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Office of The Ombudsman*



*Direct Investigation Report
Lands Department's System of Regularisation of
Illegal Occupation of Government Land and
Breach of Lease Conditions*

The Office of The Ombudsman has conducted an in-depth direct investigation and found that for years, the Lands Department (“Lands D”) has been taking a lax and passive approach in dealing with illegal occupation of Government land and breach of lease conditions. In particular, people who have committed such breaches are allowed to apply for regularisation by way of short-term tenancy or short-term waiver of lease conditions.



The regularisation system itself is not well-thought-out and prone to abuse: applications for regularisation are at “zero cost”. The applicants do not have to pay a price for the breaches they have already committed. Moreover, once they apply for regularisation, Lands D will generally suspend its enforcement action.

The Ombudsman makes 5 recommendations to Lands D, which include urging the Department to proactively conduct inspections against irregularities, and requiring regularisation applicants to pay a forbearance fee, so as to deter people from stalling Lands D’s enforcement actions.

The executive summary of the investigation report is at **Annex 1**.

Direct Investigation Report
Temporary Closure of Public Swimming Pools/Beaches under the
Leisure and Cultural Services Department Due to Shortage of
Lifeguards

The Office of The Ombudsman has completed a direct investigation into temporary closure of public swimming pools/beaches under the Leisure and Cultural Services Department (“LCSD”) due to shortage of lifeguards.

In recent years, there have been more and more cases of partial or even complete closure of LCSD’s swimming pools/beaches because of insufficient lifeguards on duty. While industrial actions staged by lifeguards had at times led to partial or complete closure of swimming facilities, LCSD has a duty to ensure the effective operation of its swimming pools/beaches under normal circumstances. This direct investigation, however, shows a number of areas for improvement by the Department in this regard.



Our investigation has found that LCSD’s deployment of lifeguard manpower was ineffective. When lifeguards need to take leave at short notice because of sickness or other reasons, LCSD might not be able to redeploy manpower right away, resulting in temporary closure of swimming pools/beaches. Moreover, LCSD’s monitoring of sick leaves taken by staff members was lax compared with other Government departments and the execution was ineffective. In recent years, the number of days on which individual swimming pools/beaches had to be partially or even completely closed owing to lifeguards being absent or on sick leave was on the rise. Regarding lifeguards who can only perform light duties, LCSD’s failure to set out clear working guidelines for them had to a certain extent impacted on the operation of individual swimming pools/beaches. Furthermore, more than 20% of late cases involved lifeguards being late for work for more than 15 minutes, and 70% of the late cases would not be so regarded when the lifeguards’ time-off in lieu had been deducted in recompense.

Our investigation has also found that some lifeguards had not yet completed or even participated in the induction training programme. If for this reason these lifeguards could not properly discharge their duties, it would not only affect the operation of swimming pools/beaches, but also arouse discontent among other lifeguards and affect their morale. In case of emergencies, rescue action may be delayed if these lifeguards are unable to render help without urgent assistance from the other colleagues. This would damage the professional image of lifeguards and even jeopardise the safety of swimmers.

During our investigation, we noticed that there were rather significant differences in the perspective and point of view between the LCSD management and lifeguards' unions on a number of basic issues concerning the operation of swimming pools/beaches, from the arrangement and deployment of manpower to a grade structure review of lifeguards. LCSD has to enhance its actual communication with the lifeguards' unions for achieving mutual understanding and consensus, so as not to dampen lifeguards' morale and in turn affect the operation of swimming pools/beaches.

To address the inadequacies, The Ombudsman has made 12 recommendations to LCSD for improvement. The executive summary of the investigation report is at **Annex 2**.



Enquiries

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Office of The Ombudsman
13 September 2016

Executive Summary

Direct Investigation into Lands Department's System of Regularisation of Illegal Occupation of Government Land and Breach of Lease Conditions

Background

The Lands Department (“Lands D”) is responsible for taking enforcement actions against illegal occupation of Government land and breach of lease conditions. Generally speaking, when illegal occupation of Government land is found, Lands D can take land control actions pursuant to the Land (Miscellaneous Provisions) Ordinance, such as taking possession of any property or structure remaining on the land after the expiry of the period stipulated for the occupier to make rectification. In case of breach of lease conditions by a landowner, Lands D can take lease enforcement actions, including re-entry of the lot if the irregularities persist.

2. Nevertheless, in practice, Lands D has all along allowed illegal occupiers of Government land and landowners in breach of the lease conditions to apply for regularisation of such irregularities by way of short-term tenancy and short-term waiver of lease conditions respectively.

3. We notice that Lands D often takes more than a year to complete processing regularisation applications. Moreover, when an application is being processed, Lands D would normally suspend its enforcement actions, resulting in possible prolonged nuisance or inconvenience caused to nearby residents as the irregularities persist. Accordingly, The Ombudsman conducted this direct investigation to probe inadequacies in the existing system of regularisation.

Procedures for Processing Regularisation Applications

4. On receipt of an application for regularisation of illegal occupation of Government land by way of short-term tenancy (“STT”), the District Lands Office (“DLO”) will scrutinise whether the application meets the requirements, for example, that the Government land in question is such that it cannot be leased out separately to any people other than the applicant, and that there is no objection from Government departments and local residents.

5. Once the STT application is approved, the DLO will require the applicant to pay rent and an administrative fee. In general, charging of rent will take retrospective effect from the date when the illegal occupation first came to the DLO's attention.

6. According to the working guidelines, the DLO should complete processing simple applications within 24 weeks, counting from the start of considering the application to issuing an offer letter setting out the basic terms of the STT.

7. On receipt of an application for regularisation of breach of lease conditions by way of short-term waiver (“STW”), the DLO will scrutinise whether the application meets the requirements, for example, that the application is in compliance with the requirements of the Outline Zoning Plan and other legislation (such as fire safety provisions), and that there is no objection from Government departments and local residents.

8. Upon approval of the STW application, the DLO will charge the applicant a waiver fee and an administrative fee. In general, the waiver fee will take retrospective effect from the date when the breach of lease conditions first came to the DLO’s attention.

9. With regard to applications for STW for putting industrial premises to commercial use, which are relatively large in number, Lands D has drawn up particular guidelines on the handling procedures and timeframes. According to the guidelines, after the applicant has obtained the permission from the Town Planning Board and paid the administrative fee to Lands D, the DLO should issue within 4 months a notification letter specifying the basic terms (including the amount of waiver fee) of the STW.

Our Findings and Comments

10. Our investigation has found clear inadequacies in Lands D’s enforcement policy against illegal occupation of Government land and breach of lease conditions, as well as in its system of regularisation of such breaches.

11. For years, citing resource constraints as reason, Lands D has not proactively conducted regular inspections to detect illegal occupation of Government land and breach of lease conditions. Normally, Lands D will conduct inspections only upon receipt of public complaints or referrals from other departments. Even so, Lands D allows those who have committed breaches to apply for regularisation. This amounts to encouraging and conniving at cases of people first committing breaches and then applying for regularisation or not applying for regularisation at all, thus aggravating the problem of illegal occupation and breach of lease conditions.

12. In recent years, the general public and commentators have criticised Lands D for its failure to detect longstanding breaches, and for its recurring delays in taking enforcement actions. We consider that Lands D should as soon as possible discontinue its enforcement policy of not conducting self-initiated inspections.

Design and Implementation of the Existing Regularisation System

13. Deficiencies are found in the following four aspects of Lands D's system for regularising illegal occupation of Government land and breach of lease conditions:

- (1) Applications for regularisation of breaches are at "zero cost". Furthermore, when an application is being processed, the applicant can have the "benefit" of continuing with the breaches during the period. This amounts to encouraging those caught having committed breaches to stall Lands D's enforcement actions by simply applying for regularisation. We consider that Land D should introduce the concept of "paying a price for breaches" into the regularisation system. For example, Lands D should require the applicants to pay a "forbearance fee" to deter them from abusing the regularisation system.
- (2) There were often delays on the part of DLOs in processing regularisation applications. Some applications were even left idle for years. Such delays resulted in deferred enforcement actions, thus condoning breaches. They also led to decrease in (and in some cases, even non-collection of) revenue in respect of rent or waiver fees.
- (3) Some cases show that even though public complaints had already been received about the premises in question or related Government departments had already raised concerns about the regularisation applications, the DLOs still suspended enforcement actions.
- (4) Lands D does not maintain statistics on STTs granted for regularisation of illegal occupation of Government land. In other words, the Department has no way of grasping the overall situation with respect to those STTs, such as the area and distribution of the land involved, and the amount of revenue generated.

Lands D's Response to Our Comments

14. Lands D reiterated that with limited resources, the Department found it hard to proactively conduct regular inspections. Nevertheless, in the last two years, the Department has strategically conducted self-initiated inspections and stepped up enforcement actions in targeted areas. For example, it has stepped up enforcement actions against structures on private agricultural land that are in breach of lease conditions; it has also made risk-based enforcement measures against industrial buildings that are in breach of lease conditions.

15. After considering our comments on the existing regularisation system, at long last Lands D agreed to make improvement, i.e. to tighten up the practice of suspending enforcement actions during DLOs' processing of regularisation applications. Unless

there are “special reasons” for suspending enforcement actions, the DLOs will no longer suspend enforcement actions even if those having committed the breaches have applied for regularisation. “Special reasons” include situations where enforcement action would:

- (1) contradict a policy direction of the Government; or
- (2) have an adverse impact on people’s livelihood; or
- (3) pose a safety risk.

16. Lands D also indicated that it would consider charging regularisation applicants a “forbearance fee” in cases where enforcement actions have to be suspended. It will also strengthen its monitoring of the progress of processing such cases.

17. Apart from that, Lands D will consider requiring all applicants for regularisation by way of STT or STW to pay the administrative fee as soon as the DLO starts processing their applications. The Department will also enhance its database on short-term tenancies by adding a new field of data to record whether the short-term tenancies are for regularisation.

Our Views on Lands D’s Response

18. We note that in recent years, Lands D has stepped up inspections and enforcement actions in response to major incidents revealed by the media. However, such reactive actions could at best cope with those specific cases only. We do not think that the Department can deter illegal occupation of Government land or breach of lease conditions by conducting inspections only when it has learnt about the breaches from public complaints, referrals from other departments, or media reports. The reasons are as follows.

- (1) Ordinary citizens may not know what amounts to breaches. They only make complaints when they find themselves subject to nuisance or their safety under threat.
- (2) By the time a problem gets reported in the media, the situation is likely to have become so serious and widespread that the problem can hardly be resolved.

19. We welcome Lands D’s positive move: to abandon its practice of generally suspending enforcement actions during DLOs’ processing of regularisation applications. However, the Department must implement the new measure strictly, otherwise its purpose could not be achieved. The Department should not conveniently invoke the “special reasons” to avoid taking enforcement actions. We consider that Lands D should devise clear and specific guidelines on “special reasons” and restrict the authority to suspend enforcement actions to high-ranking officers (for example, directorate officers) only.

Recommendations

20. In the light of the above, The Ombudsman urges Lands D to:

- (1) re-deploy its resources to set up a mechanism for proactive inspections to detect illegal occupation of Government land and breach of lease conditions, and enhance its enforcement efficiency, so as to deter irregularities more effectively;
- (2) tighten up, as soon as possible, its practice of suspending enforcement actions while processing regularisation applications (including introduction of “forbearance fee”), devise clear, specific guidelines on “special reasons” for suspension of enforcement actions, and restrict the authority to suspend enforcement actions to high-ranking officers of the Department only;
- (3) set a timeframe for processing cases where enforcement actions have not been suspended, and closely monitor and timely escalate the enforcement actions to ensure that the breaches can be rectified as soon as possible;
- (4) implement, as quickly as possible, the new measure of requiring applicants for regularisation by way of STT or STW to pay the administrative fee as soon as the DLO starts processing their applications; and
- (5) add, as soon as possible, a category of regularisation to the database on short-term tenancies, and by phases record all old and new STTs under that category.

**Office of The Ombudsman
September 2016**

Executive Summary

Direct Investigation Report Temporary Closure of Public Swimming Pools/Beaches under the Leisure and Cultural Services Department Due to Shortage of Lifeguards

Background

Suspension of services at public swimming pools/beaches due to shortage of lifeguards still happened at times, for a number of reasons. While some cases were caused by industrial actions staged by the lifeguard unions, some were due to the inadequacies in the management and deployment of lifeguards by Leisure and Cultural Services Department (“LCSD”). We learned while investigating a complaint case that between June and September 2013, the number of days that some swimming pool facilities at the Kowloon Park Swimming Pool were closed due to concurrent sick leave of lifeguards far exceeded that of the same period in 2011 and 2012. That means the problem may be getting worse.

2. The Office of The Ombudsman noticed that the suspension of services at swimming pools due to LCSD’s shortage of lifeguards has caused not only a waste of public facilities and resources, but also inconvenience to the public. In this light, The Ombudsman initiated this direct investigation on 22 July 2015 pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance (Cap. 397, “the Ordinance”). As under the Ordinance, this Office cannot investigate personnel matters in respect of the pay, conditions of service, discipline, etc. of Government departmental positions, the focus of this direct investigation is not on LCSD’s personnel management matters but on how the Department manages its swimming pools/beaches, including the deployment of lifeguards to protect the public’s rights to use swimming pools/beaches, with a view to identifying any inadequacy and area for improvement.

Our Findings

3. Our investigation has revealed the following inadequacies/areas for improvement in LCSD’s management of swimming pools/beaches:

(A) Ineffective Deployment of Lifeguard Manpower

4. According to LCSD, apart from deploying an adequate number of basic manpower, it would in general deploy one or two lifeguards as buffer staff to strengthen lifeguard service. The buffer staff would enable swimming pools to have adequate number of basic manpower in case one of its staff members has to take sick leave. For example, while keeping the main pool and training pool of Tung Chung Swimming Pool open will require a basic complement of 8 lifeguards, the venue manager will arrange 9 to 10 lifeguards to be on duty for each shift.

5. Where the number of lifeguards on sick leave at short notice exceeds the buffer manpower, leaving insufficient lifeguards on duty at a swimming pool or beach, the officer-in-charge of the venue concerned will follow established procedures and immediately contact the substitute staff, staff on the next shift and those on vacation leave of the same venue or in the same district to cover the duties of absentees. The officer-in-charge may contact other swimming pools/beaches in the same district and discuss possible staff secondment to maintain the services of the swimming pool or beach concerned.

6. Nevertheless, in practice, regardless of whether it is the substitute staff, staff on the next shift or staff on vacation leave, they all are not yet ready to go to work. Even if they immediately agree to report duty, it would still take some time for them to get to the venue. Hence, it is inevitable that the swimming pool/beach concerned would be temporarily closed. As regards arranging other lifeguards who are already at work to provide cover, there are difficulties that need to overcome, for reasons as detailed below.

Insufficient Buffer Manpower and Lack of Substitute Staff Duty Rosters

7. The most straightforward approach to deal with any unexpected shortage of lifeguards is to arrange the available buffer manpower at the venue to cover the absentees. However, in case of insufficient buffer manpower or where the number of unexpected absentees exceeds the buffer manpower, LCSD then has to seek secondment from other venues or immediately contact the substitute staff or staff on vacation leave and request them to take up the duties. Yet, this would mean pressure to them.

8. As mentioned in **paragraph 4** above, LCSD normally includes only one or two number of buffer staff on each shift when preparing the duty rosters of lifeguards of swimming pools. We consider that LCSD has not taken into account the fact that any unexpected absence of one or two lifeguards will leave with no extra buffer to handle any more absence of staff. From the perspective of the venue's officer-in-charge, seconding their buffer manpower to help resolve the shortage of lifeguards at other venues may result in partial or even complete closure of his own venue should something unexpected happen. Therefore, unless LCSD can arrange sufficient buffer manpower, officers-in-charge may not be willing to second their staff to other venues. Besides, LCSD has no clear instructions on secondment between swimming pools/beaches. As such, while the lifeguards to be seconded may have no objection to such arrangement, but if they believe that the lifeguards of the swimming pool concerned are staging a boycott by concurrently taking sick leave, they would be reluctant to cover their duties because they do not want to be rejected by their colleagues. LCSD should consider increasing the buffer manpower where appropriate and rationalise the staff secondment arrangements to avoid disputes. This should also make the officers-in-charge feel more comfortable with secondment arrangements as needed, thereby reducing the chance of closure of facilities because of shortage of lifeguards.

Manpower Strain during Peak Season (June to August)

9. Some members of the staff unions expressed concern over lifeguards who chose to take vacation leave between June and August 2016 when it is the busiest period of the year, therefore affecting the deployment of staff. However, there was no measure from LCSD to control the problem. We consider it necessary for LCSD to take effective measures to ensure that there is adequate amount of staff for smooth operation of the facilities. At the same time, LCSD needs to explore measures and arrange lifeguards to take leave in the non-peak season. To ease manpower strain, LCSD acknowledged the need to strengthen the monitoring of lifeguards taking vacation leave during the period.

Difficulties in Hiring Seasonal Lifeguards

10. In recent years, hiring seasonal lifeguards has become more and more difficult for LCSD. In 2016, there are more than a hundred vacancies that need to be filled. As a matter of fact, with more demand for lifeguards for the swimming pools of large clubhouses in new private housing developments, it will be even more difficult for LCSD to find seasonal lifeguards given the increasing market competition. Moreover, with seasonal lifeguards being hired on a short-term basis (7 months), their high mobility, heavier workload at public swimming pools compared with private venues, and lack of career advancement, it is not easy to attract suitable candidates. LCSD, however, maintained that the existing pay package for seasonal lifeguards is similar to those in the private sector. Besides, LCSD has to follow the hiring policy of the Government for non-civil service contract staff and the principle of financial prudence in managing public funds in reviewing the pay package of seasonal lifeguards. We consider it necessary for LCSD to take a flexible approach in searching for a solution to the hiring problem of seasonal lifeguards, such as considering restructuring their grade and pay package, having regard to their job nature and requirements in experience and skills. Otherwise, the problem of insufficient seasonal lifeguards would only become more serious and the operation of swimming pools/beaches would be directly affected.

Arranging Part-time Hourly-rated Seasonal/Voluntary Lifeguards

11. The services of part-time hourly-rated seasonal/voluntary lifeguards can enhance LCSD's flexibility in deploying manpower of lifeguards. LCSD, however, pointed out that most part-time hourly-rated seasonal/voluntary lifeguards are working people or students, who are only available during weekends and public holidays for voluntary work. Hence, in case of an emergency, such as lifeguards taking sick leave concurrently when it is not a public holiday, part-time hourly-rated seasonal/voluntary lifeguards may not be able to offer assistance promptly. Moreover, voluntary lifeguards are usually less experienced than full-time lifeguards and so cannot completely replace the latter.

12. We understand that part-time hourly-rated seasonal/voluntary lifeguards are not as experienced as full-time lifeguards. However, through regular training (such as drills) and awards schemes, LCSD can enhance their professional skills, boost their confidence and ability in carrying out lifesaving duties and increase the incentive for them to provide services. In the meantime, the Department should also improve the current duty rosters for part-time hourly-rated seasonal/voluntary lifeguards by obtaining more precise information on when and where these lifeguards (especially students not in employment) can be on lifesaving duties. By doing so, LCSD can deploy manpower more swiftly when substitutes are suddenly needed so as to minimise the chance of partial or even complete closure of swimming pools/beaches because of insufficient lifeguards on duty.

Outsourcing Lifeguard Services

13. Management for the Island East Swimming Pool and Tai Kok Tsui Swimming Pool was once outsourced by LCSD to private companies in 2001 and 2005 respectively. Dissatisfied with the arrangements and worried that outsourcing lifeguard services would be detrimental to the development of their grade, LCSD lifeguards staged a strike in August 2005. Later on, the service contractor of Island East Swimming Pool was accused of falsifying the shift duty records of lifeguards. Concerned with the safety of swimmers, LCSD finally decided in 2011 to terminate all plans to outsource lifeguard services.

14. We consider that whether LCSD should reconsider outsourcing lifeguard services hinges mainly on whether it can set up a proper monitoring mechanism. In the long run, outsourcing lifeguard services can be a viable means to augment the lifeguard manpower. We shall leave the matter to LCSD for further study and planning.

(B) Lax Measures to Monitor Sick Leaves Taken by Staff Members Compared with Other Departments and Ineffective Execution

15. Under Civil Service Regulations (“CSR”) section 1270(b), sick leave means any period during which a civil servant is permitted to be absent from duty on account of illness or other medical treatment or investigation without forfeiting leave of any other description. All officers need to apply for sick leave and their applications would only be approved when the person is genuinely sick. If an officer is unable to provide valid medical certificates or apply for sick leave according to established procedures, or when there is evidence suggesting that the officer concerned is involved in any misconduct, LCSD would consider taking disciplinary actions against the officer concerned. If there are reasonable grounds for LCSD to suspect the genuineness of the sick leave application or the officer might have abused sick leave, it can take administrative measures such as invoking CSR section 1291, which require an officer to attend a particular Government or Hospital Authority clinic and produce medical certificates issued by them before sick leave is granted.

16. In terms of suspected cases on sick leave abuse, there is a rising trend in both the number of cases in the lifeguard grade where the LCSD management had to invoke CSR section 1291, as well as the percentage such cases took up among LCSD staff cases as a whole, with the number of grade members involved increasing from four to 57 in the past five years and the percentage standing at 80% in the past two years. In recent years, the number of days on which individual swimming pools/beaches had to be partially or even completely closed owing to lifeguards being absent or on sick leave was on the rise.

17. Regarding the monitoring of sick leaves taken by staff members (including lifeguards) by invoking CSR 1291, LCSD's practice had been laxer than that of other Government departments. The "trigger point" for LCSD to invoke CSR 1291 was nine days of sick leave in three months, as opposed to five days in three months for other departments. Besides, before invoking CSR 1291, the LCSD management would first meet with the staff members concerned in person for reviewing the sick leave situation ("pre-monitoring procedure"), instead of taking action right away. This was also laxer than other Government departments.

18. As can be seen from the cases cited in Chapter 4 of our investigation report, while invoking CSR 1291 early might not eradicate abuses of sick leave, it did have a certain deterrent effect on some lifeguards. In some more serious cases, invoking CSR 1291 had made it costlier and riskier for the lifeguards involved to defy the Regulations. Nevertheless, we noticed that LCSD failed to set off the procedure to invoke CSR 1291 early in a number of cases where the lifeguards had already taken nine days of sick leave in three months. In some cases, LCSD activated the procedure only after the problem had persisted for more than a year. This had to a certain extent impacted on the manpower deployment of the swimming pools/beaches where those lifeguards were stationed. On several occasions, the venues had to be temporarily closed due to shortage of staff, causing inconvenience to the public.

19. LCSD indicated that since February 2016, it has started to follow the practice of other departments and adopted the same criterion for invoking CSR 1291. It has also abolished the "pre-monitoring procedure" to expedite invoking the CSR. Besides, all LCSD officers are required to report to their supervisors the outside jobs that they have taken up while on sick leave from late February 2016, regardless of the nature and the days of sick leave taken. The management will study the cases concerned, and if it considers that there is adequate evidence suggesting that the officer concerned is abusing sick leave, it will consult the Department of Health or Hospital Authority to see if sick leave that was caused by the deliberate negligence of its staff should be refused. We consider this a right step towards more stringent monitoring. However, LCSD should regularly review the effectiveness of the new measures and remind officers-in-charge of venues to keep a close watch on the sick leave situation of lifeguards for early response and actions.

(C) Failing to Set Out Clear Working Guidelines for Lifeguards Who Can Only Perform Light Duties (“Lifeguards on Light Duties”)

20. Lifeguards on Light Duties usually refers to cases where after medical assessment, the staff concerned are recommended to refrain from performing core duties and should only perform light duties. Our investigation reveals that the number of lifeguards on light duties, though relatively stable, is slightly on the rise. We consider that notwithstanding this, the operation of individual swimming pools/beaches would still be affected to a certain extent. LCSD should, therefore, come up with a definition of “lifeguards on light duties” and set out clearer guidelines on the kind of duties they can take up so that officers-in-charge of venues can deploy adequate manpower accordingly. For instance, a certain lifeguard who cannot perform weight-lifting duties (such as lifesaving) because of injury can still assume other duties such as patrol or maintenance of order, or act as a duty officer at the first-aid station. Prolonged cases of light duties would be subject to LCSD’s regular review and seasonal lifeguards would be recruited to perform the original duties of the lifeguards involved during the swimming season should there be operational needs. Nonetheless, we consider that sufficient manpower must also be maintained at major positions at swimming pools/beaches even during the non-swimming season. If individual lifeguards have to be on light duties for a time long enough to affect the basic operations of a swimming venue, it is imperative that LCSD consider deploying more regular lifeguards to take up their original duties. In other words, LCSD should set out clear guidelines on the work arrangements for lifeguards on light duties. This can facilitate fair and reasonable allocation of duties by officers-in-charge of venues and avoid imposing extra workload on the other lifeguards on duty.

(D) Deducting Time-off in Lieu to Offset Lateness for Work Not Appropriate

21. While the frequency that lifeguards reported late for work might not be very high (about 0.8 time per month for each lifeguard on average), it might still be high enough to cause delays in opening swimming pools/beaches to the public fully and on time. Records showed that more than 20% of late cases involved lifeguards being late for work for more than 15 minutes, and 70% of the late cases would not be so regarded once the lifeguards’ time-off in lieu had been deducted in recompense. LCSD has admitted that the arrangement of offsetting lateness with deducted time-off in lieu was inappropriate and not dealing with the lifeguards’ disciplinary problem. LCSD has now issued guidelines to frontline supervisors, providing in detail the established procedures and follow up actions in handling staff who are late for work, which have become effective from February 2016. Also, LCSD has issued guidelines on writing common/departamental grade (including lifeguards) appraisals, providing guidance for appraising officers in assessing their staff’s punctuality. We consider that the LCSD management should be held responsible for having acquiesced in such inappropriate practice. LCSD management should take stringent monitoring measures to correct the lifeguards’ bad habit of being late, and properly handle time-off in lieu arrangements and conscientiously discharge supervision duties.

(E) Failing to Establish Clearly the Induction Training Requirements for Lifeguards Affecting Manpower Deployment

22. A lifeguard union indicated to us that some newly recruited lifeguards have failed to complete the three-stage induction training, including diving lessons, which is required to be completed in three years after recruitment. As a result, they could not discharge their duties effectively. The union claimed that on one occasion two lifeguards had one after another attempted in vain to rescue a swimmer who was drowned at the bottom of the pool. Fortunately a more experienced lifeguard who knew how to dive was able to come to the rescue.

23. On this issue, LCSD stated that upon appointment, lifeguards already possessed the professional qualifications necessary for carrying out lifesaving duties. On-the-job drills will also be arranged during their normal working hours. As such, even if some lifeguards have failed in their induction training programme, manpower deployment would not be adversely affected. In addition, for newly recruited lifeguards who cannot complete the three-stage induction training programme during the first three years of service, LCSD's Training Section will still arrange for them to participate in the remaining part of the training in the following year. At present, the courses are not part of compulsory training, non-participation or even failure in those courses, therefore, would not affect a lifeguard's appointment or passage over probation.

24. We consider that LCSD's explanations cannot stand. On the one hand, it maintained that those courses are not compulsory and therefore, non-participation or even failure would not affect the appointment of a lifeguard. On the other hand, the Department would continue to arrange for those who did not pass or participate in those courses to complete the remaining part of the training, implying that those courses are actually compulsory in nature. This also shows that LCSD's policy is confusing. In fact, if certain lifeguards cannot provide the most suitable lifesaving service because they have yet to complete or even participate in the relevant training courses, rescue action would be delayed even if other colleagues could render help. This not only would damage the professional image of lifeguards but also is a matter affecting the safety of swimmers. LCSD must not take the training of lifeguards lightly.

25. The investigation report reveals that, among the newly recruited lifeguards who are required to complete the three-stage training programme, there are at least several dozens of them who have yet to participate in each of those courses. Between 2012/13 and 2014/15, as many as 87 lifeguards are still to take part in the rescue diving course. Some of them have not even attended the introductory practical training of the first stage. Among those who have taken part in the courses, not all of them can attain a pass. For example, the average passing rate of the diving courses is just 87%.

26. In this regard, LCSD admitted that there is room for improvement and undertook to ensure that adequate training quota would be reserved. It will also consider ways to ensure that all newly recruited lifeguards should complete the three-stage induction training programme.

(F) Arrangements to Close Swimming Pools

27. LCSD issues press releases to announce complete closure but not partial closure of swimming pools. Members of the public are informed of partial closures only by a notice put up at a prominent place near the entrance of swimming pools or via 1823 hotline. We consider that the public will be affected even when a swimming pool is only partially closed (e.g. if all the swimmers are using the only available lanes, their enjoyment would be dampened by the crowds). LCSD should at least put up a notice on its website so that members of the public can decide for themselves whether they still want to go to the venue concerned for swimming.

(G) Inadequate Communication with Lifeguards' Unions

28. Although LCSD has conducted regular reviews on manpower and recruited more lifeguards accordingly, and has invited staff and union representatives to join the working group on manpower review, lifeguards still took industrial action occasionally, resulting in service suspension of swimming pools/beaches. This indicates that the working group has not been effective in facilitating the management and staff in reaching consensus.

29. Specifically, there are substantial differences in the perspective and points of view between LCSD management and lifeguards' unions on the following basic issues pertaining to the operation of swimming pools/beaches:

- (1) Calculation of buffer manpower: The unions stated that the basic buffer manpower for lifeguards at present is 1.24 times the basic staff requirements. However, LCSD claimed that this was the practice back in 2004 and the current manpower deployment ratio is in general better. This shows that the staff are not fully aware of how LCSD has made the current manpower deployment better than before.
- (2) Decision to close half the pool: The unions commented that when LCSD decided to close half the pool, it was often not possible to prevent swimmers from entering the closed lanes even by cordoning them off. However, LCSD claimed that there was never such an arrangement. While some swimming pools had considered this arrangement, it was eventually dropped because of the difficulty involved in controlling the swimmers.
- (3) Arrangements for vacation leave: LCSD stated that in augmenting the manpower, it would take into account the need to have staff covering the duties of those on vacation leave at the venues concerned. However, the unions stated that it is not uncommon to see lifeguards taking their vacation leave in the summer season, but LCSD has not adopted any measures to control the situation.

- (4) Arrangements for light duties: The unions stated that LCSD has no established guidelines on the work arrangements for lifeguards on light duties. This would mean heavier workloads for the other lifeguards on duty.
- (5) Difficulty in recruitment of lifeguards: LCSD claimed that at present, it has encountered no difficulty in the recruitment and retention of civil service lifeguards. However, all three unions stated that it is difficult to recruit seasonal lifeguards (non-civil service lifeguards). For those seasonal lifeguards successfully recruited, the dates for them to report for duty were actually deferred to mid-April, thereby increasing the workloads of incumbent lifeguards during the swimming season.
- (6) Figures on rescue cases: The unions argued that LCSD's statistics on rescue cases fall short of reflecting the lifeguards' actual workloads. Moreover, there is the question of the definition of rescue case. Take the rescue figures of Shek O Beach as an example, the unions noted that LCSD recorded only one "rescue case" during the year of 2014. However, LCSD replied to us that it was in fact a "fatal case", and there were indeed other rescue incidents at Shek O Beach. Apparently, there are differences in understanding between the management and staff regarding the figures and definition of rescue cases.

30. The above examples serve to illustrate that LCSD has to further enhance its actual communication with the lifeguards' unions to facilitate understanding and consensus and not to dampen lifeguards' morale and affect the operation of swimming pools/beaches.

Recommendations

31. From the perspective of swimming pool/beach operation, The Ombudsman makes the following recommendations for improvement to LCSD:

Manpower Deployment

- (1) to review the adequacy of existing arrangements for buffer manpower, and formulate more specific arrangements for deploying substitute staff (such as drawing up staff secondment duty rosters), and to explore measures to strengthen the capability and flexibility in deploying lifeguards, with a view to maintaining the normal operation of all facilities;
- (2) to explore ways of strengthening the monitoring of lifeguards taking vacation leave during the peak season (June to August), so as to relieve

manpower strain, as well as exploring measures to allow lifeguards to take leave in the non-peak season instead;

- (3) to formulate measures (such as setting up regular training and awards schemes) for enhancing the professional skills of part-time hourly-rated seasonal/voluntary lifeguards, and obtain more precise information on the time slots they are available for carrying out lifeguard duties in order to draw up a more functional duty roster;
- (4) to study the feasibility of reintroducing outsourced lifeguard service, including studying the feasibility of setting up a comprehensive monitoring mechanism to ensure swimmer safety, and consulting the public and trade unions where necessary;

Mechanism for Monitoring Sick Leave

- (5) although LCSD has now followed the practice of other departments in invoking CSR 1291 for monitoring suspected abuse of sick leave, LCSD should still regularly examine the effectiveness of its new measures. In particular, officers-in-charge at the venues should be reminded to closely monitor the sick leave taken by staff and take timely action where necessary;
- (6) to closely monitor any rising trend in cases of light duties and, if such trend is identified, to review whether potential risks of occupational injury exist in swimming pool/beach facilities and make improvements. The need for stepping up training on occupational safety and health for lifeguards should also be considered;
- (7) to issue more reference materials on the definition of light duties and the nature of work assignments for the staff concerned, and regularly examine prolonged cases of light duties. If the situation has a long-term impact on the operation of swimming pools/beaches, deploying more manpower to resolve the problem should be considered;
- (8) to vigorously deal with the problem of punctuality among lifeguards and avoid allowing them to work overtime as compensation for being late; to closely monitor repeated latecomers and take disciplinary action in a timely manner to achieve a deterrent effect;

Arrangement to Close the Pool

- (9) in case of temporarily partial closure of swimming pool facilities, to consider issuing a press release as in the case of complete closure, or at least making an online announcement, so that the public can decide whether they still want to go to those facilities;

Enhancing the Lifeguard Management Regime

- (10) to review lifeguards' target timeframe of completing training courses, so as to ensure that they are equipped with basic lifesaving knowledge, and to give them opportunities to acquire new skills thereby improving their lifesaving abilities. This would not only enhance their competence and promote water safety at swimming pools/beaches, but also boost their sense of mission towards the job and their professional image;
- (11) to comprehensively review and explore more flexibly ways to overcome the difficulty that LCSD is currently facing when hiring seasonal lifeguards; to step up publicity on the hiring campaign and make advance preparation before the start of swimming season to prevent manpower wastage; and
- (12) to enhance its communication with lifeguards' unions and staff, and to reach a consensus and common understanding with them on basic issues pertaining to the daily operation of swimming pools/beaches.

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