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8 November 2004

The Honourable TUNG Chee Hwa
The Chief Executive of the
Hong Kong Special Administrative Region
of the People's Republic of China
Chief Executive's Office
Hong Kong

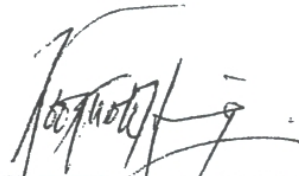
Dear Mr Tung,

Interim Report on
the 2004 Legislative Council Election

A general election for the third term of the Legislative Council was held on 12 September 2004. Pursuant to section 8(1) of the Electoral Affairs Commission Ordinance, the Electoral Affairs Commission is required to submit a report on the election to you within three months of the conclusion of the election. In order to address the public concerns expressed in a number of complaints received by the Commission regarding the electoral arrangements on the polling day, we have conducted detailed investigations into some of the major issues raised in these complaints. We consider it necessary and appropriate to submit an interim report to you at this stage on the progress we have made so far on our investigations.

The interim report contains our findings of the investigation, views and recommendations on the major issues which we have dealt with. We shall submit our final report to you before the statutory deadline of 12 December 2004 as required by the law.

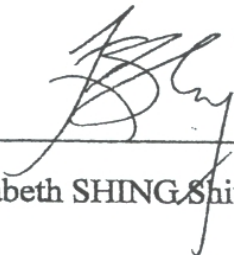
Yours sincerely,



WOO Kwok-hing, Chairman



Norman LEUNG Nai-pang, Member



Elizabeth SHING Shiu-ching, Member

ABBREVIATIONS

APRO, APROs	Assistant Presiding Officer, Assistant Presiding Officers
CAS	Civil Aid Service
Cap	Chapter of the Laws of Hong Kong
CCC	Central Command Centre
CEO	Chief Electoral Officer
CTIL	Continuous Technologies International Limited
DPRO, DPROs	Deputy Presiding Officer, Deputy Presiding Officers
EAC, the Commission	Electoral Affairs Commission
EACO	Electoral Affairs Commission Ordinance (Cap 541)
ECICO	Election (Corrupt and Illegal Conduct) Ordinance (Cap 554)
the election	the 2004 Legislative Council Election
EP Reg	Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap 541D)
FC, FCs	Functional Constituency, Functional Constituencies

GC, GCs	Geographical Constituency, Geographical Constituencies
the Guidelines	the Guidelines on Election-related Activities in respect of the Legislative Council Elections
IVRS	Interactive Voice Response System
LegCo	Legislative Council
Operation Manual	the Operation Manual for Presiding Officers, Deputy Presiding Officers and Assistant Presiding Officers published by the Registration and Electoral Office
PRO, PROs	Presiding Officer, Presiding Officers
REO	Registration and Electoral Office
SIC	Statistical Information Centre

CONTENTS

		<u>Page</u>
Section 1	Prologue	1
Section 2	Insufficient Supply of Ballot Boxes and Consequential Contingency Measures Adopted During the Poll	4
Section 3	Legality of Emergency Measures Adopted by the EAC	25
Section 4	Ballot Discrepancy in Four Functional Constituencies	34
Section 5	Eviction or Exclusion of Candidates or Their Agents from Polling Stations	43
Section 6	Use of Polling Stations by Disabled Persons	57
Section 7	Way Forward	65

APPENDICES

	<u>Page</u>
Appendix I : Polling stations which did not request for additional ballot boxes on the polling day	69
Appendix II : Complaint case about polling station Q0801 – Po Kok Secondary School	71
Appendix III : Cases involving use of cardboard boxes and ballot boxes opened by PROs	77
A. Cases involving the use of cardboard boxes as ballot boxes	77
B. Complaint cases involving ballot boxes having been opened by PROs	78
C. Polling stations where ballot boxes were opened by PROs witnessed by candidates/agents/police officers	79
Appendix IV : Complaint cases relating to over-crowdedness or prolonged queuing outside the polling stations	84
Appendix V : Complaint cases relating to eviction or exclusion of candidates or agents from polling stations	86
A. Cases in which no request had been made by agents to enter the polling station after the close of poll and no refusal by the PRO to admit agents	86

	<u>Page</u>
B. Cases in which the PROs refused entry of counting agents but allowed polling agents to stay on as a result of misunderstanding the Operational Manual/Regulation/Guidelines	89
C. Cases in which no agent was admitted for a period of time between close of poll and conversion/counting	91
D. Cases in which both polling agents and counting agents were admitted to witness the conversion process as confirmed by the PRO/DPRO/APRO	92
Appendix VI : Investigation findings on four cases in which no agent was admitted for a period of time between close of poll and conversion	94
(1) Polling Station C3701	94
(2) Polling Station Q0401	105
(3) Polling Station R3301	113
(4) Polling Station L1801	118
Conclusion	124

SECTION 1 – PROLOGUE

Introduction

1.1 The second term Legislative Council (“LegCo”) prorogued on 22 July 2004. A general election was held on 12 September 2004 to return 60 LegCo members for the third term of four years commencing on 1 October 2004.

1.2 The Electoral Affairs Commission (“EAC” or “Commission”) is required under section 8(1) of the Electoral Affairs Commission Ordinance (“EACO”) (Cap 541) to submit a report on an election to the Chief Executive within three months of the conclusion of the election. The statutory deadline for EAC to submit the report on the 2004 LegCo Election (“the election”) to the Chief Executive is 12 December 2004.

1.3 Under section 6(1) and (3) of the EACO, the Commission is also entrusted with the function to consider any complaint relating to a guideline issued by it, and the report to the Chief Executive shall include a report on any complaint made to the Commission in connection with that election (section 8(2) of the EACO).

1.4 In view of the grave concern expressed by the public in a number of complaints regarding the conduct of the election, and in particular, the complaints raised in the press release dated 15 September 2004 by a number

of candidates led by Mr Ho Chun-yan, the letters dated respectively 15 and 22 September 2004 from Mr Ronny K W Tong to the EAC Chairman and the letter dated 17 September 2004 to the EAC Chairman from an election agent, Mr Wong Yun-tat of the Neighbourhood and Worker's Service Centre, the Commission considers it necessary and appropriate to submit an interim report to the Chief Executive to address the public concern on the following major classes of complaint with regard to the electoral arrangements on the polling day of the election :—

- (a) Insufficient supply of ballot boxes and the adoption of various contingency measures (ie opening of sealed ballot boxes and repacking of ballot papers and the use of cardboard boxes as ballot boxes) during the poll, etc;
- (b) Legality of the emergency measures directed by the EAC or otherwise;
- (c) Ballot discrepancies in four functional constituencies (“FCs”);
- (d) Voter turnout figures and delay in announcing election results;
- (e) Eviction or exclusion of candidates or their agents from polling stations; and
- (f) Use of polling stations by disabled persons.

This Report

1.5 This interim report aims to address the issues mentioned in paragraphs 1.4 (a) – (f) and to set out the EAC’s clarification, views and observations on these issues.

1.6 The EAC has conducted investigations into the allegations. Statements of the officers of the Registration and Electoral Office (“REO”) involved were obtained, and questions were asked for clarification purposes. The investigations also took the form of requesting the polling officials, namely, the Presiding Officer (“PRO”), Deputy PRO (“DPRO”) and Assistant PROs (“APROs”) of the polling cum counting stations to answer queries relating to the complaints and, wherever necessary, requesting the complaining party to provide more information on the matter complained of and the identity of the actual persons experiencing it, followed up with telephone enquiries of such persons. All the PROs had also been asked to complete a questionnaire on a number of aspects of the electoral processes and occurrences that took place on the polling day, and their responses to the questionnaire formed an avenue of information available to the Commission.

1.7 The following sections in the report give a detailed account of what the Commission has gathered from the investigations with its views and recommendations for improvement.

SECTION 2

Insufficient supply of ballot boxes and consequential contingency measures adopted during the poll

Reasons for insufficiency of ballot boxes

2.1 It was generally considered that printing of photographs and particulars of candidates, including names and emblems of the organisations that support them or to which they were affiliated, on the ballot paper would better facilitate electors in identifying the candidates of their choice during the voting process. Towards that end, the EAC made the Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation, Cap 541M, which came into operation on 2 July 2004, to regulate the printing of such particulars on the ballot paper. It was then necessary for the EAC and the REO to redesign a new type of ballot paper of A3 size so that the specified particulars of candidates could be shown on the ballot paper. On the other hand, a new type of ballot box had to be produced as the much larger old ballot boxes would be too heavy to handle when filled with the much heavier new ballot papers.

2.2 Before delivering the new white boxes designed for the casting of geographical constituency (“GC”) ballot papers to the REO, the contractor engaged for production of the boxes had conducted tests to ensure that papers identical to the size of the ballot papers could be inserted into the boxes smoothly. Upon the receipt of the sample boxes, the REO staff had

conducted a number of tests to ascertain the function of these boxes. Ordinary A3 white paper was used for testing the capacity of these boxes, with all papers folded once (not too neatly) to purport to conceal the vote before inserting them into the boxes through the front slot in the way which electors were expected to cast their votes. It was shown from two tests conducted that about 1,000 ballot papers could be inserted into each box. Against this background, the REO ordered a total of 3,200 such ballot boxes to be made. Theoretically speaking, this provision could meet the demand for the entire registered electorate of about 3.2 million on the basis of each ballot box being able to accommodate 1,000 ballot papers. Indeed, there were 37 polling stations that did not make any request for extra ballot boxes during the election. According to their ballot paper accounts as compared with the number of ballot boxes supplied to them, disregarding those with a low voter turnout, there were 11 of these polling stations where on the average a ballot box was able to accommodate 500 to 750 ballot papers. A breakdown of the figures is at **Appendix I**.

2.3 Initially, 2,770 new GC ballot boxes were distributed to the 501 polling stations before the polling day. Six of the boxes were used for publicity purposes, and the remaining 424 of these boxes (about 13% of the total stock) together with other reserve polling/counting equipment were kept in the 4 depots situated in Quarry Bay (for the Hong Kong Island GC), Kowloon Bay (for the Kowloon East and Kowloon West GCs), Tuen Mun (for the New Territories West GC) and Tai Po (for the New Territories East GC), with 8 standby vehicles for the purpose of replenishing supplies when

the need, if any, arose. This contingency measure was adopted in line with past practice because it had proved to facilitate very effective and prompt replenishment of supplies to polling stations located in different districts during the elections held in the past ten years. In fact, the REO had never experienced any serious problems in the shortage of ballot boxes and other polling equipment and in the replenishment of supplies in the past elections. It must be accepted that the contingency measure was not designed to cater for urgent demands of replenishment from numerous polling stations that were made almost simultaneously or one very soon after another. In hindsight, the Commission considers that had a special contingency operational plan been made to cover unexpected scenarios, the ballot box shortage problem might well have been avoided or at least contained at an early stage.

2.4 The Commission regrettably notes that the REO staff that had designed and ordered the new GC ballot boxes had not envisaged that the A3-size ballot papers could be inserted into the ballot box by electors in many different ways. This would occur when the polling staff manning the ballot box was not astute or vigilant enough to ensure insertion in the proper manner. What transpired during the polling day was that not all ballot papers were tidily folded when they were cast into the ballot box as expected. Some were folded more than once and some inserted askew, while some others were compressed and crumpled. These unnecessarily occupied a lot

of additional space and filled up ballot boxes shortly after the start of poll, leading to an early shortage of ballot boxes.

2.5 The use of the newly designed GC ballot box on the polling day had shown that it was flawed in design in that the ballot papers inserted into it did not invariably fall flat and pile up neatly one over another. The tests for capacity of the ballot boxes made by the REO during the preparatory stage had assumed optimal condition of usage without much tolerance. Moreover, when the tests were conducted, ordinary A3-size paper, instead of the thicker paper eventually adopted for the GC ballot paper, was used, because the design of the ballot paper had not been confirmed at the time. When the design of the ballot paper was confirmed eventually, unfortunately, no further test for capacity was undertaken. As a result, the number of 1,000 cast ballot papers to be contained in each ballot box was a serious over-estimation and was based on the wrong assumption that ordinary A3-size paper would be used for printing the eventual GC ballot paper. That resulted in numerous requests for additional supply as the ballot boxes originally supplied to the polling stations were used up quickly.

2.6 During the investigation, EAC members personally tried the capacity of the GC ballot box with the ordinary A3-size paper that had been used in the preparatory tests conducted by the REO, and found that shaking of the box was required after the insertion of about 450 papers. Thereafter, occasional shaking of the box was required whenever the papers seemed to have reached the top or further insertion encountered difficulty. The

capacity so tried out was about 900 papers. With another test by using papers of the thickness of the GC ballot paper, it was found that shaking of the box was required after the insertion of 315 papers. With five more occasions of shakings, the capacity of the box was found to be about 690.

2.7 Unfortunately, the use of papers of ordinary thickness for the preparatory tests and the occasional shaking requirement had not been made known to the senior management of the REO when they were informed of the content capacity of the ballot box.

2.8 After the first several requests for additional ballot boxes were received by the REO Central Command Centre (“CCC”) starting at about 8:30 am on the polling day, at around 9:50 am the CCC arranged a message sent through a computerised telephone system called the Interactive Voice Response System (“IVRS”) to remind all PROs that the polling staff should fold the GC ballot papers before issuing them to electors. Instructions of the requirement to occasionally shake the ballot box and to use rulers or other apt instruments to flatten and press the content through the slot were also given to all polling stations whenever they called the CCC for additional ballot boxes. However, these operational methods were insufficient to curb the spread of the problem.

Replenishment of supply

2.9 The CCC Helpdesk 2 was responsible for providing logistical support and replenishment of supplies to polling cum counting stations. It

was manned by a team of experienced staff, some of whom had in fact worked as electoral staff since the 1998 LegCo Election and made the preparatory tests of the content capacity of the new GC ballot box. Therefore when the CCC Helpdesk 2 first received requests from some PROs for additional supply of ballot boxes as early as about an hour after the commencement of polling, they were very surprised and indeed alarmed by the requests. They viewed the requests made on the basis that a ballot box could only hold below 100 and at most 200 ballot papers as quite incredible. They also asked for the information of the number of empty ballot boxes still remaining in the station before responding to the individual requests. Due to the limited number of reserve available even if old boxes had been included, they thought it inappropriate to distribute additional boxes on a first come first served basis, as latecomers would be left helpless when all the boxes were depleted. The CCC had to assess the overall situation to ascertain the reasons for the early shortage of boxes in order to meet subsequent requests from other polling stations.

2.10 The CCC started before 10:00 am to transport ballot boxes from the four emergency depots in Quarry Bay, Kowloon Bay, Tuen Mun and Tai Po to the polling stations. These four depots had a fleet of 43 5-seater vans/lorries to replenish supplies on the polling day. However 35 of these vehicles had been deployed to deliver ballot papers to 281 polling stations at 7:45 am in order to fill the stock of ballot papers in these stations up to 100% of the registered electorate. The necessity for this exercise was that A3-size ballot paper was too heavy for the polling officials of these stations to keep

with themselves more than 40% of the ballot papers required for the entire registered electorate and carry them to the polling station before the commencement of the poll. They had personally carried to the station a fair proportion (30%-40%) of the ballot papers, and thus the first job of 35 of the 43 vans on the day was to deliver ballot papers to these polling stations to make up the 100%. The remaining 8 vehicles were not all free to take up the delivery of extra ballot boxes to the polling stations requesting them at that early moment, as 4 of them had been sent for delivering other electoral equipment and even furniture to about 10 polling stations requiring them. Thus, only 4 vans were immediately available to be engaged at the commencement of the delivery of replenishing supplies of ballot boxes. By around 11:30 am, about 80 polling stations had called in to make the same request for more ballot boxes. The CCC sought the assistance of the Hong Kong Police Force at around 11:15 am to help the delivery. Between 12:30 pm and 1 pm it also tried to arrange for more vehicles with the Government Logistics Department, which was able to get a contractor to provide 4 vans. The REO transportation force was gradually increased back to 43 when the 35 vans completed their trips to deliver the ballot papers and other electoral equipment. Thus, it was in the afternoon that a total of 47 vans were tasked for the delivery of ballot boxes to the polling stations. These were augmented by taxis for the most urgent cases.

2.11 At midday, in consultation with the Chief Electoral Officer (“CEO”), the CCC also decided to have resort to the 1,200 old white GC ballot boxes used in previous elections so as to bolster up what was

remaining of the 424 new GC ballot boxes that were feared to be insufficient to cater for the many demands. All these 1,200 old GC ballot boxes were kept in the Tuen Mun depot. Arrangements were made to allocate these old GC boxes to the other three depots to streamline and facilitate deliveries to the polling stations under their respective geographical spheres, and a private transportation company was engaged to provide 3 large lorries to transport 300 of these old boxes to each of these three depots. This allocation was carried out between 1:30 pm and 2:30 pm. Indeed, at around 5:30 pm, the REO started to deliver the additional stock of 620 old style red ballot boxes and 130 old style blue ballot boxes used in previous elections kept in the Tuen Mun depot to various District Offices for standby service in case individual polling stations within the District needed further replenishment.

2.12 The district liaison officers of the Home Affairs Department were asked to contact the PROs in their respective districts to ascertain the number of additional boxes required by each station. When the information was obtained in the early afternoon, from 2:30 pm onwards, the Police started the delivery of the 1,200 old GC ballot boxes used in previous elections to polling stations from the four depots deploying up to 30 of their own vehicles. According to the Police, they had made deliveries to some 450 polling stations throughout the day. Because the Tai Po District did not indicate its requirement until around 5:00 pm, the CCC decided to deliver two additional ballot boxes to each polling station in that District. Unfortunately for some polling stations there was a considerable time gap between the start of the delivery of ballot boxes and the time when the boxes actually reached the

stations. Whenever a phone call was received from a polling station claiming an emergency situation with a dire need for additional ballot boxes, the CCC instructed the staff to deliver the ballot boxes by taxi. According to the taxi claim forms received so far, at least 46 taxi trips had been made to deliver ballot boxes to 52 polling stations. The records of the four depots show that deliveries of extra ballot boxes had been made by the REO to a total of 180 polling stations¹ on the polling day, inclusive of the said 52 polling stations.

2.13 As polling stations requesting additional ballot boxes all indicated that the need was very urgent, the delivering teams could not prioritise the delivery to supply additional ballot boxes to those polling stations whose ballot boxes were almost exhausted. They could only follow the quickest route to reach the polling stations concerned. The original 30 members of the staff of the Helpdesk were eventually decreased to 10 during the period in order to spare the workforce to help with the deliveries. Some PROs could not contact the Helpdesk to request additional boxes over the telephone because of the decrease of staffing and telephone lines were busily engaged by similar requests from other polling stations or by others having to call the CCC. On the other hand, because of the continuous requests made by some polling stations, they were supplied with extra ballot boxes in excess of their need.

¹ For the deliveries to the 180 polling stations made by the REO, additional new ballot boxes were distributed whereas for the deliveries to the 450 polling stations made by the Police referred to earlier in this paragraph, mainly old ballot boxes used in previous elections were distributed.

2.14 The requests for extra ballot boxes ended at around 8:45 pm.

2.15 Following the practice in past elections, three of the most senior officers of the REO were each accompanying the three members of the Commission on their programmes of visiting polling stations throughout the day. Although the Chief Commander in charge of the CCC had constant telephone contacts with the CEO who was with the EAC Chairman in the course of the visits, he did not inform the CEO timeously that the situation had become difficult, let alone impossible. He did not apprise the CEO that as many as 80 polling stations had requested extra boxes by 11:30 am at the time or even later. He seriously underestimated the gravity and extent of the problem and believed that all the steps mentioned above that had been taken would be able to satisfy the demands from all polling stations in time. It was around 3:30 pm when the CEO and members of the EAC heard that a polling station in Sheung Wan had asked electors to wait to cast their votes for want of ballot boxes that they realised the situation had got out of hand.

2.16 The situation was hectic. The CCC and the delivery services it had arranged were simply overwhelmed by the widespread demands and were unable to cope despite their efforts. The consequence was that many polling stations found that the ballot boxes that they had were insufficient to fully accommodate the ballot papers cast and to be cast by electors, and various contingency measures to cater for the emergency thus arisen were employed. Altogether about 56 polling stations were affected. Their situations are dealt with below.

2.17 The Commission regrets to note that the ample experience of the staff manning the CCC Helpdesk 2 from various elections in the past and their lack of exposure to any crisis situation may have rendered them less alert to the potential crisis arising from the shortage of ballot box and therefore less proficient in crisis management. Enhanced training on problem solving and crisis management will in future need be arranged for electoral staff prior to every general election.

2.18 The Commission also regrets that no special contingency plan to cater for unexpected widespread problems had been made, and that the most senior of the REO officers were accompanying the EAC members in their site visits instead of employing themselves more usefully to take charge of the CCC. The manning scale and command structure of the CCC, which had modelled on those of past elections, had proved to be inadequate for handling emergencies effectively. The fact that the two helpdesks designated for different functions and enquiry hotlines were situated at different places from the command desk was also not conducive to pooling joint efforts and resources for effective crisis management. For future ordinary or general elections, such a special contingency plan must be made in the preparatory stage and a change in the command structure at the CCC to put in more experienced and senior officers in charge with the juxtapositioning of the command desk, helpdesks and enquiry hotlines must be introduced.

Contingency measures adopted

2.19 There are a few complaints about the propriety of inserting rulers or

other instruments through the slot of the ballot box to flatten or press the contents. These measures, just like the shaking of the ballot box, are to avoid jamming of the slot, ensure that ballot papers fall better and more smoothly into the ballot box and free up more space in the box. These measures had been taken in previous elections without any complaint. Insofar as care is taken not to damage any ballot paper inside the box, they are normal steps employed and should not give rise to any concern. Our investigations through the checking of all GC ballot paper accounts returned from all the polling stations revealed that only 21 GC ballot papers had been rendered void for being substantially mutilated. It is interesting to note that for the 2000 LegCo Election, where fewer electors had cast their votes than this time, there were 34 GC ballot papers that were void for being substantially mutilated. There is no sufficient reason to suspect that the measures adopted this time had damaged any large number of ballot papers.

2.20 As an expedient measure to relieve the emergency situation of insufficient ballot boxes at the polling stations, the CCC, on the instructions of the EAC, advised the PROs that when circumstances dictated they could open the seemingly full GC ballot boxes to shuffle the ballot papers cast so as to make room for more ballot papers if additional ballot boxes had not yet arrived at their polling stations. This was done in two stages. The first stage started sometime around 3:30 pm when the EAC instructed PROs to unlock the front slot of the apparently full GC ballot boxes, for ballot papers to be compressed through the slot. The second stage started sometime around 4:40 pm when the EAC instructed PROs to open the back of the ballot

boxes for ballot papers to be re-arranged tidily to free up space.

2.21 The EAC had stressed that any such act of opening the ballot boxes should, as the PROs were told at that point in time, be made in the presence of candidates or their election/polling agents, or, in their absence, a police officer should serve as a witness. By so doing, the fairness, openness and honesty of the election should not be affected.

2.22 Enquiries with PROs show that out of a total of 501 polling stations, 56 stations had opened ballot boxes for re-arrangement of ballot papers inside so as to make room for more ballot papers. During the course of our investigation, the PROs concerned were requested to give a detailed account of the circumstances under which the ballot boxes were opened in their stations and to confirm whether the boxes were opened in the presence of witnesses as instructed by the EAC referred to in the preceding paragraph. Where appropriate, the witnesses mentioned in the PROs' statements were invited to verify the facts described in the statements. Detailed examination of the statements showed that in the cases investigated, all of the ballot boxes were opened in the presence of either the candidates' election agents or polling agents, or in their absence, police officers, and in a number of cases that was even done with the agreement of polling agents. There is no available evidence to indicate that any of the PROs had breached the condition imposed by the EAC in the opening of ballot boxes. The EAC Complaints Committee / REO will inform individual complainant of the outcome of the investigation concerning each complaint case.

2.23 One of the controversial cases arising from the opening of ballot boxes was the subject of complaint by the press release dated 15 September 2004 of a group of candidates led by Mr Ho Chun-yan and by Mr Ronny K W Tong in respect of polling station Q0801, Po Kok Secondary School in Tseung Kwan O within the New Territories East GC. The complaints are that electors were told to leave this station and not to cast their votes and that ballot papers (those already cast) were left stacked on a table and unattended. Investigation of this case, as far as it can go, has been finalised, and a report of it is annexed as **Appendix II** to show what the Commission has done and the outcome.

2.24 Another controversial case arising from the shortage of ballot boxes was that the PRO of the polling station A1201 at Sheung Wan Post Office had to turn away electors while awaiting the supply of additional ballot boxes. The PRO did not close the polling station. He merely asked the electors who attended the polling station to leave and return an hour later to cast their votes. For a few electors who told the PRO that they would not be free to return, they were allowed to cast their votes (by pushing their ballot papers) into the already full ballot boxes.

2.25 Section 44(2) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, Cap 541D (“EP Reg”) provides that in order to ensure that polling takes place smoothly and efficiently, the PRO may regulate the number of electors to be admitted to the polling station

at any one time or exclude any person from the polling station. A PRO thus has the discretion to regulate the number of electors to be admitted and even exclude an elector from entering the station.

2.26 In the circumstances of this case, as the ballot boxes in the polling station had been used up, and the replenishment had yet to arrive, in order to maintain order and ensure polling to take place smoothly and efficiently, instead of making electors stay and wait till the arrival of extra ballot boxes, the PRO asked electors to leave and return in an hour's time. This step taken by him did not forbid the electors to vote, although it had caused them inconvenience. Our investigation has revealed that the operation of polling at station A1201 returned to normal after about 45 minutes when extra ballot boxes arrived. The EAC considers this arrangement acceptable under the exceptional and unforeseen circumstances.

2.27 The Commission found two other similar cases. Polling at polling station Q1301 at STFA Leung Kit Wah Primary School at Tseung Kwan O was suspended for about 60 minutes until the arrival of extra ballot boxes. The PRO did not ask the electors to leave and return later. About 5-10 electors refused to wait and, according to the PRO's recollection, at least some of them returned later in the evening to cast their votes. One elector insisted on voting immediately because he had to catch a plane. The PRO allowed him to cast his vote.

2.28 The third case was at polling station R2001 at Po Leung Kuk Siu

Hon Sum Primary School at Shatin, where polling was suspended for about 15 minutes. The PRO had not asked the electors to leave and return later. The electors simply waited and cast their votes upon the arrival of the extra ballot boxes.

2.29 While sincerely apologising to the electors concerned for the inconvenience caused to them, the Commission would like to express its appreciation to those electors who had waited or returned to cast their votes for their respect for their right to vote and, above all, for their gracious understanding and patience.

2.30 The Commission's enquiry has revealed two cases where cardboard boxes were used as ballot boxes during the interval before the additional ballot boxes arrived at the polling stations (see **Appendix III**). These cardboard boxes were the cartons used for packing the new GC ballot boxes when they were allocated to polling stations. The statements given by the two PROs concerned and their witnesses show that in one station, two carton boxes were so used with the agreement of the polling agents of 3 different GC candidates' lists. The two carton boxes were sealed and signed in the presence of these agents, who also witnessed the transfer of the cast ballot papers in the cartons to one of the extra ballot boxes when they arrived. The two carton boxes had been returned after the conclusion of the election to the REO for safe custody. In the other polling station, one carton box was used, and the entire process of ballot casting was conducted in the presence of a polling agent and a police officer who also witnessed the transfer of ballot

papers from the carton into one of the original ballot boxes after it was opened and the ballot papers inside it had been re-arranged to free up space. The PRO had also shown the empty carton box to the police officer and polling agent before disposal.

2.31 The Commission considers that this stopgap measure, though not a normal practice, was effective in ensuring that the polling process was not disrupted, in the absence of any other immediate and better solutions.

2.32 In the absence of other contradictory evidence, the Commission has no reason to doubt the credibility of the statements given by the PROs and their witnesses and considers that the adoption of the various contingency measures described above was done in good faith to ensure the completion of the election, and should not affect the integrity of the electoral process.

2.33 So far the Commission has received complaints relating to opening of ballot boxes in 8 stations and complaints relating to cardboard boxes having been used as ballot boxes in 5 stations. A summary showing the investigation findings of these cases and a list showing the 56 stations where ballot boxes were opened by PROs are set out in Appendix III. The legality of the contingency measures is dealt with separately in the next section.

Crowdedness of polling stations

2.34 Some complainants have alleged that the shortage of ballot boxes

had led to a delay of the polling process and some electors were put off from casting their vote because of the crowded situation. So far the Commission has received 13 complaints relating to the electors' failure to vote because of over-crowdedness or prolonged queuing outside the polling station (details set out in **Appendix IV**).

2.35 The majority of these complaints involved a polling station located at Ying Wa Girls' School in Robinson Road which the EAC Chairman personally visited on the polling day with a view to relieving the situation. The reason for the crowd at the polling station was that the School had only allowed the REO to use the School's entrance foyer for the polling station and that was the only available venue in the vicinity that was close to the electors' registered residential addresses for use as a polling station. Before the election, the REO could not obtain the permission of the School to use its carpark with entrance from Robinson Road, situated just about 20 feet from the entrance foyer, as a polling station for this election. Only the entrance foyer was allowed to be used. In the early evening on polling day, in view of the over-crowdedness the PRO finally obtained the permission from the school management to expand the polling station to the carpark so as to accommodate more electors, and the number of issuing desks and voting compartments were also increased.

2.36 The EAC wishes to apologise to the public, the electorate and the School that its Chairman made a mistake when he announced openly that the School had in former elections allowed the carpark to be used as a polling

station. That was a result of misinformation that he had received from the staff dealing with getting venues for polling stations. The truth was that the School had never allowed the carpark to be so used in former elections, but it was kind enough to let us use the carpark in the evening to alleviate the situation.

2.37 The cause of the crowdedness was that the staff obtaining the School's permission to use the entrance foyer only had failed to foresee that a larger space would be needed because the registered electorate assigned to cast their votes at this station had increased from about 6,000 to just over 7,000 and the turnout of 4,208 this time had greatly surpassed those in the past elections (2,937 in the 1998 LegCo Election, 1,429 in the 1999 District Council Election, 2,428 in the 2000 LegCo Election and 2,246 in the 2003 District Council Election), and there had never been any complaint of crowdedness or long queues in those elections.

2.38 One complainant regarding this polling station stated that he had left without casting his vote. The Commission sincerely apologises to him and also to other electors who might have left without casting their vote as a result of the over-crowdedness and prolonged queuing at this polling station.

2.39 Detailed investigations are being conducted on the other 4 polling stations indicated in the complaints.

Recommendations

2.40 In light of experience from this election, the Commission will carefully review the criteria in selection of polling stations to ensure that suitable venues are selected to sufficiently accommodate large number of electors in case of a high turnout.

2.41 The Commission will thoroughly review the design of the ballot box and other electoral equipment. In the future, newly designed equipment will be cautiously tested by various means, including real life trial use. The new designs that are required will need to be viewed globally so that each piece of electoral material will be compatible with the relevant electoral equipment when put into use under real life situations. The size and thickness of the ballot paper may also need to be reconsidered. Consideration should also be given to tightening the supervision and line management within the REO.

2.42 Moreover, the system of communication between each polling station and the CCC has to be reviewed so as to ensure that all in-coming calls will be answered. It is also necessary to review the logistics and contingency measures in the supply of election materials and equipment, such as ballot boxes and ballot papers, etc to each polling station on polling day. It is obvious that one of the major causes for the late supply of extra ballot boxes was that the four depots were too far away from a number of polling stations, and one way that needs be considered is to decentralise the storage

of electoral materials and equipment so that any urgent need could be satisfied in a short time.

2.43 The Commission was particularly disappointed with the operation of the CCC on the polling day. It was trying all its best to cope with the problem but had it reported the urgency and gravity of the problem and sought the advice of the CEO and any EAC member much earlier, the problem might have been contained or resolved. With the benefit of hindsight, if more senior officers had taken charge of the various command posts and helpdesks, better decisions could have been made in ensuring a more speedy delivery of ballot boxes, and sounder advice to individual polling stations could have been made to help solve their problems. Consideration must therefore be given to deploying more senior staff to be in charge at the CCC so that emergencies could be more effectively handled and problems that may arise would be dealt with more timely and hopefully nipped in the bud. A special contingency plan to cater for unexpected scenarios must also be carefully considered and made in preparation for future territory-wide elections.

2.44 Nevertheless, the Commission would like to express its gratitude to the staff at the CCC for giving their best under the dire circumstances.

SECTION 3

Legality of emergency measures adopted by the EAC

3.1 The administrative errors that had regrettably been made as referred to in the last Section had caused a shortage of ballot boxes in a number of polling stations. As a result, the EAC had given a directive to PROs that they could, in case of emergency, take the expediency measure of having the ballot boxes in which votes had already been cast during the course of polling opened.

3.2 It has been suggested in some of the complaints that the EAC has no power to adopt the expediency measure.

3.3 The contention is that there was a breach of the combined effects of sections 47, 48 and 73A of the EP Reg, and the act of opening a ballot box in use might have contravened section 17(1)(e) of the Election (Corrupt and Illegal Conduct) Ordinance, Cap 554 (“ECICO”). The EP Reg provisions are set out below:

“47. *Design of ballot box*

A ballot box to be used for an election is to be so constructed that ballot papers can be introduced into it while it is locked but cannot be withdrawn from it without unlocking it or breaking the seal or the sealing device.

48. *Presiding Officer to seal ballot box before commencement of poll*

(1) Immediately before the commencement of the poll, the Presiding Officer must show each ballot box, empty, to the persons, if any, as are then present within the polling station. Then the Presiding Officer must lock the ballot box, seal it with a seal provided for that purpose or any

other device specified by the Chief Electoral Officer, so that it cannot be opened without breaking the seal or the device.

(2) The Presiding Officer must place the ballot box for the receipt of ballot papers in that Officer's view or in the view of any other polling officers, and must keep it locked and sealed."

"73A. Presiding Officer at a counting station to open ballot box for the receipt of GC ballot papers

(1) A Presiding Officer at a counting station must open a ballot box for the receipt of GC ballot papers in that Officer's charge by breaking the seal. That Officer must do so in the presence of the candidates, their election agents or counting agents, if present at the counting zone."

3.4 Section 17(1)(e) of the ECICO reads:

"17. Corrupt conduct to destroy or deface ballot papers

(1) A person engages in corrupt conduct at an election if the person -
(e) without lawful authority, destroys, removes, opens or otherwise interferes with a ballot box in use at the election."

3.5 The Guidelines on Election-related Activities in respect of the Legislative Council Elections ("the Guidelines") issued by the EAC in July 2004 pursuant to section 6 of the EACO contain similar provisions dealing with the sealing and breaking the seal of the ballot boxes before the poll and at the commencement of the count (paragraphs 5.12, 5.42 and 5.53 of the Guidelines).

3.6 The effect of all these statutory provisions and guidelines is that before the poll commences, the PRO has to show the empty ballot boxes to those present in the polling station and lock and seal them in their presence. At the close of poll, the PRO has to lock and seal the boxes which should be kept under lock and seal until the commencement of the count, when the seal is broken and the lock opened for the contents to be emptied for counting.

In the normal course of events, therefore, the ballot boxes once locked and sealed at the commencement of poll will be kept locked and sealed until the beginning of the count.

3.7 However, apart from section 17(1)(e) of the ECICO, there is no prohibition in the EP Reg or the Guidelines that ballot boxes must *in no circumstances* be opened. There is no statutory provision catering for unexpected contingencies or emergencies.

3.8 As far as section 17(1)(e) of the ECICO is concerned, the prohibition against opening a ballot box in use is subject to the condition that that was done “without lawful authority”.

3.9 The EAC is the statutory body empowered by the EACO to conduct and supervise elections. The EAC shall perform its functions through a CEO who shall, under the direction of the Commission, do all acts and things necessary for implementing the decision of the Commission (section 9 of the EACO). The PROs were persons appointed by the CEO for the election to be in charge of polling cum counting stations and to carry out duties relating to polling and counting therein, pursuant to section 34 of the EP Reg.

3.10 Under sections 6 and 7 of the EACO, the EAC is empowered to issue guidelines and make regulations to provide for the conduct or supervision of, and the procedure at any election. Pursuant to these provisions, the EAC had issued the Guidelines and made the EP Reg.

3.11 In addition to the powers given by sections 6 and 7, by virtue of section 4(b) and (h) of the EACO, the EAC has the following functions, powers and duties:

“4(b) to be responsible for the conduct and supervision of elections;”

“4(h) to generally make arrangements, take such steps or do such other things as it considers appropriate for the purpose of ensuring that elections ... are conducted openly honestly and fairly.”

3.12 Moreover, section 5(g) of the EACO provides:

“The Commission may –

(g) do such other incidental act or thing or exercise such powers as it considers necessary or *expedient* for the performance of its functions under this or any other Ordinance.” (Italics supplied)

3.13 Apart from issuing the Guidelines and making the EP Reg, therefore, the EAC has the power and lawful authority to make arrangements or take appropriate measures in whatever manner necessary or expedient for the performance of its functions for the conduct of the election.

3.14 Although there are the aforesaid provisions in the EP Reg and the Guidelines as well as the ECICO to prevent interference with or opening of the ballot boxes in use, there are no provisions to cover unexpected contingencies or emergencies. For example, if smoke or fumes were found emitting from inside a ballot box in use or after it has been filled, it would be unreasonable for the ballot box not to be opened in order to ensure that the ballot papers inside are safe and undamaged. In such an unexpected event, the EAC as well as the PRO (as the person in charge of the station and the

conduct of the poll therein), will no doubt need to act swiftly and take expediency measures, including the opening of the ballot box.

3.15 It is therefore clear that under section 4(b) and (h) and section 5(g) of the EACO, the EAC has the power and authority to give instructions or directive for the expedient measure to be taken insofar as it makes sure that the electoral process is open, fair and honest.

3.16 In the exceptional, unexpected and emergent circumstances of the shortage of ballot boxes that prevailed in the course of polling on 12 September 2004, the EAC was certainly entitled to give the directive to the PROs, to cater for the emergency, for ballot boxes to be opened for the cast ballot papers to be rearranged to make room for more ballot papers to be cast, or to spare ballot boxes for use, in the presence of candidates, their election agents or polling agents, or in their absence, police officers.

3.17 Regarding the use of carton boxes as ballot boxes to cater for the emergency situation of having insufficient ballot boxes for electors to cast their votes, the EAC is satisfied that the stopgap measure taken by the PRO, as the person in charge of a polling station for electors to cast their votes and entrusted with the power and authority to ensure that the polling process was not disrupted in the absence of any other better immediate solution, though not a normal practice, is acceptable and not improper in the circumstances, insofar as he made sure that the electoral process was open, fair and honest.

3.18 Either in the opening of the ballot boxes to reshuffle their contents or in the use of carton boxes as ballot boxes, the PROs did so in the presence and observation of the polling staff, election agents or polling agents, police officer, Civil Aid Service (“CAS”) officers (where the agents or officers were present) and the electors inside the polling station at the time. Where polling agents were present, the PRO had invariably made the proposal to take the measure to them and obtained their agreement. Everything was done in a fair, honest and transparent manner.

3.19 In some stations, in the absence of any polling agent, the PRO opened the sealed ballot boxes in the presence of the polling staff and as witnessed by the police officer(s) on duty. There is some criticism that this was improper because no candidates’ representatives were present. This criticism of impropriety is unjustified insofar as the process was done in the presence of a police officer. Police officers on duty at polling stations were given the duties to maintain law and order and to assist PROs in the fair and impartial conduct of the election.

3.20 The Hong Kong Police Force had issued “A Guide for Police Officers on Duty at Polling / Counting Stations” to police officers on duty at polling stations as an aid for them in performing their duties. This Guide committed Police support for fair, honest, safe and clean elections for all and highlighted specific Police duties in support of PROs in carrying out their responsibilities. It also detailed the various statutory offences under the ECICO. In the present context, it is pertinent to note that section 17(1) of

the ECICO is set out in the Guide that a person engages in corrupt conduct at an election if the person –

- “(b) with intent to deceive, puts into a ballot box a paper other than a ballot paper that the person is lawfully authorized to put into the box; or
- (d) without lawful authority, destroys, defaces, takes or otherwise interferes with a ballot paper in use, or that has been used, at the election; or
- (e) without lawful authority, destroys, removes, opens or otherwise interferes with a ballot box in use at the election.”

3.21 The presence of police officers, during the opening of the ballot boxes under the direction of the EAC, therefore, was intended to provide a greater degree of protection to the ballot boxes and ballot papers and instil confidence that, in the absence of agents of candidates at the polling stations concerned, the potential for unlawful or fraudulent interference with the ballot boxes and ballot papers was minimised.

3.22 Thus, when the PROs in some polling stations had followed the directive of the EAC to open sealed ballot boxes to rearrange the cast ballot papers for making more room for ballot papers to be cast, since the replenishing ballot boxes had failed to arrive on time, these were done in the presence of and witnessed by police officers on duty. It is hard to imagine, in such cases, that the police officers concerned did not appreciate the importance of their function and duty in ensuring that the ballot boxes and the cast ballot papers inside were kept free from interference, undamaged and safe. This would, some may think, be as good as, if not better than, the processes being witnessed by a few polling agents, as opposed to polling

agents representing all candidates' lists contesting in the GC, for such polling agents might have the interests of their principals to serve, whereas police officers had to perform their duties in upholding the law and to ensure no contravention of section 17(1) of the ECICO.

3.23 Furthermore, section 94 of the EP Reg stipulates that where under this Regulation, an act or thing is required or authorised to be done in the presence of a candidate or all the candidates, the election agent, the polling agent or the counting agent of the candidate, that act or thing is not to be invalidated solely for the reason that such person or persons were not present as required or authorised.

3.24 There was no threat to the secrecy of the vote either. The ballot papers inside the opened ballot boxes were at least folded once, and the votes marked on them were kept concealed even when the ballot boxes were open and the ballot papers inside were taken out, rearranged and packed back into one or more of the ballot boxes. Even if the vote on some ballot papers was exposed inadvertently in the course of the process, there was no way that the vote could be attributed to any particular elector.

3.25 Moreover, every person present at a polling/counting station is required to take the declaration of secrecy, and a breach of it is an offence. This applies not only to the candidates or their agents, but also to all electoral officers, visitors to the station and members of the EAC. This is an added measure to ensure the secrecy of the vote.

3.26 All the above acts to cater for the unexpected and emergent situation of shortage of ballot boxes were performed in good faith to ensure the least disruption would be caused to the polling process. The principle of fair, honest and open election has not, in any way, been jeopardised.

SECTION 4

Ballot discrepancy in four functional constituencies

4.1 A few candidates from four FCs, namely the Social Welfare FC, Labour FC, Accountancy FC and Health Services FC, claimed that the number of cast ballot papers counted had exceeded the number of voter turnouts as announced.

4.2 In respect of this matter, the EAC caused the ballot paper accounts of the 501 polling stations regarding the 4 FCs to be checked very soon after the polling day. The discrepancies between the turnout figures and the number of counted ballot papers set out in Table 1 below were announced by the EAC at a press conference on 15 September 2004.

Table 1

	Voter turnout figure (for provisional reference only)	Ballot paper account figure (total number of ballot papers believed to be in ballot boxes)	Number of ballot papers counted
Social Welfare FC	8,475	8,539	8,538
Labour FC	469	458	455
Accountancy FC	12,269	12,324	12,323
Health Services FC	21,833	22,037	22,035

4.3 From Table 1, in the case of the Social Welfare FC, for example, the

provisional voter turnout figure was 8,475 while the number of cast ballot papers counted was 8,538. On the face of it, there appear to be 63 more ballot papers counted than the number of voters. But, as we can see from the Table 1, the number of ballot papers believed to be in ballot boxes as recorded in the ballot paper account was 8,539 and the number of ballot papers cast as counted was 8,538. Hence there was one ballot paper as counted less than as believed to have been cast. The picture for the other three FCs is similar. The real outcome was that, in all of these cases, the number of cast ballot papers counted was smaller than the number of ballot papers believed to have been cast as recorded in the ballot paper account, and the differences were relatively small, ranging from one to three. This phenomenon is common in elections, as an occasional elector may obtain a ballot paper from the issuing desk, but, instead of marking it and casting it into the ballot box, take it away. The relatively small discrepancy is acceptable and unexceptional, for it had always been accepted by candidates and all concerned in all past elections without question. As mentioned above, the number of ballot papers believed to have been cast as recorded in the ballot paper account is the figure that can be taken as the basis for comparison, ensuring that there is no forged or unauthorised ballot paper amongst the ballot papers eventually counted in the count.

4.4 There is no regulation or guideline for voter turnout figures to be provided. They were provided solely as an administrative arrangement that aimed to give provisional figures for general reference of the public. On the other hand, the preparation of the ballot paper account with its verification

and the conduct of the count to ascertain the election result are prescribed by the EP Reg (sections 64, 74, 77, 79 and 83) and the Guidelines (paragraphs 5.66 to 5.75 and 5.78 thereof). The ballot paper account is compiled from the actual serial numbers on the counterfoils. The only basis for the election result is the number of votes cast for each candidate that are ascertained in the count.

4.5 The EAC would like to stress that the voter turnout figures announced on an hourly basis were just an indicator showing the general trend of the number of electors turning up at the polls, and these figures were meant for provisional reference only. There is nothing irregular if the turnout figure is more or less than the number of actual ballot papers counted. The number of ballot papers believed to have been cast as recorded in the ballot paper account was relied on as reflecting the number of electors that had turned up at the polling station and obtained their ballot paper. Insofar as the ballot papers counted are equal to or smaller than the figures of the ballot papers believed to have been cast shown on the ballot paper account, then one can be quite sure that there was nothing that should give rise to concern.

4.6 There were subsequent questions from a candidate of the Accountancy FC relating to the methodology adopted for accounting for ballot discrepancies. As a result, the Commission instructed the REO to check and examine all relevant data.

4.7 What has transpired upon checking of the turnout records and ballot paper accounts returned from each polling station and verified with the working papers for compiling these records and accounts is that recording and computation errors had been made. For example, there was one polling station which had only reported the voter turnout of some FCs in that station for a one-hour period but was unable or failed to report such turnouts for all other hours during the polling day through the IVRS. This station was K0301 located at Shak Chung Shan Memorial Catholic Primary School in the New Territories West GC. The verified and corrected figures appear in Table 2 below.

Table 2

	Voter turnout figure (for provisional reference only, as verified)	Ballot paper account figure (total number of ballot papers believed to be in ballot boxes, as verified)	Number of ballot papers counted
Social Welfare FC	8,546	8,541	8,538
Labour FC	461	458	455
Accountancy FC	12,333	12,326	12,323
Health Services FC	22,050	22,036	22,035

4.8 Regarding the Accountancy FC, as the complaining candidate asked the EAC to check the number of registered electors against the number of ballot papers issued in each of the polling stations, the EAC has caused the relevant ballot paper accounts to be thoroughly checked. It has been found

that in respect of one polling station, one Accountancy FC ballot paper had been issued while no Accountancy FC elector was assigned to this polling station. The PRO and DPRO of the station have not been able to recollect or tell the reason why. Apart from this polling station, no ballot paper was issued in excess of the registered electors of the Accountancy FC assigned to all other polling stations.

4.9 This discrepancy shows that the ballot paper accounts may also be open to recording and computation errors during the busy polling day. However, these errors can be and have now been checked and verified. In any case, all these did not affect the accuracy of the ballot papers counted at the counting stage, because their number was ascertained in the process of physical counting after the ballot papers were emptied from sealed ballot boxes, and the whole process of the count, including the breaking of the seals of the ballot boxes, was done openly under the eyes of the candidates and/or their agents. The counted ballot papers were the most accurate and only basis for the election result. While the Commission regrets that the aforesaid mistakes had been made, it is firmly of the view that in the light of the relatively large difference between the votes obtained by the candidate who was elected and the votes obtained by the runner-up, the discrepancies and the mistakes should not make any material difference and would not have affected the election result.

Voter turnout figures and delay in announcing election results

4.10 The compilation of the turnout figures was based on the hourly voter turnout rate reported by the staff of 501 polling stations to the CCC through the IVRS. Theoretically, reliable voter turnout figures had to be derived from the number of ballot papers issued to the electors which were bound in individual pads. There was a serial number on the counterfoil of each ballot paper (but there was no number on the ballot paper itself for the sake of keeping the secrecy of ballot). To obtain at any one time the number of electors who had turned up at the issuing desks for a ballot paper, a polling staff should first take the number of counterfoil of the last ballot paper issued to subtract from it the number of the counterfoil of the first ballot paper in the pad, and then add 1. If there was one or more pad of ballot papers that had been used up, he could get the number of ballot papers issued from each pad by taking note of the number of the counterfoil of the last ballot paper issued. By adding all these figures together he could get the total number of electors that had turned up for their ballot papers. The polling staff had been told to follow this method to compile the voter turnouts for FCs on an hourly basis. At a fixed hourly interval or approximately so, the polling official who was tasked to compile statistics would go round to each issuing desk to seek a verbal report from the polling staff at the desk of the previous hour's turnout in respect of the GC and each of the FCs (up to a maximum of 17 FCs), and then add up all the figures so reported by all the issuing desks for reporting to the REO CCC. On the other hand, for the GC turnout rate, the polling staff had been told to use each of the five strokes in the Chinese character 正 to

record the sex and age profile of every GC elector who had been issued with a ballot paper and add the number of the characters written together with the unfinished one to reach the total at the close of the hour. The total number would provide the hourly GC voter turnout conveniently and expeditiously. Although the polling staff were not required to use the Chinese character 正 to record the sex and age profile of FC electors, there is evidence to show that a number of polling stations had compiled the FC turnout figures in the same way, or indeed some other way. As each polling station was required to calculate manually the voter turnouts for the relevant GC and up to 17 FCs every hour and then report these figures through the IVRS, one cannot rule out the possibility of human errors in recording and compiling them when staff were working under considerable pressure and time constraint.

4.11 The hourly voter turnout rates were reported to the Statistical Information Centre (“SIC”) of the CCC by a polling official of each of the 501 polling stations throughout the territory by using the IVRS. The contract for the programme design, computer hardware and project management of the system was awarded to Continuous Technologies International Limited (“CTIL”) through an open tender exercise. The statistics unit at the CCC had noticed that 34 to 37 polling stations had failed to report the GC voter turnout figures during the first two hours of reporting starting from 8:30 am. At around 10:30 am, CTIL reported a problem in the primary database system which would cause sudden cut-offs of telephone calls. CTIL invoked the contingency plan and switched to the secondary system. Between 11:30 am and 4:30 pm, about 35 polling stations had

reported repeated problems in reporting voter turnout figures through the IVRS. The REO IVRS Support Hotline Team provided immediate assistance to the polling stations concerned by collecting the voter turnout figures manually. With the joint efforts of the contractor and the REO SIC, the system resumed normal operation temporarily. The Commission regrettably noted that there were subsequent setbacks in the IVRS in the closing hours of the poll which had adversely affected the hourly reporting of voter turnouts and the accuracy of the final figures.

4.12 Technical problems with the IVRS also compelled the staff at the CCC to conduct an overall verification of all voter turnout data manually, which brought about the delay in declaring the election results, as there was a need to ensure that all relevant data were correct before the election results could be announced. Investigations into the problems with the IVRS on the polling day are continuing. Preliminary findings indicate that there were shortfalls in the design and capacity of the system and deficiencies in the testing of the system during the implementation stage, and that the built-in contingency plan could not cope with the significant failure of the system on polling day. The Commission will report further on these aspects, including the question of responsibility, in the final report.

Recommendations

4.13 In order to avoid any misunderstanding and too much reliance being placed on the turnout rates published or reported by each polling station on an

hourly basis, the EAC proposes that in future there should be an express warning that the turnout rates provided are imprecise and can only be used for temporary reference only.

4.14 On the other hand, it is necessary for the EAC and REO to design ways to improve on the accuracy of the hourly turnout, if possible.

4.15 The EAC and REO have also to explore ways in which ballot paper accounts can be compiled with accuracy.

4.16 The EAC will look into the reasons for the failure of the IVRS in detail, critically examine the effectiveness and reliability of its operation and look for other better and safer means for reporting and computing data.

4.17 In respect of all these, consideration will need be given whether it is necessary to seek assistance from outside experts.

SECTION 5

Eviction or exclusion of candidates or their agents from polling stations

5.1 The EAC / REO have so far received 15 complaints relating to the eviction or exclusion of candidates and their agents from 31 polling stations when the station was being converted for counting purposes. The relevant provisions with regard to the admission of candidates and their agents into the polling/counting stations at the close of poll and at the commencement of the counting process are contained in the EP Reg and the Guidelines.

5.2 The relevant provisions of the EP Reg are set out below:

- (i) Section 48(1) and (2) provides that immediately before the commencement of the poll, the PRO must show each ballot box, empty, to the persons, if any, as are then present within the polling station. Then the PRO must lock the ballot box, seal it with a seal provided for that purpose or any other device specified by the CEO, so that it cannot be opened without breaking the seal or the device. The PRO must place the ballot box for the receipt of ballot papers in that Officer's view or in the view of any other polling officers, and keep it locked and sealed.
- (ii) Section 63(1) provides that as soon as practicable after the close of the poll at a polling station which is also designated as a counting station, the PRO must display a notice at a prominent place outside

the polling station stating that the poll has been closed and that it will be opened when it is ready for use for the counting of votes;

- (iii) Section 63(1A) stipulates that a candidate and an election agent and a counting agent of such candidate **may stay** in a polling station referred to in subsection (1) while it is closed for the preparation for the counting of votes;
- (iv) Section 68(4) states that only an election agent or counting agent regarding whom **notice of appointment** has been given under this Regulation may be present during the counting of the votes at the counting zone or zones;
- (v) Section 73A(1) provides that a PRO at a counting station must open a ballot box for the receipt of GC ballot papers in that Officer's charge by breaking the seal. That Officer must do so in the presence of the candidates, their election agents or counting agents, if present at the counting zone; and
- (vi) Section 94 stipulates that where under this Regulation, an act or thing is required or authorised to be done in the presence of a candidate or all the candidates, the election agent, the polling agent or the counting agent of the candidate, **that act or thing is not to be invalidated** solely for the reason that such person or persons were not present as required or authorised.

5.3 The following paragraphs of the Guidelines are also relevant:

“5.12 About 15 minutes before the commencement of polling, which is at **7:30 am** on the polling day, the PRO at a polling station will show the candidates, their election agents and *polling agents*, if they are present, the empty ballot boxes before proceeding to lock and seal them. Candidates concerned and their agents may observe the locking and sealing of the ballot boxes. ...” (Italics supplied)

“5.42 Polling will close at **10:30 pm**, and electors who intend to vote but are not at the door of their designated polling station by that time will not be allowed in afterwards. At the close of poll, the ballot boxes will be locked and sealed by the PRO in the presence of the relevant candidates and their agents, if they are present. ...”

“5.44 At the close of poll, a notice will be displayed by the PRO outside the polling station (which is also designated as a counting station) to inform the public that the poll has been closed and that the station is being arranged for the counting of GC votes and will be open to them when such arrangements are completed. *A candidate and his election agent and counting agent may stay in the polling station while it is closed for the preparation for the counting of GC votes.*” (Italics supplied)

“5.53 The PRO will check whether all the ballot boxes are properly sealed. The seal on each GC ballot box will then be broken by the PRO in the presence of candidates or their election or *counting agents*, if they are present at the time. ...” (Italics supplied)

“7.29(c)(ii) For GCs, *candidates and their counting agents, if present, may stay inside the polling station to observe the conversion of the venue into a counting station* and then the count that will commence upon the completion of the conversion.” (Italics supplied)

“7.30 ... A *polling agent* **MAY**:

(a) ...

(b) *observe the locking and sealing of empty ballot boxes before the poll commences and the locking and sealing of the ballot boxes at the close of the poll;*

NOTE :

A polling agent who signs the sealing certificate of a ballot box as witness is required to write his name in block letters beneath his signature for easy identification. Candidates are advised to keep a list of their own polling agents to facilitate checking when the sealing certificate is broken at the counting station.” (Italics supplied)

“7.42 Counting agents are appointed to attend at the counting station **to observe the breaking of the seals on the ballot boxes, the sorting, separation and counting of ballot papers and the counting of votes recorded on the valid ballot papers.** This arrangement ensures the transparency of the counting process and is conducive to openness and fairness.”

5.4 The Operation Manual for PROs, DPROs and APROs published in August 2004 by the REO for the conduct of the election (“Operation Manual”) also has the following provisions:

“7.4 **NOTE : Nobody is allowed to stay behind inside the station on the close of poll, except the station staff, candidates, their election agents/polling agents or any other public officers authorised to stay.**” (Italics supplied)

“7.5 [After the close of poll] The PRO should lock and seal the flap at the front of each ballot box with a sealing certificate in the presence of those people who are still staying behind in the station. ... The candidates or their agents may sign the sealing certificate as witnesses but they are required to write their names in block letters under their signatures for easy identification. If no candidate/agent is present, any member of the station staff may sign the sealing certificate as a witness.”

The third last bullet item on “Checklist E – Close of Poll” provides: “GC candidates and their election agents and *polling agents* may stay to witness the conversion.” (Italics supplied)

“7.22 *During the conversion the candidates/agents may be allowed to stay inside the station.*” (Italics supplied)

“8.13 The PRO will conduct the count in the presence of the candidates, their election agents/counting agents, if they are present. The PRO should ensure that the candidates/agents should stay outside the restricted area when they are observing the opening of the ballot box(es). The PRO will first show them that the locks and seals on the ballot box(es) are intact. The PRO will then break the seal and unlock the box(es). The box(es) will then be opened and emptied, with all the contents poured onto a counting table. ...”

5.5 The third last bullet item on Checklist E is in error because counting agents, as opposed to the stated polling agents, may stay to witness the

conversion. Paragraph 7.22 of the Operation Manual may also give rise to a possible interpretation that a PRO has a discretion to admit or not to admit candidates and agents into the polling station during the conversion of the station into a counting station.

5.6 However, in Part One “Introduction” of the Manual, there are the following statements:

“1.1 This manual aims at facilitating your discharge of duties as the Presiding Officer (“PRO”), Deputy PRO (“DPRO”), Assistant PRO (“APRO”) or APRO (Statistics) for the conduct of the poll and the count ... This manual provides all the relevant information about the electoral arrangements and operational procedures with regard to the poll and the count for geographical constituencies (“GCs”) election, *which are your primary concern.*”

“1.3 You should go through this manual thoroughly and at the same time *be equipped with adequate knowledge about the electoral arrangements and procedures stipulated in the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (“EP Reg”) and the Guidelines on Election-related Activities in respect of Legislative Council Elections (“Guidelines”) issued by the Electoral Affairs Commission (“EAC”).*” (Italics supplied)

“1.5 You will not be left helpless. In case of doubt in the course of your execution of duties on the polling day, please contact the help desks stationed in the Central Co-ordination Centre (“CCC”), relevant District Command Centre (“DCC”), your Returning Officer (“RO”), Assistant RO (“ARO”), ARO (Legal), or the relevant units. A list of contact phone and fax numbers of the units concerned will be issued to you nearer the polling day. ...”

5.7 Despite the possible ambiguities presented by paragraph 7.22 and the mistake in the bullet item of Checklist E, section 63(1A) of the EP Reg and paragraphs 5.44 and 7.29(c)(ii) are crystal clear that candidates, election agents and *counting agents* may stay in the station during its conversion for counting purposes. It is also clear from all the provisions that a polling

agent is allowed to stay in the polling station from shortly before the start of poll until after the sealing of the flaps on the ballot boxes at the close of poll, and that he is not allowed to stay to keep an eye on the ballot boxes after the completion of the sealing procedure, which is to be the task for the counting agent.

5.8 On the other hand, many PROs and polling officials in the cases we have dealt with seemed to have understood from paragraph 7.4 and the last third bullet item of Checklist E of the Operation Manual that GC candidates and their election agents and *polling agents* may stay to witness the conversion, which implies that *counting agents* are not allowed to witness the conversion. Moreover, since paragraph 7.22 of the Operation Manual mentions that “the candidates/agents may be allowed to stay inside the station during the conversion”, a reading in conjunction with paragraph 7.4 and Checklist E would allow the interpretation that “agents” are “election agents” or “polling agents”. According to such interpretations, the PROs believed that counting agents were not allowed to observe the conversion.

5.9 The EAC must concede that the understanding of the PROs was not an unreasonable reading and interpretation of the aforesaid paragraphs of the Operation Manual, although when one looks at section 63(1A) of the EP Reg and the various passages in the Guidelines cited above, this understanding would be obviously wrong.

5.10 Against this background, the EAC has investigated whether a PRO or any other staff had asked an agent to leave the station or had refused him entry, and if so, the reasons why and circumstances under which the agent was expelled or excluded. We also have to ascertain the status of the person so expelled or excluded, whether he was a candidate, an election agent or a counting agent, because apart from the candidate and election agent, who should be allowed to remain inside during both the polling and counting processes, the functions of a polling agent as opposed to a counting agent and therefore the treatment to be accorded to him are different. The EAC has investigated into 15 complaint cases involving 31 polling stations. Results of enquiries with the PROs concerned show that the cases could be broadly classified into four types, (a) cases in which no request had been made by agents to enter the polling station after the close of poll and the PRO did not refuse to admit them; (b) cases in which PROs refused entry of counting agents but allowed polling agents to stay as a result of a misunderstanding of the Operational Manual; (c) cases in which no agents were admitted for a period of time between close of poll and conversion; and (d) cases in which both polling and counting agents were admitted to observe the conversion process as confirmed by PRO/DPRO/APRO. A summary of these cases is set out in **Appendix V**. There are still some complaints under the above categories in respect of which investigation has to be made or continued. There were four cases under category (c) in respect of which investigations have been completed, and a report with our findings, observations and suggested remedial measures can be found in **Appendix VI**. For the

remaining cases under investigation, the complainants will be individually informed of the findings once the investigation is completed.

5.11 In the category (a) cases, investigations have so far revealed that, although the allegations in the complaints are that counting agents were not allowed to enter the stations concerned, the explanation given in the statements of the PROs and other polling officials was that they did not know of any request by any counting agent for entry or that no such request had been made to them. In most of these cases, polling agents were allowed to witness the sealing of ballot boxes and conversion of the polling station into a counting station. Investigations on many of these cases are continuing because despite our efforts, it had been quite a time-consuming process to obtain first the actual counting agents' details and then the particulars of the circumstances under which they were allegedly refused entry. Without these particulars, further investigation may not be possible and we are constrained to accept the polling officials' version in the absence of any evidence from the alleged counting agents supporting the allegations. Regardless, where a police officer was present during the conversion process, we trust that the integrity of the election was not affected. See the detailed reasons given below.

5.12 In the category (b) cases where investigations have completed, since polling agents were allowed to remain in the station for the sealing of ballot boxes as well as during the whole course of the conversion for counting purposes, we are quite sure that the expulsion or non-admission of

counting agents in the stations concerned should not be a basis for suspicion against the integrity of the electoral processes conducted in the polling station concerned.

5.13 Similarly, for category (d) cases, where polling agents as well as counting agents were without distinction admitted to observe the conversion process, no suspicion against the integrity of the electoral processes should arise.

Security provided by presence of police officer

5.14 Moreover, as in former elections, for the LegCo election this time, the Hong Kong Police Force had provided great assistance in the conduct of the election. Apart from escorting the delivery of FC ballot boxes from the polling stations to the Central Counting Station at the close of poll, police officers were deployed to each of the polling/counting stations to assist the PRO in the fair and impartial conduct of the election and to maintain law and order.

5.15 For the purpose, the Police Force had provided “A Guide for Police Officers on Duty at Polling / Counting Stations” as an aid for police officers in the performance of their duties. This Guide committed Police support for a fair, honest, safe and clean election for all and highlighted specific Police duties in support of the PRO in carrying out his responsibilities. It detailed various statutory offences under the ECICO. In the present context, section

17(1) of the ECICO is set out in the Guide that a person engages in corrupt conduct at an election if the person without lawful authority, destroys, removes, opens or otherwise interferes with a ballot box in use at the election. The presence of police officers, therefore, was intended to provide a greater degree of protection to the ballot boxes and ballot papers and to instil confidence that, in the absence of agents of candidates at the polling stations concerned, the potential for unlawful or fraudulent interference with the ballot boxes and ballot papers was minimised.

5.16 The EAC places trust in police officers as to their ability, alertness and, above all, integrity. Insofar as they stayed inside a polling station, they can be trusted not only to maintain law and order, but also to assist in ensuring that the electoral processes were conducted in an impartial, open and transparent manner.

5.17 Moreover, when the PROs in some polling stations had followed the directive of the EAC to open sealed ballot boxes for making more room for ballot papers to be cast, since the replenishing ballot boxes had failed to arrive in time, these processes were done in the presence of and witnessed by police officers. It is hard to imagine, in such cases, that the police officers concerned did not appreciate the importance of their function and duty in ensuring that the ballot boxes and the cast ballot papers inside were kept free from interference, undamaged and safe. This would, some may think, be more satisfactory than the processes being witnessed by a few polling agents, as opposed to polling agents representing all candidates' lists contesting in

the GC, for such polling agents might have the interests of their principals to serve, whereas police officers had to perform their duties in upholding the law and to ensure no contravention of section 17(1) of the ECICO.

The built-in stronghold of neutrality, fairness and honesty

5.18 The various tasks in a polling/counting station were divided amongst various polling officials and polling staff. They are civil servants that are under the employ of various government departments, and were recruited by the REO for the purpose of conducting the election. They were normally not working in the area covered by the polling station. These civil servants were all volunteers who had applied to the REO to participate in the conduct of the election. The REO required the volunteers to report if they had close relationship with any candidate, and if so, they would not be appointed to work in any polling/counting station. The REO also devised a practice of deploying the officers and staff in the following manner so as to ensure that they would be neutral and fair towards the contesting candidates or lists of candidates. The volunteer applicants whose applications had been accepted by the REO were assigned by the REO to man the polling/counting station at random, without their prior knowledge. The assignments were done on purpose so as to ensure that they should not be too familiar with one another, and to minimise the possibility that they would act in favour of any political body or candidate in the area covered by the station. All these were done to bolster the neutrality and independence of the arrangements and to avoid any collusion that might affect the integrity of the polling and counting

processes. It would therefore be difficult to imagine that all officers and staff within the station were conspiring together to do anything improper during the time when the counting agents were kept outside the polling station.

Conclusion

5.19 Out of 31 polling stations in respect of which complaints or allegations of polling agents and counting agents being turned away or expelled at the close of poll so that they were not able to keep an eye on the sealed ballot boxes, four of such cases may have given rise to suspicion or concern (see Appendix VI). For the reasons given in respect of these four polling stations, we have come to the conclusion that there should not be any reasonable ground to suspect that the integrity of the polling and counting processes conducted at these four polling stations had been adversely affected.

5.20 The Commission has sent a letter of caution to each of the four PROs concerned, pointing out the mistakes they had made and disapproving what they had done.

5.21 Most of the expulsion or exclusion cases were caused by the ambiguity created by the relevant passages in the Operation Manual, which resulted in the misunderstanding on the part of the PRO and polling officials in the stations concerned. This misunderstanding is well illustrated by the

treatment accorded to the polling agents who were allowed to remain in the stations after the sealing of ballot boxes and during the entirety of the period when the stations were converted for counting purposes. One of the category (c) cases shows that the PRO harboured the belief that he had the power or discretion to exclude persons from the station as a matter of regulating or maintaining order, but apparently without appreciating the importance of carrying out the electoral processes beyond suspicion in order to maintain the integrity of election. Obviously, those who erred were not too familiar with the electoral rules and the principle of openness, fairness and honesty or had failed to appreciate the significance of upholding the principle. Nonetheless, for the reasons given above and those set out in Appendix VI, we have come to the conclusion that there was no deliberate flouting of the principle, although the expulsion or exclusion had given rise to concern about fairness of treatment to counting agents of various candidates subjected to this treatment.

Recommendation

5.22 As a remedial measure, it is necessary for the REO to fully revamp the Operation Manual to make the contents fully compliant with the provisions of the EP Reg and the Guidelines. It is also necessary for the training programme for PROs and polling officials to be revamped and strengthened, so that they will have a fuller understanding of the EP Reg and Guidelines. It is of paramount importance to explain and stress to them that all the electoral steps are for upholding the principle that the electoral

processes have to be open, fair and honest, and the significance of not only giving effect to the principle, but also acting in such a manner as to ensure that the principle is perceived by the public to have been fully complied with. The personnel assigned the task of the conduct of the electoral processes must be trained to understand the principle and always keep it in mind.

SECTION 6

Use of polling stations by disabled persons

6.1 There were two complaints received under this category, both relating to the same polling station, namely St Stephen's Girls' Primary School, station A0501.

6.2 The first complaint appeared in the press release dated 15 September 2004 issued by a group of candidates led by Mr Ho Chun-yan. The complaint was that the PRO of this polling station allowed an elderly immobile elector to cast her vote outside the station.

6.3 The PRO explains very clearly. She says:

“The polling station A0501 ... consists of two floors – the G/F is a small reception area and the 1/F is a hall used to house the issuing desks and voting compartments, etc. At about noon on 12 September, a young lady requested our assistance saying that her mother had an operation on her leg very recently and could not walk up the stairs to the 1/F to vote. She asked if we could do anything for her mother. I recalled that REO had once told us that electors should not be turned away without good reasons. Believing that an elector should not be deprived of her voting right because of the layout of the polling station she was assigned to, I suggested the following to all election and polling agents present at the station at that time (including the agents for the DP, DAB and Mrs Rita Fan):

- (a) I went down to the G/F to check the HKID card of the elector;
- (b) if I was satisfied with her identity, I would go up to the 1/F to bring her a ballot paper;
- (c) the elector could mark her vote secretly in an area on the G/F where nobody could see her vote, then fold the ballot paper before giving it to her daughter;

- (d) her daughter could then take the ballot paper to the 1/F to put it in the ballot box on her behalf; and
- (e) the whole process was to be witnessed by all election and polling agents present if they so wish.

All election and polling agents (there were at least 4 agents in the station at that time) agreed to my suggestion. I then telephoned the REO helpdesk to seek their consent to the proposal. I explained that the G/F reception area where the elector would mark her vote was within the polling station because (i) the entrance leading to the reception area had been delineated as 'no staying zone'; and (ii) the Secretary of Justice cast her vote on the G/F. The REO official (I could not recall her name now, but she said she came to our polling station to check the set-up on 11 September) endorsed the proposal. I rendered assistance to the elector in accordance with steps (a) to (e) above in the company of Mr. Sherman Chan, APRO. The whole process was witnessed by at least two election agents and no complaints were received from them."

6.4 The APRO confirmed that he rendered assistance as instructed, and there were two agents who witnessed the whole process.

6.5 While the processes of issuing a ballot paper to an elector not at an issuing desk, allowing her to mark her vote outside a voting compartment and letting someone else to cast her ballot paper into the ballot box were not the usual procedure adopted for polling stations, everything done by the PRO was open and fair. She had explained the procedure to be adopted to cater for the situation to the agents and obtained their agreement or approval. The elector in fact had marked the ballot paper in private and had it folded before it was taken upstairs by her daughter for casting into the ballot box. There was certainly a risk of affecting the secrecy of the vote, but in the circumstances we do not believe that it was breached. Moreover, the ballot paper was not taken outside the polling station, as the reception area on the ground floor was obviously part of the polling station and the elector did not mark it outside the polling station.

6.6 Nor did the PRO contravene any of the provisions of the EP Reg.

The provisions about the polling station allocated to the elector read:

“section 32(1) ... a person may only vote at the polling station or polling stations allocated to him or her ...”

“section 43(1) The Chief Electoral Officer must delineate each polling station on one or more maps or plans. The Chief Electoral Officer must display the relevant map or plan outside each polling station.”

6.7 We have checked the maps delineating the polling station that were displayed outside this polling station. There were three of them. The first is a location map, showing the location of the polling station, at St Stephen’s Girls’ Primary School, coloured in red, with names of roads, streets and buildings in the vicinity. This map also shows by blue lines the No Canvassing Zone. The second is a boundary plan showing the entrance to the polling station on the ground floor, with chequered red lines demarcating the No Staying Zone. The third is a boundary plan of the first floor polling station with also a similarly marked No Staying Zone. It is therefore clear that the ground floor of the school was also designated as part of the polling station with the No Staying Zone demarcated. The PRO was therefore correct when she considers that the ground floor of the school building was also part of the polling station. There was no breach of section 32(1) of the EP Reg cited above, and under this regulation, the elector must cast her vote in this polling station or not at all.

6.8 Regarding the manner in which and the place at which the elector marked her vote and the way that her marked ballot paper was taken up to the

first floor by her daughter to cast it into the ballot box, there is no express regulation or guideline to cover the situation. The following provisions in the EP Reg and the Guidelines may, however, be relevant:

- (a) Section 54 of the EP Reg deals with the procedure for voting. An elector must immediately go into a voting compartment with the ballot paper issued to him, mark the ballot paper inside and conceal the mark. He must then without undue delay put the ballot paper into the correct ballot box. The manner of concealing the mark made on the GC ballot paper is to fold it so that the marked side is inside, and the folded ballot paper must be put into the ballot box.
- (b) Section 59 of the EP Reg deals with marking of ballot papers for or by an incapacitated person. The PRO may mark a ballot paper for an elector who is or claims that he is unable to read or is incapacitated from voting due to blindness or other physical cause. The PRO may do so only on the application of such an elector. The PRO must mark the ballot paper according to the choice of the elector. The PRO must put the ballot paper into the ballot box in the manner provided in section 54.
- (c) Paragraph 5.37 of the Guidelines provides that such an incapacitated elector may ask the PRO, DPRO or APRO to mark the ballot paper on his behalf. The marking of the ballot paper will be made to show the elector's choice in the presence of one of the polling officers as a witness.

6.9 These provisions, however, do not provide for the situation faced by the PRO. The request of the incapacitated elderly lady was not for the PRO to mark her ballot paper. She requested the PRO to issue to her a ballot paper within the polling station in order to avoid climbing the stairs which she could not climb. As we said before, there was nothing wrong with this, as the ground floor at which the ballot paper was issued to her was also part of the polling station. The difficulty was that there was no voting compartment on the ground floor, but she was allowed to mark her ballot paper in private secretly. There is no regulation or rule or guideline that the voting compartment must be a designated place, and the place where she could mark her ballot paper in private and have it folded to conceal her vote could reasonably be said to be a makeshift voting compartment, as the secrecy of her vote was kept intact. The elector's daughter taking the folded ballot paper upstairs to cast it into the ballot box is as good as a polling official casting the vote for the elector had the elector made the request for the officer to do so, pursuant to section 59 of the EP Reg and paragraph 5.37 of the Guidelines. That was done perfectly honestly and openly in the presence of the election/polling agents who had agreed to the PRO's proposal to deal with the situation.

6.10 In all the circumstances, we do not believe that what had been done by the PRO was in breach of any regulation or guideline. There was nothing in this case that affected the integrity of the polling process in the station concerned. The whole process was done with the agreement of

agents for various candidates present and performed openly in their presence, and the principle of open, fair and honest election has not been contravened.

6.11 The other complaint was found in Ms Audrey Eu's speech in the programme "Letter to Hong Kong" broadcast on Radio Television Hong Kong on 26 September 2004. It was said that an elderly gentleman got to this polling station, only to discover that the polling area was on a different floor. He could not manage the stairs on his crutches and went away, deprived of his right to vote.

6.12 With the kind assistance of Ms Eu, the REO contacted the daughter of the elderly gentleman who accompanied him to the polling station. She told the REO that she and her father had gone to the station by car. She had voted but her father could not manage the stairs leading to the polling area and so they left.

6.13 The polling area was situated on the 1st floor of the school, and as such, it was not accessible to electors hampered in walking. It was stated under the location map of the polling station (showing the same information as the first map displayed outside the station referred to above) sent together with the poll card to electors at least 10 days before the polling day that "the entrance/exit of this polling station is not accessible to electors who have difficulty in walking, including those on wheel chair". It was also stated with underlining that disabled persons may apply, at least 5 days before the polling day, to be assigned to a "special polling station" that is accessible to

them. The use of special polling stations was also made known in the Guidelines, the relevant paragraphs of which read:

“5.11 An elector (and an AR [authorised representative] of a corporate elector) **may vote only at the polling station allocated to him** by the CEO [Chief Electoral Officer]. Many of the polling stations are accessible to persons with a disability including those who have difficulty in walking. An elector with a disability finding it difficult for him to access the polling station allocated to him may at least 5 days before the polling day apply to the CEO for re-allocation of a polling station specifically designated for such electors (‘special polling station’) [s 33 of the EAC (EP) (LC) Reg]. ...”

“7.34 There may be electors with a disability who have been permitted to vote in the polling station specifically designated for the constituency for the purpose. Candidates or their agents can make inquiries with the RO for information.”

6.14 On receiving an elector’s application to vote at a “special polling station”, the REO will also offer free service on the Rehabus to the elector to take him from his place of residence to that “special polling station” if he so wishes.

6.15 It was unfortunate that the elderly gentleman and his daughter were not aware of the notice on the location map and did not take advantage of the arrangements for him to be designated to a special polling station. If either of them had sought the assistance of the PRO, there is little doubt that the PRO would have dealt with the gentleman’s case in the same manner as that she had with the elderly lady referred to in the first complaint.

6.16 In the circumstances of this case, the EAC considers that it was an unfortunate case that the gentleman did not cast his vote, but there is little justification in the allegation that he had been deprived of his right to do so.

6.17 The REO will continue to make every effort to identify venues accessible to disabled persons for use as polling stations in future elections.

SECTION 7 – WAY FORWARD

Immediate action in hand

7.1 Save for the complaints into which investigation has been made and a finding has been reached as described in this report, the Commission is continuing to investigate into the uncompleted cases as well as other issues such as the failure of the IVRS and the delay in announcing the final voter turnout rate of the GCs and the election results. Where appropriate, the complainants (insofar as can be identified) and electoral staff involved in such complaints would be requested to attend an interview so that the facts and circumstances pertaining to each case could be collected. The interviews would be personally conducted by the Chairman.

7.2 Upon conclusion of the interviews, a comprehensive review of the electoral arrangements relating to the election will be conducted with a view to identifying ways and means to forestall the repetition of the problems that arose in the polling and counting processes and to bring about improvement for future elections. Our findings, observations, views and recommendations will be included in the Commission's final report on the election. Considerations will need to be given whether it is necessary to seek assistance from outside experts to follow up on the findings and recommendations of the report.

7.3 In accordance with section 8(1) of the EACO, the Commission will

submit a detailed and comprehensive review report on the election to the Chief Executive upon the conclusion of all the investigations, before the statutory deadline on 12 December 2004.

Concluding note

7.4 A number of measures had been introduced for the first time in this election, all for the purposes of conveniencing and facilitating electors and all others concerned in the electoral processes. These included the A3-size ballot paper so that photographs of candidates and the emblems and names of the bodies to which they belonged or which supported them would be provided for electors' easier identification. The larger ballot paper with the consequent heavier weight resulted in new ballot boxes having to be made. The polling station to be used as counting station would also help to speed up the count and alleviate the problem involved in transportation of ballot boxes that would come with the heavier ballot papers. The IVRS was introduced in order to ensure safe and secure reporting of turnout figures and the checking of the same through the use of modern electronic technology. It is a conglomeration of these new measures that had taken its toll on the polling day. The EAC regrets that no special contingency plan had been designed to ensure that the normal electoral processes would not be affected by these new measures.

7.5 In this Interim Report, we have identified the major problems that prevailed on the polling day and found that a number of administrative and

planning errors had been made. While those who carried out the functions involved, including the EAC, must take the blame for what had happened, we express deep regret for the problems and inadequacies relating to the conduct of this election and tender our sincere apology for the confusion and inconvenience caused to the public, the electorate, the candidates and their agents. We profoundly appreciate the attitude of those who have so graciously taken the difficulties experienced with understanding, patience and forgiveness. Despite the adversities, the Commission had made every effort to defend the creditability of the electoral processes and to ensure that the election was conducted openly, fairly and honestly. Concluding on the investigations that we have carried out since the election, we are sure that the integrity of the election and all its processes was upheld.

7.6 While problems arose in some of the polling stations, a great majority of the polling stations had conducted polling and counting smoothly and efficiently without any failing, despite the difficulties confronting them caused by the shortage of ballot boxes. The PROs, polling officials and polling staff manning these stations worked extremely hard and for long hours, in order to serve the electorate and maintain the principle of openness, fairness and honesty. The Commission is most grateful to them. The blemishes of the electoral processes that have so far been identified and the possible blame that the Commission has to shoulder should in no way tarnish the tremendous efforts that these good civil servants had made for this election and their worthy contribution towards its success.

Polling stations which did not request for additional ballot boxes on the polling day

No.	Code	Polling Station	Voter turnout	No. of ballot box	Ratio
1.	A0401	German Swiss International School	643	2	1: 322
2.	A1401	Kau Yan Church Tsung Tsin Mission of Hong Kong	3,757	5	1: 752
3.	D1101	Assembly Hall	893	2	1: 447
4.	F0301	Hong Kong YWCA Chi Po Neighbourhood Elderly Centre	2,890	5	1: 578
5.	G0701	Caritas Community Centre - Kowloon	1,731	3	1: 577
6.	G0902	Kowloon Funful Children's Corner	538	1	1: 538
7.	J0102	Kwun Tong Post Office	1,737	3	1: 579
8.	J2101	Po Chiu Catholic Secondary School	3,034	5	1: 607
9.	J2801	Delia Memorial School (Hip Wo)	5,006	8	1: 626
10.	J3001	S.K.H. Kei Hin Primary School	5,008	8	1: 626
11.	K1102	Ma Wan Cultural and Recreational Centre	152	1	1: 152
12.	K1202	Airport Core Programme Exhibition Centre	106	1	1: 106
13.	L1401	FDBWA Chow Chin Yau School	2,157	3	1: 719
14.	L1901	Lung Kwu Tan Village Office	268	1	1: 268
15.	L2002	Ju Ching Chu Secondary School (Tuen Mun)	371	1	1: 371
16.	L2401	PLK Horizon East Primary School	1,043	3	1: 348
17.	M0701	TWGHs C Y Ma Memorial College	407	1	1: 407
18.	M1001	Wang Chau Public School	1,347	3	1: 449
19.	N1401	Ta Ku Ling Ling Ying Public School	360	1	1: 360
20.	N1404	Kat O School	71	1	1: 71
21.	N1406	Lee's Temple	39	1	1: 39
22.	N1407	Ta Kwu Ling Rural Centre Government Building	549	2	1: 275
23.	N1602	Lung Shan School	620	2	1: 310
24.	N1605	Wo Him School	180	1	1: 180
25.	P1902	Water Supplies Department's Uk Tau Site Office	46	1	1: 46
26.	P1903	Tap Mun Village Office	113	1	1: 113
27.	Q0101	The Sai Kung Jockey Club Town Hall (Boxes had been opened)	4,644	8	1: 581

No.	Code	Polling Station	Voter turnout	No. of ballot box	Ratio
28.	Q0502	Tseung Kwan O Government Secondary School	392	1	1: 392
29.	S1202	ESF Bauhinia School	2,581	5	1: 517
30.	T0102	Sha Lo Wan Village Office	67	1	1: 67
31.	T0103	San Tau Village Office and Community Centre	16	1	1: 16
32.	T0104	Auxiliary Medical Service Tung Chung Sub-Unit Headquarters	203	1	1: 203
33.	T0105	Ngau Kwu Long Sam Heung Co-operative Society	25	1	1: 25
34.	T0106	Po Lin Monastery's Tung Chung Room	47	1	1: 47
35.	T0108	Tong Fuk Village Office	173	1	1: 173
36.	T0602	Food and Environmental Hygiene Department, Sok Kwu Wan Sub-office	136	1	1: 136
37.	T0702	Caritas Social Centre - Cheung Chau	1,017	2	1: 509

Complaint case about polling station Q0801 - Po Kok Secondary School

1. The 15/9/04 press release of a group of candidates led by Mr Ho Chun-yan raised the complaint regarding this polling station that when the ballot boxes were full, electors were told to go away and not to cast votes.

2. Another complainant is Mr Ronny K W Tong who sent the EAC Chairman a letter dated 15 September 2004. The letter states that at about 5 pm on 12 September, after he was told by a number of electors (between 4 to 6) that they were told to leave the station on the ground that “the ballot box was full”, Mr Tong and Ms Margaret Ng immediately went to the station to investigate, only to find that one of the ballot boxes was opened and certain ballot papers were stacked and unattended on a table. Upon Mr Tong’s questioning, the Presiding Officer (“PRO”) told him that he was instructed to do so, without providing the identity of the person who had given him the instructions. Mr Tong was told that the PRO had already opened two other ballot boxes and rearranged the ballots in order to allow one of the boxes to be reused. “This was admittedly done in the absence of representatives of any of the candidates.”

3. The polling officials of this polling station deny that any elector was told to leave. When the ballot boxes were full, there was no polling agent inside the station. The PRO opened two full ballot boxes in the presence of a police officer and a Civil Aid Service (“CAS”) officer as witnesses. The jammed ballot papers in these two boxes were taken

out, rearranged and put back into one of the boxes. The boxes were then resealed and the spared one was used for casting of votes.

4. The PRO further states that he had opened 3 ballot boxes in total, for repacking the ballot papers inside. He denies “leaving the ballot papers unattended on a table” as alleged by Mr Tong, and surmises that could have referred to a snapshot at some point of the repacking exercise. He was trying to get candidates/election agents/polling agents to witness the opening of the ballot box for sparing one for use, but they could not be found although there had been two polling/election agents admitted into the station in the morning. He therefore followed the directive given by the Command Centre, Sai Kung to open the ballot boxes as witnessed by a police officer and a CAS member. When the additional ballot boxes arrived at about 6:08 pm, no further ballot box was opened as there was no such need.

5. The Deputy Presiding Officer (“DPRO”) states that he recalls that the replenishing ballot boxes arrived at around 6 pm and he announced the arrival time to make that known to the candidates present inside the station at the time.

6. The statement of the CAS member Mr Choi Shun-cheong is very clear and specific. It states that at 5:12 pm, because the ballot boxes were too full without any more ballot boxes, the PRO (Mr W H Lee by name) requested him and PC A968 to witness the opening of ballot boxes Y2134 and Y2135. The PRO put the ballot papers from Y2134 into Y2135. The emptied Y2134 box was resealed and used by electors to cast their votes at 5:14 pm. At 5:23 pm, in anticipation of insufficient ballot boxes, the PRO decided to open ballot boxes Y2136 and Y2137

and similarly requested him and PC A968 to bear witness. When the ballot papers in Y2136 were taken out of the box, at 5:23 pm Mr Tong, Ms Ng and a canvassing group arrived, stopping the PRO from continuing to take ballot papers out from Y2136. At 6:05 pm, the PRO took the ballot papers taken out from Y2136 back into Y2136. Y2137 had not been opened during the whole process. New ballot boxes arrived at 6:15 pm. He and PC A968 witnessed the whole opening process, and no one had interfered with the ballot boxes or ballot papers.

7. PC A968 states that the PRO personally opened the ballot box(es) and put the cast ballot papers on the table and pressed the ballot papers back into the box(es), not in the presence of any polling agent. This further supports the statements of the PRO and the CAS member.

8. The hourly voter turnout shows that at 3:30 pm - 4:30 pm the turnout was 501, at 4:30 pm - 5:30 pm the figure was 491, and at 5:30 pm - 6:30 pm, the figure was 457. These figures support the polling officials' denial that any voter had been turned away.

9. The REO contacted Mr Ho's group who raised the complaint in the said press release for the identity of the person who made the complaint to them and received the information that it was the election agent of List 3 (headed by Mr Cheng Kar-foo), Mr So Hang-tai. On the REO seeking clarification with Mr So, he said that he personally had not seen electors being turned away by polling staff and did not wish to write in.

10. On the other hand, two police officers, namely, PC A968 (on duty at 12:30 pm - 8:30 pm) and PC A976 (on duty at 7:30 am - 1:30 pm) confirm that no electors had been asked to leave.

11. We considered that, subject to what Mr Tong would say regarding his complaints, no further investigation from Mr So or Mr Ho's group or others was necessary on the subject matters of the complaints.

12. The REO had made various attempts to contact Mr Tong as from 14 October 2004, first by telephone and later by email on 15 and 18 October after obtaining his email address from his secretary. The 18 October email set out specific questions for Mr Tong's clarification. The initial reply from Mr Tong came by email on 18 October, which was that he had to check with Ms Ng's recollection of the events in the polling station as she was also there. Mr Tong promised to give the REO a reply sometime in the week commencing 25 October as both Ms Ng and he were busily engaged and would be out of Hong Kong in the interim.

13. As promised, Mr Tong has given the REO a detailed reply on 27 October 2004.

14. Regarding the identity of electors who were allegedly turned away, Mr Tong states:

“(i) I do not know the identity of the electors who were turned away. I do know, however, that there were at least 2 separate groups of up to 5 or 6 persons each.

(ii) I have no further information other than that they informed me they were turned away because the presiding officer told them it was not clear when the situation would improve and there was no air-conditioning in the voting hall.”

15. In this regard, since the persons (whether the 4 to 6 electors mentioned in Mr Tong's letter of 15 September or the at least 2 separate groups of up to 5 or 6 persons each referred to in his letter of 27 October) who told Mr Tong that they were turned away cannot be identified for contact, our investigation cannot be continued.

16. Regarding the Mr Tong's complaint that "one of the ballot boxes was opened and certain ballots were left unattended stacked on a table", Mr Tong's 27 October letter reads:

"(b) When we arrived at the station, there was a stack of ballots placed on a table with no paper weight on top. The first thing I told the presiding officer was to ensure the ballots would not be blown away. At that time, those present included the presiding officer, an assistant and a civil aid service ("CAS") member. There might also be a policeman but I cannot be sure.

(c) The presiding officer pointed to the CAS member/ and the policeman and suggested he/they witnessed the opening of the ballot boxes. I asked why were the candidates' representatives not informed? The presiding officer, however, was not able to answer my question.

(d) (i) We were told that of the two ballot boxes opened, one was already being used and was about to become full. The officer showed me another ballot box which he said contained ballots taken from the two opened boxes. He claimed that the CAS member witnessed the entire process but he admitted no candidates' representatives were around.

(ii) The officer further said he had just opened a third ballot box and pointed to the ballots on the table as being taken out of that box. He was about to open a fourth ballot box when we arrived. He asked us to witness the opening of the fourth ballot box. We warned him that the ballot box is sacred and no attempt should be made to either open a ballot box or tamper with the ballots unless with the consent of all the candidates. Upon being warned, the officer then declined to open the fourth box but made no attempt to deal with the ballots lying on the table.

...

(x) I was not sure when the unattended ballots were put back into any of the ballot boxes, if at all."

17. Regarding ballot boxes in this station being opened, what Mr Tong saw did not differ from the story of the PRO. What seems to be in dispute is whether ballot papers were “left unattended stacked on a table” which is what Mr Tong seems to maintain. The basis of the ballot papers being “unattended” was that when Mr Tong and Ms Ng arrived at the station, “there was a stack of ballots placed on a table with no paper weight on top”. He was very kind to have told the PRO to ensure that the ballots would not be blown away. However, a clear picture of the events has emerged that there was the PRO, an assistant, a CAS member and a policeman present and that it was on Mr Tong’s warning that the PRO did not proceed with opening a fourth ballot box and did not deal with the ballot papers lying on the table.

18. On the evidence as a whole, we conclude that the ballot papers were not left unattended.

19. In Section 3 of this Interim Report, we deal with the question of the legality of the Commission giving the directive to open ballot boxes in the presence of candidates or their polling agents, and in their absence, a police officer, in order to cater for the emergency situation. Even Mr Tong suggested to the PRO in this station that “no attempt should be made to either open a ballot box or tamper with the ballots unless with the consent of all the candidates”. Apparently, Mr Tong appreciated that ballot boxes could be opened in case of emergency or any unforeseen circumstances.

Cases involving use of cardboard boxes and ballot boxes opened by PROs

A. Cases involving the use of cardboard boxes as ballot boxes

(i) Based on complaints as at 23.10.2004

Code	Polling Station	Investigation Findings
F2001	Tai Hang Tung Community Centre	PRO confirmed that no cardboard box was used at this station. There was no shortage of ballot boxes at this station as additional boxes had arrived in time.
Q1301	STFA Leung Kit Wah Primary School	PRO had not used cardboard boxes but electors had to be kept waiting for about an hour in the early evening for the additional ballot boxes to arrive.
Q1401	Buddhist Wong Cho Sum School	No cardboard box was used at this station. <i>Complainant cannot be contacted. (Investigation continuing)</i>
Q1701	Yan Chai Hospital Chan Iu Seng Primary School	PRO confirmed that no cardboard box was used at this station. Complainant had not actually seen the use of cardboard boxes at this station.
Q0601	Po Leung Kuk Fung Ching Memorial Primary School	Two cardboard boxes were used and sealed in the presence of polling agents.

(ii) 1 case revealed by the EAC investigation

(As at 23.10.2004)

Code	Polling Station	Investigation Findings
R3402	LKWFSL Wong Yiu Nam Primary School	A cardboard box was temporarily used as ballot box in the presence of a polling agent and Police officer.

B. Complaint cases involving ballot boxes having been opened by PROs
(Investigation till 23.10.2004)

Code	Polling Station	Investigation Findings
Q0801	Po Kok Secondary School	PRO did open the full ballot boxes in the presence of a Police officer and a CAS member. <i>(Investigation continuing)</i>
R0601	Chi Hong Primary School	PRO did open the full ballot boxes in the presence of polling agents and Police officers.
R0901	Immaculate Heart of Mary College	PRO confirmed that no ballot box was opened during polling at this station. Complainant cannot be contacted. <i>(Investigation continuing)</i>
R1302	Hin Keng Sports Centre	PRO confirmed that no ballot box was opened during polling at this station. <i>(Investigation continuing)</i>
R2401	Toi Shan Association Wong Tat To Memorial School	Complainant withdrew the complaint. In any event, investigation revealed that no ballot box was opened during polling at this station.
S0601	S.K.H. Chu Oi Primary School	PRO did open the full ballot boxes in the presence of polling agents.
S0901	Shek Lei Community Hall	PRO did open the full ballot boxes in the presence of a polling agent.
H0601	The Boys' and Girls' Clubs Association of HK Tsz Wan Shan Children & Youth Integrated Services Centre Lung Poon Court Office	PRO confirmed that no ballot box was opened during polling at this station. <i>(Investigation continuing)</i>

C. Polling stations where ballot boxes were opened by PROs witnessed by candidates/agents/police officers*(Based on investigation results as at 23.10.2004)*

No.	Code	Name	No. of ballot boxes that had the seal of the flap broken	No. of ballot boxes that had the seal of the back door broken	No. of ballot boxes that had the seal of the flap and back door broken
1.	A0102	Hong Kong Park Sports Centre	0	3	0
2.	A0201	Raimondi College	0	0	1
3.	A0301	Ying Wa Girls' School	6	0	0
4.	C0101	G/F at Cityplaza 3	0	4	0
5.	C0501	C.C.C. Kei Wan Primary School (Aldrich Bay)	0	3	0
6.	C1701	Clementi Secondary School	0	1	1
7.	C2601	Taikoo Primary School	0	8	0
8.	C2701	Shanghai Alumni Primary School	0	2	0
9.	C3001	Sai Wan Ho Sports Centre	0	6	0
10.	E1001	Lung Kong World Federation School Limited Lau Wong Fat Secondary School	3	0	0
11.	E1301	Boundary Street Sports Centre No. 2	0	0	5
12.	E1501	T.W.G.Hs. Lo Yu Chik Primary School	0	7	0

No.	Code	Name	No. of ballot boxes that had the seal of the flap broken	No. of ballot boxes that had the seal of the back door broken	No. of ballot boxes that had the seal of the flap and back door broken
13.	F1601	Cheung Sha Wan Community Centre	0	3	0
14.	H1501	Chuk Yuen Sports Centre	0	5	0
15.	H1601	Ho Lap Primary School (Sponsored by Sik Sik Yuen)	2	4	2
16.	J0301	Kai Yip Community Hall	0	4	0
17.	J0401	Yan Chai Hospital Law Chan Chor Si College	0	2	0
18.	J1202	Christian Alliance Sau Mau Ping Chen Lee Wing Tsing Kindergarten	0	3	0
19.	J1501	Lam Tin (East) Community Hall	0	10	0
20.	J2001	P.L.K. Mrs Fong Wong Kam Chuen Kindergarten	0	1	0
21.	K0501	Tsuen Wan Government Secondary School	3	0	0
22.	K0801	Chai Wan Kok Catholic Primary School	2	4	2
23.	K1001	Hong Kong Baptist Convention Primary School	0	3	0
24.	K1201	Parkview - Rhine Garden International Nursery	0	2	0
25.	K1301	Chinese YMCA Tsuen Wan Centre	3	0	0

No.	Code	Name	No. of ballot boxes that had the seal of the flap broken	No. of ballot boxes that had the seal of the back door broken	No. of ballot boxes that had the seal of the flap and back door broken
26.	L0101	Exhibition Gallery, Tuen Mun Town Hall	0	0	2
27.	L2001	C.C.C. Hoh Fuk Tong Primary School	4	0	0
28.	M0101	Yuen Long Merchants Association Secondary School	1	0	0
29.	M0201	E.L.C.H.K. Yuen Long Lutheran College	0	2	0
30.	M2501	H.K.M.L.C. Wong Chan Sook Ying Memorial School	2	0	0
31.	N1102	S.K.H. Chan Young Secondary School	0	3	0
32.	N1302	Tai Po District Junior Police Call Sheung Shui Club House	0	2	0
33.	P1001	HK Teachers' Association Lee Heng Kwei Secondary School	3	0	0
34.	P1401	Assembly of God Hebron Secondary School	0	1	0
35.	Q0101	The Sai Kung Jockey Club Town Hall	0	3	0
36.	Q0401	HK & Macau Lutheran Church Primary School	0	8	0
37.	Q0801	Po Kok Secondary School	0	2	1

No.	Code	Name	No. of ballot boxes that had the seal of the flap broken	No. of ballot boxes that had the seal of the back door broken	No. of ballot boxes that had the seal of the flap and back door broken
38.	Q1201	Po Lam Multipurpose Hall	0	2	0
39.	Q1401	Buddhist Wong Cho Sum School	0	6	0
40.	Q1801	Chi Lin Buddhist Primary School	4	0	0
41.	R0601	Chi Hong Primary School	0	0	3
42.	R0602	The Covered Corridor linking the Belair Gardens Shopping Arcade Phase I and Phase II	2	0	0
43.	R1501	Hin Keng Neighbourhood Community Centre	0	7	0
44.	R1801	Buddhist Wong Wan Tin College	0	3	0
45.	R2001	Po Leung Kuk Siu Hon Sum Primary School	0	2	1
46.	R2801	Ng Clan's Association Tai Pak Memorial School	0	6	0
47.	R2802	F.D.B.W.A. Mrs Fung Ping Shan Primary School	0	6	0
48.	R3101	Tak Sun Secondary School	0	2	0
49.	R3401	Leung Kui Kau Lutheran Primary School	0	2	0

No.	Code	Name	No. of ballot boxes that had the seal of the flap broken	No. of ballot boxes that had the seal of the back door broken	No. of ballot boxes that had the seal of the flap and back door broken
50.	R3402	LKWFSL Wong Yiu Nam Primary School	0	3	0
51.	S0101	CNEC Ta Tung School	0	1	0
52.	S0601	S.K.H. Chu Oi Primary School	0	7	0
53.	S0901	Shek Lei Community Hall	0	6	0
54.	S1302	Creative Kindergarten (Wonderland Villas)	0	2	0
55.	S2001	Tsuen Wan Trade Association Primary School	0	2	0
56.	T0401	S.K.H. Wei Lun Primary School	0	0	4
Total no. of ballot boxes:			35	153	22

**Complaint cases relating to over-crowdedness or
prolonged queuing outside the polling stations**

Date of Complaint		Case No.	Polling Station	Receiving Party
1	12.9.2004	A0621	Caritas Community Centre – Kowloon 1/F, 256A Prince Edward Road West, Kowloon (Code: G0701) <i>(Investigation continuing)</i>	EAC
2	12.9.2004	A0695	Ying Wa Girl's School 76 Robinson Road, Hong Kong (Code: A0301)	EAC
3	12.9.2004	A0915	Ying Wa Girl's School 76 Robinson Road, Hong Kong (Code: A0301)	EAC
4	13.9.2004	A0947	The complainant has not provided the information. <i>(This is an anonymous complaint with no means of contact with the complainant.)</i>	EAC
5	13.9.2004	A0959	Ying Wa Girl's School 76 Robinson Road, Hong Kong (Code: A0301)	EAC
6	13.9.2004	A1148	Ying Wa Girl's School 76 Robinson Road, Hong Kong (Code: A0301)	EAC
7	13.9.2004	A1150	Ying Wa Girl's School 76 Robinson Road, Hong Kong (Code: A0301)	EAC

Date of Complaint		Case No.	Polling Station	Receiving Party
8	13.9.2004	A1219	Ying Wa Girl's School 76 Robinson Road, Hong Kong (Code: A0301)	EAC
9	12.9.2004	B0050	S.K.H. Kei Lok Primary School Lok Wah South Estate, Ngau Tau Kok, Kowloon (Code: J3301) <i>(Investigation continuing)</i>	PRO
10	12.9.2004	B0051	S.K.H. Kei Lok Primary School Lok Wah South Estate, Ngau Tau Kok, Kowloon (Code: J3301) <i>(Investigation continuing)</i>	PRO
11	12.9.2004	B0052	Ying Wa Girl's School 76 Robinson Road, Hong Kong (Code: A0301)	PRO
12	12.9.2004	B0063	Yan Oi Tong HK Toi Shan Association No.2 Elderly Centre G/F., 1 Tsun King Road, Royal Ascot, Fo Tan, Sha Tin, NT. (Code: R2202) <i>(Investigation continuing)</i>	PRO
13	12.9.2004	B0067	STFA Leung Kit Wah Primary School 2 Mau Yai Road, Tseung Kwan O, NT (Code: Q1301) <i>(Investigation continuing)</i>	PRO

**Complaint cases relating to eviction or exclusion of
candidates or agents from polling stations**

A. Cases in which no request had been made by agents to enter the polling station after the close of poll and no refusal by the PRO to admit agents
(Based on investigation results as at 23.10.2004)

Code and Name of the Polling Stations	Findings and Remarks
Hung Hom Municipal Services Building Sports Centre, 3/F, Hung Hom Municipal Services Building, 11 Ma Tau Wai Road, Hung Hom, Kowloon (Code: G1801)	Some polling/counting agents witnessed sealing of ballot boxes and conversion. The door of the polling station was closed at close of poll. Police officer present during the conversion. PRO/DPRO did not ask anyone to leave. The complainant (also a polling/counting agent) simply waited outside and then lodged complaint. <i>(Investigation continuing)</i>
Tak Oi Secondary School, 8 Tsz Wan Shan Road, Tsz Wan Shan, Kowloon (Code: H1901)	Polling agents allowed to witness sealing of ballot boxes and conversion. PRO recalled he was asked to go to the main gate and answered questions from counting agent but no explicit request was made to enter. Awaiting complainant to confirm details of complaint. <i>(Investigation continuing)</i>
P.L.K. Mrs Fong Wong Kam Chuen Kindergarten, G/F, Chun Moon House, Ko Chun Court, Ko Chiu Road, Yau Tong, Kowloon (Code: J2001)	PRO/APRO stated that candidates and agents were present to witness sealing of the ballot boxes and conversion. They also implied that no one had been refused entry. However, APRO(L) said that no agent was present after sealing of the ballot boxes. Police officer present during the conversion. <i>(Investigation continuing)</i>
Chinese YMCA Tsuen Wan Centre, Podium, Block G, Annex Building, Luk Yeung Sun Chuen, Tsuen Wan, NT. (Code: K1301)	Some election/polling agents witnessed sealing of ballot boxes and conversion. No specific request was made with the PRO to enter the station. <i>(Investigation continuing)</i>

Code and Name of the Polling Stations	Findings and Remarks
South Tuen Mun Government Secondary School, 218 Wu Shan Road, Tuen Mun, NT (Code: L1501)	Agents witnessed sealing of ballot boxes and conversion. PRO stated that he had not refused any request for admission during conversion. Police officer present during the conversion. Complainant cannot be contacted. <i>(Investigation continuing)</i>
Lingnan University, G/F, Main Building, Lingnan University, Tuen Mun, NT (Code: L2702)	Polling agent witnessed sealing of ballot boxes. Counting agents did not specifically request to enter station to see the conversion. Police officer present during the conversion. <i>(Investigation continuing)</i>
Luen Kwong Public School, 1 Tai Tong Tsuen, Yuen Long, NT (Code: M0802)	Polling agents witnessed sealing of ballot boxes but then stayed outside during conversion due to limited space but they could see the process through opened door and windows. Police officer present at the conversion. Not aware of any request for entry by any counting agent. <i>(Investigation continuing)</i>
T.W.G.Hs. Yiu Dak Chi Memorial Primary School, Phase 1, Tin Shui Estate, Tin Shui Wai, Yuen Long, NT (Code: M1401)	A number of agents witnessed sealing of ballot boxes and conversion. PRO stated that no request was received for entry into the station during conversion. Complainant complained that a polling staff indicated that entry would be permitted by about 11:30 pm when arrangements were made for the counting process. The others had to wait until about 11:30 pm before the station was re-opened and they were admitted. <i>(Investigation continuing)</i>

Code and Name of the Polling Stations	Findings and Remarks
S.K.H., Tin Shui Wai Ling Oi Primary School, Primary School 1, 88 Tin Shui Road, Area 111, Tin Shui Wai, Yuen Long, NT (Code: M2001)	Polling agents witnessed sealing of ballot boxes. PRO requested the agents to leave their designated area and stay at a safe distance to facilitate movement of furniture for conversion into counting station, but he did not ask them to leave the station.
Tin Yiu Community Centre, Tin Yiu Estate, Tin Shui Wai, Yuen Long, NT (Code: M2301)	Polling agents witnessed sealing of ballot boxes and conversion. PRO/DPRO/APROs denied having refused entry of any counting agent. On telephone enquiry by REO, complainant said she did request for entry but was refused though the original record of complaint stated that polling staff should have taken the initiative to check the identity of agents. The complainant was invited to a meeting with EAC Chairman, so that further clarification could be sought with regard to her complaint. However, the complainant refused to attend.
Buddhist Ma Kam Chan Memorial English Secondary School, 9 Luen Yick Street, Luen Wo Market, Fanling, NT (Code: N0101)	According to PRO, one polling agent witnessed the sealing of ballot boxes and left the station on his own accord. No request was received to enter the station prior to 11:10 pm. On request by a counting agent at 11:10 pm, two counting agents were admitted when the conversion process was still going on. <i>(Investigation continuing)</i>
Kwai Chung Post Office, Unit 11, G/F, Chau Kwai House, Kwai Chung Estate, Kwai Chung, NT (Code: S0501)	According to PRO, polling agents witnessed sealing of ballot boxes but were then requested to sit at the “Designated Area for Candidates/ Election Agents/ Polling Agents” if they wished to stay to see the conversion since the post office was small. PRO was not aware of any request for entry after 10:30 pm. <i>(Investigation continuing)</i>

Code and Name of the Polling Stations	Findings and Remarks
The HK Sze Yap Commercial and Industrial Association Chan Nam Chong Memorial College, 12 King Cho Road, Cho Yiu Chuen, Kwai Chung, NT (Code: S1401)	A polling agent witnessed sealing of the ballot boxes and conversion. Did not receive or refuse any request to enter the station. Police officer present during the conversion. Awaiting complainant to confirm details of complaint. <i>(Investigation continuing)</i>
Lai King Community Hall, Lai King Hill Road, Kwai Chung, NT (Code: S1601)	Polling agents were requested to leave the polling hall to stay in the waiting area to facilitate conversion. Activities in the polling hall could be seen from the waiting area. Police officer present during the conversion. The complainant was a counting agent. <i>(Investigation continuing)</i>

B. Cases in which the PROs refused entry of counting agents but allowed polling agents to stay on as a result of misunderstanding the Operational Manual / Regulation / Guidelines
(Based on investigation results as at 23.10.2004)

Code and Name of the Polling Stations	Findings and Remarks
Po Leung Kuk Yu Lee Mo Fan Memorial School, 19 Wharf Road, North Point, Hong Kong (Code: C2002)	Polling agents witnessed sealing of ballot boxes but then seated at the public area. Complainant being refused entry at 10:30 pm but was admitted at 11:00 pm on protest. <i>(Investigation continuing)</i>
Kornhill Christian Anglo-Chinese Kindergarten, Rear Portion, 1/F, Kornhill Plaza (North), 1 Kornhill Road, Quarry Bay, Hong Kong (Code: C2801)	Polling agents witnessed sealing of ballot boxes but then stayed outside the polling area to facilitate conversion. The polling area could still be seen from the outside through the glass door. Complainant being refused entry at 10:30 pm apparently caused by misunderstanding of the Manual. <i>(Investigation continuing)</i>

Code and Name of the Polling Stations	Findings and Remarks
Canossa Primary School (San Po Kong), 9 Choi Yee Lane, San Po Kong, Kowloon (Code: H0702)	Polling agents witnessed sealing of ballot boxes. Counting agents were not allowed to enter station because of the PRO's understanding of that only polling agents were allowed to witness the conversion process. <i>(Investigation continuing)</i>
Ng Wah Catholic Secondary School, 5 Choi Hung Road, San Po Kong, Kowloon (Code: H0801)	Polling agents allowed to witness sealing of ballot boxes and conversion. Two counting agents might have been refused entry at 10:20 pm. PRO was apparently under the impression that according to the Manual counting agents were not allowed to witness the conversion. <i>(Investigation continuing)</i>
The Neighbourhood Advice-Action Council-Martha Baker Social Centre for the Elderly, G/F, Sheung Yat House, Upper Ngau Tau Kok Estate, Kowloon (Code: J3102)	Polling agents witnessed sealing of ballot boxes in the presence of police officers. Counting agents were not allowed to remain in the station during the conversion process and were only allowed in after 11 pm because of the PRO and DPRO's apparent misunderstanding of the Manual.
Semple Memorial Secondary School, 18 Siu Lun Street, Tuen Mun, NT (Code: L0301)	Polling agents allowed to witness sealing of ballot boxes and conversion. PRO's understanding seemed to be only to admit counting agent when counting commenced which was the answer she gave to a lady counting agent who possibly was the complainant. <i>(Investigation continuing)</i>
On Ting/Yau Oi Community Centre, On Ting Estate, Tuen Mun, NT (Code: L0401)	Polling agents allowed to witness sealing of ballot boxes and conversion. PRO recalled checking the identity of 2 counting agents but could not recall whether he asked them to stay outside until conversion was completed. Awaiting complainant to confirm details of complaint. <i>(Investigation continuing)</i>

Code and Name of the Polling Stations	Findings and Remarks
Tin Shui Wai Government Secondary School, Phase II, Tin Yiu Estate, Tin Shui Wai, NT (Code: M2401)	Polling agents allowed to witness sealing of ballot boxes and conversion. Counting agents only admitted when counting commenced. Misunderstanding of the Manual.

**C. Cases in which no agent was admitted for a period of time between close of
poll and conversion / counting (See Appendix VI)**
(Based on investigation results as at 23.10.2004)

Code and Name of the Polling Stations	Findings and Remarks
Chinese YMCA of HK – Chai Wan Centre, G/F, Sui Lok House, Siu Sai Wan Estate, Chai Wan, Hong Kong (Code: C3701)	10 minutes without agent inside when PRO sought advice from REO. A polling agent witnessed sealing of ballot boxes and then being requested to leave. PRO also refused entry of a candidate and counting agents during conversion process.
Butterfly Bay Community Centre, Butterfly Estate, Tuen Mun, NT (Code: L1801)	Polling agents witnessed sealing of ballot boxes but were requested to leave the station to facilitate conversion. Station re-opened when counting commenced.
HK & Macau Lutheran Church Primary School, 4 Chap Fuk Road, Tseung Kwan O, NT (Code: Q0401)	No candidates and agents were present at close of poll. PRO did not allow counting agents to witness conversion of polling station.
St. Rose of Lima's College, 29 Ngan Shing Street, Sha Tin, NT (Code: R3301)	Polling agents were requested to leave the station at about 10:55 pm after witnessing the sealing of ballot boxes, since according to the PRO, the station should be closed then. Counting agents were specifically requested to stay outside station during conversion since the station was not re-opened yet.

D. Cases in which both polling agents and counting agents were admitted to witness the conversion process as confirmed by the PRO/DPRO/APRO
(Based on investigation results as at 23.10.2004)

Code and Name of the Polling Stations	Findings and Remarks
Smithfield Sports Centre, 6/F, Smithfield Municipal Services Building, 12K Smithfield, Kennedy Town, Hong Kong (Code: A0801)	PRO did allow counting agents to witness conversion; the complaint was about a delay of 15 minutes before letting the agent in; because the DPRO did not know she was a counting agent at first.
Pak Tin Community Hall, Podium, Block 3, Pak Tin Estate, Pak Tin Street, Sham Shui Po, Kowloon (Code: F1801)	Polling agents witnessed sealing of ballot boxes and were not requested to leave the station thereafter. Counting agents were admitted at 10:40 pm after requests were made and their identity checked. The complaint was about “counting agents not allowed to enter the station between 10:30 pm and 10:40 pm”. <i>(Investigation continuing)</i>
The Boys’ and Girls’ Clubs Association of HK Tsz Wan Shan Children & Youth Integrated Services Centre Lung Poon Court Office, Room 203, 1/F, Lung Poon Court Commercial Centre, Diamond Hill, Kowloon (Code: H0601)	Polling agents were inside the station during conversion. Counting agents were also admitted during conversion though they had to wait outside for a while. PRO stated that despite the ambiguity in the Manual, he decided to admit counting agents to witness the conversion process. <i>(Investigation continuing)</i>
Shan King Community Hall, Shan King Estate, Tuen Mun, NT (Code: L0801)	Polling agents witnessed sealing of ballot boxes. Both polling and counting agents were allowed to enter the station during conversion. <i>(Investigation continuing)</i>

Code and Name of the Polling Stations	Findings and Remarks
The Salvation Army Sam Shing Chuen Lau Ng Ying School, Sam Shing Estate, Castle Peak Road, Tuen Mun, NT (Code: L1201)	Polling or counting agents were present to witness sealing of ballot boxes and conversion of station. No agent ever requested entry and being refused. Awaiting complainant to confirm details of complaint. <i>(Investigation continuing)</i>
S.K.H. Mung Yan Primary School, 1 King Fung Path, Tuen Mun, NT (Code: L2701)	At around 10:30 pm, 4 to 5 agents (polling or counting) made requests to witness the conversion and were allowed to stay. (Complaint withdrawn)

**Investigation findings on four cases in which no agent was admitted
for a period of time between close of poll and conversion**

The provisions of the EAC(Electoral Procedure)(Legislative Council) Regulation (“EP Reg”), the Guidelines on Election-related Activities in respect of the Legislative Council Elections (“Guidelines”) and the Operation Manual for Polling Staff and their proper interpretation, as well as the comments made by the EAC, referred to in Section 5 of the Interim Report should be borne in mind for a full understanding of this Appendix.

*(1) Polling Station C3701 – Chinese YMCA of HK – Chai Wan Centre
(Siu Sai Wan)*

1. In respect of this polling station, there was a complaint made by Mr Chung Shu-kan, a candidate of List No. 1 in the Hong Kong Island Geographical Constituency (“GC”), that his polling agent was expelled from the polling station at 10:30 pm on the polling day or shortly before. When he arrived at the polling station at about 10:40 pm, he and his own counting agent and counting agents of other lists were not allowed into the polling station. He was disturbed with the situation and called the police.

2. Another complaint was from Mr Albert R Xavier, the election agent of List No. 6. The complaint was that two of the list’s counting agents who attended the polling station at about 10:30 pm were not allowed to enter the polling station for the purposes of observing the sealing of the ballot boxes. At about 10:40 pm, the counting agents’ request to enter the station was again turned down, despite the fact that reference to the relevant legislation had been made to the Presiding Officer (“PRO”).

3. We requested the PRO, the Deputy Presiding Officer (“DPRO”) and the four Assistant Presiding Officers (“APROs”) of that polling station to reply to our questions for the clarification of what had in fact occurred. The PRO’s reply was most telling. He stated:

“I did ask the one and only one polling agent in the station at that time to leave the polling station at 10:30 pm. She left without any disagreement or complaint. She was the polling agent of List 1. She was in the station for almost the whole day (in and out). Other than her, I did not ask anyone else to leave the station. ... There were a couple of voters still waiting for collecting ballot papers.

When we were closing the door at 10:30 pm, a couple of counting agents would like to come in to witness the sealing of the flaps of the ballot boxes in use. I was not sure about this arrangement.

Therefore, I asked them to wait for a while, then closed the door. I then immediately phoned the REO help desk for advice. The advice I received from the help desk was that counting agents could not witness the flap sealing of the ballot boxes, but the polling agents could actually stay and witness the sealing process. This enquiry took about 10 minutes. After receiving this advice, I then re-opened the door, informed the counting agents what I just learnt from the REO, and allowed the polling agent to come back in to seal the ballot boxes. She then completed the sealing process for the FC [functional constituency] box and the last GC box together with one of my APROs and myself. Then I asked her to leave the station again. At the same time, the polling staff were changing the station into a counting station. However, one of the List 1 candidates Mr 鍾樹根 [Chung Shu-kan] kept yelling outside the door saying that we were manipulating the ballot papers inside. He called 999 (the police) ... Then a team of police officers ... arrived at the station, came in and asked me about what the situation was. From then on, the police officers were staying in the station. ...

... Mr Chung was the only candidate of the 6 lists outside the station. There were also counting agents at least from List 1, 2, and 4 waiting outside the door after 10:30 pm. I did not ask them to go away. I just advised them that we were turning the station into a counting station. When we were ready, we would admit them in accordance with the counting agent list. Indeed, they could see what happened inside the station through the windows. ...

... After we were ready, we admitted the counting agents accordingly. The public were also allowed to come in and observe.” (Italics supplied)

4. The PRO also asked the REO to check the enquiry record of the REO Helpdesk shortly after 10:30 pm. He stated that he asked the lady on the phone whether she would make a record of his enquiry and the conversation over the phone and she said she would.

5. The other officers of the same polling station either did not have much opportunity to witness what was stated so clearly by the PRO himself, or whatever they have stated does not contradict the PRO's aforesaid description of the event.

6. The DPRO and one APRO state that when the polling agent, Madam Wong, was told to leave the polling station at about 10:30 pm, no public officers (ie, police officers or Civil Aid Service ("CAS") officers) were inside the polling station as they were guarding the entrance. Another APRO confirms that the PRO had rejected the counting agents' request to enter the polling station before it became a counting station.

7. Responding to our further enquiry, the PRO stated he asked the lady polling agent to leave at 10:30 pm because the polling had ended. He did not explain why he did not admit the candidate and counting agents after the polling agent had been asked by him to get back to witness the sealing of the ballot boxes and had thereafter left the station again at his request.

8. It is therefore established on his own admission that the PRO contravened the relevant provisions in the EP Reg, the Guidelines and the Operation Manual and committed the following errors:

- (a) Before the close of poll, when there were still a couple of electors collecting their ballot papers, the PRO asked the lady

polling agent of List No. 1 (the only polling agent inside the polling station) to leave the station. This was against the polling agent's right and duty to observe polling and keep an eye on the ballot boxes in use that were still unsealed.

- (b) Although he was correct in not allowing the counting agents to come inside the polling station for witnessing the sealing of the flaps of the ballot boxes in use, the PRO only realised that polling agents were allowed to so witness after he had sought advice from the REO Helpdesk.
- (c) It was wrong for the PRO to have closed the door and refused counting agents' entry while he was seeking advice from the REO Helpdesk. He should have allowed them to stay inside the station when he sought advice.
- (d) While he tried to make amends by allowing the lady polling agent to go inside the polling station to witness the sealing of the ballot boxes, and was correct in asking her to leave the station after that event, it was wrong for him to have refused entry of Mr Chung (since he was a candidate) and the counting agents of whatever lists waiting outside the polling station, during the course of converting the station into a counting station.

9. The action of the PRO as aforesaid understandably gave rise to suspicion and concern. After reviewing all the evidence, the EAC, however, has come to the conclusion that these errors of the PRO, while casting doubt on the integrity of the polling process and counting process

inside the polling station, should not be properly regarded as actually damaging such integrity. The reasons are summarised below:

- (a) There were windows through which what was happening in the polling station could be seen from the outside.
- (b) The other polling officials inside the polling station, namely, the DPRO and some of the APROs were inside the polling station and none of them saw anything improper or untoward happen to the ballot boxes and the ballot papers.
- (c) While the lady polling agent was asked to leave, there were still a couple of electors waiting to collect their ballot papers inside the polling station, and it would be unlikely that anything untoward would have been done to the unsealed ballot boxes. There was only one FC ballot box and one GC ballot box that were left unsealed at the close of poll.
- (d) The PRO was honest to admit all the aforesaid errors without any attempt to hide. It would be most unlikely that he would have admitted any or all of these errors had he any untold motive to affect the integrity of the polling and counting processes in the polling station.
- (e) The PRO did call the REO Helpdesk to seek the advice. That shows that he was not familiar with the rules, rather than he was attempting to perpetrate anything improper.
- (f) His acts also demonstrate that he did not appreciate the requirement to allow counting agents, election agents and all the

more candidates, to be admitted into the polling station while it was being converted for counting. His misunderstanding was shown not only by his telling the candidate and counting agents waiting outside the station that they would be admitted after the conversion was completed, but it was also followed by his actually admitting them when counting was ready to begin.

- (g) Had the PRO wished to perpetrate anything improper, he would have completed what he had to do before the sealing of the FC ballot box and the last GC ballot box as witnessed by the lady polling agent, and there would not have been any reason for his insistence in excluding the entry by the candidate and counting agents to further fuel the suspicion, especially when the police had already arrived as summoned by the candidate and when the counting agents of List No. 6 had drawn his attention to the relevant legislation regarding the right of counting agents to stay in the station.
- (h) The only interval during which the last two ballot boxes were unsealed was the 10 minutes or so while the PRO was seeking advice from the REO Helpdesk, but immediately upon his obtaining advice he allowed the lady polling agent to return into the polling station to witness the sealing of the ballot boxes.
- (i) When the count started, the ballot boxes were sealed and the seals were broken in the presence of the counting agents who had by then been allowed inside.

10. There were the following officers and polling and counting staff allocated to that polling station, namely, 1 PRO, 1 DPRO, 4 APROs, and 21 polling/counting staff. They were civil servants employed by various government departments. They were normally not working in the area covered by the polling station. They were all volunteers who had applied to the REO to participate in the conduct of the election. They and the other volunteers whose applications had been accepted by the REO were assigned by the REO to man the polling station at random, without their prior knowledge. The REO also required the volunteers to report if they had close relationship with any candidates, and if so, they would not be appointed as polling staff. The assignments were done on purpose so as to ensure that they should not be too familiar with one another, and to minimise the possibility that they would act in favour of any political body or candidate in the area covered by the station. All these were done to bolster the neutrality and independence of the arrangements and to avoid any collusion that might affect the integrity of the polling and counting processes. It would therefore be difficult to imagine that all officers and staff within the station were conspiring together to do anything improper during the 10 minutes or so while the lady polling agent had been asked to leave the station and later to return to witness the sealing of the ballot boxes.

11. While the station was being converted for counting purposes, the polling officials had various duties to perform, and members of the junior polling staff were arranging the tables and notice boards or taking a rest in anticipation of their having to carry out counting duties. The PRO himself would need to compile the ballot paper account, which was the most important document that he had to compile himself. It would be unlikely that after the ballot boxes had been sealed as witnessed by the

lady polling agent that the seals were later broken and something improper was done to the contents of the ballot boxes before they were resealed, while the candidate and counting agents were waiting outside and through the windows they could see what was happening in the station.

12. Because of the irregularities, we have checked the GC voter turnout during the entire 15 hours of polling in the polling station, and they are set out below:

Period	Hourly Turnout	Cumulative Turnout	Hourly Turnout Rate	Cumulative Turnout Rate
0730 – 0830	90	90	1.39%	1.39%
0830 – 0930	188	278	2.90%	4.29%
0930 – 1030	207	485	3.19%	7.48%
1030 – 1130	257	742	3.97%	11.45%
1130 – 1230	246	988	3.80%	15.24%
1230 – 1330	193	1,181	2.98%	18.22%
1330 – 1430	266	1,447	4.10%	22.33%
1430 – 1530	226	1,673	3.49%	25.81%
1530 – 1630	210	1,883	3.24%	29.05%
1630 – 1730	209	2,092	3.22%	32.28%
1730 – 1830	244	2,336	3.76%	36.04%
1830 – 1930	272	2,608	4.20%	40.24%
1930 – 2030	199	2,807	3.07%	43.31%
2030 – 2130	234	3,041	3.61%	46.92%
2130 – 2230	314	3,355	4.84%	51.77%

13. It will be noticed that the turnout rate fluctuated from hour to hour. While the last hour turnout rate of 4.84% was the highest in the day, the number of electors was 314. As compared with the number of 234

recorded for 8:30 pm to 9:30 pm, 80 more electors turned up in the last hour of polling and the turnout rate so compared was 1.23% more.

14. In order to put the trend of voter turnout rate in the polling station in its proper perspective, we set out below the turnout figures relating to the entirety of the Hong Kong Island GC.

Period	Hourly Turnout	Cumulative Turnout	Hourly Turnout Rate	Cumulative Turnout Rate
0730 – 0830	8,083	8,083	1.31%	1.31%
0830 – 0930	15,898	23,981	2.57%	3.88%
0930 – 1030	24,179	48,160	3.91%	7.79%
1030 – 1130	28,689	76,849	4.64%	12.43%
1130 – 1230	28,705	105,554	4.64%	17.07%
1230 – 1330	25,802	131,356	4.17%	21.24%
1330 – 1430	26,776	158,132	4.33%	25.57%
1430 – 1530	26,391	184,523	4.27%	29.84%
1530 – 1630	26,047	210,570	4.21%	34.05%
1630 – 1730	24,250	234,820	3.92%	37.97%
1730 – 1830	24,339	259,159	3.94%	41.90%
1830 – 1930	23,446	282,605	3.79%	45.70%
1930 – 2030	24,094	306,699	3.90%	49.59%
2030 – 2130	21,889	328,588	3.54%	53.13%
2130 – 2230	27,800	356,388	4.50%	57.63%

15. For the whole of the Hong Kong Island GC, while the turnout rate of the penultimate hour was 3.54%, the last hour's was 4.50%, 0.96% more. The last hour voter turnout was also the third highest in the day; the number of electors in that last hour was 5,911 more than those in the previous hour. Although the number of electors during the last hour in other polling stations may have little relevance to

the number of electors in polling station C3701, the trend of many electors casting their votes throughout the Hong Kong Island GC would indicate that the same trend should normally apply to polling station C3701. At least the increase of 80 electors in polling station C3701 and the increased voter turnout rate of 1.23% as compared with the figures of the penultimate hour should not give rise to concern. Indeed, considering the trend across the whole GC, the increased figures for the last hour at polling station C3701 look nothing extraordinary.

16. As compared with the turnout rate of the whole GC, the turnout rate at polling station C3701 was much lower, ie, 51.77% as against 57.63%. The lesser turnout rate also tends to alleviate the suspicion that ballot papers had been fraudulently introduced into the ballot boxes from the time when the lady polling agent was asked to leave up to the time when they were sealed in her presence.

17. We have also examined the votes cast in favour of the six lists of candidates in this polling station, and they are as follows:

Candidate List Number	No. of Ballot Papers	No. of Questionable Papers Found Valid
1	800	61
2	648	16
3	84	5
4	1,061	34
5	24	1
6	587	16
Tendered	1	
Unmarked	12	

Not marked by the chop provided by the polling station	1	
Contains votes for more than one list of candidate(s)	3	
Void for uncertainty	1	
Total:	3,222	133

18. The total of the ballot papers cast for the six lists of candidate(s), including those obviously valid and invalid and those that had been questionable but eventually determined by the PRO to be valid and invalid, came to 3,355, which was the same as the number of ballot papers believed to be in the ballot boxes according to the ballot paper account. As compared with the figures of votes cast for each of the lists across the whole GC, the figures regarding this polling station again do not appear to be anything out of the ordinary.

19. While the EAC regrets that these irregularities occurred at this polling station giving rise to suspicions, we are quite sure that nothing untoward had taken place in this station that would reasonably cast doubt on the intactness of the ballot boxes and their contents inside the station before the count commenced. In all the circumstances mentioned above, there is insufficient evidence to enable one to draw any reasonable inference that ballot papers other than those cast by electors attending the station had been unlawfully inserted into the ballot boxes in use after the lady polling agent left the polling station shortly before the close of poll and during the period before she was allowed to return to witness the sealing of the ballot boxes. There has been no complaint that when the counting agents were eventually allowed in they did not see the breaking of the seals of the ballot boxes for their contents to be emptied for counting, which illustrates that during the interval after their entry had

been refused, nothing could have been inserted into the sealed ballot boxes.

20. In the whole, therefore, after examining the evidence very carefully, we have come to the conclusion that the integrity of the polling and counting processes at this station should not be doubted.

21. We will need to rephrase paragraph 7.22 and other parts of the Operation Manual to ensure that it is clear beyond peradventure that candidates, election agents and counting agents are allowed to stay inside a polling station while it is being converted into a counting station. We accept with regret that the language of this paragraph 7.22 and related parts might have caused misunderstanding on the part of the PRO and polling officials, and the entirety of the Operation Manual must be revamped to lay more emphasis on the procedures that ensure the openness, fairness and honesty of elections.

(2) *Polling Station Q0401 – HK & Macau Lutheran Church Primary School (Tseung Kwan O)*

22. Mr Ronny K W Tong, candidate in List No. 3 of the New Territories East GC, sent us a letter of complaint from Mr Au Hing-cheung (“Mr Au”), one of Mr Tong’s two counting agents in respect of this polling station Q0401. The other counting agent was Mr Matthew Au (“Matthew”). Mr Au’s complaint was that he and Matthew arrived at the station about 10 minutes before the close of poll and were each provided with a counting agent badge. When they returned to the station just after 10:30 pm, they found the gate of the station locked and counting

agents of other candidate lists were waiting outside the gate. Mr Au and Matthew told the personnel manning the gate that they were counting agents and asked to be allowed in. They were told that they would not be allowed in until the polling station was properly converted into a counting station and that might take some time. At about 11:20 pm or so, as some counting agents were complaining about the delay in allowing them to go into the counting station, the PRO came out and explained that they had to re-check the numbers of ballot papers issued against the turnout figure and would still take a while longer than expected before the station was ready for counting votes. Eventually, all the counting agents including the two gentlemen were allowed into the counting station with the public at about 11:45 pm. The PRO cut the seals of the ballot boxes in the presence of all the counting agents and the public.

23. Mr Au was concerned that there might well be a possibility that, before the counting agents were allowed in, the ballot boxes had been opened and resealed in the absence of any counting agents.

24. In the press release dated 15 September 2004 issued by a group of candidates led by Mr Ho Chun-yan (“the said 15/9/04 press release”), there was a similar complaint that this polling station was only opened for candidates’ agents at 11:45 pm.

25. The statements received from the PRO, DPRO and APROs manning the station confirm the material part of the story related by the complainant.

26. The PRO stated:

“There was no candidate, election agent and polling agents within the polling station (the school hall) before close of poll. When I closed

the gate at the NSZ (no-staying zone), I noticed that the polling agent for the DAB candidate was walking out of the NSZ of her own accord. I did not ask any of my staff to request her to leave the station. There were two policemen and some CAS members within the station area after the close of poll.

Incidentally, two counting agents representing Mr K W Tong entered the polling station at about 10:00pm. As polling was still ongoing at that instance and they were not the authorised polling agents, I did request them to wait outside the station after checking their identities. *I informed them that they would be invited to witness the counting process after the polling station was converted to the counting station.*” (Italics supplied)

“*Two police officers were present in the station.* There were some CAS officers at the gate initially but they requested my permission to leave the station shortly after the close of poll. ... After the CAS members left the station, I requested *one of the police officer to guard the gate.*”

“There were counting agents, polling agents and members of the public staying outside the polling station after 10:30 pm. I did not ask any of them to leave but *I did not invite them to enter into the station either as we were not ready* at that time. In fact, I did not pay much attention to the situation outside the station, as we were busy converting the polling station into the counting station, closing the ballot account and sealing the 11 nos. of ballot boxes. As counting could not start until 11:55pm, one of the policemen informed me at about 11:35pm that the *counting agents wanted to see me at the gate* (NSZ). I then proceeded to the gate to keep them informed of the progress in converting the polling station into the counting station. I also explained to them the reasons for not being able to start counting at that time.” (Italics supplied)

27. While other polling officials of the station did not make any statement contrary to what the PRO states, one of the five APROs, had the following to say:

“They [candidates’ agents] were staying outside the station after 10:30pm and we did not ask them to go away. *We just told them they could get inside the station once the counting station was ready.*” (Italics supplied)

28. Upon our further enquiry, the PRO stated that according to the Operation Manual, his understanding was that counting agents were not allowed to enter a polling station before the close of poll.

29. From all the evidence available, we find with little doubt that the complainant Mr Au and his colleague and other counting agents were not allowed inside the polling station when it was being converted into a counting station. This was clearly a breach of section 63(1A) of the EP Reg and the various provisions of the Guidelines. It appears that both the PRO and the APRO whose statement is quoted above were oblivious of those relevant provisions that counting agents are allowed to get in and stay inside the station while it is being converted for counting purposes. It is therefore necessary for the EAC to examine closely the situation to see (a) whether Mr Au's concern is substantiated that before the counting agents were allowed in, the ballot boxes had possibly been opened and resealed in the absence of any counting agents, and (b) whether the integrity of the electoral processes in that polling station was damaged.

30. Again, the circumstances of this case justifiably give rise to Mr Au's concern as well as other suspicion that something untoward had been done to the ballot boxes. There was no excuse for the counting agents not to be admitted into the station in the course of its being converted into a counting station. On the other hand, however, when the counting agents were eventually allowed into the station for witnessing the count at about 11:45 pm, the PRO cut the seals of the ballot boxes in the presence of all the counting agents and the public. The sealing could have been witnessed by the polling agents that were present shortly before the opening of the poll and during the course of the poll, and it would have been extremely audacious for the PRO to break the seals in the hope that such seals that had already been broken and resealed by himself during the interval between the close of poll and 11:45 pm would not have been noticed.

31. The frank admissions of the PRO and the APRO as to telling counting agents that they would be allowed in when the conversion was completed also suggest that they have nothing to hide, but rather they did not know the relevant rules for allowing counting agents in. Moreover, from the PRO's statement, a police officer had continuously stayed inside the polling station, who was duty-bound to prohibit any offence under section 17(1) of the ECICO being committed (see paragraph 5.15 of the Report). The breaking of the seals and resealing, as suspected by the complainant, if that had been done so audaciously, would not have failed to escape the police officer's eyes.

32. Owing to the occurrence of the irregularity, we have checked the GC voter turnout during the 15 hours of polling in the polling station, and they are set out below:

Period	Hourly Turnout	Cumulative Turnout	Hourly Turnout Rate	Cumulative Turnout Rate
0730 – 0830	155	155	1.71%	1.71%
0830 – 0930	237	392	2.61%	4.32%
0930 – 1030	414	806	4.56%	8.88%
1030 – 1130	396	1,202	4.36%	13.25%
1130 – 1230	418	1,620	4.61%	17.86%
1230 – 1330	582	2,202	6.41%	24.27%
1330 – 1430	358	2,560	3.95%	28.22%
1430 – 1530	363	2,923	4.00%	32.22%
1530 – 1630	408	3,331	4.50%	36.71%
1630 – 1730	245	3,576	2.70%	39.41%
1730 – 1830	348	3,924	3.84%	43.25%
1830 – 1930	325	4,249	3.58%	46.83%

1930 – 2030	359	4,608	3.96%	50.79%
2030 – 2130	308	4,916	3.39%	54.18%
2130 – 2230	457	5,373	5.04%	59.22%

33. It will be noticed that the turnout rate fluctuated from hour to hour. While the last hour turnout rate of 5.04% was the second highest in the day, the number of electors was 457. As compared with the number of 308 recorded for 8:30 pm to 9:30 pm, 149 more electors turned up in the last hour of polling and the turnout rate so compared was 1.65% more.

34. In order to put the trend of voter turnout rate in the polling station in its proper perspective, we set out below the turnout figures relating to the entirety of the New Territories East GC.

Period	Hourly Turnout	Cumulative Turnout	Hourly Turnout Rate	Cumulative Turnout Rate
0730 – 0830	10,153	10,153	1.32%	1.32%
0830 – 0930	20,225	30,378	2.62%	3.94%
0930 – 1030	28,458	58,836	3.69%	7.64%
1030 – 1130	32,524	91,360	4.22%	11.86%
1130 – 1230	32,499	123,859	4.22%	16.07%
1230 – 1330	30,991	154,850	4.02%	20.09%
1330 – 1430	31,768	186,618	4.12%	24.22%
1430 – 1530	29,299	215,917	3.80%	28.02%
1530 – 1630	30,444	246,361	3.95%	31.97%
1630 – 1730	28,635	274,996	3.72%	35.69%
1730 – 1830	29,912	304,908	3.88%	39.57%
1830 – 1930	28,922	333,830	3.75%	43.32%
1930 – 2030	32,104	365,934	4.17%	47.49%
2030 – 2130	28,976	394,910	3.76%	51.25%
2130 – 2230	39,832	434,742	5.17%	56.42%

35. For the whole of the New Territories East GC, while the turnout rate of the penultimate hour was 3.76%, the last hour's was 5.17%, 1.41% more. The last hour turnout rate was also the highest in the day; the number of electors in that last hour was 10,856 more than those in the previous hour. While the number of electors during the last hour in other polling station may have little relevance to the number of electors in polling station Q0401, the trend of many electors casting their votes throughout the GC would indicate that the same trend should normally apply to polling station Q0401. At least the increase of 149 electors in polling station Q0401 and the increased voter turnout rate of 1.65% as compared with the figures of the penultimate hour should not give rise to concern. Indeed, considering the trend across the whole GC, the increased figures for the last hour at polling station Q0401 look nothing extraordinary.

36. We have also examined the votes cast in favour of the six lists of candidates in this polling station, and they are as follows:

Candidate List Number	No. of Ballot Papers	No. of Questionable Papers Found Valid
1	640	1
2	144	
3	1,664	80
4	698	35
5	329	32
6	1,566	134
Tendered	1	
Unmarked	36	

Chop not affixed to give a single “✓” in the circle opposite the list of candidates of the elector’s choice	4	
Contains votes for more than one list of candidate(s)	7	
Void for uncertainty	2	
Total:	5,091	282

37. The total of the ballot papers cast for the six lists of candidate(s), including those obviously valid and invalid and those that had been questionable but eventually determined by the PRO to be valid and invalid, came to 5,373, which was the same as the number of ballot papers believed to be in the ballot boxes according to the ballot paper account. As compared with the figures of votes cast for each of the lists across the whole GC, the figures regarding this polling station again do not appear to be anything out of the ordinary.

38. There were the following officers and polling and counting staff allocated to that polling station, namely, 1 PRO, 1 DPRO, 5 APROs, and 29 polling/counting staff. They were civil servants employed by various government departments. They were normally not working in the area covered by the polling station. They were all volunteers who had applied to the REO to participate in the conduct of the election. They and the other volunteers whose applications had been accepted by the REO were assigned by the REO to man the polling station at random, without their prior knowledge. The REO also required the volunteers to report if they had close relationship with any candidates, and if so, the volunteers would not be appointed as polling staff. The assignments were done on purpose so as to ensure that they should not be too familiar with one another, and to minimise the possibility that they would act in favour of

any political body or candidate in the area covered by the station. All these were done to bolster the neutrality and independence of the arrangements and to avoid any collusion that might affect the integrity of the polling and counting processes. It would therefore be difficult to imagine that all officers and staff within the station were conspiring together to do anything improper during the time when the counting agents were kept outside the polling station.

39. The continual presence of the police officer inside the polling station while it was being converted for counting purposes also enhances our confidence that nothing untoward had been done by the PRO or other officers and staff while the counting agents were waiting outside the station.

40. In all the circumstances, we conclude that the integrity of the polling and counting processes inside this polling station should not be doubted.

(3) Polling Station R3301 – St Rose of Lima’s College (Shatin)

41. The complaint regarding this station was raised in the said 15/9/04 press release, which states that between 10:30 pm and 1:00 am, all counting agents were not allowed to enter the school hall on the ground floor (apparently where the polling took place) and were only allowed to remain in the basketful court.

42. The PRO stated that at the close of poll at 10:30 pm, there was only one polling agent (of List No. 6) present, and she was invited to

witness the sealing of all the ballot boxes. At about 10:55 pm, the lady polling agent was asked to leave the station after the sealing. During the conversion process, policemen and CAS members were present in the station. There were about 8 counting agents staying outside the station after 10:30 pm. The PRO asked them to wait outside the gate of the school for the re-opening of the station when counting was ready, as he believed that they could only enter the station as a counting station. When the station was open for counting, all counting agents were allowed in to witness the breaking of the seal of every ballot box and the count.

43. None of the other polling officials said anything contrary to the PRO's statement. An APRO confirmed that the PRO did ask the counting agents to remain outside the station.

44. Upon our further enquiry, the PRO stated that he asked the polling agent to leave and did not allow counting agents into the station by relying on his past experience and exercising his own judgement. He contended that as it was not necessary for agents to witness how the ballot boxes were transported from the polling station to the counting station in former elections, applying the same reasoning there was no necessity for agents to observe the conversion of the polling station into a counting station (both of which happened to be the same place this time round). He did not understand why the agents would want to see how the polling station was changed to a counting station.

45. The PRO's act of not allowing counting agents to enter the station during the conversion process and his thinking or reasoning in support are clearly wrong. This is a clear case that the PRO misunderstood the rules and did not appreciate the importance of the

principle that elections are to be conducted openly, fairly and honestly. His reliance on the former practice that agents were not allowed to witness the transportation of ballot boxes from the polling station to the counting station is also wrong because in past elections when polling and counting were done separately at two different venues, agents were allowed to join in the escort of the transportation of the sealed ballot boxes. Moreover, even if no agent participated in the escort, at least a police officer would be in the escorting party. This was and is still the practice.

46. Owing to the occurrence of the above irregularity, we have checked the GC voter turnout in the 15 hours of polling in this polling station, and they are set out below:

Period	Hourly Turnout	Cumulative Turnout	Hourly Turnout Rate	Cumulative Turnout Rate
0730 - 0830	56	56	1.16%	1.16%
0830 - 0930	127	183	2.62%	3.78%
0930 - 1030	163	346	3.37%	7.15%
1030 - 1130	224	570	4.63%	11.77%
1130 - 1230	288	858	5.95%	17.72%
1230 - 1330	212	1,070	4.38%	22.10%
1330 - 1430	206	1,276	4.26%	26.36%
1430 - 1530	227	1,503	4.69%	31.05%
1530 - 1630	208	1,711	4.30%	35.34%
1630 - 1730	192	1,903	3.97%	39.31%
1730 - 1830	223	2,126	4.61%	43.92%
1830 - 1930	265	2,391	5.47%	49.39%
1930 - 2030	145	2,536	3.00%	52.39%
2030 - 2130	194	2,730	4.01%	56.39%
2130 - 2230	222	2,952	4.59%	60.98%

47. It will be noticed that the turnout rate fluctuated from hour to hour. While the last hour turnout rate of 4.59% was the sixth highest in

the day, the number of electors was 222. As compared with the number of 194 recorded for 8:30 pm to 9:30 pm, 28 more electors turned up in the last hour of polling and the turnout rate so compared was 0.58% more.

48. We refer to the turnout figures relating to the entirety of the New Territories East GC already set out above in order to put the trend of the voter turnout rate in this polling station in its proper perspective.

49. For the whole of the New territories East GC, while the turnout rate of the penultimate hour was 3.76%, the last hour's was 5.17%, 1.41% more. The last hour turnout rate was also the highest in the day; the number of electors in that last hour was 10,856 more than those in the previous hour. Although the number of electors during the last hour in other polling station may have little relevance to the number of electors in polling station R3301, the trend of many electors casting their votes throughout the GC would indicate that the same trend should normally apply to polling station R3301. At least the increase of 28 electors in polling station R3301 and the increased voter turnout rate of 0.58% as compared with the figures of the penultimate hour should not give rise to concern. Indeed, considering the trend across the whole GC, the increased figures for the last hour at polling station R3301 look nothing extraordinary.

50. We have also examined the votes cast in favour of the 6 lists of candidate(s) in this polling station, and they are as follows:

Candidate List Number	No. of Ballot Paper	No. of Questionable Papers Found Valid
1	438	4
2	69	
3	1,213	10
4	413	6
5	110	
6	626	41
Unmarked	14	
Not marked by the chop provided by the polling station	1	
Contains votes for more than one list of candidate(s)	5	
Void for uncertainty	2	
Total:	2,891	61

51. The total of the ballot papers cast for the 6 lists of candidate(s), including those obviously valid and invalid and those that had been questionable but eventually determined by the PRO to be valid and invalid, came to 2,952, which was identical to the number of ballot papers believed to be in the ballot boxes according to the ballot paper account. As compared with the figures of votes cast for each of the lists across the whole GC, the figures regarding this polling station again do not appear to be anything out of the ordinary.

52. There were 23 polling/counting personnel manning this station. Like the two cases already mentioned in this Appendix, the built-in stronghold of the administrative system that polling officials and polling staff were chosen at random to man the station, bolstering the

neutrality and independence of the arrangements and avoiding any collusion between the personnel also applied to this station. There was also the continuous presence of at least one police officer inside the station while it was being converted for counting purposes. From all the evidence, we are quite sure that the PRO's decision of not allowing counting agents to enter the station after all ballot boxes had been sealed in the presence of a polling agent was made without any illegal or improper motive but was rather caused by the PRO's inaccurate memory and misunderstanding of the applicable rules and his insufficient appreciation that actions taken must be shown to be open, fair and honest. We conclude that no reasonable inference can be drawn that the integrity of the polling and counting processes in this polling station had been damaged.

(4) Polling Station L1801 – Butterfly Bay Community Centre (Tuen Mun)

53. This complaint was raised by the letter dated 17 September 2004 to the EAC Chairman from an election agent, Mr Wong Yun-tat of the Neighbourhood and Worker's Service Centre. The complaint is that after the sealing of the ballot boxes in this station, counting agents were driven out and were only allowed to enter at 11:30 pm.

54. The PRO stated:

“At 10.30pm, after the last elector had done the election, I invited all the polling/candidate agents to witness the sealing of the ballot boxes. Afterwards, the polling centre was to be converted to the counting centre. The polling/candidate agents (as far as I remember there are 4 agents) are requested to leave the centre for the following reasons:

a) There are 39 staff in my centre. All of us are mobilised to convert the polling centre to counting centre. The situation is rather busy and a bit chaotic. For the safety of the polling/candidate agents,

they are requested to leave the centre. The situation has been briefly explained to the agents. They all leave the centre voluntarily and there is no argument on this issue with the agents;

- b) I have been told to convert the polling centre to counting centre as soon as possible, to be within half an hour. The presence of the agents would inevitably hinder the process;
- c) There is no objection/hints of objection from the agents upon the request of leaving the centre. On the contrary, I got the feeling that they understood it is reasonable/acceptable to temporarily leave the centre for our works on the conversion;
- d) They are fully informed of the process of conversion of counting centre and when the centre will be re-opened or planned to be re-opened; and
- e) There is no reserved staff to take care both the ballot boxes and/or the agents if they are still inside the centre (you might be aware that the original seats for the agents would be taken away and there is seating plan for the agents during this period of time);
- f) Another relevant fact is that the agents are allowed to witness that all the ballot boxes were still sealed before the unseal of the ballot box after the counting centre is re-opened.

... By the time they [the agents] are asked to leave, it should be approx. 10.40pm.”

55. The statements of the other polling officials do not shed further light on the subject. On the other hand, the Assistant Returning Officer confirmed that after the sealing of the ballot boxes, he and the police officer on duty remained at the station and while he did not notice when the polling agents left the station, he was sure that around 11 pm, only the polling staff and the police officer were inside the station. When the station was re-opened as counting station at around 11:30 pm, some counting agents entered with the general public to observe the count. He heard of no complaint.

56. Upon our further enquiry, the PRO explained why the agents were requested to leave the station after they had witnessed the sealing of the ballot boxes. He referred to the presiding officers’ duty list to show that he had the duties as the presiding officer to keep the polling station

running in a proper and orderly manner and to be personally responsible for the safe custody of the ballot papers and electoral documents. He also referred to the provision in paragraph 7.22 of the Operation Manual that “during the conversion the candidates/agents may be allowed to stay inside the station” and contended that the provision is not conclusive and it gave him discretion whether to allow the agents to do so.

57. Although the PRO further stated that by “polling/candidate agents”, he meant polling agents, we have some doubt as to whether the four “polling/candidate agents” referred to by him were only polling agents and not counting agents. If they were all polling agents, then the PRO had not breached section 63(1A) of the EP Reg or the relevant provisions of the Guidelines that counting agents may stay in the station during conversion. On the other hand, if one or more of these agents were counting agents, although they should not have been allowed to witness the sealing of the ballot boxes (as that would be the polling agent’s prerogative), they should have been entitled to stay in the station after the sealing process and during the conversion.

58. For the sake of putting any suspicion at rest, we have also checked the turnout rates and relevant figures of polling at this station.

59. The GC voter turnout during the entire 15 hours of polling in this station are set out below:

Period	Hourly Turnout	Cumulative Turnout	Hourly Turnout Rate	Cumulative Turnout Rate
0730 - 0830	178	178	1.62%	1.62%
0830 - 0930	350	528	3.19%	4.81%
0930 - 1030	456	984	4.15%	8.96%
1030 - 1130	449	1,433	4.09%	13.05%

1130 - 1230	450	1,883	4.10%	17.14%
1230 - 1330	389	2,272	3.54%	20.68%
1330 - 1430	377	2,649	3.43%	24.12%
1430 - 1530	354	3,003	3.22%	27.34%
1530 - 1630	376	3,379	3.42%	30.76%
1630 - 1730	360	3,739	3.28%	34.04%
1730 - 1830	361	4,100	3.29%	37.33%
1830 - 1930	381	4,481	3.47%	40.80%
1930 - 2030	378	4,859	3.44%	44.24%
2030 - 2130	336	5,195	3.06%	47.30%
2130 - 2230	430	5,625	3.91%	51.21%

60. It will be noticed that the turnout rate fluctuated from hour to hour. While the last hour turnout rate of 3.91% was the fourth highest in the day, the number of electors was 430. As compared with the number of 336 recorded for 8:30 pm to 9:30 pm, 94 more electors turned up in the last hour of polling and the turnout rate so compared was 0.85% more.

61. In order to put the trend of voter turnout rate in the polling station in its proper perspective, we set out below the turnout figures relating to the entirety of the New Territories West GC.

Period	Hourly Turnout	Cumulative Turnout	Hourly Turnout Rate	Cumulative Turnout Rate
0730 – 0830	10,869	10,869	1.24%	1.24%
0830 – 0930	22,197	33,066	2.54%	3.79%
0930 – 1030	31,139	64,205	3.57%	7.35%
1030 – 1130	35,109	99,314	4.02%	11.38%
1130 – 1230	34,512	133,826	3.95%	15.33%
1230 – 1330	31,423	165,249	3.60%	18.93%
1330 – 1430	33,833	199,082	3.88%	22.80%
1430 – 1530	30,791	229,873	3.53%	26.33%
1530 – 1630	31,470	261,343	3.60%	29.94%
1630 – 1730	30,230	291,573	3.46%	33.40%

1730 – 1830	32,023	323,596	3.67%	37.07%
1830 – 1930	33,156	356,752	3.80%	40.86%
1930 – 2030	35,315	392,067	4.05%	44.91%
2030 – 2130	31,962	424,029	3.66%	48.57%
2130 – 2230	42,833	466,862	4.91%	53.48%

62. For the whole of the New Territories West GC, while the turnout rate of the penultimate hour was 3.66%, the last hour's was 4.91%, 1.25% more. The last hour turnout rate was the highest in the day; the number of electors in that last hour was 10,871 more than those in the previous hour. Although the number of electors during the last hour in other polling station may have little relevance to the number of electors in polling station L1801, the trend of many electors casting their votes throughout the GC would indicate that the same trend should normally apply to polling station L1801. At least the increase of 94 electors in polling station L1801 and the increased voter turnout rate of 0.85% as compared with the figures of the penultimate hour should not give rise to concern. Indeed, considering the trend across the whole GC, the increased figures for the last hour at polling station L1801 look nothing extraordinary.

63. As compared with the turnout rate of the whole GC, the turnout rate at polling station L1801 was much lower, ie 51.21% as against 53.48%. The lesser turnout rate also tends to alleviate the suspicion that ballot papers had been fraudulently introduced into the ballot boxes from the time when the polling/counting agents were asked to leave after their having witnessed the sealing of the ballot boxes up to the time when the seals were broken openly in the sight of everyone at the commencement of the count.

64. We have also examined the votes cast in favour of the 12 lists of candidates in this polling station, and they are as follows:

Candidate List Number	No. of Ballot Paper	No. of Questionable Papers Found Valid
1	165	
2	174	1
3	1,645	23
4	399	3
5	4	2
6	87	3
7	1,395	125
8	25	
9	462	7
10	45	
11	491	4
12	485	30
Unmarked	29	
Not marked by the chop provided by the polling station	4	
Contains votes for more than one list of candidate(s)	12	
Void for uncertainty	3	
Total:	5,425	198

65. The total of the ballot papers cast for the 12 lists of candidate(s), including those obviously valid and invalid and those that had been questionable but eventually determined by the PRO to be valid and invalid, came to 5,623, which was just 1 less than the number of ballot papers believed to be in the ballot boxes according to the ballot

paper account. As compared with the figures of votes cast for each of the lists across the whole GC, the figures regarding this polling station do not appear to be anything out of the ordinary.

66. Like the cases dealt with above in this Appendix, the built-in stronghold of the administrative system that polling officials and polling staff were chosen at random to man the station, bolstering the neutrality and independence of the arrangements and avoiding any collusion between the personnel also applied to this station. There was also the continual presence of the police officer inside the station while it was being converted for counting purposes. From all the evidence, we are quite sure that the PRO's request of the agents to leave the station after they had witnessed sealing process was made without any illegal or improper motive but was rather caused by the PRO's misunderstanding of his powers and his insufficient appreciation that actions taken must be shown to be open, fair and honest. We conclude that the integrity of the polling and counting processes in this polling station should not be doubted.

CONCLUSION

67. Out of 31 polling stations in respect of which complaints or allegations of polling agents and counting agents being turned away or expelled or absent at the close of poll so that they were not able to keep an eye on the sealed ballot boxes, we have found that the circumstances pertaining to the four stations included in this Appendix might have given rise to suspicion or concern. For the reasons given in respect of these four polling stations, we have come to the conclusion that there should

not be any reasonable ground to suspect that the integrity of the polling and counting processes conducted at these four polling stations had been adversely affected.

68. As we said before, the main cause for the exclusion of the counting agents from witnessing the conversion process was due to the ignorance on the part of the PRO of the counting agents' right to do so in accordance with the relevant provisions of the EP Reg and Guidelines. Certain misunderstanding might also have been caused by the ambiguity created by various parts of the Operation Manual. The Operation Manual will, no doubt, have to be revamped so that all the steps necessary to ensure that the electoral processes are open, fair and honest are clearly and unequivocally stated. It is of paramount importance to explain and stress that all the electoral steps are for upholding the principle that the electoral processes have to be open, fair and honest, and the significance of not only giving effect to the principle, but also acting in such a manner as to ensure that the principle is perceived by the public to have been fully complied with. The personnel assigned the task of the conduct of the electoral processes must be trained to understand the principle and always keep it in mind.