

## **Summary of Investigation Report**

### **Complaint about an Unauthorised Structure on “Government Property”**

#### **Details of Complaint**

The complainant lived on the top floor of a building. She had complained to the Buildings Department (“BD”) that an unauthorised structure on the roof had caused serious water seepage at the ceiling of her flat. BD found out that the roof was owned by the Financial Secretary Incorporated (“FSI”) and so referred the case to the **Lands Department** (“Lands D”), the agent of FSI, for follow-up action. However, Lands D did not take appropriate action on the unauthorised structure or carry out the necessary repairs.

#### **Our Findings**

2. The roof was previously private property. Upon the expiry of the land lease for the site of the building at the end of 1992, Government started to make the necessary arrangements with all owners of the building to renew the lease. While the legal formalities regarding the regrant of the lease were in progress, the properties involved were temporarily vested in FSI, with Lands D handling those formalities on behalf of FSI. Meanwhile, the previous owner of the roof passed away and the legal personal representative did not complete the regrant formalities. As a result, Government could not assign the title of the roof to that representative.

3. Between 2006 and 2009, the complainant made a number of complaints to the Joint Office (“JO”) of the Food and Environmental Hygiene Department and BD about water seepage from the roof. Worried that the water seepage would affect the structural safety of her flat, the complainant also requested BD to follow up. BD’s investigation revealed no obvious problem of structural safety at the complainant’s flat and so the Department decided to conclude the case. JO also ceased its investigation, as the complainant had withdrawn her complaint and the seepage at her flat had stopped.

4. In February and March 2010, the complainant complained to BD again that water seepage from the roof had caused concrete spalling and corrosion of the steel

reinforcement at the beams of her flat. After investigation, BD found noticeable cracks on the walls of the unauthorised structure on the roof. Its condition had deteriorated, rendering it potentially dangerous. On learning from the Land Registry that FSI was the owner of the roof, BD wrote to Lands D, the agent of FSI, in mid-March and urged the latter to remove the unauthorised structure as soon as possible. Despite BD's subsequent reminders, Lands D took no action. In early August, Lands D replied to BD, refusing to remove the unauthorised structure on the grounds that FSI was not the permanent owner of the roof.

5. In mid-October, BD issued another reminder to Lands D. It was not until then that Lands D conducted a site inspection and sought legal advice.

6. In March 2011, our staff conducted a site inspection and observed the following:

- (1) water seepage at the ceilings of the living room and bedrooms of the complainant's flat, with concrete spalling at some parts of the ceilings;
- (2) traces of seepage at the ceiling of the common corridor outside the complainant's flat; and
- (3) noticeable cracks on some external walls of the unauthorised structure on the roof.

### **Response from Lands D**

7. Lands D explained that as FSI would eventually have to assign the title of the roof to the legal personal representative of the previous owner, FSI never took possession of or used the roof. It should not, therefore, be liable for any matters related to the roof. Moreover, as some people related to the previous owner (i.e. occupants of the unauthorised structure) were still using the roof, Government would not enter the unauthorised structure without the consent of the previous owner's legal personal representative or the occupants. Besides, the case involved complicated policy and legal issues. To find a feasible solution, Lands D had to seek legal advice on the removal of the unauthorised structure and the handling of the water seepage problem.

8. Subsequently, on receipt of the legal advice, Lands D took action against the legal personal representative of the previous owner and other relevant parties in April 2011. It ordered them to remove the unauthorised structure and to carry out the necessary repairs within a specified timeframe.

### **Conclusion and Recommendations**

9. This Office was aware of the complicated legal issues involved. Nevertheless, as the agent of the current owner of the roof (i.e. FSI), Lands D had an obligation to resolve the problems as quickly as possible when the regrant formalities of the roof were still dragging on. Lands D should not have let the complainant and other residents suffer from prolonged nuisance caused by the water seepage and face the hazards posed by the unauthorised structure.

10. In the incident, Lands D initially made no attempt to clarify the condition of the unauthorised structure and the responsibility of FSI. It also procrastinated in responding to BD's advice and reminders. Lands D argued that it had not taken any action because Government was not the permanent owner of the roof. We found its argument untenable. Lands D could have resolved the critical problems expeditiously with public funds and afterwards claimed the expenses from the parties concerned. In any event, the Department should protect public interest and ensure building safety rather than shying away from the problems.

11. In this light, The Ombudsman considered the complaint partially substantiated.

12. Lands D finally took possession of the roof and, following our recommendations, removed the unauthorised roof structure and carried out repairs on the seepage.

**Office of The Ombudsman**  
**February 2012**