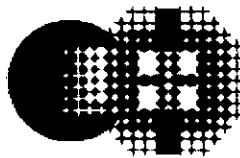


REPORT
OF THE INVESTIGATION
ON
PROCEDURES FOR IMMIGRATION CONTROL
OF PERSONS WHO PRESENT THEMSELVES,
ARE FOUND OR RETURNED TO
IMMIGRATION CHECK POINTS,
WITHOUT PROOF OF IDENTITY

April 2001



Office of The Ombudsman

Hong Kong

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Executive Summary

Legend of Abbreviations

C & ED	Customs and Excise Department
CIO	Chief Immigration Officer
DIR	Draft Investigation Report
EOC	Equal Opportunities Commission
HKSAR Government	Hong Kong Government or The Government of the Hong Kong Special Administrative Region
HKPF	Hong Kong Police Force
ICAC	Independent Commission Against Corruption
II	Illegal immigrant
Imm D	Immigration Department
IO	Immigration Officer
ISSO	Immigration Service Standing Order
MSA	Management Services Agency
PRC	People's Republic of China
ROP	Registration of Persons
SB	Security Bureau
SIO	Senior Immigration Officer
SWD	Social Welfare Department
The Rules	Rules and Directions for the questioning of suspects and taking of statements
This Office	The Office of The Ombudsman

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INTRODUCTION

BACKGROUND

1.1 In late August 2000, extensive media coverage reflected grave public concern over the mishandling of a minor, who crossed the Lo Wu Control Point into Shenzhen without proof of identity. A massive search operation was subsequently mounted, but the whereabouts of the youth is still unknown to date.

1.2 The incident highlighted possible deficiencies in the procedures of the Immigration Department (Imm D) in handling cases of persons who present themselves, are found or returned to immigration check points, without any proof of identity. To examine the relevant procedures and related issues, The Ombudsman informed the Director of Immigration on 1 September 2000 of her decision to conduct a direct investigation into the subject under Section 7(1)(a)(ii) of The Ombudsman Ordinance.

PURPOSE OF THE INVESTIGATION

1.3 The purpose of the investigation is to examine, inter alia, the procedures and monitoring mechanism of Imm D in the handling of persons who present themselves, are found or returned to immigration check points without any proof of identity.

AMBIT OF THE INVESTIGATION

- 1.4 The ambit of the investigation includes -
- (a) whether Imm D has procedures on the handling of persons who present themselves, are found or returned to immigration check points without proof of identity;
 - (b) what mechanisms exist to monitor or enforce the implementation of such procedures;
 - (c) whether there are special procedures relating to the treatment of persons with disabilities, particularly those with communication difficulties; and
 - (d) whether these procedures are adequate and effective and if not, how these can be improved.

THE INVESTIGATION

1.5 In the course of investigation, Imm D provided relevant papers and extracts of information, case files, publications and statistical data to the Office of The Ombudsman (this Office) for examination and analysis. Investigation Officers of this Office held discussions with representatives of Imm D throughout the investigation and also visited immigration control points at the Hong Kong International Airport, the Lo Wu Control Point, and the Macau Ferry Terminal. This Office invited members of the public through press release to offer their comments and suggestions on the subject matter during the period from 1 September 2000 to 3 October 2000, and subsequently received one written submission from an association concerned with matters on pre-school handicapped children.

INVESTIGATION REPORT

1.6 A Draft Investigation Report (DIR) was sent on 13 March 2001 to Imm D and Security Bureau (SB) for comments. The comments were received on 26 March 2001 and 27 March 2001

respectively. This final report was issued on 4 April 2001.

1.7 There are eight chapters in this investigation report. The first seven chapters deal with the background and purpose of the investigation, an overview of the procedures for immigration control of persons who present themselves, are found or returned to immigration check points without proof of identity, the concern of the community, the case studies on related issues, improvement measures taken on the subject, and the overall observations, opinions, and recommendations of The Ombudsman. The last chapter covers the comments of Imm D and SB on this investigation report, and the final remarks of The Ombudsman in response to the comments.

2

PROCEDURES FOR IMMIGRATION CONTROL OF PERSONS WHO PRESENT THEMSELVES, ARE FOUND OR RETURNED TO IMMIGRATION CHECK POINTS WITHOUT PROOF OF IDENTITY

THE LEGAL FRAMEWORK

The Immigration Ordinance

2.1 Immigration officers and immigration assistants are empowered under Section 4(1)(a) of the Immigration Ordinance, Cap. 115 to 'examine any person on his arrival or landing in or prior to his departure from Hong Kong'. The purpose of such examination is to establish the identity of the arriving or departing passengers, by reference to the proof of identity that they carry.

2.2 Visitors invariably carry travel documents as proof of their identity and nationality. For all practical purposes, travel documents are synonymous with proof of identity as far as arrival clearance is concerned. Since the introduction of the Easy Travel Scheme in 1987, Hong Kong residents are allowed to use Hong Kong identity cards for the purpose of immigration examination.

2.3 Passengers arriving without travel document are regarded as persons seeking permission to land and are subject

to examination under Section 4(1)(a) of the Immigration Ordinance, irrespective of their Hong Kong immigration status. There are different clearance procedures for residents and visitors. Basically, entry for undocumented residents is conditional upon their identity being verified, whereas the overriding concern for undocumented visitors is their ability to gain re-entry to their country of origin or place of domicile.

ROLE AND RESPONSIBILITIES OF BUREAU AND DEPARTMENT

Security Bureau

2.4 SB has policy responsibility for immigration matters. Specifically, it is responsible for developing and maintaining appropriate policies governing entry into and exit from Hong Kong; and for ensuring that Hong Kong has a framework of efficient procedures for pre-entry controls and control at points of entry and exit by land, sea and air.

Immigration Department

2.5 Imm D is charged with the statutory function of immigration control of passengers travelling to and from Hong Kong. In this respect, Imm D seeks to facilitate the mobility of tourists, business visitors and Hong Kong residents, to deny entry of undesirables into Hong Kong, and to prevent wanted criminals from departure from Hong Kong.

Rules and Directions

2.6 In October 1992, the Secretary for Security promulgated in the Government Gazette the "Rules and Directions for the questioning of suspects and the taking of statements" (the Rules) for observance by law enforcement officers in the Hong Kong Police Force (HKPF), the Customs and Excise Department (C & ED), Imm D and the Independent Commission Against Corruption (ICAC).

2.7 In September 1998, Imm D issued a booklet on the Rules and distributed it to all immigration staff in February

1999. The 7 rules and 8 directions contained in the Rules are summarised at **Annex 1**.

2.8 The Rules govern the manner in which law enforcement officers should behave when questioning suspects or when taking statements from them. The main objective of the Rules is to ensure that oral replies and written statements provided by a suspect have been given voluntarily. The Rules are administrative in nature. It provides that every person at any stage of an investigation should be able to communicate and consult privately with a solicitor or barrister. It is in breach of the Rules if visual surveillance compromises privacy. Compliance of the Rules by immigration officers is mandatory. The Rules also apply to circumstances where immigration officers are required to obtain information or statements from persons who present themselves, are found or returned to immigration checkpoints without proof of identity, including persons with communication difficulties.

THE DEPARTMENTAL GUIDELINES AND PROCEDURES

2.9 For the handling of undocumented persons at immigration control points, Imm D has additional procedures in the form of Immigration Service Standing Orders (ISSO), working manuals and departmental/sectional instructions /notices.

Guidelines and procedures for handling various types of travellers without proof of identity

Immigration clearance of Hong Kong residents without proof of identity

2.10 Imm D has well-established guidelines and procedures for the handling of Hong Kong residents who present themselves for immigration clearance without any proof of identity. They will be subject to secondary examination and have to go through a series of formalities before they are permitted to land. Generally speaking, there are similar guidelines and procedures for the immigration clearance of Hong Kong residents without proof of identity, whether they

arrive by sea, by land (mainly through Lo Wu Control Point) or by air.

Immigration clearance of foreign visitors without proof of identity

2.11 Overseas passengers arriving without travel documents would normally be refused landing, and be removed by the first available flight. However, after considering the merits of individual cases, those having strong connections with Hong Kong may be granted permission to land. There are detailed procedures for the handling of foreign visitors who present themselves for immigration clearance without any proof of identity.

Immigration clearance of unauthorised persons (e.g. stowaway, illegal immigrant) without proof of identity

2.12 Imm D also has clear guidelines and procedures in handling the immigration clearance of unauthorised persons (e.g. stowaway, illegal immigrant (II)) without proof of identity. If the II were discovered at the Airport, he would be refused landing and removed to his last port of embarkation by the incoming airline. A stowaway with no proof of identity would be refused permission to land and caused to depart by the same vessel.

2.13 In 1998 and 1999, Imm D issued divisional/sectional instructions on the handling of IIs. A person not in possession of any valid travel document or other identity paper, intercepted in the immigration clearance hall or in the vicinity of immigration border control points, could be categorised as an II on the establishment of prima facie evidence. There are clear instructions on the handling of a person whose claim for residence in Hong Kong could not be confirmed after detailed immigration examination or when Imm D had reasons to believe that he was an II. On the handling of IIs, an instruction issued by the Border Division of Imm D in 1988 stipulated that cases of unusual nature should be reported to the duty Senior Immigration Officer (SIO) immediately who in turn would notify the Section Head instantly. After examination, immigration staff would hand

over the suspected II to HKPF for dispatch to the San Uk Ling Immigration Clearance Centre to await repatriation to China.

2.14 Detailed procedures on the handling of Chinese IIs are laid down in the "San Uk Ling Immigration Clearance Centre Working Manual" and also at Item 661 of the Immigration Service Standing Orders. These highlight the need for interviewing officers to be on the alert when an II shows signs of mental unbalance or retardation. In such cases, interviewing officers are supposed to conduct check with HKPF's Missing Persons Units and to verify Imm D's own records to ascertain whether the suspected II was in fact a Hong Kong resident.

Guidelines and procedures for handling travellers slipping through immigration clearance

2.15 Imm D has clear guidelines and procedures on the handling of travellers who had slipped through immigration clearance. This includes arrival slip-through cases detected on departure from the territory, and departure slip-through cases detected on return to the territory.

2.16 As early as 1986, Imm D was concerned about passengers slipping through immigration clearance counters at the Lo Wu Control Point whilst departing for/arriving from China. Channel supervisors were requested to thoroughly check with slip-through passengers and to record their findings on a secondary examination sheet with recommendations to the duty SIO for decision before permitting the passenger to leave the control point. All such cases were recorded in a register for future reference. From 1986 to 1996, there were various internal messages and notices from Lo Wu Control Point reminding immigration counter staff to be on the alert to prevent passengers from slipping through, and requiring channel supervisors to conduct frequent patrol along counters facing Lo Wu bridge and to carry out constant spot-checks on suspicious cases.

Guidelines and procedures relating to the treatment of persons with disabilities, particularly those with communication difficulties

2.17 According to Imm D, instructions on the treatment of disabled passengers are more about facilitation than control. These instructions provide that the aged, infirmed, physically disabled, and persons suffering from mental illness, etc. should be guided out from the queues and dealt with separately.

2.18 As a general rule, a visitor with mental infirmity will be referred to the Port Health doctor for medical advice before a decision is taken. As regards a mentally disturbed passenger with behavioral problems, the procedures provide that the mental conditions of such a passenger should be assessed and certified by a medical officer before he is transferred to the appropriate facilities for detention.

2.19 Special procedures apply to the taking of statements from a mentally handicapped person or a person whose hearing is impaired. The note to Direction 6 of the Rules (summarised at **Annex 2**) requires an appropriate adult to be present for the former category of persons and a sign language interpreter to be present for the latter category of persons.

Liaison with other government departments and mainland authorities

Liaison with HKPF

2.20 When a person without proof of identity is encountered at immigration control points, immigration officers would first ascertain that person's identity through asking questions, checking records and searching for evidence carried by the person. Immigration officers would not normally check the criminal records or missing person records held by HKPF. Such checks would only be conducted if officers have suspicions that the undocumented person was trying to evade detection by claiming a false identity, or when the

department could not confirm the identity of a person or had reasons to believe that he/she was a missing person.

2.21 Before October 2000, Imm D had no laid-down procedures for communicating with HKPF on missing persons. Immigration officers would seek assistance from the appropriate Police Station, and it would be up to that Police Station to conduct a full or partial check as it deemed appropriate. Depending on the nature of the case, HKPF officers might also advise the enquiring immigration officers on what further checks might be required.

Liaison with other government departments

2.22 Imm D has no guidelines or procedures on the verification/exchange of information on missing persons with other government departments. Immigration officers are expected to use their discretion on appropriate actions to be taken, depending on the circumstances of individual cases. Imm D also handles requests from other government departments for confirmation of identity or location of mainlanders.

Liaison with mainland authorities

2.23 The Border Liaison system was set up in early 1980s to improve cross-border consultation and for information-sharing on matters of concern in the border area. Under the system, Imm D and its mainland counterpart would appoint liaison officers to meet and to maintain working level contacts. Liaison meetings are held almost on a daily basis.

2.24 Imm D has also established other direct communication channels with the mainland authorities to handle daily operations at border control points. For example, the duty SIO at the Resident Arrival Clearance Hall of the Lo Wu Control Point has a direct hotline to the Shenzhen Frontier Inspection Station for efficient liaison on daily operational matters.

2.25 Immigration officers would use the hotline to alert their mainland counterpart if a passenger had "dashed through" the departure counters on the Hong Kong side. This would

enable officers of the Shenzhen Frontier Inspection Station to intercept the escapee on the Shenzhen side and to return him to Lo Wu. Immigration officers would also request assistance from their mainland counterparts to verify the identity of any person found without proof of identity if such a person was suspected to be a mainlander.

Other General Procedures

Use of official notebooks

2.26 Item 8.1 of the ISSO stipulates that immigration officers should carry an official notebook to record all matters that had been dealt with by them or brought to their notice during their tour of duty. However, if the actions or information concerned had already been properly recorded in a case report, file, register or occurrence book, etc., it would not be necessary to repeat the information again in the immigration notebook.

Taking photographs and fingerprints

2.27 There is no mandatory requirement for immigration officers to take fingerprints from or to photograph persons who have no proof of identity when they present themselves at immigration control points. Immigration officers are required to handle such cases with flexibility based on the circumstances of individual cases.

Use of handcuffs

2.28 Item 218.3 of the ISSO stipulates that handcuffs should be used to restrain a person only when absolutely necessary. Relevant records should be made whenever handcuffs are used. Immigration officers are reminded that the use of handcuffs on a person renders him automatically under arrest. As this constitutes a degree of force, this should never be applied punitively. Handcuffs should not normally be used on a female or a juvenile.

MONITORING AND CONTROL MECHANISM

Monitoring by duty SIO/Chief Immigration Officer (CIO) and senior management

2.29 Under existing procedures, a person found without proof of identity at control points would be interviewed by one officer of the rank of Immigration Officer (IO). During the process, particulars of the interview, actions taken and recommendations would be recorded in a standard control case report form and submitted to the duty SIO for decision.

2.30 After a case is concluded, a standard control case report will be passed to the duty CIO for scrutiny. Where there are inadequacies in handling, the CIO's views and comments would be noted in the report to be followed by such action as may be appropriate.

2.31 Depending on the nature of the case, senior officers would be alerted prior to a decision being taken. To facilitate such decision making, referral mechanisms are in place for staff to seek guidance from more senior management. For cases of significance, special incidents reports would have to be prepared for the information of the senior management.

2.32 Item 218.6 of the ISSO specifies that the role of a duty SIO is to ensure that a passenger under examination or detention is being properly looked after. The personal needs of passengers under prolonged secondary examination and those being refused permission to land should be looked after as far as possible. A standard monitoring sheet is used at all control points for monitoring the handling of cases under secondary examination.

Monitoring role of channel supervisors

2.33 The duties of a channel supervisor at an immigration check point include field control duties (e.g. to handle emergencies in the clearance hall), channel supervision duties (e.g. to spot problematic passengers in queues before they reach the counter), miscellaneous duties (e.g. to relieve

duty officers and immigration officers for meal breaks), and secondary examinations (e.g. to further examine cases for passengers travel on invalid or lost travel document, lost/invalid/defaced Hong Kong Identity Card, and incorrect documents). As an example, the Lo Wu Control Point normally has 34 channel supervisors on duty every day, each supervising six immigration control officers. Of these, 16 work on morning shifts, 5 on mid-shifts and 13 on night shifts. Channel supervisors are deployed to work at the departure and arrival halls.

2.34 Apart from those assigned to administrative duties, all immigration officers are required to perform shift duties. Shift patterns are designed to ensure that there would be sufficient staff, including channel supervisors, to cope with the passenger/vehicular traffic throughout the operation hours.

Other monitoring facilities

2.35 CCTV systems are installed inside the arrival/departure halls at all immigration control points. At the Lo Wu Control Point, the CCTV system is equipped with close-up/zooming but not recording functions, and is installed for the Duty Officer/SIO to monitor passenger flow and the overall operation of the immigration counters. The CCTV systems installed at Man Kam To, Lok Ma Chau and the Airport, have close-up/zooming and recording functions but the recorded images are too small for clear identification of "slip-through" passengers or the counter officers. At the China Ferry Terminal and the Macau Ferry Terminal, Imm D shares the CCTV systems with Marine Department. These systems have no close-up/zooming or recording functions.

2.36 Gates/doors are installed between immigration clearance counters. They serve as blocking devices, and are normally closed when the counters are not in operation so as to prevent travellers from passing through.

RELEVANT STATISTICS

2.37 Statistics of undocumented person and slip-through cases encountered at immigration control points from 1998 to 2000 are shown at **Annex 3**. As regards undocumented person cases, there were 12,909 in 1998, 13,647 in 1999 and 12,363 in 2000; and over 80% of undocumented person cases were handled by the Lo Wu Control Point. There were only a few slip-through cases reported during the same period, the majority of which were found at Lo Wu Control Point and the Airport.

2.38 The respective establishment size of operational immigration staff and daily passengers handling capacity of these two control points are shown at **Annex 4**. A recent study conducted by the Management Services Agency (MSA) has identified acute staffing shortfall as a problem at the Lo Wu Control Point. As no additional resources had been provided to the Lo Wu Control Point to keep pace with its increased workload, it had to rely on existing manpower to cope with the increasing workload. The existing establishment of the Airport Control Point was considered capable of handling the current capacity of passengers.

3

CONCERN OF THE COMMUNITY

GENERAL

3.1 During August and September 2000, extensive media coverage was given to the 'slip-through' incident of an autistic teenager who had been intercepted by the mainland authorities and was returned to the Lo Wu Control Point without proof of identity. The teenager was subsequently sent back to Shenzhen, in the mistaken belief that he had come from the Mainland.

ISSUES OF CONCERN

3.2 The incident sparked extensive public comments, which focused on the following issues -

- (a) how could an autistic teenager have departed from Hong Kong to Shenzhen without proof of identity, bypassing normal immigration controls;
- (b) why was the teenager repatriated to Shenzhen without a thorough verification of his identity after the Shenzhen Authority referred him to the Lo Wu Control Point;
- (c) was there a lack of co-ordination between Imm D and other concerned departments in the verification of the identity of the teenager; and

- (d) why did immigration officers not seek professional assistance when they failed to communicate with the autistic teenager.

COMMENTS AND SUGGESTIONS FROM MEMBERS OF THE PUBLIC DURING THE PUBLIC CONSULTATION PERIOD

3.3 During the public consultation period from 1 September to 3 October 2000, this Office received a written submission from an association concerned with pre-school handicapped children. In addition to the four issues identified above, the association raised the following points of concern -

- (a) why did Imm D fail to obtain missing persons information from the concerned department;
- (b) why did immigration officers not treat the teenager as a special case on discovering that he had communication difficulties; and
- (c) why did Imm D handcuff the teenager.

3.4 The association expressed the view that immigration officers had no awareness of or the necessary skills to handle autistic persons. It suggested that in addition to publishing its findings on the incident, Imm D should formulate guidelines in handling persons with special needs, and provide training to its staff. The association indicated its willingness to share with Imm D its knowledge and skills in handling autistic persons.

4

CASE STUDIES

GENERAL

4.1 According to Imm D, its officers regularly handled large numbers of undocumented person cases. By comparison, there were only a few slip-through cases. During the three years from 1998 to 2000, Imm D recorded a total of 100 slip-through cases, but it encountered an average of over 1,000 undocumented person cases each month.

4.2 For the purpose of this investigation, this Office randomly selected 25 cases from 1998 to 2000 for close scrutiny. Of these, 10 were slip-through cases and 15 involved undocumented person. These included one case that had been publicized. Cases were selected on the basis of the following criteria -

- (a) the immigration control points covered should be among those with the highest number of undocumented persons cases detected;
- (b) cases should cover immigration control points on land, sea control points as well as the Airport; and
- (c) cases would be selected randomly by our Investigation Officers during visits to immigration control points.

4.3 Based on our study of these 25 cases, we identified the following key areas of concern.

KEY AREAS OF CONCERN

Compliance with departmental guidelines and procedures

Compliance with general departmental guidelines and procedures

4.4 Scrutiny of the 25 cases indicates that immigration officers have generally complied with departmental guidelines on the handling of undocumented persons and slip-through cases. However, in one case, the officer concerned failed to report a slip-through case to his supervisor. He also did not record the incident in his official notebook or make an entry in the occurrence book (para. 2.26). This contravened the requirement that unusual cases should be reported to the duty SIO, who in turn should notify the Section Head instantly (para. 2.13).

Compliance with the Rules in handling minors under the age of 16

4.5 Direction 5 of the Rules deals with the handling of minors under the age of 16. Of the 25 cases studied, 4 involved minors under the age of 16. Of these, 3 involved undocumented person and one was a slip-through case.

4.6 In the 3 undocumented person cases, the parent or guardian of the minor or an independent third party was present during the secondary examination of the cases. In the first case, in accordance with Direction 5 of the Rules, a social worker from Social Welfare Department (SWD) was invited as an independent third party to witness the secondary examination of the minor. In the second case, airline staff accompanied the 11 year old undocumented person during the interview. In the third case, the undocumented person aged 14 was accompanied by his father during the interview.

4.7 In the slip-through case, the minor aged 15 was an autistic person. During the examination with this minor, no parent, guardian or independent third party was present. This contravened Direction 5 of the Rules (see Annex 1).

Compliance with the Rules in handling persons with disabilities

4.8 The note to Direction 6 of the Rules states that during the examination of a mentally handicapped person, a relative, guardian, person from a relevant professional field, or an independent third party should be present.

4.9 This Office notes that 3 slip-through cases involved mentally handicapped persons or persons with mental problems. However, no relative, guardian, person from a relevant professional field, or an independent third party was present in the secondary examination in all these cases. The first case involved a mildly retarded person who ran away from a special training school and entered the mainland after slipping through an immigration control point. The secondary examination was conducted in the absence of relatives or independent witnesses immediately after the subject was returned by the mainland authorities because the subject could communicate and tell his identity which was later confirmed through record checks. His father was contacted and came to pick him up at the control point where he was intercepted. The second case involved a person who appeared to be slightly mentally disturbed. As she was able to communicate and possessed a Hong Kong Identity Card, immigration officers decided that no further questioning or investigation was required, and it was not necessary to enlist the assistance of an independent witness or a social worker. The last case involved an autistic minor. Throughout the one-hour long interview, no independent witness or professional from a relevant field was present.

Liaison with bureaux / departments / mainland authorities

Co-operation with relevant bureaux / departments / mainland authorities

4.10 Imm D had no established guidelines on seeking co-operation from other government bureau(x) or department(s) in the verification of missing persons. To verify the identity of an undocumented person who claimed to have lost his Hong Kong Identity Card, Imm D would normally conduct an

internal Registration of Persons (ROP) record check in accordance with laid down departmental guidelines and procedures. Of the undocumented person cases studied, 7 cases were resolved through ROP verification and another 3 cases by other forms of identification possessed by the undocumented persons. Normally, an undocumented person would possess some form of identity papers even though he might not have a travel document. Where appropriate, Imm D would seek assistance from the relevant consulates general in Hong Kong to verify the identity as claimed by the undocumented person.

4.11 As regards co-operation with the mainland, Imm D had an established hotline for liaison with its mainland counterparts such as the Shenzhen Frontier Inspection Station and the Man Kam To Frontier Inspection Station. Where necessary, the hotline can be used to seek assistance to verify the identity of an undocumented person.

Seeking professional assistance

4.12 Of the 3 studied cases involving persons with mental problems (para. 4.9), Imm D did not seek professional assistance for the examination of the subjects.

Verification of missing persons

4.13 Prior to October 2000, Imm D had no focal point of contact to communicate with HKPF on missing persons. As the subject in two of the cases studied had no identification documents, Imm D had to enlist assistance from the Missing Persons Units of HKPF in establishing their immigration status. In such cases, Imm D provided to HKPF all available information including the personal particulars of the person if known, or a detailed description of the person's appearance, clothing, physique, etc. A photograph would be supplied to HKPF if and when available. HKPF would then conduct checks from its database of missing persons. It would also advise Imm D on what further checks might be appropriate.

Monitoring mechanism and control measures

Field control and channel supervision

4.14 According to Imm D, channel supervisors are tasked with specific functions in field control and channel supervision. The manning scale of channel supervision was one channel supervisor to six immigration control officers. However, this Office notes that in reality, such manning scale could not be adhered to and this was certainly the case in the two studied slip-through cases. In the first case, two channel supervisors were on duty to supervise a total of 31 departure counters. In the second case, there were two channel supervisors on duty with 19 counters in operation.

Other monitoring facilities

- CCTV

4.15 Imm D informed our Investigation Officers during site visits that the purpose of the CCTV system was to facilitate the monitoring of passenger traffic control in the immigration clearance halls. However, the recorded images of the CCTV system were too small for clear identification of "slip-through" passengers or the counter officers who might be involved. In a slip-through case that took place at the Airport Control Point, Imm D was unable to prove, beyond reasonable doubt through viewing the video images of the CCTV tapes, the exact immigration counter where the slip-through had occurred.

- Immigration clearance counter gate

4.16 It is observed during site visits that a trespasser could easily jump over the gate of a closed immigration counter. This happened in one slip-through case, where an intruder slipped through an unmanned immigration counter by jumping over the counter gate. As the lock was installed near the top of the gate, a trespasser could easily unlock the counter gate and walk through.

Staff training and awareness

4.17 From our scrutiny of cases involving persons with communication difficulties, it would appear to this Office that immigration officers lacked the skills to handle the interviews with such persons. In one case, the interview was an exercise in futility when the interviewee did not respond at all to questions put to him. Furthermore, the officers concerned seemed unaware that they could enlist professional assistance from a relevant field to overcome such communication difficulties.

5

IMPROVEMENT MEASURES

GENERAL

5.1 In the wake of a well publicized 'slip-through' case of an autistic teenager into the mainland in August 2000, Imm D carried out an investigation into the incident. An investigation report was issued on 14 September 2000. In it, Imm D proposed a number of improvement measures aiming at preventing the recurrence of similar incidents in the future.

IMM D'S PROPOSED IMPROVEMENT MEASURES

Compliance with the Rules

5.2 Despite the existence of the Rules which Imm D stressed should be complied with by all immigration officers, Imm D acknowledged that the 'slip-through' incident reflected a general lack of awareness, sensitivity and knowledge on the part of the concerned immigration officers in the handling of mentally handicapped persons. To enhance staff awareness, Imm D would issue detailed instructions to draw the attention of its front-line staff and to advise them on the proper procedure to follow in the handling of mentally handicapped persons. Imm D would also seek assistance from appropriate professionals in the respective fields in staff training.

Liaison with HKPF on checking of missing persons

5.3 Imm D would liaise with HKPF to work out the most efficient and effective way for checking of missing persons. Imm D would then issue detailed procedures and instructions

on this matter for compliance by its staff.

Adequacy of supervision and field control

5.4 The 'slip-through' incident highlighted the acute staffing shortage for channel supervision in the immigration hall. Imm D would seriously examine the supervision and field control situation at all immigration control points, particularly at Lo Wu. Having considered the upsurge in passenger traffic and the frequent congestion at the Lo Wu Control Point, Imm D would further examine security measures at Lo Wu.

Disciplinary actions

5.5 Imm D would institute disciplinary action against those immigration officers who considered to have played a part in the 'slip-through' incident.

PROGRESS ON IMPLEMENTING IMPROVEMENT MEASURES

5.6 In October 2000, Imm D informed this Office that it was conducting an overall review of the training programmes and internal guidelines for dealing with persons with mental disabilities. Imm D set up a joint study group with the Equal Opportunities Commission (EOC), hoping that this would lead to concrete recommendations on improving the training and guidelines for its staff. Imm D would then issue detailed instructions to staff drawing their attention to the need to adopt a sensitive and caring attitude in dealing with persons with mental disabilities, and to the requirement to abide by the Rules. Meanwhile, with assistance from EOC, Imm D was in the process of designing short-term sensitivity training seminars for the front-line staff. Other professionals in the relevant fields would be invited to participate in the seminars.

5.7 Imm D was liaising with SWD for the setting up of a channel for referral of professional assistance for handling cases involving passengers with disabilities.

5.8 Imm D had established with HKPF a focal point of contact for enquiries concerning missing persons. Imm D would check with HKPF Headquarters Command and Control Centre for information on missing persons.

6

OBSERVATIONS AND OPINIONS

GENERAL

6.1 This direct investigation focuses on immigration procedures relating to travellers who seek to leave or enter Hong Kong without any valid travel documents or proof of identity. In reality, this could cover a number of possible scenarios, as below -

(A) Undocumented Persons Cases, include:

- (a) the highly frequent "normal" situations where travellers seeking immigration clearance at the various immigration control points have forgotten to bring their travel documents or proof of identity;
- (b) illegal immigrants intercepted while attempting to enter Hong Kong without valid documentation; and
- (c) persons with mental infirmity who seek to enter or leave Hong Kong without any travel documents or proof of identity.

(B) Slip-through cases, include:

- (d) individuals who present themselves at immigration clearance halls and attempt to bypass normal immigration controls by dashing through departure counters;
- (e) individuals travelling on coaches in a group who

for whatever reasons, seek to bypass normal immigration controls at land control points by staying on board their vehicles instead of disembarking therefrom to proceed to immigration clearance halls for immigration clearance as they are supposed to do (hereinafter referred to as "stowaway cases"); and

- (f) persons seeking immigration clearance with travel documents that have not recorded their earlier departure from or entry into Hong Kong.

6.2 This investigation was originally intended only to scrutinize the treatment of travellers who presented themselves or had been returned for immigration clearance at arrival or departure halls. It was not intended to cover "stowaway" situations (sub-para. (e) above). But a stowaway case came to light while this investigation was underway, this Office decided also to look into the adequacy of the relevant procedures relating to such cases. This is being covered at paragraphs 6.21 to 6.23 below.

UNDOCUMENTED PERSONS AND SLIP-THROUGH CASES

6.3 This Office notes that the Immigration Service Standing Order, working manuals, departmental and sectional instructions/notices issued by the Imm D contain guidelines and procedures for the handling of persons who present themselves, are found or returned to immigration check points without proof of identity. Based on scrutiny of the 25 randomly selected cases, this Office notes that immigration officers generally follow the 1992 Rules issued by Secretary for Security in conducting interviews with and taking statements from such persons.

6.4 As a result of the 'slip-through' incident that occurred in August 2000 at a border control point, Imm D had been undertaking improvement measures to prevent similar recurrence (see Chapter 5). However, this Office believes that more could be done for persons with disabilities and/or communication difficulties who present themselves, are found or returned to immigration check points without proof of

identity.

Compliance with Guidelines and Procedures

6.5 The importance of immigration officers complying with guidelines and procedures in dealing with undocumented person cases and slip-through cases is self-evident. Scrutiny of cases selected randomly by this Office suggests that there is a high degree of compliance with the guidelines and procedures on the handling of such cases. Of the cases scrutinized, there was only one case in which officers had failed to comply with the department's guidelines and instructions. This case highlighted breaches of departmental instructions in three notable respects.

6.6 The first breach involves contravention of the instruction to report cases of an unusual nature to supervisors (para. 4.4). In this incident, the officer concerned had failed both to report the 'slip-through' case to his supervisors, and to record an entry about the incident in his official notebook or the occurrence book for follow-up by other immigration officers.

6.7 The second breach involves violation of Direction 5 of the Rules on the treatment of minors. Direction 5 stipulates that "children and young persons under the age of 16 years (whether suspected of crime or not) should only be interviewed in the presence of a parent or guardian, or, in their absence, some person who is not an immigration officer and is of the same sex as the child". In this one incident (para. 4.7), no parent, guardian or independent third party was present during the minor's interview with immigration officers.

6.8 The third breach involves contravention of the note to Direction 6 of the Rules on statement taking with mentally handicapped persons. The note to Direction 6 stipulates that, in handling mentally handicapped person, a relative, guardian, person from a relevant professional field, or an independent third party should be present in the examination of such persons (para. 4.8). But in this particular case studied, none of the above-mentioned persons/parties was present

during the secondary examination of the subject.

6.9 Based on the cases studied, the incidents of lapses on the part of immigration officers in compliance with departmental instructions and procedures appeared not to be high. Nevertheless, such occasional lapses could bring immeasurable human sufferings to those affected and must therefore be prevented at all costs. As a result of a highly publicized case, there is little doubt that Imm D and indeed the community at large now recognize the vigilance that is called for in the identification and handling of persons with particular vulnerability, such as minors, persons with disabilities and persons with communication difficulties. In this respect, this Office suggests that Imm D should remind its staff regularly of the need to comply with guidelines and procedures; appropriate training would help to ensure that staff appreciate the reasons underlying such guidelines.

Enlisting Professional Assistance

6.10 This Office observes that there appears to be a tendency to try to resolve "problems" within Imm D itself, without recourse to outside assistance. While this may be laudable and possible in the majority of cases, the department should recognize that the need to enlist outside expertise where appropriate. In handling persons with disabilities and/or communication difficulties, this Office considers that there is an imminent need for Imm D to enlist the professional assistance from other government departments or relevant professional organisations/bodies. If Imm D had put in place a network of professional organisations/bodies and appropriate procedural guidelines on enlisting such assistance, this Office believes that the outcome in that particular case might well have been different.

Verification of Missing Persons

6.11 Prior to October 2000, Imm D had no established guidelines and procedures or a focal point of contact to communicate with HKHF (para. 4.13) on the verification of missing persons. This Office notes that in one particular case, immigration officers had to phone up several police

stations to inquire whether they had a missing person report in respect of a subject held in immigration custody. This Office considers that Imm D should explore with HKPF and the SB on the feasibility of accessing the missing persons database being maintained by HKPF. Subject to any legal encumbrances being overcome, this Office believes that it is technologically possible for immigration control points to be linked up with HKPF's missing persons unit and have real time access thereto.

6.12 In addition to this, internet technology now makes it a relatively cheap and simple task for immigration officers to seek assistance from HKPF in the verification of a subject by supplying electronically to the latter all available information, including a photo of the undocumented person taken at immigration control points.

Field Control and Channel Supervision

6.13 This Office notes that despite the approved manning scale, field control and channel supervision at immigration control points is often undermanned at peak hours when passenger flow was heavy. This was amply illustrated by two studied slip-through cases (para. 4.14). In these two cases, there were two channel supervisors to oversee a total of 31 and 19 departure counters respectively.

6.14 Imm D recognizes that field control and channel supervision at those immigration control points with high passenger flow are far below the approved manning scale of one channel supervisor to six immigration control officers. This Office recommends that Imm D should urgently review the staffing situation at immigration control points with a view to strengthening field control and channel supervision, particularly at peak operating hours for those busy immigration control points.

6.15 To improve the handling of cases involving persons with disabilities and/or communication difficulties, this Office suggests that suitably trained channel supervisors possessing skill and expertise should be deployed to 'high-risk' control points where slip-through cases are

likely to occur.

Other Monitoring Facilities

6.16 This Office also notes that for those CCTV systems with recording functions installed in control points, the recorded images were too small for clear identification of "slip-through" passengers (para. 4.15). To facilitate investigation of slip-through cases, Imm D should consider upgrading the existing CCTV systems to make it possible to trace back and monitor the circumstances of any slip-through case and which particular immigration clearance counter /officer was involved.

6.17 In one of the studied cases, this Office notes that the subject in question easily jumped over the gate of an unmanned immigration clearance counter (para. 4.16). This suggests that Imm D should review the physical layout and design of the counter gates in immigration halls. If necessary, consideration should be given to improving physical blocking devices, such as raising the height of the counter gate and re-positioning the turn lock currently located at the upper portion of the counter gate to prevent easy unlocking of the gate.

Knowledge, Awareness and Staff Training

6.18 This Office observes that immigration officers were in general not sensitive to the handling of persons with disabilities particularly those with communication difficulties (para. 4.17). This Office further believes that two studied slip-through cases could have been avoided, had the concerned immigration officers been more alert in observing the peculiar behaviour of the persons involved. In both cases, the subject switched from one queue to another when it was nearly their turn for immigration clearance. Immigration officers could perhaps be more alert to travellers displaying unusual behavioural traits, and single them out for attention.

6.19 To equip immigration officers with adequate knowledge and skill on the handling of persons with

disabilities particularly those with communication difficulties, this Office considers that Imm D should organise, in conjunction with relevant authorities and professional bodies, regular staff training and refresher programmes. Priority in training in these special fields should be given to immigration officers assuming the role of channel supervisors.

Documentation Review and Update

6.20 When formulated, the relevant guidelines and procedures mentioned in paras. 5.2, 5.3, 5.6 and 6.10, should be regularly reviewed to ensure that they are comprehensive and up-to-date.

STOWAWAY CASES

6.21 In the course of this investigation, the media reported in February 2001 another slip-through case involving a mentally handicapped adult. In this incident, the subject was returned from Huanggang to the Lok Ma Chau Control Point without any proof of identity. The subject's family subsequently claimed that on departure from Hong Kong, the subject bypassed immigration control by staying on the coach and did not proceed to immigration clearance as all passengers were supposed to have done. Public attention therefore focused on whether and if so, what responsibilities drivers and immigration officers had in preventing passengers from stowing away on cross-border coaches. In the light of this incident, The Ombudsman decided also to review the procedures for this type of situations.

6.22 This Office notes that Imm D has guidelines and procedures for the clearance of passengers departing from or arriving in Hong Kong through the three border vehicle crossing control points at Lok Ma Chau, Man Kam To and Sha Tau Kok. Under departmental guidelines, an Immigration Assistant would board and check vehicles such as coaches/buses, to ensure that all passengers on board such vehicles had disembarked for immigration clearance and that no unauthorized persons had remained in the vehicles.

6.23 In this particular incident, Imm D revealed that it had no record of the subject having left Hong Kong. The department has instituted an internal investigation into how the subject managed to cross into the mainland without any travel document. As the department's own investigations are still underway, The Ombudsman has decided not to duplicate investigative efforts but to await the department's findings before considering whether there is a need for the further involvement of this Office. Nevertheless, if allegations by the subject's family as to the circumstances of his departure from Hong Kong were true, this incident could indicate a loophole in Hong Kong's current immigration control at the three border vehicle crossing control points.

7

RECOMMENDATIONS

GENERAL

7.1 Under the Immigration Ordinance, Cap. 115, immigration officers are empowered under Section 4(1)(a) to 'examine any person on his arrival or landing in or prior to his departure from Hong Kong'. The purpose of conducting the examination is to establish the identity of the arriving or departing passengers, by reference to the proof of identity they carry. As far as immigration control is concerned, the role and responsibilities of Imm D overall are to facilitate the mobility of tourists, business visitors and Hong Kong residents, to deny entry of undesirables, and to prevent wanted criminals from departure. As outlined in Chapter 2, Imm D already has established guidelines and procedures for the immigration control of persons who present themselves, are found or returned to immigration check points without proof of identity.

7.2 This Office observes that immigration officers generally follow departmental guidelines and procedures in handling cases of undocumented persons and 'slip-through' cases. However, this Office notes that Imm D itself recognizes that its officers lack the knowledge, skill, awareness, and alertness, when handling undocumented persons with disabilities particularly those with communication difficulties. This Office believes that Imm D could do more to improve the overall operation, and in particular to strengthen the field control and channel supervision at the immigration control points.

RECOMMENDATIONS

7.3 Based on the observations and opinions in Chapter 6, The Ombudsman has made the following 10 recommendations for consideration by Imm D to improve the overall operation at the immigration control points -

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

- i) To enhance staff awareness and sensitivity in handling persons with disabilities, particularly those with communication difficulties, in accordance with the Rules, Imm D is recommended to re-circulate relevant circulars and notices on a regular basis, and to organise relevant talks, seminars, and training to be delivered by relevant professional bodies at regular intervals. (paras. 5.6, 6.9)
- ii) To provide better staff guidance, Imm D is recommended to consider seeking professional advice and assistance from relevant organisations/bodies in devising detailed guidelines and instructions on the handling of persons with disabilities particularly those with communication difficulties. (paras. 5.2, 5.6 and 6.10)

(b) **Network and Guidelines for Professional Assistance**

- iii) To facilitate access to professional assistance, Imm D is recommended to consider, in consultation with the Health and Welfare Bureau, establishing focal points of contacts with SWD, setting up a liaison network with other relevant professional organisations and voluntary bodies; and formulating guidelines and procedures in enlisting professional assistance from such

relevant parties for internal reference by its staff. (paras. 3.4, 5.7, 6.10)

(c) **Verification of Missing Persons**

- iv) To speed up the verification of missing persons, Imm D is recommended to consider -
 - (a) formulating detailed procedures and instructions and issuing them to its staff concerned for checking of missing persons (paras. 5.3 and 6.12); and
 - (b) in consultation with SB and HKPF, exploring the feasibility of sharing with Police the computerised information of missing persons relating to those requiring special care and attention such as minors, persons with disabilities and persons with communication difficulties, to facilitate real-time checking by Imm D. (paras. 6.11 and 6.12)

(d) **Field Control and Monitoring Mechanism**

- v) Imm D is recommended to review its manning scale realistically with a view to improving operation and control at the immigration control points especially those with high volume of passenger flow. In particular, it should consider designating a channel supervisor or such other appropriate staff in each shift who has been trained in the handling of persons with disabilities, particularly those with communication difficulties. (paras. 4.14, 5.4, 6.13 to 6.15)
- vi) To strengthen control at immigration control points, Imm D is recommended to consider upgrading and improving various security devices such as CCTV systems and the design of immigration clearance counter gates. (paras. 4.15, 4.16, 5.4, 6.16 and 6.17)

vii) To improve monitoring and supervision of staff, Imm D is recommended to consider devising a comprehensive monitoring mechanism on compliance of departmental guidelines and procedures by its staff. (paras. 2.29 to 2.33, 6.5 to 6.9)

(e) **Training and Documentation**

viii) To equip its staff, especially those responsible for field control and channel supervision at immigration control points, with the required knowledge, skill and competency, Imm D is recommended to enhance staff training on the handling of undocumented persons at immigration control points in general, and on the handling of persons with disabilities and persons with communication difficulties in particular. (paras.3.4, 5.6, 6.18 and 6.19)

ix) To ensure that guidelines and procedures are comprehensive, adequate and up-to-date, Imm D is recommended to put the guidelines and procedures under regular review. (para. 6.20)

(f) **Publicity**

x) To enhance public awareness, especially those having family members with disabilities or communication difficulties, Imm D is recommended to consider stepping up publicity through various channels on the need to carry proof of identity at all times; including seeking help from the Health and Welfare Bureau and SWD, to encourage those with disabilities or communication difficulties to carry a specific identification badge/label similar to those registration cards issued by the Central

Registry for Rehabilitation of the Health
and Welfare Bureau to people with
disabilities.

8

FINAL REMARKS

COMMENTS FROM IMM D

8.1 Imm D accepts The Ombudsman's recommendations to improve the overall operation at the immigration control points as set out in Chapter 7. In response, Imm D advises that the department has already initiated some improvement measures; and wishes to give the following comments on the relevant recommendations -

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

- (i) The Rules and Directions for the questioning of suspects and taking of statements will be re-circulated to all officers at immigration control points on an annual basis. Meanwhile, Imm D had enlisted assistance from the EOC and City University to conduct six sensitivity training seminars to its frontline and supervisory staff during the period from November 2000 to January 2001.
- (ii) The EOC is studying the training requirements of the Immigration Service staff and will make proposals after the 6-month study which is expected to complete by April 2001. Based on EOC's input, Imm D will draw up detailed guidelines and instructions for its staff.

(b) **Network and Guidelines for Professional Assistance**

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

(c) **Verification of Missing Persons**

(iv) Imm D has established with HKPF a focal point of contact for handling enquiries concerning missing persons since October 2000. Sectional instructions have been issued to promulgate the checking procedures. Imm D will explore with HKPF on the feasibility of gaining access to Police's computerised information of missing persons to facilitate real-time checking.

(d) **Field Control and Monitoring Mechanism**

(v) The MSA has embarked on a study on the manpower requirements for channel supervision and secondary examination at immigration control points since March 2000. It is accepted that the duties of supervising counter staff and conducting secondary examination of passengers should be separated and performed by designated officers. To strengthen channel supervision, it is important that sufficient number of channel supervisors should be provided. MSA will finalise its report shortly. Subject to availability of sufficient channel supervisors, immigration control points will designate as far as possible a suitably trained channel supervisor to handle persons with disabilities, in particular those with communication difficulties. Although such passengers are rarely encountered, Imm D will call for professional assistance whenever necessary.

(vi) All immigration control points are reviewing their existing CCTV systems in consultation with the appropriate authorities. Improvements will be introduced within the constraints of the environmental layout of individual immigration control point and the Personal Data (Privacy) Ordinance and subject to availability of funds.

Imm D is also reviewing the design of immigration counters at immigration control points with a view to improving security. Subsequent to the intrusion incident in July 2000 by an American male in the Airport

Departure Hall, the Airport Authority agreed to enhance the design of the immigration counters both at the departure and arrival halls by increasing the height of the counter gate and adding another gate in front of the counters. The modification work is expected to complete by the end of August 2001. At Lo Wu, metal railing are being installed at the passageway between departure counters so as to prevent the slip-through of passengers.

(vii) Supervisors at all immigration control points have been reminded to step up spot checking. Disciplinary actions will be taken against staff who are found at fault or not complying with departmental guidelines and procedures where appropriate.

(e) **Training and Documentation**

(viii) With the training proposal/materials provided by the City University and the EOC, Imm D will incorporate sensitivity training in all its training programmes for members of the Immigration Service.

(ix) Review of procedures and guidelines has been an on-going exercise in Imm D.

(f) **Publicity**

(x) Whilst the role to enhance publicity in order to encourage persons with disabilities or communication difficulties to carry an identification badge/label may not fall within the responsibilities of Imm D, the department will liaise with SWD and seek its assistance to enhance publicity in this aspect.

8.2 On the time scale for implementing the recommendations made by The Ombudsman, Imm D reveals that it will exert due diligence to implement them as soon as practicable.

8.3 As regards the investigation report, Imm D considers that The Ombudsman has studied carefully and thoroughly all relevant laid-down procedures and case reports of the immigration control points, and that the facts and statistics quoted in the report are correct. Imm D proposes

textual amendments to paragraphs 2.5, 4.3, 4.4, 4.7, 4.9, 4.12, 4.17, and 7.1 of the investigation report. Except the suggested amendments for paragraphs 4.3, 4.4, 4.7, 4.9, 4.12 and 4.17 which relate to the approach of presenting the key areas of concern based on the study of 25 cases of undocumented persons and slip-through, all other textual amendments proposed by Imm D have been incorporated into the corresponding paragraphs of the investigation report. Also, Imm D proposes to delete the last sentence of paragraph 6.23. The Ombudsman has carefully considered the proposal and decided to retain the sentence with appropriate modifications.

8.4 Lastly, Imm D also informed this Office of the latest progress of the legal proceedings instigated in respect of one of the cases studied by this Office. In view of Section 15 of The Ombudsman Ordinance, The Ombudsman considers inappropriate to disclose information provided by Imm D in respect of that case.

COMMENTS FROM SB

8.5 SB finds all the recommendations set out in Chapter 7 acceptable. Also, SB shares Imm D's comments on the investigation report, and has no objection to its publication in full.

FINAL REMARKS FROM THE OMBUDSMAN

8.6 The focus of this investigation is to examine, inter alia, the procedures and monitoring mechanism of Imm D in the handling of persons who present themselves, are found or returned to immigration control points without proof of identity. This Office has studied the relevant procedures and scrutinised 25 randomly selected cases of undocumented persons and slip-through with a view to putting forward to Imm D recommendations to improve its overall operations at the immigration control points, particularly in handling persons with disabilities and persons with communication difficulties. The Ombudsman is pleased to note that Imm D has accepted all the recommendations set out in Chapter 7 and will implement them as soon as practicable.

8.7 Based on the scrutiny of 25 randomly selected cases of undocumented persons and slip-through, this Office spells out in Chapter 4 the key areas of concerns on (a) compliance with departmental guidelines and procedures, (b) liaison with bureaux/departments/mainland authorities, (c) verification

of missing persons, (d) monitoring mechanism and control measures, and (e) staff training and awareness. This Office notes the approach of presentation proposed by Imm D to confine the key areas of concern only to three slip-through cases, and to incorporate correspondingly the proposed textual amendments into paragraphs 4.3, 4.4, 4.7, 4.9, 4.12 and 4.17 of the investigation report (**Annex 5**). As mentioned earlier in Chapter 4, the study of cases by this Office included 15 undocumented persons cases and 10 slip-through cases. As far as in conducting this direct investigation, this Office has tried to review at a macro level the procedures and monitoring mechanism of Imm D in the handling of persons who present themselves, are found or returned to immigration control points without proof of identity. The key areas of concern are based on the overall study of all cases and are not relied solely on the three slip-through cases pointed out by Imm D. The Ombudsman therefore cannot agree to the approach of presentation as proposed by Imm D.

8.8 The Ombudsman would like to be kept informed by Imm D of progress on the implementation of the 10 recommendations, and any major changes in the policy and practice on the subject matter in due course.

8.9 Lastly, The Ombudsman would like to express appreciation to the co-operation and assistance rendered by Imm D throughout the course of this investigation.

----- End -----

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ANNEXES

Annex	Title	Paragraph No.
1	Rules and Directions for the questioning of suspects and taking of statements, summarised from the booklet issued by the Immigration Service Training School	2.7
2	Handling procedures on mentally handicapped persons and hearing impaired persons under the note of Direction 6 of the Rules	2.19
3	Statistics of undocumented persons and slip-through cases encountered at immigration control points from 1998 to 2000	2.37
4	The establishment of operational staff and statistics on the daily handling capacity for Lo Wu Control Point and the Airport Control Point	2.38
5	Presentation approach by Imm D in confining the key areas of concern only to three slip-through cases	8.7

**Rules and Directions for the Questioning of Suspects
and the Taking of Statements (the Rules)**

(Summarised from the booklet issued by the Immigration Service Training School)

Rules

Rule I

Under Rule I of the Rules, when an immigration officer tries to discover whether an offence has been committed, he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. In other words, this rule entitles an immigration officer to freely question any person, whether or not he has been taken into custody, so long as he has not been charged with the offence or told that he may be prosecuted for it.

Rule II

Under Rule II, when an immigration officer has reasonable grounds to suspect a person having committed an offence, he shall caution that person or cause him to be cautioned before asking him further questions relating to that offence. The immigration officer shall keep a contemporaneous record of the time and place at which any such questioning or statement began and ended and of the persons present. The significance of the caution lies in that the immigration officer has informed the suspect his being subject to possible prosecution and reminded his 'right to silence', and any subsequent statement made is voluntary.

Rule III

Under Rule III(a) of the Rules, when a person is charged with or informed that he may be prosecuted for an offence, there shall be another caution in another term. Under Rule III(b), in exceptional cases, questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Again, the accused would be cautioned in yet another term before such questions are put to him. Under Rule III(c), similar to Rule II, a contemporaneous record shall be kept. It is noted that Rule III(a) sets out the caution to be used when a person is charged or informed that he may be prosecuted for an

offence, and Rules III(b) deals with questions relating to the offence that may be put to a suspect after he has been charged or informed that he may be prosecuted.

Rule IV

Rule IV of the Rules deals with written statements made after caution and lays down the procedures to be followed in taking such statements.

Rule V

Rule V deals with the procedures to be observed in recording interview including compiling accurate and contemporaneous written record of interview, and providing opportunity to the suspect to read over the completed written record.

Rule VI

Rule VI deals with the cross-serving of statements or records of interview in which two or more persons are charged with the same offence.

Rule VII

Rule VII extends the applications of the Rules to law enforcement officers in HKPF, C & ED, and ICAC.

Directions

Direction 1

As on the directions under the Rules, Direction 1 deals with general procedures.

Direction 2

Direction 2 deals with recording timing of various matters in a record of interview, and all immigration officers present should sign the record of interview.

Directions 3 and 4

Direction 3 deals with recording all interviews at Immigration Office or Police Station. Direction 4 is about comfort and refreshment for persons being questioned.

Directions 5, 6 and 8

As regards matters on interviews with children and young persons, taking statements in languages other than English, statement taking from mentally handicapped persons and hearing impaired persons, and facilities provided to persons in custody, these are laid down under Directions 5, 6 and 8 respectively.

Direction 7

When an accused person is to be charged, there are procedures, as mentioned under Direction 7, on the supply of written statement of charge(s) to the accused person.

Note to Direction 6 of the Rules

From the booklet containing the Rules issued by the Immigration Service Training School in September 1998, under the note of Direction 6 of the Rules in the booklet with the heading 'Statement Taken From Mentally Handicapped Persons', it states -

As far as practicable any person suspected or known to be suffering from a mental disorder, whether suspected of a crime or not, should only be interviewed or have a statement recorded from them in the presence of one of the following appropriate adults :

- (a) a relative, guardian or other person responsible for his care or custody;*
- (b) someone who has experience of dealing with mentally disordered or handicapped persons who is not an immigration officer nor employed by the Immigration Department, such as a Social Worker; or*
- (c) failing either of the above, some other responsible adult who is neither an immigration officer nor employed by the Immigration Department.*

The appropriate adult should be invited to read over and sign any statement made by the interviewee in their presence. Any refusal to sign should be recorded on the statement by the interviewing officer.

If an officer of the rank of Chief Immigration Officer or above considers that any delay in an interview of a person suspected to be suffering from a mental disorder will involve an immediate risk of harm to persons or serious damage to property, then he may authorise a person's interview in the absence of an appropriate adult. Any such interview should desist once the immediate risk has been averted.

With respect to persons with hearing problems, under the note of Direction 6 of the Rules in the booklet with the heading 'Statement Taken From Hearing Impaired Persons', it states -

When a statement is required from a hearing impaired person (deaf and perhaps dumb) either as a witness, victim or suspect in an immigration investigation, the OC Case should consider the need for the services of a Sign Language Interpreter.

In case where the person is not a suspect, it may suffice, and in fact may well be desirable in the first instance, for a friend or relative who normally communicates with the person to be present, both to put the person at ease as well as to interpret. In serious cases, where the victims or witness's account is particularly pertinent to the case, consideration should be given to having a Sign Language Interpreter present.

In cases where the hearing impaired person is either an arrested person or is suspected of having committed a crime, the presence of a Sign Language Interpreter is essential both to assist in questioning and recording any cautioned statement and additionally to testify as a witness at any subsequent court proceedings.

Where the hearing impaired person is literate, an interview can be conducted in writing. Any person may be permitted to write their own statement, subject to the appropriate caution being applied to the statement and signed if the person is a suspect.

**Statistics of undocumented persons and slip-through cases
encountered at immigration control points
from 1998 to 2000**

Control Point	Undocumented Persons			Slip-through		
	1998	1999	2000	1998	1999	2000
Lo Wu	10,884	11,826	10,514	18	11	10
Hung Hom	87	53	86	-	-	-
Lok Ma Chau	6	3	2	-	-	-
Man Kam To	1	-	1	-	1	2
Sha Tau Kok	-	1	-	-	-	-
China Ferry Terminal	535	404	370	-	1	4
Macau Ferry Terminal	789	705	710	2	2	8
Airport	607	655	680	7	15	19
Total:	12,909	13,647	12,363	27	30	43

**Establishment size of operational immigration staff and daily handling capacity
for Lo Wu and the Airport Control Points**

	<i>Lo Wu Control Point</i>	<i>The Airport Control Point</i>
(a) Establishment size	555	826
(b) Staff dealing with passenger clearance duties	504	775
(c) No. of counters at the departure level	76	88
(d) No. of counters at the arrival level(s)	136	118
(e) Average daily handling capacity	240,000	71,000

**Presentation approach proposed by Imm D
In confining the key areas of concern only to three slip-through cases**

Imm D proposes a presentation approach in confining the key areas of concern mentioned in Chapter 4 to three slip-through cases only, and in incorporating correspondingly the proposed textual amendments into paragraphs 4.3, 4.4, 4.7, 4.9, 4.12 and 4.17 of the investigation report as following -

(a) Para. 4.3

Out of the 25 cases examined by The Ombudsman, concerns were raised only in the following three cases –

Case	Brief Summary	Concerns were raised by The Ombudsman in the report at
A	A 15-year old autistic boy	- Para. 4.4 - Para. 4.7 - Para. 4.9 - Para. 4.12 - Para. 4.17
B	A mildly retarded youth who ran away from school and was later returned from the Mainland	- Para. 4.9 - Para. 4.12
C	A person who appeared to be slightly mentally disturbed	- Para. 4.9 - Para. 4.12

To put things in the right perspective, Imm D proposes to replace para. 4.3 by:

“Based on our study of these 25 cases, we identified the following key areas of concern in 3 cases, hereafter referred to as Case A, Case B and Case C.”

(b) Para. 4.4

The second sentence is proposed by Imm D to be amended to read as follows:

“However, in Case A, i.e. the case of the 15 years old autistic boy which had prompted this investigation by The Ombudsman, the officer concerned failed to report ...”

(c) Para. 4.7

The paragraph is proposed by Imm D to be amended to read as follows:

“During the examination of the 15 years old autistic boy in Case A, no parent, guardian or independent third party was present. This contravened ...”

(d) Para. 4.9

Imm D proposes to refer to the 3 cases mentioned as Case A, Case B and Case C.

Imm D suggests to refer the second and last case mentioned in this paragraph as Case C and Case A respectively.

(e) Para. 4.12

Imm D proposes to refer to the 3 cases as Case A, Case B and Case C.

(f) Para. 4.17

The case mentioned in this paragraph is Case A.