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*Direct Investigation into
Enforcement against Unauthorised Building Works in
New Territories Exempted Houses*

The Ombudsman has completed a direct investigation into the enforcement regime on unauthorised building works (“UBW”) in New Territories Exempted Houses (“NTEHs”).



Under the current selective enforcement regime, action is taken essentially only against UBW in progress (“WIP”) in NTEH. WIP found to have been practically completed or newly built UBW will not be enforced upon. Our investigation has revealed that this selective enforcement regime and narrow action threshold is ineffective in stopping the proliferation of UBW in NTEHs. We have also found that enforcement is inconsistently carried out, the problem lacks monitoring and there is disparity of treatment for UBW in NTEHs and those in other buildings, giving a signal to the public that NTEHs are privileged.

Recommendations are made to the Development Bureau, Buildings Department and Lands Department for improvement.

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

***Investigation Report
Complaint against Seven Government Departments for
Delay in Handling a Road Repair Works***

A member of the public noticed a large water pool in a pothole on a footpath leading to a playground. He lodged a complaint with the 1823 Call Centre under the Efficiency Unit. The complaint was subsequently referred to the Lands Department (“Lands D”), the Leisure and Cultural Services Department (“LCSD”), the Highways Department (“Hy D”), the Drainage Services Department (“DSD”), the Home Affairs Department (“HAD”) and the Food and Environmental Hygiene Department. Several months had lapsed but none of the departments was willing to take up the repairs responsibility.



Our investigation discovered that the matter had not been followed up properly, not only because the repair responsibility of the footpath in question was unclear, but also due to inefficiency of the Call Centre in handling cross-departmental complaints, the carelessness and sloppiness of Lands D in handling complaints and verifying land information, the lack of understanding of LCSD of the land grant provisions and the misplacement of case files of DSD. As a result, there was delay in the repairs of the footpath. HAD, on the other hand, was found not proactive enough to take the initiative to resolve district problems.

Our investigation revealed the compartmental mentality of the departments involved and their failure to attend to the needs of the public. From the point of view of the complainant, coordination among Government departments was poor and the departments were shifting the repairs responsibility onto each other instead of making a serious effort to resolve the problem. The Government’s image was tarnished as a result.

The Ombudsman has made a total of 11 recommendations to EU, Lands D and LCSD for improvement such as: to review and improve their complaint handling procedures; to review and enhance file management system; and to strengthen staff training.

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

***Investigation Report
Housing Department (HD)
Failing to Allocate Public Rental Housing Flats Fairly***

In 2006, the complainant applied to HD for public housing. In mid-2010, he went to HD's Customer Service Centre to check the latest allocation status, only to find that some applicants in his category with later Waiting List Application Numbers had been allocated flats, while he was still waiting for an offer. He asked HD staff for an explanation but did not get a satisfactory answer. He, therefore, lodged a complaint with this Office.

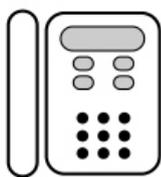


The investigation revealed that when HD announced the "Highest Numbers that have accepted Public Housing Offers" every month to inform applicants of the latest allocation status, it failed to explain the various factors affecting the actual sequence of housing allocations simultaneously. In addition, HD would suspend the allocation process temporarily whenever the applicant enquired about his allocation status, presuming that such enquiries would involve requests affecting the allocation. The complainant's housing allocation was suspended without his knowledge till his enquiries were addressed.

We consider that in its monthly announcement, HD's failure to explain the factors affecting the actual sequence of housing allocations would raise doubts or even arouse discontents among applicants, if late-comers are found to have allocations earlier. Besides, HD's temporary suspension of allocation, irrespective of the reason of the enquiry, was tantamount to be a punishment in disguise, which was obviously unfair to applicants making enquiries.

In the course of our investigation, HD initiated improvement measures to expedite processing of enquiries or complaints. This Office recommended that HD review timely such improvement measures and to briefly explain the factors affecting the actual sequence of housing allocations whilst publicising the latest allocation status to applicants.

A summary of the investigation report is at **Annex C**.



Enquiries

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Office of The Ombudsman, Hong Kong
19 April 2011

Issue No. 1 of 2011/12

EXECUTIVE SUMMARY

Direct Investigation Enforcement against Unauthorised Building Works in New Territories Exempted Houses

Ambit of Investigation

This direct investigation serves to examine:

- (a) the effectiveness of the current enforcement regime in stopping the proliferation of unauthorised building works (“UBW”)¹ in New Territories Exempted Houses² (“NTEHs”); and
- (b) any necessary improvement to the enforcement regime.

Statutory Powers of Departments Concerned

2. Both the Buildings Department (“BD”) and the Lands Department (“Lands D”) may take enforcement action against UBW in NTEHs.

3. BD may issue a statutory order under section 24 of the Buildings Ordinance, Cap. 123, (“BO”), requiring the property owner to remove any illegal or dangerous structure within a specified period, failing which the UBW may be demolished by BD at the owner’s expense. Non-compliance with a removal order is an offence under section 40(1)(B) of the BO, with the offender liable to imprisonment and fines.

4. Lands D may take lease enforcement action against UBW if they constitute a contravention of the lease conditions. As land administrator, Lands D has the powers to demolish UBW under sections 12 and 13 of the Lands (Miscellaneous Provisions) Ordinance, Cap. 28 and to re-enter the land and cancel the lease under section 4 of the Government Rights (Re-entry and Vesting Remedies) Ordinance, Cap. 126.

¹ *Unauthorised building works are building works that have not been approved by the Buildings Department or the Lands Department.*

² *New Territories Exempted Houses are houses built on land granted under the New Territories Small House Policy to male indigenous villagers, or houses built outside the scope of the New Territories Small House Policy by indigenous or non-indigenous villagers, in accordance with the specifications of an New Territories Exempted House.*

Enforcement Policy

5. In 2001, a Working Group comprising the then Planning, Environment and Lands Bureau (“PELB”), BD, Lands D and Planning Department (“Plan D”) decided to adopt a strategy of prioritisation of enforcement actions, in respect of all buildings in Hong Kong, by prescribing that BD should take priority action against, *inter alia*, “new” UBW, i.e. UBW completed within 12 months, and UBW constituting obvious or imminent danger to life or property.

6. In 2002, the Working Group revised the policy such that for NTEHs, BD will take enforcement action only against UBW in progress (“WIP”) and UBW constituting obvious or imminent danger. Unlike other buildings, no enforcement action is to be taken by BD against “new” UBW in NTEHs. Lands D will accord high priority of lease enforcement action only to cases of blatant breach, such as erection of an over-sized NTEH.

7. In 2006, the Development Bureau (“DevB”) (the successor of PELB), BD, Lands D and Plan D decided that an item of unauthorised building works-in-progress should not be considered WIP if it is “practically completed”, i.e. if the construction of the concrete framework of the structure or the cover of the stairhood of the building has been completed. The WIP status of a structure is determined upon the site situation reported at the date of first detection.

8. Pursuant to this definition, UBW under construction in NTEHs with their main structures already completed will not be classified as WIP and will not be subject to immediate enforcement action by BD. We dub the above “the WIP Policy”.

Work Practices

Detection and Referral

9. BD will consider the need for taking action upon receipt of a complaint on WIP. For referrals from Lands D, the related land information (e.g. land status plans, lot particulars, ownership records) and photographs showing the site and its surrounding area are accompanied as far as possible.

Site Inspection and Report

10. BD will arrange for one of its consultants to conduct a site inspection within 48 hours of receipt of the complaint. The consultant will submit an inspection report to BD afterwards for consideration as to whether and what enforcement action should be taken.

Removal Order

11. If BD confirms the case to be WIP, it will issue a “cease work advisory letter” and a removal order to the lot owner concerned demanding him to cease work and remove the UBW respectively. If the owner does not remove the UBW, BD will consider prosecution.

12. A removal order requires the owner to remove the UBW within a specific period of time, which varies from 30 days to a few months. BD will arrange inspection to check compliance. Extension may be allowed.

Lease Enforcement Action

13. Lands D usually accords low priority to dealing with UBW in NTEHs. Upon receipt of a complaint on UBW, Lands D will inspect the premises to ascertain if a breach of the lease conditions is involved. If so, Lands D will issue a warning letter requiring the breach to be purged within a specified period. If the breach persists, Lands D may take further lease enforcement action, including registering the warning letter in the Land Registry against the title of the property.

Overall Monitoring

14. According to Lands D, as at February 2004, there were around 13,000 UBW in NTEHs which constituted contravention of the lease conditions. A visual survey conducted by Lands D in 2004/05 confirmed that the problem of UBW in NTEHs was serious. However, since then, neither Lands D nor BD has conducted any further survey or study to size up the problem.

Observations

15. Our investigation, including study of cases, has revealed that despite the Administration’s commitment to enhance enforcement against UBW in NTEHs, there remain obvious deficiencies in the current enforcement system.

Questionable Efficiency and Effectiveness

16. Statistics on the enforcement actions taken by BD and Lands D between 2007 and 2010 have raised doubts on the efficiency and effectiveness of the system:

- (a) of the 2,400 WIP cases received by BD, 1,492 (62%) were not subject

to enforcement action. Of those 1,492 cases, 931 (62%) were due to “WIP practically completed” or “no works under construction” – to some extent, a reflection of BD’s restrictive enforcement criteria and action threshold.

- (b) Only 755 (31%) of the 2,400 cases received by BD were confirmed to be WIP cases and, therefore, subject to enforcement action. Despite BD’s issuance of removal orders in 721 of those cases, as at 25 February 2011, only 285 cases (40%) have been resolved; the UBW in the remaining 436 cases (60%) have not been removed.
- (c) Of the 129 removal orders issued in as early as 2007, 57 (44%) have remained outstanding as at 25 February 2011. The corresponding figures for 2008, 2009 and 2010 are equally unimpressive.
- (d) Only 118 (5%) of the 2,161 cases handled by Lands D have yielded positive result (UBW purged). Of the rest, warning letters have been issued and registered in the Land Registry in 1,147 cases (53%). Action remain outstanding for 888 cases (41%). No re-entry of land or cancellation of lease has been invoked.

17. The slow rate of enforcement of removal orders by BD and the mere registration of warning letters in the Land Registry by Lands D is highly unsatisfactory, especially in the light of the increase in the number of complaints against UBW in NTEHs (49% increase from 2007 to 2010).

Narrow Opportunity for Enforcement

18. The current enforcement regime for UBW in NTEHs gives priority of enforcement only to (a) WIP and (b) UBW constituting obvious or imminent danger to life or property. UBW, which are not under construction or dangerous, are not actionable under the regime.

19. Structures that are simple and fast to build could easily escape enforcement. If an inspection of WIP is not made during the brief spell of construction, no enforcement action will be taken against them. If the owner refuses the authorities entry for inspection and collection of evidence during the construction period, he stands a high chance of having no enforcement action taken against his UBW thereafter.

Defying Common Sense and Logic

20. In many of the cases studied, the circumstantial evidence for substantiating the WIP status of UBW, such as the presence of building materials or workmen or the self-admission to WIP status by the owner, were available to BD. Yet, BD did not classify them as WIP on the grounds that the main structures of the UBW had been completed. BD's decisions, though technically defensible by reference to the definition of WIP, clearly defy common sense and logic and are certainly not in line with the Administration's commitment to curb the proliferation of UBW in NTEHs.

Inequity between NTEHs and Other Buildings

21. For buildings other than NTEHs, BD gives high priority of enforcement to tackling "new" UBW. The present restrictive WIP Policy for UBW in NTEHs is, therefore, inconsistent with the general approach. It unnecessarily imposes an obstacle in enforcement action against "new" UBW in NTEHs, causes inequity between NTEHs and other buildings, and gives a signal that owners of NTEHs are privileged.

Inconsistent Application of Action Criteria

22. As indicated by the cases studied, the definition of WIP is capable of being interpreted loosely and differently by BD and Lands D staff. Lands D may refer cases of WIP with circumstantial evidence and photographs to BD in the belief that they are actionable, only to be told that the works have been "practically completed". In some cases, Lands D may not agree with BD's judgment. At times, the rationale behind BD's own decision in different cases cannot be reconciled.

23. Such inconsistencies result in a waste of time and efforts in referrals and abortive visits, as well as unfairness in enforcement action.

Delay

24. We notice that delays in action have been caused by the spending of excessive time on ascertaining the status of WIP or simply tardiness on the part of the departments.

25. Under Lands D's operational guidelines, in referring a suspected WIP case to BD, staff are required to provide land information and circumstantial evidence, such as photographs, so as to avoid abortive visits by BD. However, since time is of the essence in stopping WIP cases, we

consider that Lands D staff should promptly refer cases of suspected WIP to BD. Circumstantial evidence not readily available could be collected and provided later.

Lack of Recourse against Owners' Stalling Tactics

26. Some owners of UBW adopt stalling tactics by refusing BD or Lands D entry for inspection or arguing at length about the completion date of the UBW to prove that the UBW should not be subject to immediate enforcement action.

27. We find that such stalling tactics are fuelled by the lack of decisive action on the part of the Administration. Pending the strengthening of their power of entry, DevB should review the departments' action criteria for referring cases of WIP and initiating enforcement action. DevB should also explore alternative methods of collecting evidence such as resorting to technological devices or soliciting the assistance of complainants or nearby residents.

Improper Keeping of File Records

28. The inspection reports prepared by BD's consultants provide first-hand information about UBW in NTEHs. However, as our study of the cases reveals, BD may deviate from the assessments and recommendations of its consultants, without providing the reasons or justifications for its deviation in the case files or to the consultants. This does not help to ensure that BD's decisions are well-grounded and consistent, nor does this facilitate the consultants' understanding of BD's thinking and requirements.

Lack of Monitoring

29. We are disappointed that DevB and the departments do not systematically collect and monitor statistics on UBW in NTEHs. We consider that in the absence of such statistical data, it is difficult, if not impossible to assess accurately the effectiveness of the enforcement regime for UBW in NTEHs.

Feasibility of Expanding the Coverage of Enforcement

30. DevB and BD have expressed difficulties in expanding the scope of enforcement action to cover "new" UBW in NTEHs:

- (a) Unlike other buildings covered by the BO, NTEHs do not have detailed building plans or subsequent building plans for alteration and

addition works. This makes it difficult to ascertain the “unauthorised” status of structure.

- (b) There is often an absence of evidence to prove that the UBW were “new”, i.e. newly completed within the past 12 months.
- (c) Expansion of the coverage of enforcement action may not be cost-effective. Public expectation has to be carefully balanced and managed.

31. Our response is as follows:

- (a) The difficulties in proving the “unauthorised” status of UBW in NTEHs do not apply to every case. For typical NTEHs³, the dimensions are clearly specified and BD can readily recognise whether the NTEH carries UBW. For non-typical NTEHs⁴, the absence of detailed building plans may pose difficulties for BD in determining the “unauthorised” status of a structure. If that is indeed the case, BD may eventually have to drop the charge against the owner. However, that is an operational problem which may arise in WIP, as well as in “new” UBW cases. We see no grounds why this problem should be taken as a reason not to expand the scope of enforcement action to cover “new” UBW in NTEHs.
- (b) DevB and BD have set too high a standard of proof for themselves for establishing the “new” status of UBW. Before issuing a removal order, BD should, of course, exercise due diligence to ascertain the “new” status of the UBW. This may be done, for example, by questioning the owner and his neighbours and examining the structure concerned. After issuing the order, the onus is on the owner to adduce sufficient evidence to prove that the UBW is not “new” and, therefore, should not be subject to immediate enforcement action by BD under the Department’s prioritisation policy. That should not be too much of a burden on the owner.

³ *The specifications on the dimensions of an NTEH are stipulated under the Buildings Ordinance (Application to the New Territories) Ordinance, Cap. 121.*

⁴ *NTEHs built before 1 January 1961 were not subject to the control of the BO at the time of their construction and, therefore, the specifications on the dimensions of NTEHs later imposed under Buildings Ordinance (Application to the New Territories) Ordinance.*

- (c) We are not asking BD to do the impossible. We are merely suggesting that it should not make it a policy or a norm not to take enforcement action against “new” UBW in NTEHs. The Department should deal with such cases in line with its policy for all other buildings. The public at large would welcome consistent and non-discriminatory handling of UBW cases and appreciate the practical difficulties involved.

Conclusion and Recommendations

32. Government has sworn its determination to tackle UBW on a sweeping scale, but UBW in NTEHs are excepted under the WIP Policy without sound justifications being proffered. Numerous cases of “new” UBW in NTEHs have, as a result, escaped enforcement action and the situation will persist unless positive changes are made.

33. In this light, The Ombudsman recommends that:

- (a) the Administration scrap the WIP Policy altogether to bring effective enforcement action against UBW in NTEHs in a manner that is fair and consistent compared to that against other buildings;
- (b) BD and Lands D align the departments’ understanding and practices and set up a database of cases on which enforcement action has or has not been taken;
- (c) BD and Lands D streamline the departments’ procedures for more efficient operation;
- (d) BD and Lands D explore alternative methods of collecting evidence such as resorting to technological devices or soliciting the assistance of complainants or nearby residents;
- (e) BD record its decisions on UBW cases and the rationale behind them and make them known to its consultants; and

- (f) DevB, in association with BD and Lands D, expeditiously size up the problem of UBW in NTEHs, with a view to objectively assessing the effectiveness of its enforcement regime.

Office of The Ombudsman

April 2011

Summary of Investigation Report

Complaint against Seven Government Departments for Delay in Handling a Road Repair Works

The Complaint

The complainant noticed that there was a pothole on a footpath leading to a playground (“the Footpath”). The pothole turned into a pool of water when it rained. In April 2010, he lodged a complaint with the 1823 Call Centre under the Efficiency Unit (“EU”). The complaint was subsequently referred to the Highways Department (“Hy D”), the Lands Department (“Lands D”), the Drainage Services Department (“DSD”), the Leisure and Cultural Services Department (“LCSD”), the Home Affairs Department (“HAD”) and the Food and Environmental Hygiene Department (“FEHD”). However, the six departments denied repairs responsibility. Allegedly, Hy D once mentioned to him, “The Department was only responsible for named streets. The Footpath had not been named and was, therefore, not within Hy D’s jurisdiction. Since the Footpath served as an access leading only to a playground under LCSD, LCSD should be the responsible department”. FEHD allegedly refused to follow up the case because the pothole was filled with water, not refuse.

2. The complainant considered that the above departments had been passing the buck and the Call Centre, unfamiliar with the functions and responsibilities of the departments, was simply randomly referring his complaint to them. He, therefore, lodged a complaint with this Office.

The Events

3. In March 2009, Lands D received a complaint from a member of the public saying that the Footpath was always flooded after rain. The Department conducted a site inspection at once and confirmed the problem. In June 2009, Lands D notified LCSD that, according to the land grant provisions, LCSD is responsible for the repairs of the Footpath. Upon receipt of the notification, LCSD checked the map and found that the Footpath was outside the perimeter of the playground. The Department considered there to be insufficient evidence to prove that the Footpath had been included in the land allocated for the playground. To establish repairs responsibility for the Footpath, LCSD then sent a memorandum to Lands D in the same month asking for relevant documents. However, Lands D did not receive the memorandum. It later decided to discontinue following up the matter after site inspections in October 2009 and March 2010, during which no water pools were found on the Footpath.

4. In February 2010, the complainant complained to DSD about pools of water on the Footpath. DSD staff conducted a site inspection and identified the pothole on the Footpath, not drainage problems, to be the source of trouble. As such, it was not within DSD's purview. DSD then referred the complaint to Hy D and HAD. Both departments later responded and denied repairs responsibility. DSD then referred the case to Lands D on 13 April.

5. On 17 April, the complainant lodged a complaint with the Call Centre about the same problem on the same Footpath. Following internal guidelines, the Call Centre referred the case to Hy D for follow-up action. After a site inspection, Hy D confirmed that the Footpath was outside its responsibility of road maintenance. It then suggested the Call Centre to refer the case to Lands D. Hy D further pointed out that the complainant's case was similar in nature to another complaint (lodged by someone else) referred by the Call Centre on 13 April.

6. On 27 April, Lands D replied to the Call Centre, indicating that the Footpath was unallocated government land. It further noted that the Department, not being a works department, could not provide assistance. However, as street lighting on the Footpath was a joint responsibility for Hy D and HAD, it suggested that the Call Centre refer the case to these two departments for follow-up. The Call Centre took the case to the Lighting Division of Hy D and HAD on 28 April.

7. Afterwards, HAD replied to the Call Centre that as the Footpath led only to a temporary playground under LCSD, the case should be referred to LCSD. The Lighting Division of Hy D also said that the case was outside its purview. The Call Centre then referred the case to LCSD on 2 May.

8. On 3 May, the Call Centre requested that the liaison officers of Lands D, LCSD, HAD and Hy D follow up the case. On 14 May, LCSD responded and maintained that the Footpath was not included in the land allocated for the playground and, therefore, should fall outside its responsibility. It suggested that the case be referred to Lands D. On 15 May, the complainant telephoned the Call Centre and complained about serious flooding on the Footpath. The Call Centre then referred the case to DSD as a flooding complaint.

9. On 17 May, DSD sent an email to Hy D, HAD and Lands D urging for prompt action. It suggested that HAD carry out repairs on the Footpath. On 18 May, Hy D telephoned the Call Centre after another site inspection, reiterating that the location fell outside its repairs responsibility. HAD advised that the Call Centre should consider asking LCSD to take up repairs responsibility for the Footpath. Then on 1 June, LCSD told the Call Centre that the government land in the vicinity of the playground might be allocated for other uses in the future and the Footpath would lead to

other places in addition to the playground by then. It would, therefore, be inappropriate for LCSD to take over repairs responsibility for the Footpath.

10. On 7 June, the Principal Executive Officer of EU urged the complaints officers of Lands D, HAD and LCSD to intervene and handle the case. The following day, Lands D provided information on land grant provisions of the playground to LCSD and indicated that the department allocated the playground site should be responsible for repairs of the Footpath. On 9 June, LCSD asked the Call Centre to inform the complainant that it would liaise with the Architectural Services Department about repairs of the Footpath. The latter completed the repair works on 17 August upon LCSD's request.

11. Between February and August 2010, the complainant had telephoned the Call Centre many times to complain about pools of water on the Footpath and asked FEHD to clear them. On receipt of each of those referrals from the Call Centre, FEHD conducted site inspection and cleared away the water.

Our Findings and Comments

12. EU pointed out that in determining the responsible department and before making a referral, staff of the Call Centre would make reference to its internal guidelines and consider the information provided by the complainant as well as the views of relevant departments. This by no means implied that the Call Centre's referrals were made at random. The Complaint Handling Team of the Call Centre was tasked with case analysis and collation. Cases would be escalated to the management level of a department if warranted. However, our investigation revealed that although the case had already been escalated to a higher level for handling in accordance with established procedures, the various staff members of the Call Centre who handled the complainant's repeated complaints failed to check case records carefully and were not aware that the Call Centre Manager had taken the case to the management of the departments concerned. As a result, the same complaint by the complainant was given different file numbers and multiple internal referrals were made. Besides, the staff members concerned did not study the information in the database and only made guesses on which department should be responsible based on information provided by the complainant and other circumstantial information. Moreover, the Complaint Handling Team failed to discharge its function of collating and analysing cases for prompt resolution of the complaint, thus giving the complainant an impression that the Call Centre was randomly referring his case. The complaint against EU was, therefore, **substantiated**.

13. **Lands D** indicated that two site inspections had been conducted in October 2009 and March 2010 respectively regarding the complaint received in March 2009. Since no flooding was

found on the Footpath, it assumed that LCSD had fixed the problem and therefore closed the case. Upon receipt of referral of the complainant's case by the Call Centre in April 2010, it immediately checked the land status plan but it contained no information as to which department should take up the repairs responsibility. Judging from factors such as the location, outlook and construction materials of the Footpath, Lands D considered that the Footpath might possibly be constructed by HAD and Hy D and therefore suggested that the Call Centre make an enquiry with those two departments. Later on, it re-examined the land grant documents concerning the Footpath and confirmed that the construction and subsequent repairs of the Footpath were LCSD's responsibilities. Lands D asserted that it had been cooperating with the Call Centre in identifying the responsible department. As for the checking of land information, District Lands Offices would not have all the files on non-public works of Government departments. Therefore, the onus was on individual departments to check their own files and confirm if they are the departments responsible for the repairs.

14. Our investigation revealed that Lands D had referred the case to LCSD in 2009 but hastily closed the file before confirming with LCSD whether the repair works had been completed. The two site inspections by Lands D mentioned above were not conducted on rainy days and it simply would not find water pools on the Footpath. Initially, Lands D was not aware that the 2009 case was related to the complaint received in 2010. But when it later became aware of that and merged the two files, the staff concerned failed to pay attention to the land grant information about the Footpath available in the 2009 case file. It was not until June 2010 that Lands D presented to LCSD the relevant land grant information and confirmed that LCSD was responsible for the repairs. Moreover, before fully grasping the case, Lands D suggested that the Call Centre should refer the case to Hy D and HAD, notwithstanding both departments had previously denied repairs responsibility. That had aggravated the shifting of responsibility among departments. We appreciated that the District Lands Office under Lands D might not possess all information on repair works undertaken by other Government departments but considered that Lands D being the department managing land matters should have checked the relevant land records as soon as practicable to clarify the demarcation of responsibilities. Unfortunately, the slipshod handling by Lands D staff had caused delay in the repairs of the Footpath. The complaint against Lands D was, therefore, **substantiated**.

15. **LCSD** admitted that its staff had not followed up the matter after having sought further information from Lands D on receipt of its notification in 2009, due to heavy workload. It also admitted that its staff had inadequate understanding and knowledge of the land grant provisions and failed to check carefully the land grant records while handling this complaint. The staff wrongly believed that the Footpath was outside the purview of LCSD because it was not included in the allocation plan of the playground. Consequently, there was delay in the repairs of the Footpath. We considered that this complaint was mainly caused by LCSD's misunderstanding of the land

grant provisions and its failure to promptly follow up with the notification from Lands D in 2009 and clarify the land grant provisions. Even if LCSD considered the repair works as outside its purview, it should still have followed up the case in the interests of the playground users because the Footpath led only to the playground. The complaint against LCSD was, therefore, **substantiated**.

16. On 26 February 2010, **DSD** learned that the Footpath was not within the purview of Hy D. It only followed up the case after a month or so because the case was inadvertently set aside due to staff transfer. Under the cross-departmental complaints handling mechanism of works departments, DSD, as the “complaint-receiving department”, should try to identify the “maintenance department”. The matter could have been settled earlier had DSD promptly followed it up. It should thus be partly responsible for the delay in repairs of the Footpath. The complaint against DSD was, therefore, **partially substantiated**.

17. Despite this, DSD had offered to take up the repairs of the Footpath before the responsible department was identified. DSD should be commended for this and other departments should learn from such exemplary attitude.

18. **HAD** explained that in accordance with established guidelines, it would not provide services that should be provided by other Government departments to avoid duplication and wasting of resources. As the local District Office was not responsible for the repairs of the Footpath which was in fact the only access to the playground under LCSD, HAD suggested that the Call Centre refer the case to LCSD. We considered that as far as delay in the repairs of the Footpath was concerned, HAD should not bear any responsibility. The complaint against HAD was, therefore, **unsubstantiated**. Nevertheless, we found that HAD had not attempted to contact the relevant departments to work out a solution after learning from the Call Centre on 1 June that LCSD would not follow up the repairs of the Footpath. When the Principal Executive Officer of EU escalated the case on 9 June to the management level and sought assistance from HAD and other departments, HAD made no response at all. That was contrary to the function that “district problems are resolved promptly through inter-departmental consultation and co-operation” as advocated by HAD. There was a lack of initiative and proactiveness on the part of HAD in handling of this case.

19. **Hy D** had conducted several site inspections regarding the complaint and it was just trying to be cautious. According to the complainant, Hy D staff had remarked that the department would only deal with “named streets” and that “the Footpath was a dedicated access to the playground under LCSD and should thus be managed by LCSD”. Hy D clarified that it would arrange for repair works for any roads within its purview including unnamed streets. It denied that its staff had made the above remark to the complainant. Our investigation discovered that the

inaccurate message was conveyed to the complainant by the Call Centre as its staff misunderstood the responsibility of Hy D. Overall, the complaint against Hy D was **unsubstantiated**.

20. **FEHD** had performed its duties and followed established procedures to clear the pools of water on the Footpath. The Department denied the allegation that its staff had refused to deal with the situation on the grounds that those were pools of water rather than refuse. In the absence of independent evidence, we would not comment on the allegation. On the whole, the complaint against FEHD was **unsubstantiated**.

Recommendations

21. The Ombudsman made the following recommendations to EU, Lands D and LCSD on improvement of services:

For the Call Centre under EU

- (1) review and improve its complaint handling procedures and storage system of complaint information to ensure that staff could promptly identify previously received calls and related complaints;
- (2) staff should check with callers to ensure repeated complaints are identified early and to avoid giving multiple file numbers for one case;
- (3) staff should be updated on any new information and latest development when the case has been escalated to the management level for handling;
- (4) enhance staff's skills in handling cross-departmental complaints;
- (5) review its internal referral mechanism to avoid misleading the public as well as saving them the trouble of repeating the same facts
- (6) improve the workflow of the Complaint Handling Team in the collation of related cases;

For Lands D

- (7) assist LCSD in gathering information on the land grant provisions and

plans of gazetted recreation areas;

- (8) review and enhance the current file management system and procedures to enable more efficient use of file records by staff;
- (9) strengthen staff training to cultivate proactiveness and prudence among staff in handling complaints;

For LCSD

- (10) conduct regular reviews on the improvement measures implemented in response to this complaint, including checking the information on the land grant provisions and plans of recreation areas, strengthening staff supervision and setting up of a database for land records of recreation areas; and
- (11) continue to seek assistance from Lands D in the gathering of information on the land grant provisions and plans of gazetted recreation areas.

22. EU, LCSD and Lands D accepted the above recommendations and undertook to implement them.

The Ombudsman's Conclusion

23. The problem of water pools arising from pothole on road surface remained unresolved for months not only because of unclear demarcation of responsibilities and negligence of staff, but also due to the compartmental mentality of the government departments involved. Those departments had failed to attend to the needs of the public. Had they taken the initiative to do more than their duties required them of, the outcome would have been much different. In this case, even though some of the departments involved had followed the internal guidelines and performed their duties, the complainant had been given the impression that the coordination among government departments was poor and the departments were shifting their responsibilities onto each other without making serious effort to resolve the problem. In this context, the Government's image was tarnished.

Office of The Ombudsman
April 2011

Summary of Investigation Report Complaint against Housing Department (“HD”) for Failing to Allocate Public Rental Housing Flats Fairly

The Complaint

In 2006, the complainant applied to HD for public housing. In mid-2010, he went to HD’s Customer Service Centre to check the latest allocation status, only to find that some applicants in his category with later Waiting List Application Numbers had been allocated flats, while he was still waiting for an offer. He asked HD staff for an explanation but did not get a satisfactory answer. He, therefore, lodged a complaint with this Office.

Background

Public Housing Allocation Procedures

2. Applications for public housing are generally processed according to the sequence of registration on the Waiting List (i.e. the application numbers), the number of family members and the applicant’s district choice. Flats are allocated randomly by computer programme. When an application approaches the allocation stage for the first time, HD would investigate and verify the eligibility of the applicant. When an application is ready for allocation depends on various factors, such as the availability of flats of suitable size in the applicant’s chosen district, or whether the applicant has changed his/her district choice.

3. If resources permit, HD would try its best to accommodate requests from those applicants with special allocation needs. To make sure that an applicant is still eligible for public housing when the tenancy agreement is signed, HD may conduct spot checks on or review those cases in which eligibility were verified two or more years ago.

4. On the 15th day of each month, HD publicises the “Highest Numbers that have accepted Public Housing Offers” (“Highest Numbers”) for different categories of public housing applications via newspapers, the Department’s website and its Customer Service Centre. Those “Highest Numbers” are for applicants’ reference only and do not imply that all applicants with lower numbers have accepted public housing offers. All eligible applicants have three chances of flat allocation.

The Complainant's Case

5. The complainant's application was registered on the Waiting List and assigned an application number in 2006. In early 2008, HD gave him the first housing offer in his chosen district but it was refused. In June 2008, the complainant changed his choice of district.

6. In early 2010, HD verified the complainant's eligibility for allocation again. In mid-June, HD publicised the "Highest Numbers". The complainant found that the "Highest Numbers" for his category had exceeded his application number. He subsequently enquired of HD five times during June and July and pressed for an early allocation. HD staff responded and explained the situation to him over the telephone or through written replies and asked him to wait patiently. Not until the end of July, the complainant received a notification of his second flat allocation.

HD's Comments

7. HD denied having delayed the complainant's application. HD clarified that the "Highest Numbers" publicised in mid-June 2010 included applications where the first housing allocation offer was accepted. Applicants with application numbers close to the complainant's and who needed to undergo certain procedures before allocation (such as re-verification of eligibility) got the second offer at about the same time as the complainant did.

8. The complainant's application reached the allocation stage in late June 2010. As he made a number of enquiries around that time, HD had to suspend allocation temporarily each time to clarify if there was any update of family particulars or new request, so as to avoid making an unsuitable offer which might cost the complainant one chance of allocation.

9. HD admitted that the above arrangement needed improvement. A "triage" system was thus introduced. If an applicant's enquiry or complaint does not affect the order of allocation or involve new requests, HD must reply within two to three working days. Applications approaching the allocation stage would be put on designated shelves for centralised management and closer follow-up actions.

Our Comments

10. HD's suspension of housing allocation to applicants making an enquiry or a complaint presumes that such enquiry or complaint might involve requests affecting the allocation. This might be unfair to the applicants. In the present case, the complainant's enquiries had nothing to do with the factors relating to housing allocation. Nevertheless, HD suspended housing allocation for him without his knowledge. This could give the impression of a punishment in disguise and

was obviously unfair to him. Besides, HD had failed to provide a satisfactory explanation for such suspension all along.

Conclusion

11. In light of the above, The Ombudsman considered the complaint against HD **substantiated**.

Other Observations

12. Announcing the “Highest Numbers” every month to inform applicants of latest allocation status (**para. 4**) is itself a good arrangement. However, HD failed to explain at the same time the various factors afore-mentioned (**paras. 2 and 3**) that would affect the actual sequence of housing allocation. Applicants would inevitably think that late comers were served first and feel dissatisfied.

Recommendations

13. The Ombudsman recommended that HD should review in due course the “triage” system and other measures (**para. 9**) for full and effective implementation; and that, when publicising the latest information on public housing applications (**para. 4**), HD should consider giving a brief explanation as to why actual public housing allocation may not follow the sequence of application numbers.

Office of the Ombudsman

April 2011