

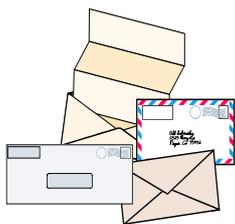
*Issue No. 2 of Reporting Year 2005/2006
(22 June 2005)
Office of The Ombudsman, Hong Kong*



17th Annual Report of The Ombudsman, Hong Kong

On 15 June 2005, The Ombudsman submitted to the Acting Chief Executive of the Hong Kong Special Administrative Region the Annual Report for the year of April 2004 to March 2005, in accordance with The Ombudsman Ordinance. The report was tabled at the Legislative Council by the Administration on 22 June 2005.

The Summary of the 17th Annual Report is at **Annex A**.



Anonymised Investigation Reports

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

- i) Complaint against the Lands Department for delay in handling water seepage problem on a retaining wall (**Annex B**).
- ii) Complaint against the Social Welfare Department for delay in processing an application for disability allowance (**Annex C**).



Enquiries

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Office of The Ombudsman, Hong Kong
22 June 2005

Case Summary

Complaint against Lands Department for delay in handling water seepage problem on a retaining wall

The Complaint

A District Lands Office (“DLO”) under the Lands Department (“Lands D”) delayed handling the water seepage problem on a retaining wall behind the complainant’s house.

The Event

2. In early February 2004, a District Councillor referred a complaint from the complainant to the local District Office (“DO”), alleging that there was water seepage from a retaining wall on Government land behind the complainant’s house. DLO also received the complaint in early March.

3. DLO considered the issue outside its jurisdiction. In mid-March, DO requested DLO in writing to check the ownership of the retaining wall and the party responsible for maintenance. It also sought assistance from other departments concerned to follow up the matter.

4. As the cause of the seepage had not been identified and DLO had not replied, DO contacted the relevant departments and coordinated a joint site inspection with the complainant in early September, with a view to solving the problem as quickly as possible. On receiving the notification, DLO joined the inter-departmental inspection and pursued the case again.

5. After the inspection, the departments concerned agreed that DLO should find out who should be responsible for maintenance. Nevertheless, DLO was unable to find any registration records of the retaining wall. DLO, therefore, proposed that DO arrange repair under its Rural Public Works Programme (“RPWP”).

6. As the retaining wall was on unleased Government land, DO asked DLO whether it was an unauthorised structure and should be demolished. DLO indicated inability to confirm it and considered demolition not practicable. DLO, therefore, suggested again that DO arrange repair under its RPWP. However, DO held that maintenance of the retaining wall was not within the scope of RPWP and insisted upon identifying the party responsible for maintenance.

7. Lands D admitted its negligence in not following up the case immediately upon receipt of DO's memo in March 2004. As regards maintenance responsibility, Lands D believed that the retaining wall was probably built in the 1970's around the time when the complainant's house was completed. Meanwhile, Technical Circular No. 26/99 issued by the former Works Bureau stipulates a "beneficiary-maintains" principle. In this light, Lands D considered that if the retaining wall was later found to be dangerous, the owner or beneficiary of that wall should be responsible for maintenance.

Our Observations and Opinions

8. As DLO had failed to take prompt action, on receiving the complaint, to clarify the ownership of the retaining wall and the party responsible for its maintenance, this Office considered DLO lax in performing its duties.

9. Although DLO had twice responded to DO's enquiries, it indicated only uncertainty of maintenance responsibility, impracticability of demolition and request for DO's RPWP. The problem dragged on until this Office took up the case. Lands D then confirmed the retaining wall to be on Government land and then advanced the "beneficiary-maintains" principle.

10. However, the Technical Circular cited by Lands D was an internal document issued in 1999. This Office noted that it had apparently not been officially published and the legal basis for such a principle was not explained. The Department should seek clarification to prevent future disputes.

Conclusion

11. In view of the above, The Ombudsman considers the complaint **substantiated**.

Recommendations

12. The Ombudsman urges Lands D to:

- (a) instruct its staff to adopt a more proactive attitude in order to avoid causing any delay; and

- (b) settle any disputes over the maintenance responsibility for the retaining wall as soon as possible to prevent any accident arising from lack of maintenance.

Response from Lands D

13. Lands D has raised no objection to our investigation report. It has issued a letter to the owner of the house informing him of his responsibility to maintain the retaining wall.

Final Remark

14. This Office will follow up with Lands D on clarification of its legal justification for the “beneficiary-maintains” principle.

Office of The Ombudsman

June 2005

Case Summary

Complaint against Social Welfare Department for delay in processing an application for disability allowance

The Complaint

The complainant alleged that the Social Welfare Department (“SWD”) had delayed processing his wife’s application for disability allowance.

Sequence of Events

2. On 9 August 2004, the complainant’s wife (“the applicant”) applied for a disability allowance. Ms. A of SWD’s Medical Social Service Unit (“MSSU”) attached to the hospital handled her application, and issued a medical assessment form to her doctor to assess her eligibility.

3. On 13 September, the doctor returned the assessment form to Ms. A, confirming the applicant’s eligibility. However, Ms. A was on leave.

4. Ms. A resumed duty in late September. As she had to clear a backlog of work as well as to cover for a colleague on leave, processing of the application was not attended to.

5. After nearly a month, on 15 October, Ms. A sent the applicant’s assessment report to the responsible Social Security Field Unit (“SSFU”) of SWD for further processing of her application.

6. In late October, the applicant’s health condition deteriorated and she passed away. Later that day, Ms. B of SSFU tried to contact the complainant to complete the application formalities. She was told of the applicant’s death. As the applicant had not yet signed the application and made the relevant declaration, SWD was not able to continue processing her application.

7. The complainant was dissatisfied that it had taken SWD more than two months to point out that the application required the applicant’s signature. He alleged that SWD had delayed handling the matter.

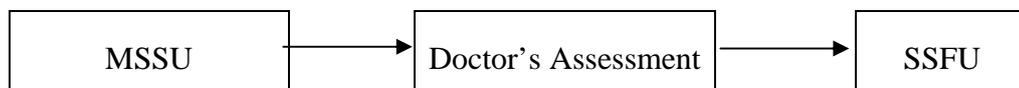
Our Observations and Opinions

8. There had been delay in processing in this case. After completion of the assessment report by the applicants' doctor, it was over a month before Ms. A took action on the application. More than two and a half months had elapsed by the time SSFU tried to contact the complainant to complete the outstanding application formalities. The delay had resulted in the applicant being deprived of her entitlement to disability allowance.

9. While it is normal for staff to take leave from time to time and for their duties to be shared by other colleagues, there is a need to ensure that urgent or time-sensitive matters will be attended to in a timely manner.

10. Through this complaint, we have also noticed a disparity in processing depending on the application channel used. An application for disability allowance can be submitted either through SWD's MSSU attached to a hospital or directly to the Department's SSFU. This will lead to two alternative processes, as follows:

(A) Through MSSU



Arrange for doctor's assessment; application form yet to be completed

Application form completed; application comes into effect.
If approved, allowance would be back-dated to the day when MSSU was approached

(B) Through SSFU



Application form completed; application comes into effect.
If eventually approved, allowance would be back-dated to this date

Arrange for doctor's assessment

11. In the present case, the applicant applied through MSSU, i.e. Process (A). Unlike Process (B) applicants, her application formalities could not be completed until after the referral to SSFU. Regrettably, she died before completing the application procedure by signing the application form.

12. We consider that the two processes should be aligned or promptly improved, and that Process (A) unnecessarily drags out the application process.

13. In sum, The Ombudsman considers the complaint **substantiated**.

SWD's Improvement Plans

14. SWD has formulated the following improvement plans:

- (i) to set specific service targets, stipulating deadlines for referral for medical assessment and forwarding of assessment reports to SSFUs;
- (ii) to design a well-defined monitoring system to ensure that the officer-in-charge of each section will make proper arrangements to cope with the work of any staff member on leave; and
- (iii) to enhance staff awareness of and alertness to work priorities through training.

Our Recommendations

15. We support the improvement plans, and recommend that SWD:

- (i) apologise to the complainant for the delay;
- (ii) implement the improvement plans expeditiously; and
- (iii) revise Process (A) to allow and advise all applicants to complete and sign their applications as early as possible, without waiting for the doctor's assessment, in order to prevent recurrence of similar incidents.

16. SWD has undertaken to pursue our recommendations. This Office will monitor progress.

**Office of The Ombudsman
June 2005**