

## **Summary of Investigation Report**

### **Complaint against Agriculture, Fisheries and Conservation Department, Transport Department and Highways Department for Failing to Implement Properly the Restriction on Vehicular Entry into a Country Park on General Holidays**

#### **The Complaint**

There were traffic control signs at the entrance of a road (“the Road”) within Kam Shan Country Park, prohibiting vehicles from entering on general holidays. However, on one Sunday in August 2011, the complainant found several vehicles using the Road. There was neither a crash gate nor a watchman at the entrance of the Road to prevent vehicles from entering on general holidays.

2. Country park management, road traffic management and installation of crash gates at the entrance of the Road are the responsibilities of the Agriculture, Fisheries and Conservation Department (“AFCD”), Transport Department (“TD”) and Highways Department (“Hy D”) respectively. This complaint, therefore, involved the three Government departments.

#### **Sequence of Events**

3. Towards the end of 2003, in response to complaints from some members of the public, the Government departments concerned (including AFCD, TD and Hy D) held a meeting and decided to install crash gates at the entrance of the Road to prevent vehicular entry on general holidays. AFCD was tasked with putting up and removing the gates before and after general holidays.

4. Hy D completed installation of the gates and AFCD planned to start in late May 2006 to put up the gates on general holidays.

5. In mid-June 2006, AFCD sent an email to TD, claiming that the crash gates were not positioned far away enough from an expressway which ran perpendicular to the Road. When a large vehicle stopped in front of the gates, the rear part of the vehicle would stick out to the expressway and pose a potential safety risk. AFCD, therefore, suggested that the gates be relocated farther away from the expressway. Meanwhile, it would not put up the gates until further notice. TD, in its reply to AFCD, stated that it had conducted a site inspection and confirmed the positioning of the crash gates as correct. Nevertheless, in view of AFCD’s request, it would re-assess the need to relocate the gates. Moreover, TD advised AFCD not to put up the gates in bad weather so that vehicles could enter the park for emergency repairs. In early July, TD sent a memorandum to the departments concerned to seek their views on relocation of the gates.

6. In November 2008 and January 2010, further complaints were received from members of the public about vehicles using the Road on general holidays.

7. Then in May 2010, TD sent a work request of “normal priority” to Hy D, which put the request on its list of small-scale traffic improvement projects. In mid-October, Hy D informed its contractor of the proposed project to relocate the crash gates. The contractor drew up a temporary traffic arrangement (“TTA”) in early December and applied to TD and the Police for approval. TD informed the contractor in November 2011 that it had no objection to the arrangement.

8. The contractor completed the relocation works in March 2012. Starting from 1 April, AFCD staff would put up and remove the crash gates before and after general holidays.

## **Response from the Departments**

### ***AFCD***

9. AFCD opened up the Road to bicycles and other vehicles. However, out of road safety concern arising from the large number of visitors on public holidays, TD prohibited vehicular entry into the Road on general holidays, pursuant to the Road Traffic Ordinance. As AFCD did not have the power to enforce the Ordinance, its staff could not take up vehicular control on the Road. Nevertheless, violations of the above restriction, if found, would be reported to the Police for follow-up action.

10. Besides, the potential safety risk posed by the gates previously installed had not yet been resolved and TD had asked AFCD not to put up the gates in bad weather. AFCD, therefore, suspended putting up the gates on general holidays.

### ***TD***

11. TD had already consulted AFCD in 2004 regarding the design of the crash gates. Its site inspection in 2006 also confirmed that the location of the gates was correct and that the distance between the gates and the expressway was sufficient for parking an ordinary vehicle or a light goods vehicle. In fact, AFCD staff could use a vehicle of suitable length for putting up and removing the gates. Nonetheless, TD later agreed to review the location of the gates at the request of AFCD as mentioned in **paragraph 5** above.

12. As there were already traffic control signs at the entrance of the Road to prevent vehicles from entering on general holidays, the crash gates were meant to be just a supplementary facility. Relocation of the gates was in no way urgent. TD issued a “work request” to Hy D in May 2010 and the contractor applied for approval of the TTA in December. However, the application did not reach the TD staff

responsible for the matter due to an error in internal dispatch. This resulted in a delay of the approval, and eventually of the relocation works.

13. Works proposals would be discussed at the regular meetings held between Hy D and the Regional Office of TD at the district concerned. As a large number of works projects were trying to scramble for the limited resources, only urgent projects or those that might have a significant impact on the public would be brought up at those meetings. The relocation works had never been discussed during the past few years and the Department was not aware of the delay.

### ***Hy D***

14. Hy D, a works department, would act on TD's requests and proposals in arranging and supervising the work of its contractors. Relocation of the gates, regarded only as some enhancement works, was accorded a priority lower than that of the other projects. Nevertheless, when Hy D learned that TD expected an early completion of the relocation, it promptly commenced the works. The gates were finally relocated in March 2012.

## **Our Observations and Comments**

### ***AFCD***

15. While AFCD is not empowered by the law to enforce vehicular control on the Road, it has a statutory duty to manage and protect country parks, and hence a responsibility to stop any irregularities within those areas. If vehicles were frequently driven into the country park on general holidays against the restriction, AFCD should have taken effective measures to prevent vehicular entry or asked the relevant authority to step up enforcement action. It should not treat the matter indifferently and do nothing.

16. AFCD cited a potential safety risk posed by the location of the crash gate in certain circumstances and stopped putting up the gates during general holidays altogether. It also did not consider other feasible interim measures to prevent vehicles from entering the Road on general holidays before relocation of the gates. This reflected its negative attitude and inflexibility in handling the problem and amounted to dereliction of duty entrusted to it by the other departments in the inter-departmental meeting in 2003. Besides, AFCD kept silent when TD consulted it regarding the design of the gates in 2004, only to identify the problem and ask for rectification after their installation. This was clearly a waste of time and resources.

### ***TD***

17. When TD learned of AFCD's intention to stop putting up the crash gates on general holidays, it should have discussed a relocation works schedule with AFCD

promptly. TD should also consider taking interim measures to implement effectively the general holiday restriction on the Road. Moreover, without a bring-up system for monitoring non-urgent projects such as relocation of the gates, the follow-up on these projects could easily be neglected. In addition, the contractor's application for approval in December 2010 regarding the TTA was delayed for about a year because of an internal dispatch error on the part of TD. We found such delay unacceptable.

### ***Hy D***

18. Hy D only acted on TD's request and proceeded with the relocation works according to its proposal. We found no impropriety on the part of Hy D regarding the installation of the gates.

### **Conclusion**

19. Although it was not the responsibility of the three departments involved to take enforcement actions and prosecute motorists who violated the restriction and entered the Road on general holidays, AFCD had just tried to stay away from the problem, while TD had failed to properly follow up the matter and communicate effectively with AFCD. The gates were rendered useless as a result. In the course of our investigation, we could not find any documentary records on the jurisdiction and division of work among the departments concerned regarding the management responsibility of the Road. Both AFCD and TD shifted the responsibility to each other. This case once again exposed that Government departments just took a narrow view of their responsibilities in handling cross-department issues. They lacked commitment and did not coordinate with each other. The measure of putting up the gates on the Road was only implemented after much twists and turns.

20. We expected that management problems of the Road might still arise in the future. Since AFCD staff were responsible for putting up and removing the gates and would conduct regular patrols in the country park, it should be easier for them to spot problems on the Road. Therefore, it would be more appropriate for AFCD to be the coordinating department in arranging inter-departmental meetings to discuss in detail the division of work.

21. Overall, The Ombudsman concluded that:

**The complaint against AFCD was substantiated;**

**The complaint against TD was substantiated; and**

**The complaint against Hy D was unsubstantiated.**

## **Recommendations**

22. The Ombudsman made recommendations to AFCD and TD for service improvement. They included:

- (1) AFCD to take the lead in holding discussions with other departments concerned (such as TD and Hy D) to clarify the division of work among them regarding the traffic management responsibility of the Road and set up an incidents report mechanism. Any of their decisions made should be clearly recorded and properly filed;
- (2) TD to devise a bring-up system for monitoring non-urgent works; and
- (3) TD to review its internal dispatch and file records mechanism.

## **Departments' Follow-up Actions on Our Recommendations**

23. The departments concerned have held inter-departmental meetings to discuss traffic management of the Road, incidents reporting mechanism, complaint handling and the division of other management responsibilities. Meanwhile, TD has implemented the other two recommendations.

**Office of The Ombudsman  
May 2013**