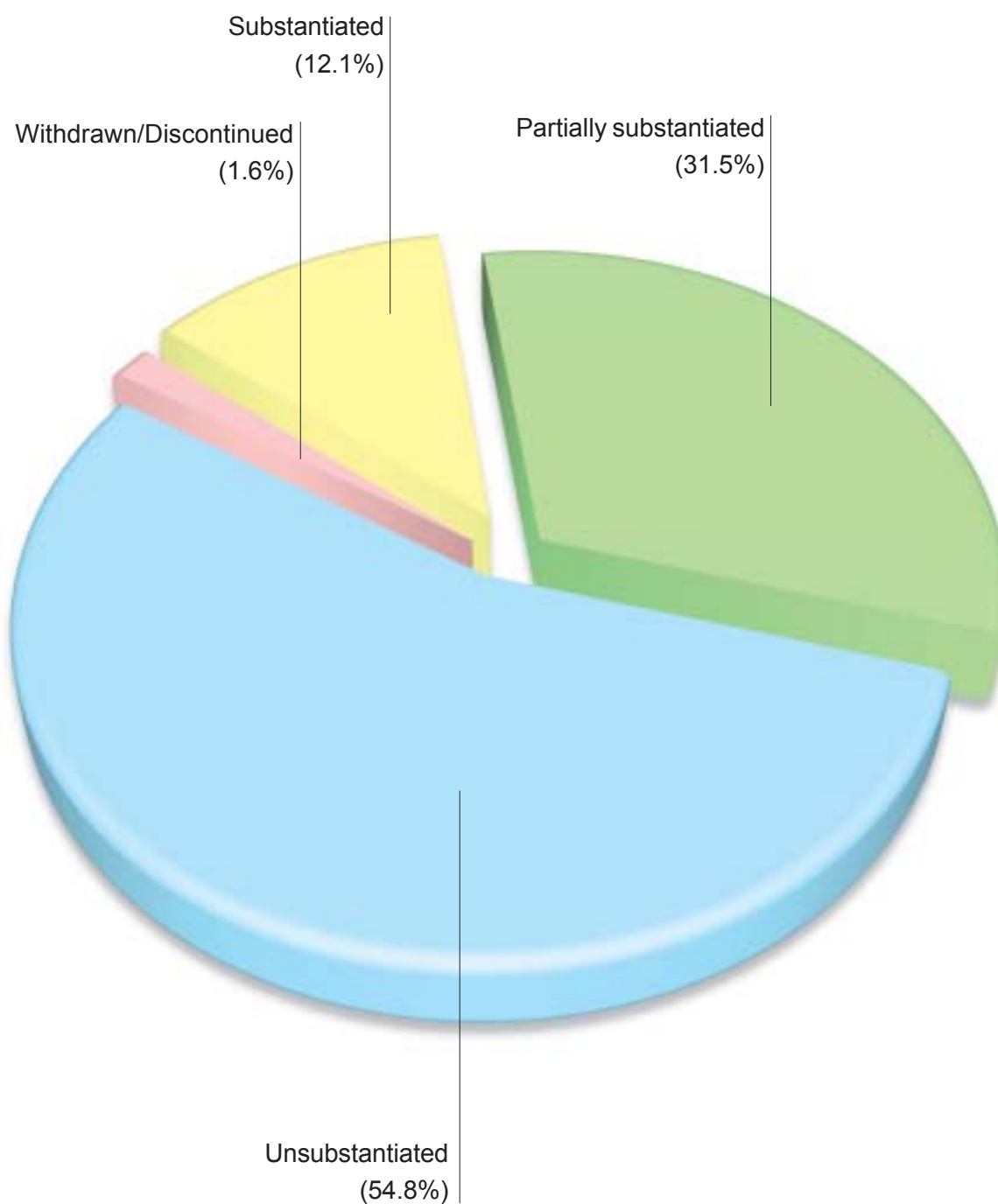
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Result of Complaints Investigated : 124 Cases

Table

8



Result of Complaints Concluded by Rendering Assistance / Clarification

Table

9

Organisations	No. of complaints	Remedial action taken	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
Agriculture, Fisheries and Conservation Department	22	2 (9%)	20 (91%)		
Airport Authority	2	1 (50%)	1 (50%)		
Architectural Services Department	4		4 (100%)		
Buildings Department	84	11 (13%)	73 (87%)		10
Census and Statistics Department	2		2 (100%)		
Civil Aviation Department	1		1 (100%)		
Civil Engineering Department	2		2 (100%)		
Companies Registry	8	2 (25%)	6 (75%)		2
Correctional Services Department	162	1 (1%)	135 (83%)	26 (16%)	2
Customs and Excise Department	14	2 (14%)	12 (86%)		
Department of Health	17	2 (12%)	13 (76%)	2 (12%)	
Department of Justice	6		6 (100%)		
Drainage Services Department	25		25 (100%)		
Education Department	44	3 (7%)	41 (93%)		4
Electrical and Mechanical Services Department	7		7 (100%)		
Employees Retraining Board	3	1 (33%)	2 (67%)		
Environmental Protection Department	29	2 (7%)	27 (93%)		5
Equal Opportunities Commission	6	1 (17%)	5 (83%)		
Fire Services Department	13	1 (8%)	12 (92%)		
Food and Environmental Hygiene Department	136	19 (14%)	111 (82%)	6 (4%)	3
General Office of the Chief Executive's Office	5		3 (60%)	2 (40%)	
Government Flying Service	1		1 (100%)		
Government Property Agency	11	1 (9%)	9 (82%)	1 (9%)	2
Government Secretariat					
- Chief Secretary for Administration's Office	14	9 (64%)	5 (36%)		
- Civil Service Bureau	5	3 (60%)	2 (40%)		
- Commerce and Industry Bureau	1		1 (100%)		
- Commerce, Industry and Technology Bureau	1	1 (100%)			
- Economic Services Bureau	1	1 (100%)			
- Economic Development and Labour Bureau	1		1 (100%)		
- Environment, Transport and Works Bureau	13	1 (8%)	12 (92%)		1
- Education and Manpower Bureau	6		5 (83%)	1 (17%)	
- Financial Secretary's Private Office	1		1 (100%)		
- Financial Services and the Treasury Bureau	1		1 (100%)		
- Financial Services Bureau	1	1 (100%)			
- Health, Welfare and Food Bureau	2		2 (100%)		
- Home Affairs Bureau	4	1 (25%)	3 (75%)		1
- Housing, Planning and Lands Bureau	1		1 (100%)		
- Security Bureau	3	1 (33%)	2 (67%)		1
- Transport Bureau	7	1 (14%)	6 (86%)		1
Government Supplies Department	4	1 (25%)	3 (75%)		
Highways Department	23	3 (13%)	20 (87%)		
Home Affairs Department	43	5 (12%)	38 (88%)		8

Table

9

Organisations	No. of complaints	Remedial action taken	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
Hong Kong Arts Development Council	2	1 (50%)	1 (50%)		2
Hong Kong Examinations and Assessment Authority	6	1 (17%)	5 (83%)		1
Hong Kong Housing Authority	17	6 (35%)	11 (65%)		
Hong Kong Housing Society	21	1 (5%)	20 (95%)		
Hong Kong Monetary Authority	9		9 (100%)		
Hong Kong Police Force	1		1 (100%)		
Hong Kong Sport Development Board	2		2 (100%)		
Hospital Authority	54	9 (17%)	41 (76%)	4 (7%)	7
Housing Department	279	49 (17.6%)	225 (80.6%)	5 (1.8%)	23
Immigration Department	49	3 (6%)	43 (88%)	3 (6%)	7
Independent Commission Against Corruption	1		1 (100%)		
Information Service Department	1		1 (100%)		
Inland Revenue Department	30	12 (40%)	18 (60%)		
Intellectual Property Department	1		1 (100%)		
Judiciary Administrator	28	3 (11%)	25 (89%)		
Kowloon-Canton Railway Corporation	11	1 (9%)	10 (91%)		
Labour Department	40		36 (90%)	4 (10%)	
Land Registry	3		3 (100%)		
Lands Department	120	8 (6.7%)	111 (92.5%)	1 (0.8%)	22
Legal Aid Department	36		36 (100%)		1
Legislative Council Secretariat	1		1 (100%)		
Leisure and Cultural Services Department	66	21 (32%)	43 (65%)	2 (3%)	11
Mandatory Provident Fund Schemes Authority	7	2 (29%)	5 (71%)		
Marine Department	2		1 (50%)	1 (50%)	
Office of the Telecommunication Authority	12	1 (8%)	11 (92%)		5
Official Receiver's Office	14	1 (7%)	13 (93%)		1
Planning Department	18	1 (6%)	17 (94%)		1
Post Office	28	11 (39%)	17 (61%)		4
Privacy Commissioner for Personal Data	7		7 (100%)		4
Radio Television Hong Kong	2		2 (100%)		
Rating and Valuation Department	12	2 (17%)	10 (83%)		
Registration and Electoral Office	1		1 (100%)		
Securities and Futures Commission	9		9 (100%)		
Social Welfare Department	78	8 (10%)	61 (78%)	9 (12%)	1
Student Financial Assistance Agency	9	3 (33%)	6 (67%)		
Television and Entertainment Licensing Authority	4	2 (50%)	2 (50%)		1
Territory Development Department	4		4 (100%)		
Trade and Industry Department	3		3 (100%)		
Transport Department	204	17 (8%)	186 (91%)	1 (1%)	2
Treasury	1		1 (100%)		
University Grants Committee, Secretariat	1		1 (100%)		
Urban Renewal Authority	1		1 (100%)		
Vocational Training Council	2		2 (100%)		
Water Supplies Department	63	9 (14%)	54 (86%)		1
Total	1,996	249	1,679	68	134

Note 1. Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by Rendering Assistance/Clarification are not shown.

Note 2. On 28 February 2003, the functions of the Education Department (ED) were transferred to the Education and Manpower Bureau (EMB) and the department ceased to exist. Complaints against ED on and after this date were treated as complaints against EMB and counted towards Government Secretariat.

Processing Time of Complaints Concluded

Table

10A

YEAR TIME	1999-2000	2000-01	2001-02 (10½ months)	2002-03
Less than 1 month	44.7%	56.5%	53.7%	59.2%
1 - 3 months	23.2%	20.5%	18.3%	15.1%
3 - 6 months	26.6%	20.5%	22.6%	24.0%
6 - 9 months	4.3%	1.7%	2.1%	0.9%
9 - 12 months	0.9%	0.6%	0.9%	0.3%
More than 12 months	0.3%	0.2%	2.4%	0.5%
Total	3,411	3,476	3,790	4,370

Processing Time for Investigated and Non-Investigated Complaints

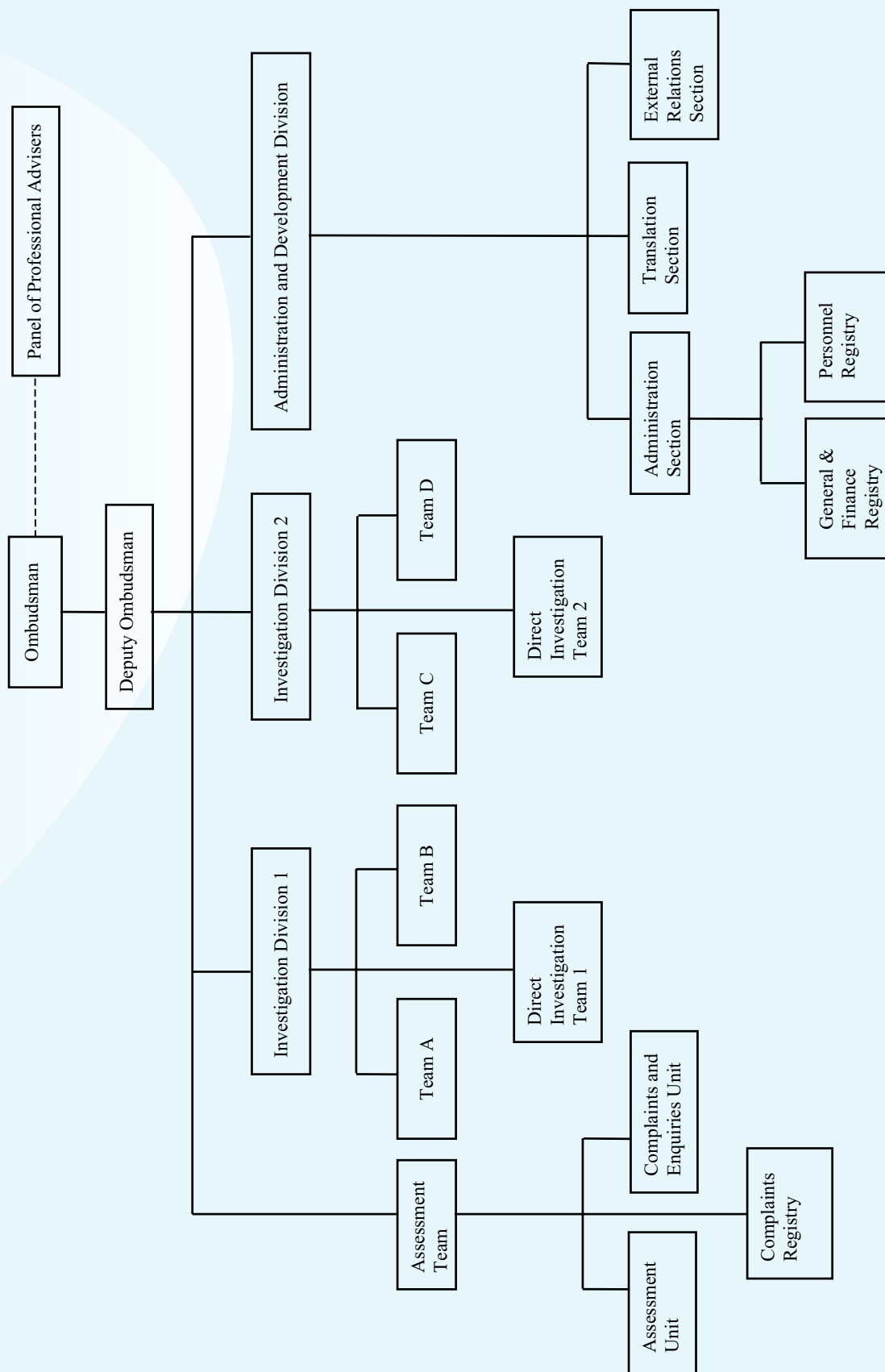
Table

10B

TIME \ YEAR	1999-2000	2000-01	2001-02 (10½ months)	2002-03
Concluded by investigation				
Less than 3 months	5.2%	6.8%	0.3%	0.8%
3 - 6 months	55%	49.7%	50.8%	56.5%
6 - 9 months	25.3%	26.1%	13.6%	14.5%
9 - 12 months	8.8%	13.7%	8.4%	9.7%
More than 12 months	5.7%	3.7%	26.9%	18.5%
Number of complaints	194	161	331	124
Concluded without investigation (i.e. Item E in Table 1 excludes complaints concluded by investigation)				
Less than 1 month	47.3%	59.3%	58.8%	60.9%
1 - 3 months	24.3%	21.2%	20.0%	15.5%
3 - 6 months	24.8%	19.0%	19.9%	23.1%
6 - 9 months	3.1%	0.5%	1.0%	0.4%
9 - 12 months	0.5%	0.0%	0.2%	0.1%
More than 12 months	0.0%	0.0%	0.1%	0.0%
Number of complaints	3,217	3,315	3,459	4,246

Organisation Chart

Office of The Ombudsman



Enquiry

An enquiry is a request for information or advice. It is *not* a complaint.

Complaint

A complaint is a specific allegation against an organisation, or any staff of the organisation, for any wrong doing or defective decision/action which affects and aggrieves the complainant either personally as an individual or collectively as a body corporate.

Potential Complaint

This refers to an anonymous complaint or a complaint addressed to an organisation and copied to The Ombudsman. Potential complaints are regarded as not for action at all or for the time being. The Ombudsman may intervene if the organisation concerned fails to follow up appropriately.

Maladministration

“Maladministration” is defined under Section 2 of The Ombudsman Ordinance. Basically it means inefficient, bad or improper administration and includes unreasonable conduct, abuse of power or authority, unreasonable, unjust, oppressive or improperly discriminatory procedures.

Complaints Investigated

This refers to investigation of a complaint in accordance with Section 12 of The Ombudsman Ordinance. On completion, one of the following conclusions will be drawn:

– ***Substantiated, Partially Substantiated or Unsubstantiated***

This refers to the degree to which the action/inaction/decision subject to complaint is found to be within the meaning of “maladministration” as defined in Section 2 of The Ombudsman Ordinance. If all aspects taken together show that there is maladministration, the complaint would be concluded as substantiated. If found in only one or some of the aspects, it would only be concluded as partially substantiated. If no maladministration is found, it would be concluded as unsubstantiated.

Glossary of Terms

Annex

2

– ***Incapable of Determination***

This refers to the situation where no conclusion can be drawn because all the evidence gathered from investigation is found to be conflicting, irreconcilable, incomplete or lacking in corroboration from independent witnesses.

Complaints Handled by Alternative Dispute Resolution

This refers to the handling of a complaint other than by investigation. It can be one of the following methods:

– ***Internal Complaint Handling Programme (INCH)***

With the consent of complainants, simple cases are referred to organisations for investigation and reply. The Ombudsman monitors the process and intervenes where the reply is not satisfactory.

– ***Rendering Assistance/Clarification (RAC)***

The office conducts extensive preliminary inquiries and presents findings with observations to the complainant. The Ombudsman may suggest improvement on systemic problems.

– ***Mediation***

This is a voluntary process where complainants and representatives of the organisations concerned agree to meet. Investigators from this Office act as impartial facilitators of the dialogue.

Complaints Screened Out

This refers to a complaint not pursued because of one or more of the following reasons:

– ***Outside Jurisdiction***

The Ombudsman is precluded from investigating the subject or the organisation under The Ombudsman Ordinance.

– *Restrictions on Investigation*

These refer to restrictions on investigation (such as time bar, identity and status of complainant) as set out in Section 10 of The Ombudsman Ordinance.

Cases Withdrawn or Discontinued

This refers to a complaint not investigated further because:

- (a) it is subsequently found to be outside The Ombudsman's jurisdiction;
- (b) there is no basis for further investigation;
- (c) the complainant withdraws it voluntarily; or
- (d) the complainant cannot be reached despite repeated attempts over a reasonable period.

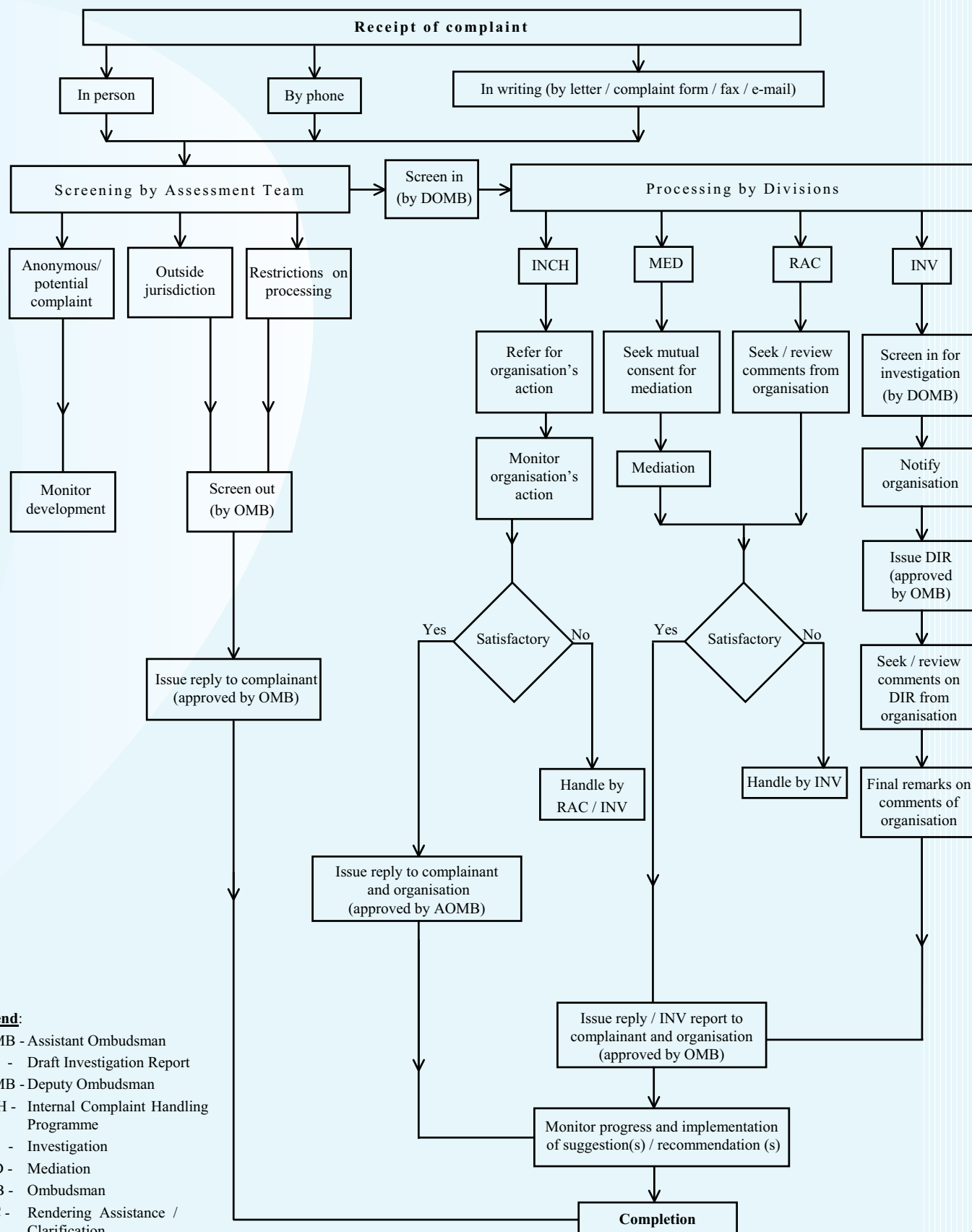
Direct Investigation

This refers to an investigation initiated under Section 7 of The Ombudsman Ordinance notwithstanding the absence of a complaint.

Direct Investigation Assessment

This refers to the examination of an issue in the public interest or of community concern which has been identified as a potential subject for direct investigation. The assessment includes comprehensive appraisal of background information, the extent of public concern, the remedial actions by the relevant authorities and the resources and other operational considerations.

Flow Chart on Handling of a Complaint



Achievement of Performance Pledges

(A) Enquiries

	Response time		
	Immediate	Within 30 minutes	Greater than 30 minutes
By telephone or in person	12,598 (99.83%)	20 (0.16%)	1 (0.01%)
In writing	Within 5 working days	Within 6-10 working days	Greater than 10 working days
	51 (96.2%)	2 (3.8%)	0

Note: The above figures exclude enquiries on existing complaints.

(B) Complaints

Initial assessment and acknowledgement*	Response time		
	Within 5 working days (target: 80%)	Within 6-10 working days (target: 20%)	Greater than 10 working days
	917 (77.58%)	140 (11.84%)	125 (10.58%)

* Excluding potential complaints and cases outside jurisdiction or under restriction.

Cases concluded	Cases outside jurisdiction or under restriction			Other cases		
	Within 10 working days (target: 70%)	Within 11-15 working days (target: 30%)	Greater than 15 working days	Less than 3 months (target: 60%)	Within 3-6 months (target: 40%)	Greater than 6 months
	541 (60.65%)	331 (37.11%)	20 (2.24%)	1,519 (57.52%)	1,047 (39.64%)	75 (2.84%)

(C) Group visits and talks

	Response time	
	Within 5 working days	Greater than 5 working days
Requests for guided group visits	81 (100%)	0
Requests for outreaching talks	Within 10 working days	Greater than 10 working days
	15 (100%)	0

Guidelines for Initiating Direct Investigations

Under Section 7(1)(a)(ii) of The Ombudsman Ordinance, The Ombudsman is empowered to initiate investigations on his own volition, even though no complaint on the matter has been received.

This power enables The Ombudsman to be more proactive in his approach to problems of wide public interest and concern. It is particularly useful to –

- (a) follow through related problems which investigation of the complaint alone may not be able to resolve;
- (b) nip problems in the bud; and
- (c) resolve repeated complaints, once and for all, by addressing the fundamental problems which may not be the subject of complaint, but are believed or suspected to be the underlying reasons for complaints.

To facilitate consideration of matters for direct investigation, The Ombudsman has established some general guidelines –

- (a) the matter is one concerning public administration, in respect of which alleged or suspected maladministration as defined in The Ombudsman Ordinance is involved;
- (b) the matter should be of sufficient dimension and complexity, representing the general interest, desire or expectation of the community, or at least a sector in the community;
- (c) individual grievances will not normally be a candidate for direct investigation, as there is no reason why the individual concerned cannot come forward to lodge a complaint himself;
- (d) the matter will not otherwise be actionable under the restrictions in Section 10(1) of The Ombudsman Ordinance, in relation to time-bar, the complainant not the individual aggrieved etc, which is nevertheless of grave concern to The Ombudsman;
- (e) the matter is one not normally subject to the jurisdiction of the court nor a tribunal constituted under any Ordinance, or in respect of which it would not be reasonable to expect the affected person(s) to resort to the court or any tribunal for remedy; and

- (f) whether time is opportune for the direct investigation, weighing against the consequences of not doing so.

It is emphasised that the above are no more than guidelines, and the list is by no means exhaustive. Much will depend on the actual matter and the problems emerged.

List of Direct Investigations Completed

1994/1995

1. Unauthorised building works

1995/1996

2. Overcrowding relief in public housing
3. Accommodation for foreign domestic helpers
4. Unauthorised building works in New Territories exempted houses

1996/1997

5. Provision of emergency vehicular access and fire services installations and equipment for public and private building developments
6. Problem of water main bursts
7. Co-ordination between Social Welfare Department and Housing Department in processing application for housing transfer on social grounds
8. Selected issues on general out-patient service in public clinics and hospitals
9. Education Department failing to complete, on a timely basis, the processing of an application from a hearing impaired student to attend a special school

1997/1998

10. Government telephone enquiry hotline services
11. Fisheries Development Loan Fund administered by the Agriculture and Fisheries Department
12. Arrangement for the closure of schools due to heavy persistent rain
13. Issue and sale of special stamps and philatelic products

List of Direct Investigations Completed

1997/1998 (cont'd)

14. Taxi licensing system
15. Co-ordination between the Drainage Services Department and Environmental Protection Department over the protection of public beaches from being polluted by sewage discharges
16. Charging of management fees in Home Ownership Scheme Estates managed by the Housing Department

1998/1999

17. Dispensary service of the Department of Health
18. Handling of trade documents by Trade Department
19. Recovery of public rental flats under the Home Ownership Scheme, the Private Sector Participation Scheme and the Home Purchase Loan Scheme by the Housing Department
20. Registration of tutorial schools
21. Commissioning and operation of New Airport at Chek Lap Kok
22. Restaurant licensing system
23. Issues pertaining to imported pharmaceutical products

1999/2000

24. Registration and inspection of kindergartens
25. Provision and management of private medical and dental clinic services in public housing estates
26. Regulatory mechanism for the import/export, storage and transportation of used motor vehicles/cycles and related spare parts

List of Direct Investigations Completed

2000/2001

- 27. Regulatory mechanism for local travel agents for inbound tours
- 28. Selected issues concerning the provision of retraining courses by the Employees Retraining Board
- 29. Clearance of Provisional Urban Council tenants and licence holders affected by Land Development Corporation's development projects
- 30. Selected issues concerning the management of Government crematoria
- 31. Procedures for immigration control of persons who present themselves, are found or returned to immigration check points without proof of identity

2001/2002

- 32. Procedures for handling travellers suspected of using false or otherwise suspect travel documents
- 33. Management of construction projects by the Housing Authority and the Housing Department
- 34. Administration of public examinations
- 35. Mechanism for enforcing the prohibition of smoking in no smoking areas and public transport carriers

2002/2003

- 36. Education Department's contingency and relief measures for the secondary school places allocation exercise 2001
- 37. Funding of sports programmes by Hong Kong Sports Development Board
- 38. Administration of vehicle registration marks auctions
- 39. Mechanism for handling missing patients in Hospital Authority hospitals
- 40. Monitoring of charitable fund-raising activities
- 41. Role of Home Affairs Department in facilitating the formation of Owners' Corporations

EDUCATION DEPARTMENT (ED)

Contingency and Relief Measures for the Secondary School Places Allocation Exercise 2001

Background

This direct investigation was initiated in the wake of widespread community and media criticism over the contingency and relief measures implemented by ED after the Court ruling in June 2001 that the Secondary School Places Allocation (“SSPA”) System was sex discriminatory and unlawful. We examined whether ED had implemented these measures fairly and reasonably and handled banding information of students properly.

Contingency and Relief Measures

2. ED had made the following administrative arrangements for implementing its contingency and relief measures –

Contingency plans

- (a) Enhancement of the SSPA computer system commenced in November 1999 and was completed in May 2000 in readiness for the SSPA exercise 2000. In March 2001, ED drew up a contingency plan to prepare for a possible unfavourable Court ruling.

Relief Measures

- (b) In anticipation of the Court not ordering immediate removal of the gender-based features of the SSPA System, ED started planning for Relief Measures (“RM”) in early June 2001. Guiding principles and criteria for determining the affected students were devised. Special computer programme was designed. 3,500 extra Secondary One (“S1”) school places were reserved for affected students.
- (c) During the press conference to announce the RM, ED stressed that vacancies available for placement under the RM would only be 600 and that successful re-allocation would be extremely limited.
- (d) ED received 7,722 applications under the RM, identified 3,001 students as affected and placed 2,261 to schools of their higher choice. The remaining 740 students were not re-allocated due to lack of vacancies. The RM exercise was completed in two weeks.

Summaries of Direct Investigations

Annex

7

Special Placement Service

- (e) For the 740 students, ED offered Special Placement Service (“SPS”), a measure “outside the RM”, in an additional S1 class in ten Government and one aided secondary schools. This successfully placed 672 students; the remaining 68 did not seek special placement.

Monitoring Group

- (f) To enhance transparency and fairness, ED set up a Monitoring Group (“MG”) to oversee and, where necessary, to advise on operation of the RM. The MG, comprising seven appointed non-official members, held five meetings.

Banding information

- (g) ED did not disclose banding information to individual students and did not retain such information after the SSPA exercise. However, ED could, if necessary, manually re-calculate from internal raw data and schools’ scaling curves.

Observations and Opinions

- 3. The Ombudsman made the following observations and opinions –

General comments

- (a) The allocation of S1 places in 2001 was complicated by simultaneous education reform : abolition of the Academic Aptitude Test and reduction of bands from five to three. The latter resulted in a greater degree of randomization and unpredictability in allocation, thus greater dissatisfaction among parents and students.
- (b) Time constraint and parental pressure aggravated the strain on ED. At times, ED staff had to work round-the-clock to meet the tight schedule.

Contingency plans

- (c) ED was technically ready for combined processing in the 2000 and 2001 SSPA exercises. ED had prepared for contingencies.

Relief measures and special placement service

- (d) ED's assertion that SPS was "outside the RM" was not convincing. It was clearly devised to accommodate the remaining affected students not placed in schools of their higher choice under the RM. The SPS was, therefore, *de facto* an extension and an integral part of the RM.
- (e) Had ED assessed more accurately the number of affected students and included in the RM exercise the additional school places later created under the SPS, placement would have been, and could be seen as, better co-ordinated.

Operation of the monitoring group

- (f) ED did not allow enough time for the MG to comment or to advise before the results of the RM were made public.
- (g) The fourth meeting of the MG was held with more than half the members absent.

Handling of banding information

- (h) ED's practice of not retaining students' banding information after allocation was unreasonable, given the importance of the band in determining priority for placement and the justifiable need for students/parents and investigating bodies, such as the Equal Opportunities Commission ("EOC") and this Office, to inspect such information in case of queries or complaints.
- (i) As ED could reconstruct banding information from raw data, it could be argued that the department was still holding banding information indirectly. ED should review its practice of not retaining and not releasing banding information to students/parents on their express request, to ensure consistency with the Personal Data (Privacy) Ordinance.

Public announcements and comments

- (j) Some parents had refrained from applying for relief due to ED's statement at press conference about the slim chance of success. They then found that statement to be untrue: ED had practically re-allocated all affected students through the RM and the SPS. Those speculative utterances had come across as cautioning against application for relief.

Summaries of Direct Investigations

Annex

7

Other observations

- (k) ED had reviewed the SSPA System and announced in December 2001 that, to abide by the Court ruling, the only changes for the time being would be removal of the gender-based features.
- (l) ED had released in February 2002 new guidelines for internal assessment of Primary Five and Six students.
- (m) The Education Commission would further review the SSPA System in 2003/04 and any long-term changes would be implemented in 2005/06.

Conclusions

4. The Ombudsman made the following conclusions –
- (a) ED had prepared for contingencies.
 - (b) The relief measures were fine in principle but deficient in implementation.
 - (c) Administrative deficiencies had been identified in the procedures for the MG's execution of its advisory and supervisory functions.
 - (d) ED's treatment of requests for access to banding information from EOC and from aggrieved students or their parents was inconsistent.
 - (e) ED had made apparently "cautious", but in effect misleading, statements about the chances of success under the RM.
 - (f) Introduction of the SPS, in our view a *de facto* extension of the RM, had been made with undue haste and without advance notice to students and parents.

Recommendations

5. The Ombudsman made the following recommendations to ED –

Relief measures

- (a) To ensure fairness and maximum access to redress for affected students when formulating and implementing RM, if ever necessary again in future.

Monitoring mechanism

- (b) To work out with the monitoring body beforehand the key stages of operation and set up corresponding check points for review.
- (c) To allow time for the monitoring body to review and advise on the operation and for the department to respond to or act on such advice.
- (d) To reschedule meetings of the monitoring body when more than half of the members are absent.

Banding information

- (e) To review, in consultation with the Office of the Privacy Commissioner for Personal Data and EOC, the existing practice of retaining and releasing banding information.

Public announcements and comments

- (f) To refrain from speculating on success of appeal in public statements or comments.

Long-term allocation

- (g) To speed up the progress of the overall review of the SSPA System.

Final Remarks

6. The Ombudsman saw a conflict between the policy objectives of the Sex Discrimination Ordinance and the educational principles behind the SSPA System. While the legislation on sex discrimination should be enforced, we also saw the need to recognise and accept the different rates of growth, development and maturity between boys and girls. This was a fact of life and nature which no legislation could alter.

May 2002

申訴專員

Summaries of Direct Investigations

Annex

7

HOME AFFAIRS DEPARTMENT (HAD)

The Role of HAD in Facilitating the Formation of Owners' Corporations

Background

In April 2001, Government announced a comprehensive strategy on building safety and timely maintenance. This included responsible building management, for which HAD was given considerable extra resources to promote and encourage.

2. Meanwhile, there was considerable public concern over HAD's role in facilitating the formation of Owners' Corporations ("OCs") in private buildings. This investigation examined the means and mechanism of HAD for assisting property owners in OC formation, ascertained their adequacy and effectiveness and assessed the need for improvement.

Government Policy

3. Responsibility for managing and maintaining private property rests with the owners. The role of Government is to assist and support responsible owners and to take action against non-compliance. Government's established policy on private building management is to encourage property owners to form OCs and to advise and assist them in carrying out their responsibilities.

Means and Mechanism for Assisting Property Owners

4. Four Building Management Resource Centres ("BMRCs") were set up in Kowloon, Hong Kong, New Territories West and New Territories East to provide information and advice for owners; to organise training courses and workshops for them; and to mount exhibitions on building management. BMRCs also arranged appointments for free expert advice by seven professional bodies upon the request of owners and OCs.

5. With the additional resources, HAD set up a Building Management Division ("the Division") in Headquarters to take charge of the overall planning and co-ordination of building management functions and services. The Division also provided support to staff in districts. District Building Management Liaison Teams ("Liaison Teams") were set up in the 18 District Offices ("DOs") to assist owners to form OCs, to provide outreach support service to OCs and owners, to attend OC meetings, to handle complaints and to mediate in disputes. Liaison Teams were staffed by Liaison Officers, Housing Grade Officers and Temporary Community Organisers ("TCOs"), varying in numbers according to district needs and workload.

6. HAD supported frontline staff by publishing reference manuals, advising on difficult cases and equipping them with the necessary knowledge and skills. The Department promulgated appropriate guidelines and procedures for control of service delivery, held regular staff meetings, set performance indicators and targets and regularly reviewed its services.

Conclusions

7. From the investigation, this Office formed the following conclusions –
- (a) There was scope for HAD to improve the means and mechanism for delivering services on OC formation.
 - (b) HAD staff would benefit from clearer guidelines and procedures on services for OC formation.
 - (c) HAD staff should be more professional and proactive in assisting owners in OC formation.
 - (d) HAD's overall efficiency and effectiveness in OC formation services could be raised if (a) to (c) above were properly addressed.

Recommendations

8. The Ombudsman made the following recommendations to HAD –

Means of service delivery

- (a) To produce a comprehensive information-cum-resource kit including VCD on OC formation for reference of owners and those who wish to form OCs.
- (b) To improve the website on building management by adding a thematic section and a sitemap for ready retrieval of information.
- (c) To seek client feedback and review the opening hours of BMRCs to suit client convenience.
- (d) To enhance the telephone enquiry and advisory service for client convenience.
- (e) To enrich the contents of reference manuals, and to publish categorised case studies of good practice and summaries of court judgments on building management cases for staff reference.
- (f) To produce information materials, such as leaflet and poster, on the criteria, limitations and procedures of the free professional advisory service.
- (g) To identify and review operations essential to the delivery of services on OC formation, draw up appropriate criteria, guidelines and procedures for these operations and suitably promulgate them among staff.

Summaries of Direct Investigations

Annex

7

- (h) To consider the scope for simpler, less formal and less costly mechanism for resolving building management disputes.
- (i) To expedite the production of a clear and comprehensive pamphlet to publicise building management services.
- (j) To publish a central building management bulletin or newsletter to disseminate to the public up-to-date building management information and services.
- (k) To organise and conduct more talks with OC formation as the main theme.

Support and control

- (l) To provide support for frontline staff by professional advisory service in a more systematic manner.
- (m) To strengthen staff training on customer services, communication and mediation skills as well as training on the Building Management Ordinance and other building management issues.
- (n) To include more performance indicators to better reflect efforts on OC formation and to set out corresponding targets to better monitor staff performance.
- (o) To regularly publish performance targets and achievement on OC formation services for improved transparency and accountability.
- (p) To set up client liaison group(s) to tap client feedback and suggestions for service improvement.
- (q) To tap the local knowledge of District Councils for views on strategies, priorities, targets and feedback on the work and performance of Liaison Teams.

Organisational set-up and staff deployment

- (r) To rectify the situation in some DOs where Liaison Teams exist nominally but not in practice.
- (s) To review and revise the duties of TCOs.

Others

- (t) To consider amending the law to empower the Department to investigate into complaints alleging non-compliance with the legal requirements for OC formation.

- (u) To review critically, in consultation with stakeholders, the Department's role and services in building management.

9. Overall, HAD accepted all recommendations in the report. The Department had also started to implement a number of similar measures in the course of our investigation.

March 2003

申訴專員

Summaries of Direct Investigations

Annex

7

HONG KONG SPORTS DEVELOPMENT BOARD (SDB)

Funding of Sports Programmes by SDB

Background

To ensure that public funds granted to National Sports Associations (“NSAs”) for development of sports were allocated and monitored fairly and efficiently, The Ombudsman conducted an investigation into the funding of sports programme by SDB.

Funding Allocation Process

2. The procedures were as follows –
 - (a) Each NSA would submit to SDB a “Yearly Plan” detailing breakdown of expenditure.
 - (b) The Sports Development Manager (“SD Manager”) concerned would check every item in accordance with SDB guidelines, to arrive at a preliminary budget for each NSA.
 - (c) All SD Managers would meet to adjust the preliminary budgets to the level within SDB’s overall projected provision.
 - (d) The Executive Director, Sports Development Committee, Hong Kong Sports Institute Management Committee and Corporate Management Committee cleared the revised budgets for the approval of the SDB governing body.

Monitoring and Control

3. SDB monitored NSA’s subvented activities as follows –

Plans and reports

- (a) To justify allocation of subvention, every NSA had to submit an annually updated Four-year Plan, Yearly Plan, Programme Plan and an Annual Financial Report. For every subvented programme, the NSA had to furnish an Application for Grants, a Statement of Accounts and an Evaluation Report.

Meetings and visits

- (b) SD Managers regularly met with NSA officials, visited NSAs at least 15 times a year, attended their sports events, executive committee meetings and annual general meetings.

Monitoring subvented staff

- (c) For posts funded by SDB, SD Managers participated at staff selection interviews, took part in staff training, scrutinised staff appraisal reports and interviewed the staff regularly.

Comments and Opinions

- 4. The Ombudsman made the following comments and opinions –

Funding policy

- (a) The funding policy should be realistic and rational, comprehensive and comprehensible. It must be made clear to all parties concerned.

Funding allocation practices and procedures

- (b) SDB appeared to apply the funding policy too rigidly, thereby discouraging NSAs from attempting new or creative projects.
- (c) On the funding allocation process –
 - i) NSAs tended to exaggerate events and participants in their funding applications, wasting SD Managers' time and efforts in vetting;
 - ii) if NSAs were given a budget to work on and advised of the allocation criteria before drawing up their Yearly Plans, they could tailor their bids accordingly; and
 - iii) SDB's criteria for scrutinising NSAs' requests appeared to be unreasonable at times.

Monitoring system

- (d) On SDB's monitoring of NSAs –
 - i) the application procedures were cumbersome, some details had to be supplied repeatedly;

Summaries of Direct Investigations

Annex

7

- ii) some supporting documents and forms might not serve any useful purposes;
- iii) when irregularities were detected, remedial measures to be taken by NSAs concerned were not monitored; and
- iv) some control measures were too severe and might have undesirable effects.

Conclusions

5. While there should be proper control of public funds, the present system was cumbersome, rigid and unreasonable on occasions. It gave the impression of a lack of mutual trust between SDB and NSAs.

6. We noted that the Home Affairs Bureau had published a consultation report “Towards a More Sporting Future” to simplify procedures on funding of NSAs in June 2002. We supported the proposals and hoped that our findings and recommendations would help the review.

Recommendations

7. SDB accepted the following recommendations from The Ombudsman –

- (a) **Long term measure** – a revised system should be introduced for the efficient management and monitoring as well as effective use of public resources.
- (b) **Interim measures** –

Allocation of grants

- i) review the allocation criteria;
- ii) updating the guidelines on funding allocation;
- iii) NSA officials responsible for assessing applications should be fully conversant with the policies and procedures, practices and guidelines;
- iv) NSAs should have adequate information and advice to enable them to prepare the Yearly Plans rationally and realistically;

- v) funding policy and guidelines should be interpreted liberally and flexibly with due regard to the expertise of NSAs in their specific fields;

Monitoring

- vi) streamlining the present scale of plans and reports required for the submission;
- vii) review the application forms;
- viii) devising a system to ensure that NSAs would take follow up action on SDB's requests and suggestions; and
- ix) amending monitoring measures that impose unduly harsh sanctions.

August 2002

MBUDSMAN

Summaries of Direct Investigations

Annex

7

HOSPITAL AUTHORITY (HA)

Handling Missing Patients in HA Hospitals

Background

This direct investigation was initiated following reports of patients missing from HA hospitals. We examined the administrative procedures and practices for handling in-patients reported or found missing from HA hospitals, ascertained their adequacy and effectiveness and assessed the need for improvement.

Missing Patients

2. Between June 1999 and May 2001, there were 6,486 reports of patients missing from 40 HA hospitals. In nine cases, the patient was later found dead.

Reasons for Missing

3. A hospital is for medical treatment and recuperation, not for detention, of patients. Patients, therefore, have unrestricted movement within the hospital compound. Patients often leave their ward. There were many reasons for patients going “missing” from hospitals – e.g. to attend to personal matters, to have tea or other recreational activities with friends, to get illicit drugs and to leave upon regaining consciousness from drunkenness or drug overdose.

Hospital Responsibilities and Patient Responsibilities

4. HA hospitals are responsible for the safety and well-being of patients in their care, particularly those “at risk”. In turn, patients had responsibility to follow hospital rules for patient conduct. HA expected patients, and their families, to abide by hospital rules and regulations.

Guidelines and Procedures

5. HA adopted an approach of decentralised management, with Hospital Chief Executives being responsible for the management of their hospitals. In 1995, HA issued guidelines on procedures for handling missing patients, with suggestions such as searching for them, contacting family members/relatives, reporting to the medical officer on duty, recording the incident and notifying the Police.

Practices

6. A patient is free to move within hospital premises and was often encouraged to do so to facilitate recuperation. HA hospitals would monitor the movement of patients through checks by nurses before medication/treatment and during meal times, head count before handing over to the next shift and ward rounds by medical officers.

7. When a patient was found or reported missing, hospitals would activate their operational guidelines and procedures. These were not identical for all HA hospitals.

Observations and Opinions

8. From our investigation, we had some observations and views –

Definition

- (a) HA hospitals had devised four definitions based on their perception and experience of handling patients found or reported missing. Different hospitals adopted different definitions, resulting in inconsistency and inaccuracy of information.

Method of counting

- (b) Lack of uniform counting was the result of diversity in definition and interpretation of “missing patients”. Some counted “episodically” and others “individually”.

Reporting to police

- (c) HA guidelines, issued in 1995 and 1999 respectively, had guidance on seeking Police assistance. The decision whether or not to report to the Police would be for the staff concerned to make, based on their clinical judgement and assessment of the patient as well as the circumstances at the time.

Closing cases

- (d) There was no uniform timespan to close “missing patient” cases. Some hospitals used as benchmark 24 hours or 48 hours.

Keeping statistics

- (e) The two sources of “missing patient” data – HA’s computerised data warehouse and hospitals’ manual records showed substantial discrepancies. For the same period between June 1999 and May 2001, the computerised data warehouse captured 2,992 cases and the manual records 6,486 – a difference of 3,494.

Preventive measures

- (f) HA maintained that there should be a balance between monitoring patient movement and respecting patients’ personal freedom and rights. Hospital staff would exercise their clinical judgement in implementing appropriate measures to minimise the risk of patients disappearing from hospitals.

MBUDSMAN

Summaries of Direct Investigations

Annex

7

Patient and family responsibilities

- (g) Patients and family were also responsible for reducing the risk of patients missing from hospitals. They should cooperate by complying with hospital conditions, rules and regulations.

Conclusions

- 9. This Office had the following conclusions –
 - (a) There was no standard definition of “missing patients” for adoption HA-wide.
 - (b) There was no uniform method of counting missing patients HA-wide.
 - (c) There was no uniform practice among HA hospitals in reporting missing patients to the Police.
 - (d) There was inconsistency in missing patient data and records maintained by HA Head Office and individual hospitals.
 - (e) There were no guidelines on procedures for hospital staff to take suitable measures for minimising the risk of patients disappearing from hospitals.

Recommendations

- 10. The Ombudsman made 14 recommendations to HA –

Definition and method of counting

- (a) To standardise the definition of “missing patient” among HA hospitals.
- (b) To devise a formal definition of patients “at risk” to enable staff of all HA hospitals to take appropriate precautions.
- (c) To standardise the method of counting missing patients among HA hospitals.

Handling of missing patients

- (d) To review and update HA guidelines and procedures for handling missing patients and to require HA hospitals to put in place operational instructions for application.
- (e) To standardise the procedures and practices HA-wide for reporting cases of missing patients to management and to family.
- (f) To examine the existing measures taken by hospital staff in minimising the risk of patients disappearing and to formulate relevant guidelines and procedures.
- (g) To enhance staff awareness and vigilance in handling patients “at risk”.
- (h) To enhance guidance for patients and family to impress upon them the need for compliance with hospital rules and regulations.
- (i) To review and update the guidelines on seeking Police assistance after a specified time span, say, 24 hours after disappearance (as usual for Police cases) and less for patients “at risk”.
- (j) To standardise the procedures and practices HA-wide for reporting cases of missing patients to the Police for assistance.
- (k) To standardise the time span for closing a case –
 - (i) after thorough search; and
 - (ii) report to the Police.

Management information

- (l) To introduce measures for accurate and consistent management information on missing patients.
- (m) To designate a unit in HA Head Office to coordinate and collate records of missing patients.

Review

- (n) To review arrangements for handling missing patients regularly and to revise them when appropriate in the light of changing circumstances and community expectations.

Final Remarks

11. HA saw eye to eye with this Office the community's legitimate expectations of HA taking proper precautions for the safe care of patients, particularly those "at risk". We were delighted that HA accepted all the recommendations and undertook to implement them fully in three to four months.

November 2002

SOCIAL WELFARE DEPARTMENT (SWD) AND TELEVISION AND ENTERTAINMENT LICENSING AUTHORITY (TELA)

Monitoring of Charitable Fund-Raising Activities

Background

Charitable fund-raising activities have long been a way of Hong Kong life. Considerable amounts of money are involved. There was community concern from time to time over the monitoring of such activities, especially whether the donations were responsibly used. This investigation examined the mechanism used by SWD and TELA for monitoring such activities, assessed the adequacy and effectiveness of such mechanism and areas for improvement.

Charitable Institutions

2. Some charities were established by legislation while a large number operated autonomously under their governing bodies. Many non-government charitable organisations were subvented and regulated by Government. Tax exemption was granted to charitable institutions or trust of a public non-profit making character.

Monitoring Mechanism

3. To maintain their operation, charities had to raise funds by public donations. Fund-raising in public places (mainly flag days) required a public subscription permit from SWD under the Summary Offences Ordinance. A licence from TELA under the Gambling Ordinance was required for fund-raising through lotteries. A permit or licence was not required for other fund-raising activities, e.g. auctions, balls, concerts, dinners, walks, film premiere, shows in mass media, request for donations by mail, advertisements or phone-in arrangements.

Limitations of the Law

4. SWD and TELA required from applicants, as a condition for approval, audited accounts of the fund-raising events. Both departments relied on these audited accounts to guard against unscrupulous use of the proceeds. However, SWD and TELA could not impose conditions *ad infinitum*. Moreover, these administrative conditions were confined only to specified fund-raising activities, not all the others which fall outside those Ordinances. Certainly, those organisations not holding events in public places or lotteries would not be subject to monitoring.

Summaries of Direct Investigations

Annex

7

Conclusions

5. This Office had the following conclusions –
- (a) Existing Government control of charitable fund-raising was confined to activities and not the organisations, and even then, only to flag days and lotteries.
 - (b) Control did not cover all charitable bodies or even all charitable fund-raising activities.
 - (c) Government monitoring of charities was partial and patchy, fragmented and ineffective.
 - (d) Present legislative provisions could not effectively safeguard the public against unscrupulous or irresponsible fund-raisers.

Recommendations

6. The Ombudsman had made the following recommendations –

For SWD and TELA

Short to medium term

Code of Practice

- (a) To draw up a Code of Practice (“the Code”) on good administration and management for reference of charities.
- (b) To publish the Code for public information.
- (c) In the light of (a) and (b), to review the need for imposing conditions on public subscription permit and lottery licence applicants.

Enhance transparency and accountability

- (d) SWD to consider maintaining, for public inspection, a central register of charities which complied with the requirements of the Code.
- (e) To display *in situ* annually the names of those charities for general information as a guide to their *bona fides*.
- (f) To introduce a scheme for monitoring the *bona fides* of those charities seeking to be placed on the central register at (d), e.g. through complaints.

For the Administration

Longer term

- (g) To review the adequacy and appropriateness of the present policy and practices on monitoring charities and their fund-raising activities.
- (h) To consider the pros and cons of –
 - i) fuller Government control of charities; and
 - ii) reliance on charities self-regulating in line with world trend.
- (i) To consider mechanism for deterring abuse and penalties for such acts.

7. SWD and TELA had accepted our recommendations for implementation in due course.

February 2003

申訴專員

Summaries of Direct Investigations

Annex

7

TRANSPORT DEPARTMENT (TD)

Administration of Vehicle Registration Marks Auctions

Background

This direct investigation was initiated in the wake of reports that at auctions for vehicle registration marks (“VRMs”), the bullying behaviour of spirited gang members had calculated to deter other participants from bidding against their “boss”. If unchecked, this could affect public confidence in VRM auctions.

Administrative Arrangements for Conduct of Auctions

2. TD adopted the following administrative arrangements for VRM auctions –
 - (a) **Auctioneers** – professional surveyors from within or outside Government.
 - (b) **Presiding executive** – while the supervisor in overall charge was a Senior Executive Officer, a junior Executive Officer of TD physically presided over the auctions. After the bullying incidents came to light, both the supervisor and a third officer would attend the auctions regularly.
 - (c) **Maintenance of order** – since November 2001, security guards have been engaged, liaison with the Police has been stepped up and plain-clothes police officers have been deployed to the auctions.
 - (d) **Rules governing the administration of auctions** – guidelines and instructions were issued to TD staff.
 - (e) **Notice on rules of etiquettes** – while not required to register, bidders and observers were issued with a copy of the notice on their entering the venue.

Observations and Opinions

3. The Ombudsman made the following observations and opinions –

Staffing

- (a) In case of untoward incidents, the junior Executive Officer did not have sufficient experience, or the maturity, to take command of the situation.

On-site security guards

- (b) They appeared to be either unacceptably lethargic or not suitably briefed about their role.

Maintenance of order

- (c) Both the auctioneers and on-site TD staff took no action to maintain order in the venue and participants were free to move around while the auction was in progress.

Action against harassment

- (d) Apart from making a report to the Police, TD staff and the auctioneers did not take any positive action to stop the harassing actions.

Recommendations

- 4. The Ombudsman made the following recommendations –

Staffing and guards

- (a) A more senior and therefore experienced TD official should act as the auctioneer.
- (b) TD should employ more professional guards.

Rules governing auctions

- (c) TD should regularly review, update and re-print its guidelines and instructions.
- (d) TD should consider pre-registration of bidders as common in other auctions, to help preserve their anonymity, thereby protecting them from being targets for bullying, and to prevent successful bidders from reneging on their bids by refusing to give their personal data.
- (e) TD should strictly enforce the rule requiring participants to remain seated during an auction.

Measures against harassment

- (f) TD should draw up clear directives on what constitutes harassing behaviour.

Summaries of Direct Investigations

Annex

7

- (g) The auctioneer should stop trouble-makers from continuing their harassing behaviour. In case of non-compliance, they should be escorted out of the venue.
- (h) Should trouble-makers refuse to cooperate, the auctioneer should consider adjourning the auction. Police assistance should be enlisted when necessary.
- (i) TD should reconsider the efficacy of video-taping the auctions.
- (j) TD should explore alternative means to auction VRMs, for example, e-auctioning.

Public information and forewarning

- (k) TD should widely publicise its rules and guidelines via the media, its homepage, information leaflets and its notice to participants.

Comments from TD

5. TD accepted most of the recommendations. However, TD preferred to continue with the employment of surveyors as auctioneers and agreed that they should be more experienced. TD also agreed to deploy experienced on-site staff to supervise the auctions.

October 2002

LEISURE AND CULTURAL SERVICES DEPARTMENT (LCSD)

Case No. OMB 2002/1985(P)

LCSD – training course – failing to prevent non-beginners from enrolling in a beginner’s course

The complainant took part in a tennis course for beginners. He alleged that the coach did not verify the identity of participants before the course. He noted that 12 out of 16 participants did not require any coaching and played tennis among themselves throughout the training session.

2. LCSD conducted an investigation. The coach had verified the identity of all participants, except a latecomer, at the first session. At subsequent regular checks, the coach was seen taking roll calls.

3. LCSD was studying the feasibility of computer-assisted enrolment and planning to subdivide the course into different levels. Beginners would be given priority to join the basic course, after which they could progress to higher levels. The Department would also review the contents of various activities and fees of leisure activities from time to time.

TRANSPORT DEPARTMENT (TD)

Case No. OMB 2002/3401(P)

TD – road markings – failing to show clear road markings in Shing Mun Toll Plaza

The complainant pointed out that there were inadequate road markings to denote the auto toll lane in the Shing Mun Toll Plaza towards Shatin. In early 2002, he wrote to the Transport Complaints Unit and was informed that road markings would be put in after the review of speed limit in July. By October, there was still no sign of any works.

2. TD informed the complainant that by the end of the year, the road markings would be completed and the speed limit within the toll area lowered from 70km/h to 50km/h.

3. TD wrote further to the complainant in January 2003 to advise him that the works had been delayed to the end of January because of the need to relocate some pavement lights.

LANDS DEPARTMENT (Lands D)

Case No. OMB/WP/14/1 S.F.100

Review Mechanism of the Phased Enforcement Programmes against Unauthorised Building Works in New Territories Exempted Houses

Introduction

In 1996, this Office conducted a direct investigation on unauthorised building works in New Territories Exempted Houses (“UBW in NTEH”). On our recommendation, Lands D had repeatedly tried but failed to secure funds for a survey to gauge the problem and resource requirements for tackling it. In the absence of an effective policy, the problem had persisted and was likely to deteriorate.

2. Meanwhile, New Territories District Lands Offices (“NT DLOs”) had scheduled enforcement programmes against UBW in NTEH. In view of the limited resources for enforcement, each NT DLO has a review board to identify cases which warrant urgent enforcement action.

Background

3. We were alerted by a complaint in which one particular DLO projected that it would take four to five years to take enforcement action against a UBW which had occasioned burglary to the complainant. The review board concerned refused to accord higher priority to the case. This Office, therefore, examined the review mechanism.

Observations and Conclusions

4. While it was recognised that the problem of UBW had yet to be assessed properly, Lands D, at headquarters, should monitor the processes and practices of DLOs in the operation of the review mechanism. DLOs should adopt a firm but pragmatic and flexible approach in the determination of the priority for action in each special case.

Subsequent Developments

5. Lands D accepted our recommendations and reminded all NT DLOs on the importance of using the review mechanism properly. As regards the UBW which led to this assessment, the relevant review board subsequently concluded that higher priority, thus earlier action, should be accorded.

THE OMBUDSMAN

Report and Financial Statements
For the year ended 31 March 2003

德勤·關黃陳方會計師行

THE OMBUDSMAN

REPORT AND FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 MARCH 2003

CONTENTS

PAGE(S)

AUDITORS' REPORT

1

INCOME AND EXPENDITURE ACCOUNT

2

BALANCE SHEET

3

NOTES TO THE FINANCIAL STATEMENTS

4 - 7

AUDITORS' REPORT

TO THE OMBUDSMAN

(Established in Hong Kong under the Ombudsman Ordinance)

We have audited the financial statements on pages 2 to 7 which have been prepared in accordance with accounting principles generally accepted in Hong Kong.

Respective responsibilities of The Ombudsman and the auditors

The Ombudsman Ordinance ("the Ordinance") requires The Ombudsman to prepare financial statements which give a true and fair view. In preparing financial statements which give a true and fair view, it is fundamental that appropriate accounting policies are selected and applied consistently.

It is our responsibility to form an independent opinion, based on our audit, on those financial statements and to report our opinion to you.

Basis of opinion

We conducted our audit in accordance with Statements of Auditing Standards issued by the Hong Kong Society of Accountants. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by The Ombudsman in the preparation of the financial statements, and of whether the accounting policies are appropriate to The Ombudsman's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance as to whether the financial statements are free from material misstatement. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements. We believe that our audit provides a reasonable basis for our opinion.

Opinion

In our opinion, the financial statements give a true and fair view of the state of The Ombudsman's affairs as at 31 March 2003 and of its surplus for the year then ended, and have been properly prepared in accordance with accounting principles generally accepted in Hong Kong.



5 June 2003

THE OMBUDSMAN

INCOME AND EXPENDITURE ACCOUNT
FOR THE YEAR ENDED 31 MARCH 2003

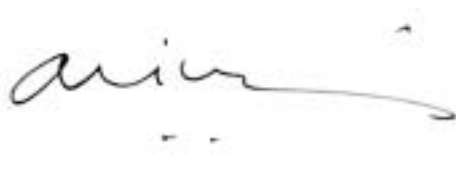
	<u>NOTE</u>	<u>2003</u> HK\$	<u>2002</u> HK\$
Income			
Government subventions		112,534,921	109,162,954
Amortisation of deferred income		3,359,677	-
Interest income on bank deposits		1,225,544	261,339
Other income		3,601	8,347
		<u>117,123,743</u>	<u>109,432,640</u>
Expenditure			
Operating expenses		<u>86,527,214</u>	<u>87,065,543</u>
Surplus for the year	4	30,596,529	22,367,097
Surplus brought forward		<u>22,367,097</u>	<u>-</u>
Surplus carried forward		<u><u>52,963,626</u></u>	<u><u>22,367,097</u></u>

THE OMBUDSMAN

BALANCE SHEET
AT 31 MARCH 2003

	<u>NOTES</u>	<u>2003</u> HK\$	<u>2002</u> HK\$
Non-current assets			
Property and equipment	6	100,291,309	76,978,907
Current assets			
Deposits and prepayments		790,574	527,602
Interest receivable		401,761	51,933
Bank balances and cash		74,726,592	37,151,636
		75,918,927	37,731,171
Current liabilities			
Accrued charges and other payables		17,725,578	10,992,356
Contract gratuity payable		2,070,289	819,267
Government subventions - deferred income	7	3,438,190	1,933,422
		23,234,057	13,745,045
Net current assets		52,684,870	23,986,126
		152,976,179	100,965,033
Surplus	8	52,963,626	22,367,097
Non-current liabilities			
Contract gratuity payable		2,987,646	3,194,483
Government subventions - deferred income	7	97,024,907	75,403,453
		152,976,179	100,965,033

The financial statements on pages 2 to 7 were approved and authorised for issue by The Ombudsman on 5 June 2003.



A handwritten signature in dark ink, appearing to be 'A. H. ...', is written above a horizontal line.

THE OMBUDSMAN

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2003

1. BACKGROUND AND FUNCTIONS OF THE OMBUDSMAN

The Ombudsman was established as a corporation sole by statute on 19 December 2001. The functions of The Ombudsman are prescribed by the Ombudsman Ordinance ("the Ordinance").

2. ADOPTION OF STATEMENTS OF STANDARD ACCOUNTING PRACTICE

In the current year, the Ombudsman has adopted, for the first time, a number of new and revised Statements of Standard Accounting Practice ("SSAPs") issued by the Hong Kong Society of Accountants. Adoption of these SSAPs had no material effect on the results for the current or prior accounting periods. Accordingly, no prior period adjustment has been required.

Employee benefits

In the current year, the Ombudsman has adopted SSAP 34 "Employee Benefits", which introduces measurement rules for employee benefits, including retirement benefit plans. Because the Ombudsman participates only in defined contribution retirement benefit scheme, the adoption of SSAP 34 has not had any material impact on the financial statements.

3. SIGNIFICANT ACCOUNTING POLICIES

The financial statements have been prepared under the historical cost convention and in accordance with accounting principles generally accepted in Hong Kong. The principal accounting policies adopted are as follows:

Income recognition

Subventions from Government are accounted for on a cash basis.

Interest income is accrued on a time basis, by reference to the principal outstanding and at the interest rate applicable.

Property and equipment

Property and equipment costing over HK\$1 million individually are stated at cost less accumulated depreciation.

Newly acquired assets costing less than HK\$1 million individually are written off in the year of purchase to the statement of income and expenditure account.

Depreciation is provided to write off the cost of property and equipment over their estimated useful lives, using the straight-line method, at the following annual rates:

Land and buildings	2.5%
Leasehold improvements	10%

The gain or loss arising from disposal or retirement of an asset is determined as the difference between the sales proceeds and the carrying amount of the asset and is recognised in the income and expenditure account.

THE OMBUDSMAN

3. SIGNIFICANT ACCOUNTING POLICIES - continued

Deferred income

Subventions from government related to the acquisition of depreciable assets are presented as deferred income and released to income over the estimated useful lives of the relevant assets.

Impairment

At each balance sheet date, The Ombudsman reviews the carrying amounts of its assets to determine whether there is any indication that those assets have suffered an impairment loss. If the recoverable amount of an asset is estimated to be less than its carrying amount, the carrying amount of the asset is reduced to its recoverable amount. Impairment loss is recognised as an expense immediately.

Where an impairment loss subsequently reverses, the carrying amount of the asset is increased to the revised estimate of its recoverable amount, such that the increased carrying amount does not exceed the carrying amount that would have been determined had no impairment loss been recognised for the asset in prior years. A reversal of an impairment loss is recognised as income immediately.

Operating leases

Rentals payable under operating leases are charged to income and expenditure on a straight line basis over the lease term.

Retirement benefit costs

Payments to defined contribution retirement benefit plan are charged as an expense as they fall due.

4. SURPLUS FOR THE YEAR

	<u>2003</u> HK\$	<u>2002</u> HK\$
Surplus for the year has been arrived at after charging:		
Auditors' remuneration	15,000	10,000
Depreciation of property and equipment	2,844,497	21,096
Office rentals under operating leases	3,909,308	7,362,953
Property and equipment written off	9,374,164	26,282
Staff costs:		
Salaries and other allowances	57,842,501	65,561,100
Contract gratuity	4,071,317	4,970,697
MPF contributions	638,375	309,077
	<u>62,552,193</u>	<u>70,840,874</u>

THE OMBUDSMAN

5. TAXATION

No provision for Hong Kong Profits Tax has been made in the financial statements as The Ombudsman is exempt from taxation of the Inland Revenue Ordinance in accordance with the Schedule 1A Section 5(1) of the Ordinance.

6. PROPERTY AND EQUIPMENT

	<u>Leasehold improvements</u> HK\$	<u>Land and buildings</u> HK\$	<u>Office furniture</u> HK\$	<u>Office equipment</u> HK\$	<u>Motor vehicles</u> HK\$	<u>Computer equipment</u> HK\$	<u>Total</u> HK\$
COST							
At 1 April 2002	-	77,000,000	1	1	-	1	77,000,003
Additions	11,456,898	14,700,000	-	-	1	-	26,156,899
At 31 March 2003	11,456,898	91,700,000	1	1	1	1	103,156,902
ACCUMULATED DEPRECIATION							
At 1 April 2002	-	21,096	-	-	-	-	21,096
Charge for the year	640,600	2,203,897	-	-	-	-	2,844,497
At 31 March 2003	640,600	2,224,993	-	-	-	-	2,865,593
NET BOOK VALUE							
At 31 March 2003	10,816,298	89,475,007	1	1	1	1	100,291,309
At 31 March 2002	-	76,978,904	1	1	1	1	76,978,907

7. GOVERNMENT SUBVENTIONS

The amount represented the fund granted by the Government for the purchase of office premises which is recognised as income on a straight line basis over the useful life of the asset, estimated to be 40 years.

	<u>2003</u> HK\$	<u>2002</u> HK\$
Government subventions	100,463,097	77,336,875
Less: Amount recognisable as income due within one year, shown under current liabilities	(3,438,190)	(1,933,422)
	<u>97,024,907</u>	<u>75,403,453</u>

THE OMBUDSMAN

8. SURPLUS

	<u>2003</u> HK\$	<u>2002</u> HK\$
Surplus carried forward is derived from:		
Bank interest income and other income	1,498,831	269,686
Unutilised government subventions provided for:		
- Personal emoluments	35,432,252	13,466,126
- Departmental expenses	16,032,543	8,631,285
	<u>52,963,626</u>	<u>22,367,097</u>

9. CAPITAL COMMITMENTS

	<u>2003</u> HK\$	<u>2002</u> HK\$
Capital expenditure in respect of the acquisition of property and equipment contracted for but not provided in the financial statements	<u>187,250</u>	<u>-</u>
Capital expenditure in respect of the acquisition of property and equipment authorised but not contracted for	<u>-</u>	<u>52,880,000</u>



Mr. Wan Suet-ming, Assistant Ombudsman, posing with senior civil servants from Yunnan Province.



Justices of the Peace (JPs) visiting the Drainage Services Department under the JPs Assistance Scheme.



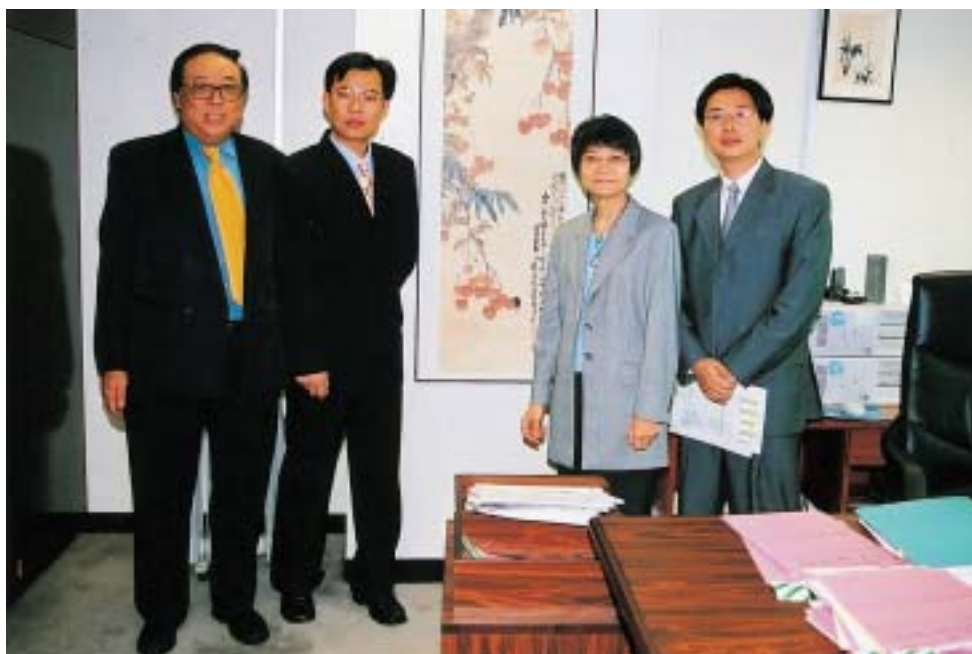
Ms. Alice Tai, The Ombudsman, attending the Australasian and Pacific Ombudsman Conference.



Ms. Alice Tai, The Ombudsman, delivering a speech at the 7th Conference of the Asian Ombudsman Association in Beijing.



A delegation from this Office, led by Ms. Alice Tai, The Ombudsman, visiting Xinjiang for exchange activities with members of the China Supervision Institute.



Mrs. Helen Yu, Deputy Ombudsman, and Mr. Wan Suet-ming, Assistant Ombudsman, posing with Mr. Wei Daiyu from the Ministry of Supervision, China.



Ms. Alice Tai, The Ombudsman, interviewed by the media.



Justices of the Peace (JPs) visiting the Customs and Excise Department under the JPs Assistance Scheme.



Ms. Alice Tai, The Ombudsman, posing with winning individuals and departments of The Ombudsman Awards.



Mr. Wan Suet-ming, Assistant Ombudsman, posing with leading cadres of the Supervision Bureau of Qinghai Province.



Ms. Alice Tai, The Ombudsman, presenting a souvenir to Mr. Pichet Soontornpipit, The Ombudsman of Thailand.



Dr. Sun Qian, President of the National Prosecutors College, China, visiting this Office.



Mrs. Betty Neoh, Assistant Ombudsman, briefing leading cadres of the Supervisory Organs of Shaanxi Province on the work of this Office.



Ms. Alice Tai, The Ombudsman, meeting with Mr. Li Guoguang, Vice President of the Supreme People's Court, Beijing.



Justices of the Peace (JPs) visiting this Office under the JPs Assistance Scheme.



An officer of this Office briefing participants at an Executive Officers Induction Course.



A delegation of the Commission Against Corruption, Macau, led by Mr. Cheong U, The Commissioner, visiting this Office.



Ms. Alice Tai, The Ombudsman, posing with the chairmen and vice chairmen of District Councils after briefing them on the work of this Office.



Mr. Huang Shuxian, Vice Minister of the Ministry of Supervision, China, visiting this Office.



An officer of this Office briefing primary pupils visiting our Resource Centre.



Ms. Alice Tai, The Ombudsman, meeting with representatives from the African Ombudsman Association.



Ms. Alice Tai, The Ombudsman, briefing teachers and students of Lingnan University on the work of this Office.



A roving exhibition at the MTR Tsuen Wan station.



A banner publicising our roving exhibition.

Date	Event
1988	
20 July	The Commissioner for Administrative Complaints (COMAC) Bill was passed by the Legislative Council (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
15 November	COMAC became a member of the International Ombudsman Institute
1994	
1 February	Second Commissioner Mr. Andrew So, JP assumed office
24 June	The COMAC Ordinance was amended: <ul style="list-style-type: none"> • 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」
1 October	First batch of contract investigation officers was recruited
1995	
1 March	Jurisdiction was extended to investigation into alleged breach of Code on Access to Information
24-26 October	The Commissioner hosted the 15 th Australasian and Pacific Ombudsman Conference and the International Ombudsman Symposium
1996	
25 January	Use of Internal Complaint Handling (INCH) mode was introduced to resolve complaints
1 March	Non-official Justices of the Peace (JPs) were enlisted in a JPs Assistance Scheme
16 April	The Ombudsman's Office participated in the establishment of the Asian Ombudsman Association and became a founding member
20-29 April	Exchange programme with the China Supervision Institute was arranged
12-13 June	First Complaint Management Workshop for public officers was organised
5 September	Resource Centre was opened
24 October	The Ombudsman was elected to the Board of Directors of the International Ombudsman Institute (until 31 January 1999)

History in Brief

27 December	English titles were changed to “The Ombudsman” and “Office of The Ombudsman” Jurisdiction was extended to investigation into complaints of non-compliance with the Code on Access to Information against Government departments not included earlier
1997	
1 April	Mediation service was launched as an alternative dispute resolution method
25 July	The Ombudsman Awards were introduced to recognise public organisations handling complaints positively
1998	
8 May	The Ombudsman was elected Secretary to the Asian Ombudsman Association (to date)
1 July	The Ombudsman Certificate of Appreciation was introduced to acknowledge complainants making special contribution towards a higher standard of public administration
1999	
1 April	Third Ombudsman Ms Alice Tai, JP assumed office
22 July	The Ombudsman Awards were extended to recognise public officers’ contribution towards better quality services
2000	
5 January	Complaints by e-mail were accepted
27 July	The Ombudsman Awards were further extended to public officers handling complaints professionally
2 November	The Ombudsman was elected to the Board of Directors of the International Ombudsman Institute (to date)
2001	
28 March	Telephone complaint service was introduced
1 April	Administrative systems independent of Government were instituted in preparation for delinking
19 December	The Ombudsman (Amendment) Ordinance 2001 came into operation : <ul style="list-style-type: none"> • to establish The Ombudsman as a corporation sole with full powers to conduct its own financial and administrative matters • to empower The Ombudsman to set terms and conditions of appointment for staff • to sever linkage with Government systems and processes • to give statutory status to alternative dispute resolution methods including mediation for processing complaints
2002	
28 March	Permanent office accommodation was acquired
6 September	Office moved to permanent accommodation at Shun Tak Centre in Sheung Wan
16 October	The Ombudsman was elected Secretary to the International Ombudsman Institute

THE OMBUDSMAN'S REVIEW

JUNE 2003



2002/03 was quite a full year, fraught with activities. It was our first full year since delinking from Government systems and practices. We moved into our own premises. We recorded 14,298 enquiries received, 4,382 complaints lodged, 4,370 cases concluded and six direct investigations completed : all of them the highest during my term of office.

The heavier caseload put extra pressure on our Office, particularly as many of my investigators were new entrants to replace civil servants previously on loan from Government. Even so, with the diligence of my staff and flexible deployment of temporary case officers, we managed to register the proud record above.

Meanwhile, there were other pressures. On the one hand, some persistent complainants not satisfied with our findings unless all their allegations were substantiated would at times direct their dissatisfaction towards my Office or my staff. On the other hand, a few resistant organisations sensitive to our inquiries would argue against our intervention. Let me assure all that we set out to see justice done. We analyse facts with impartiality; we operate without fear or favour, bias or prejudice. This is our guiding principle and the essence of our professionalism.

To make for a proper perception of our role and responsibilities, we will step up efforts in public information for our community and enhance promotion of a positive complaint management culture among public administrators.

On the other hand, I have been encouraged that some organisations in the course of our Inquiry initiate their own review and introduce remedial measures. This underlines the catalytic influence of our Office in administrative reform.

Looking ahead, I envisage difficult days. Government's financial stringencies have resulted in reduced funding for the Office over the next few years. I must, therefore, be ever more prudent with resources. We will continue to streamline procedures and redistribute duties to ensure that financial constraints will not affect our long term development.

Whatever the odds, we will do our level best to contribute to fair and open, responsive and responsible public administration. We are committed to improving the quality and standard of services in the public sector.