

*Issue No. 1 of Reporting Year 2007/2008
(1 November 2007)*

Office of The Ombudsman, Hong Kong



***Direct Investigation into the
Government Measures for Street Management***

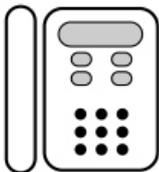
This Office is initiating a direct investigation into the Government Measures for Street Management, pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance. The background, purpose and scope of this direct investigation are at **Annex A**.



Anonymised Investigation Reports

Summaries of two anonymised investigation reports are at **Annex B & C**.

- i) Case 1: No warning on surcharge for overstaying in public housing unit
- ii) Case 2: Inadequate disclosure to Home Ownership Scheme purchasers on slope maintenance responsibility



Enquiries

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**Office of The Ombudsman, Hong Kong
1 November 2007**

OMBUDSMAN INVESTIGATES GOVERNMENT MEASURES FOR STREET MANAGEMENT

“We often receive complaints concerning on-street activities causing nuisance, inconveniencing and even endangering pedestrians and road users. Such activities include:

- promotional activities and display stands;
- placing of skips; and
- illegal parking of bicycles.

Having regard to their steady increase and the public’s growing concern, I consider it appropriate to see whether effective measures are in place to contain and control the problem,” Ms Alice Tai, The Ombudsman, said today.

The Ombudsman has decided to initiate a direct investigation into the subject, pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance, to cover the following aspects:

- (a) roles and responsibilities of Government departments concerned in the control of and enforcement against the following on-street activities:
 - promotional activities and display stands;
 - placing of skips; and
 - illegal parking of bicycles;
- (b) current legislation and other measures to tackle the activities
- (c) coordination among Government departments concerned in taking control and enforcement action;
- (d) effectiveness of the measures; and
- (e) areas for improvement.

At this stage, the departments concerned are the Food and Environmental Hygiene Department, the Home Affairs Department and the Lands Department. If necessary, we may bring other departments into our investigation.

The Ombudsman welcomes views from members of the public. Comments should reach the Office of The Ombudsman at 30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong (or by fax to 2882 8149 or e-mail to complaints@omb.gov.hk) before 1 December 2007.

CASE SUMMARY

Case 1: No warning on surcharge for overstaying in public housing unit

The Complaint

The complainant complained against the Housing Department (“HD”) for charging her, without warning, three times normal rent for overstaying in a public housing unit.

The Event

2. In January 2006, the complainant, a public housing tenant, applied to HD’s property management office for a Certificate of Eligibility for Purchase of a Home Ownership Scheme (“HOS”) Flat. She purchased an HOS flat in the secondary market in May. In mid-September, HD informed her that she should have vacated her public housing unit within 60 days after purchasing the HOS flat. For overstaying in the unit since July, she was required to pay triple rent according to the Housing Authority policy.

3. The complainant considered this unfair as she had never been informed of this policy. In fact, during the period of July to September 2006, she had paid normal rent and HD had neither told her that she had underpaid nor asked her to move out. She took this as tacit agreement for payment of normal rent. In late September, she vacated the unit and reluctantly paid the balance of the triple rent.

HD’s Explanation

4. The HOS application form that the complainant signed contained a statement that she would surrender her public housing unit within 60 days after completion of the assignment.

5. In May 2006, the complainant purchased an HOS flat. However, she did not surrender her public housing unit. In September, HD’s tenancy management office discovered her overstaying in the unit.

6. HD then informed the complainant that she should have surrendered the unit by the end of June. For the period overstayed, she had to pay a Use and Occupation Fee three times normal rent, plus rates. This is to avoid double subsidy for overstaying by public housing tenants who own HOS flats.

7. HD explains that as the requirement of surrendering public housing units is stated in the HOS application form, the Department did not inform her separately of the triple rent requirement.

Our Observations and Comments

8. We acknowledge that the complainant had the obligation to surrender her unit as stipulated in the HOS application form. We also agree that HD should charge higher rents in cases of overstaying to avoid double subsidy.

9. However, while the policy of charging higher rents may have been publicised elsewhere, the quantum (i.e. triple rent requirement) is not mentioned anywhere in the HOS application form. We consider HD to have a duty to give tenants fair and clear warning of the consequences of overstaying, both at the time of HOS application and close to the expiry of the 60-day limit.

10. Moreover, we question the lack of coordination or communication between the property management office and tenancy management office, both under HD. It is surprising that the latter office did not notice the complainant's overstaying until after three months.

Conclusion

11. The complaint about HD's lack of warning is, therefore, **substantiated**.

Recommendations

12. The Ombudsman recommends that HD:

- (i) incorporate the triple rent requirement into the HOS application form to inform tenants and also instruct staff to remind them;
- (ii) improve the coordination and communication between its property management offices and tenancy management offices; and
- (iii) make it a standard practice, towards the expiry of the 60-day limit, to issue a reminder to tenants concerned to surrender their units and to remind them of the consequences of non-compliance.

Office of The Ombudsman

November 2007

CASE SUMMARY

Case 2: Inadequate disclosure to Home Ownership Scheme purchasers on slope maintenance responsibility

The Complaint

The Owners' Corporation ("OC") of a Home Ownership Scheme ("HOS") estate lodged a complaint with this Office against the Hong Kong Housing Authority ("HA"), alleging that HA had included in the Deed of Mutual Covenant ("DMC") the maintenance responsibility for an adjacent slope on temporary lease from the Lands Department ("Lands D") for works purpose. The OC considered HA to be shifting the maintenance responsibility to owners of the estate, without having informed purchasers of such responsibility during the sale of flats.

Sequence of Events

2. The HOS estate was developed in two phases.
3. In a certain year, HA put Phase I of the estate on sale. A year or so later, Lands D granted HA temporary lease of a slope adjacent to the site as a works area, on condition that the lessee shall be responsible for managing and maintaining that slope until further notice. Lands D also stated that it would resume the slope only when necessary.
4. About five months later, Phase I was completed. The first title deed was signed and the DMC came into effect. The DMC stipulated that the responsibility for managing and maintaining all slopes in the estate shall be collectively borne by the owners of the estate.
5. Next year, Phase II was put on sale. Four months later, construction works were completed and Lands D was asked to resume the slope. However, the Department refused and replied that should it decide to resume the slope in future, HA would be notified in writing.
6. Phase II was completed the following year. 13 months later, the OC was formed and took over the management of the estate.
7. Two years later, Lands D wrote to the owners of the estate demanding that it clear the refuse on the slope. The OC claimed that the owners had no knowledge of such responsibility.

Comments from HA

Owners' slope maintenance responsibility

8. At first, HA assumed that the management and maintenance responsibility for the slope would be temporary and the slope would be returned to Lands D eventually. HA included the provision in the DMC to ensure that such responsibility would be collectively borne by the owners after completion of the estate until resumption of the slope by Lands D.

Disclosure to Purchasers

9. In the sales brochures of both Phases I and II, purchasers were reminded to refer to the land lease and the DMC and where necessary, seek professional advice. HA claimed that the sales brochures had followed the guidelines in *Description of Flats on Sale – Local Uncompleted Residential Properties* issued by the Law Reform Commission of Hong Kong (“the Commission”).

10. Purchasers had also been shown an outline of the DMC when they chose their flats at the Home Ownership Centre. It indicated that owners would be responsible for maintaining “all slopes” under the Government lease. Furthermore, purchasers had signed a declaration that they understood their responsibility for managing and maintaining slopes as specified in the land lease and DMC. HA understands from the solicitors representing both parties that they had explained the salient points of the DMC to purchasers.

11. When Phase I was put on sale, the issue of slope maintenance responsibility had not surfaced as HA had not yet been granted temporary lease for it by Lands D. When Phase II was put on sale, HA did not clearly set out such responsibility in the Phase II sales brochure as it believed at that time that the slope would be returned to Lands D after completion of works. Furthermore, there was a provision in the DMC that the owners were to be responsible for managing and maintaining all slopes in the estate.

Our Observations and Comments

12. While purchasers have the obligation to understand the terms of the land lease and DMC before buying a property and to assume the responsibilities under those terms after purchase, in reality they seldom have ample opportunity or sufficient knowledge to understand all the details in those documents. They would generally rely on the developer to provide key information and the solicitors to point out and explain their responsibilities.

Disclosure to purchasers of Phase I

13. It can be seen from paragraph 11 above that when Phase I was put on sale, the issue of slope maintenance responsibility had not surfaced and the DMC of the estate was not operative. Since any information about the maintenance of that slope was to be included in the DMC, there was no way Phase I purchasers could know about this added responsibility.

14. When later granted temporary lease of the slope, HA decided to pass the slope maintenance responsibility to the future owners of the estate. In this connection, HA ought to have notified purchasers of its decision as soon as possible, so that they could reconsider whether or not to proceed with the purchase.

15. Whilst the solicitors should have drawn purchasers’ attention to the added responsibility before the completion of transaction, the information provided by HA does not substantiate that they had done so.

16. As a matter of fact, HA had only focused on the technicalities (stating the slope maintenance responsibility in the DMC) and was obviously deficient in keeping purchasers clearly informed.

Disclosure to purchasers of Phase II

17. When Phase II was put on sale, the DMC was already in effect and owners' responsibility for maintaining the slope established. Nonetheless, the information given by HA to purchasers as mentioned in paragraphs 9 and 10 above had not spelt out this responsibility clearly. An even more serious issue is that although the sales brochure contained a plan showing some slopes over which owners would have maintenance responsibility, they did not include the slope in question.

18. This Office finds it improper of HA not to have made full and timely disclosure of all information to purchasers with regard to this significant issue affecting their interests.

19. HA has argued that it had followed the guidelines issued by the Commission. However, the Commission actually recommended that "if there is actual or potential responsibility for maintaining private slopes, there should be clear notifications to purchasers in the sales brochure of that responsibility".

20. Evidently, HA did not comply with the guidelines as claimed.

Conclusion

21. As a public organisation, HA ought to be particularly aware of the importance of integrity and transparency of its actions. It should have given clear and accurate information to purchasers about any special responsibility to be borne by them, so that they could make informed decisions on purchase. The complaint is, therefore, **substantiated**.

22. Against this background, we consider that in the special circumstances of the case and the possibility of the slope being eventually resumed by Lands D, a solution to the problem would be for HA to directly manage and maintain the slope until resumption by Lands D.

Recommendations

23. The Ombudsman urges HA to:

- (a) consider the solution proposed above and negotiate with OC for early implementation; and
- (b) review the existing practice of disclosing important information. Besides clearly informing purchasers of special responsibilities like this in sales brochures, HA should promptly and clearly remind purchasers of any additional terms so as to safeguard their interests.

Office of The Ombudsman
November 2007