

## Case Summary

Complaint against the Lands Department and the Urban Services Department for failing to take enforcement action against an illegal structure and poor co-ordination between the two departments in handling this complaint

### THE COMPLAINT

The complainant lodged written complaints with both the Lands Department (Lands D) and the Urban Services Department (USD) against an illegal provision store erected on the pavement causing obstruction and inconvenience to the public. In response, the concerned District Environmental Health Superintendent of the USD replied to him that the store was unlicensed and the control of unauthorized building works on Government land fell outside the USD's scope of responsibility and that the case had been referred to the Lands D and the Buildings Department (BD) for action. However, the concerned District Lands Officer of the Lands D wrote to him one week later that the store was a wall stall structure and he had referred the case to the DUS for action with no explanation given. The complainant was dissatisfied that both the USD and Lands D were trying to shirk their enforcement responsibility and this had resulted in inaction by both departments against the illegal structure.

2. Feeling aggrieved, the complainant lodged a complaint with The Ombudsman against both the Lands D and USD for failing to take enforcement action against an illegal structure and the poor co-ordination between the two departments in handling his complaint.

## FINDINGS AND CONCLUSION

### Complaint against the Lands D

3. According to the Director of Lands (D of L), the DUS had been authorized to clear illegal hawker structures including unlicensed wall stalls under the Crown Land Ordinance according to the internal guidelines issued in 1982. Furthermore, the wall stall in question was covered by the Environmental Clearance Freezing Surveys (ECFS) conducted by Housing Department (HD) in 1986 and in accordance with the departmental Land Instructions (LI), District Lands Offices (DLO) would not take any action in this case. Therefore, the case was referred to the DUS and later to the District office for follow-up action.

4. This Office is of the view that prior to giving a substantive reply to the complainant, the DLO, who was aware of the referral from USD, should first consult and clear with the concerned departments on their respective responsibilities before referral. In his reply, he should also give the reason for the referral and advise the complainant the current policy of the department in taking enforcement action against the structure. In the present case, the complainant was only informed that the illegal structure was a wall stall and as such it had been referred to the USD for action. This Office considers this course of action hardly adequate. If the illegal structure is tolerated, this should be explained instead of closing the case by referral. As a result, the complainant was given the impression that the department had been irresponsible and that his complaint had been handled in a perfunctory manner. The Ombudsman considers that the complaint could be avoided and concludes that the complaint against Lands D is partially substantiated.

### Complaint against the USD

5. The DUS, on the other hand, explained that even though the USD had been delegated with the authority to clear illegal hawker structures according to the 1982 internal guidelines, these guidelines, when they were read in conjunction with their Hawker Management Handbook, served to restrict USD to

the removal of illegal hawker structures and not to the clearance of illegal commercial structures generally, particularly where human habitation was involved.

6. This Office notes that upon receipt of the verbal and written complaints against the store in question, the department followed up on this complaint and enforcement actions were taken against the store operator for causing obstruction in public place. However, in the reply by the DUS to the complainant, it was only mentioned that the store was unlicensed and the complaint had been referred to the Lands D and BD on the grounds that the control of illegal structures on Government land was not the department's responsibility. The other concerns of the complainant such as illegal hawking and obstruction on pavement had not been addressed. The combined effect due to poor co-ordination between the Lands D and USD and the failure of both to assume a positive role in handling the complaint had left the complainant nowhere but made him turn to this Office for assistance. The Ombudsman concludes that the complaint against USD is also partially substantiated.

7. This Office notes that this case was subsequently discussed at the District Working Group Meeting on Tidy-up Exercise chaired by the District Officer of the Home Affairs Department, who had subsequently agreed to liaise further with D of L with a view to taking joint action to tackle this particular problem.

8. Having considered the above findings, The Ombudsman concludes that the complaint is partially substantiated.

## RECOMMENDATIONS

9. The Ombudsman recommends that both the D of L and DUS should -

- (a) further inform the complainant the actions taken or would be taken and explain to him their restrictions in relation to the clearance of the structure;
- (b) improve their co-ordination and liaison with other concerned government departments with a view to streamlining and improving their complaint handling procedures and reviewing and updating, if necessary, relevant departmental guidelines and instructions relating to the definitions of illegal structures and division of responsibilities in relation to control, enforcement and clearance of illegal structures; and
- (c) consider the issue of a joint reply to similar complaints/enquiries where appropriate.

#### RESPONSE FROM LANDS D AND USD

10. The D of L and DUS accepted in general The Ombudsman's recommendations.

#### FINAL REMARKS

11. The Ombudsman is of the view that there is no doubt that street management can be complex and delicate problems involving a number of departments to solve. There is, however, little justification for not explaining their current policies clearly to complainant who cannot be expected to have good knowledge of the issue and their enforcement responsibilities. While both departments claim each has clear policies setting out their enforcement responsibilities, this case has highlighted areas where the existing policies and guidelines have not been adequately communicated between concerned departments thus giving rise to this complaint which could have been avoided.

Office of The Ombudsman

Ref: OMB 1997/0754

OMB 1997/0755

October 1997

LTC/CWP/sh