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Office of The Ombudsman, Hong Kong



***Direct Investigation on Government's Measures
for Street Management***

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



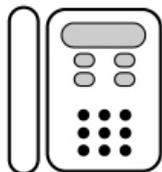
Direct Investigation on Control of Roadside Banners

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



***Direct Investigation on
Prevention of Abuse of Special Grants
under the CSSA Scheme***

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



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**Office of The Ombudsman, Hong Kong
18 December 2008**

EXECUTIVE SUMMARY

Direct Investigation on Government Measures for Street Management

Background

On 1 November 2007, The Ombudsman initiated a direct investigation into three aspects of street management, namely:

- indiscriminate placing of skips at roadside;
- illegal parking of bicycles; and
- obstruction and nuisance from on-street promotional activities.

2. The departments concerned include the Food and Environmental Hygiene Department (“FEHD”), the Home Affairs Department (“HAD”) and the Lands Department (“Lands D”).

Street Management and District Administration

3. Street management problems arise when there is encroachment of public space for private gain or convenience at the expense of road safety, environmental hygiene and the quality of city life.

4. In 2007, the Administration set up a Steering Committee on District Administration (“SCDA”), chaired by the Permanent Secretary for Home Affairs, to provide a forum for resolving district management issues centrally.

5. In March 2008, the Chief Secretary for Administration further reminded departments of the need to address district issues in a timely and coordinated manner. Where necessary, district problems can be brought to his personal attention for speedy resolution.

Roadside Skips

6. Skips are large open containers commonly used for temporary storage of construction and demolition debris removed from nearby building or renovation sites. Complaints about skips generally focus on their obstruction to vehicular and pedestrian traffic and potential danger to motorists and pedestrians.

Current Legislation and Enforcement

7. Under section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28), Lands D can post notices on roadside skips requiring their removal, failing which the skips can be confiscated. Lands D guidelines state that staff should conduct an inspection upon receiving a complaint. If a skip is found, staff will post notice giving the owner at least one day for removal. If the skip still remains after the deadline, Lands D will remove it within three working days. Staff should process complaints promptly to minimise inconvenience to road users.

8. In 2007, SCDA invited Lands D to explore the feasibility of setting up a permit system for skips. An exchange of correspondence followed between Lands D and the Transport Department (“TD”) over the question of responsibility, but that question remains unresolved.

Our Observations

Lands D’s Delay

9. Statistics show that about 40% of Lands D inspections since 2006/07 took place over three working days after receipt of complaints. Some 20% of the cases over the same period took over five working days before a re-inspection to check for compliance was conducted. In one case, the skips had been allowed to stay on site for over 50 days despite the notices posted.

10. These point to a fundamental flaw in Lands D enforcement: the evident delay in action has little, if any, deterrent effect on real or prospective offenders.

Permit System for Long-term Solution

11. The Administration sees the need to prevent obstruction and unauthorised occupation of public space on the one hand and the necessity to place skips in public places on the other. There is already inter-departmental consensus that a permit system for skips should be developed.

12. The construction and renovation industry has a genuine need for using skips, but no lawful avenue exists for placing skips at roadside. Lands D has already explored various options. It has not formally reported nor been asked to submit a progress report. We see an urgent need for SCDA to be reconvened to restart the momentum.

Timely Inspection and Re-inspection

13. Meanwhile, as roadside skips are easily placed, removed and re-instated by the operators, prompt action in detection and firm enforcement is crucial. Lands D should streamline inspection procedures and tighten the timeframe for enforcement. Re-inspection and follow-up action should be carried out promptly.

14. In this connection, Lands D should enlist the assistance of district bodies and local residents through the District Councils (“DCs”) and District Offices (“DOs”) for close monitoring and early reporting of cases.

Further Measure

15. We consider it both reasonable, and necessary, for Lands D to recover from the persons convicted under section 6 of the Land (Miscellaneous Provisions) Ordinance the costs for Government removal of skips. Lands D has such power under the Ordinance.

Recommendations

16. The Ombudsman recommends that:
- (a) SCDA reconvene promptly;
 - (b) Lands D report to SCDA the results of its study on the proposed permit system;
 - (c) Lands D streamline its procedures to tighten its timeframe for inspection and re-inspection, removal and confiscation of skips;
 - (d) Lands D enlist the assistance of DCs and DOs, district bodies and the local community in monitoring black spots and reporting offences;
 - (e) Lands D recover the costs for Government removal of skips; and
 - (f) Lands D publicise the stepping up of action against unauthorised placing of skips.

Illegal Parking of Bicycles

17. Illegal parking of bicycles on Government land is a common phenomenon in districts where people use them to commute to and from the nearest public transport interchange (“PTI”) or ferry pier. Bicycles are often chained to roadside fixtures, causing obstruction. Often, old bicycles are abandoned and become an environmental eyesore and pollutant.

18. SCDA considered some degree of tolerance necessary in view of the need to use bicycles and the inadequacy of designated parking spaces. Enforcement should, therefore, be carried out where illegal parking is causing serious obstruction, inconveniences to other road users or is the subject of frequent public complaints.

Current Legislation and Enforcement

19. Illegally parked bicycles can be removed by Lands D for unauthorised occupation of Government land under section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) or, in the case of abandoned bicycles, as street waste by FEHD under section 9 of the Waste Disposal Ordinance (Cap. 354). They are usually cleared through joint clearance operations initiated by DOs, involving the two departments and the Police.

20. Of all 18 DOs, only Yuen Long has standing guidelines on bicycle clearance operations. Under the guidelines, Lands D would post a notice on each bicycle at least two days before a clearance operation. On the day of operation, Lands D will identify the bicycles for removal by FEHD. HAD officers and the Police will be present, the former to handle public enquiries and complaints and the latter to maintain law and order.

21. Neither Lands D nor TD takes responsibility for bicycles in PTIs. DO/Yuen Long’s guidelines also do not cover action on such bicycles. Current enforcement is conducted on an *ad hoc* basis.

22. HAD has indicated that the current approach to enforcement is neither effective nor efficient. An inter-departmental meeting chaired by HAD in November 2007 agreed to explore a more stringent approach involving changes of the legal basis for enforcement. HAD is exploring the feasibility of immediate removal of illegally parked bicycles, but the outcome is unlikely to be available within a short time.

Our Observations

Involvement of District Management

23. Without more durable and more innovative solutions, the situation is unlikely to improve. DOs have a leading role and should formulate a comprehensive strategy in consultation with the local community, especially the DCs, and with other departments. DOs should make positive use of the District Administration Scheme to create new impetus and arrive at total solutions.

Provision of Parking Facilities

24. Bicycle parking facilities at convenient locations are necessary. The Administration should continue to identify sites to ease the shortfall in such provision so that cyclists would not be forced to park their bicycles illegally or have any excuse to do so.

Enforcement Action

25. We commend HAD for initiating and coordinating joint clearance operations. To enhance the effectiveness of such operations, clear inter-departmental guidelines are necessary. We hope that DO/Yuen Long guidelines would offer useful reference for other districts to develop their own guidelines, based on agreed principles, well tried practices and local characteristics.

26. As joint clearance operations require extensive efforts and substantial resources from Government departments, they cannot be frequently or readily conducted. The departments concerned should try quicker action on a smaller scale at more frequent intervals. Where statutory powers are not in doubt, a department should mount its own direct operations, with support from contractors rather than other departments.

Bicycles on Unallocated Government Land and in PTIs

27. HAD has already spent 12 months exploring the feasibility of immediate removal of illegally parked bicycles. This calls for accelerated action.

28. There is a lack of inter-departmental agreement for the clearance of bicycles in PTIs, which causes delay in enforcement. The District Administration Scheme could help bring the departments together. Government should consider legislative amendment if necessary.

Management of Bicycle Parks

29. In designated bicycle parks, a common problem is bicycles being abandoned, left unattended for a long time or overstaying. HAD should explore more innovative ways of managing bicycle parks in consultation with relevant departments and take reference from overseas experience.

Recommendations

30. The Ombudsman recommends that:
- (a) DOs formulate a comprehensive strategy to tackle the problem of illegally parked bicycles, in consultation with the DCs and other departments under the District Administration Scheme;
 - (b) the Administration identify sites to meet the shortfall in the provision of bicycle parking facilities;
 - (c) DOs develop guidelines on clearance of illegally parked bicycles with reference to Yuen Long's ;
 - (d) relevant departments try quicker enforcement action on a smaller scale on their own;
 - (e) HAD to expedite action to explore the feasibility of immediate removal of illegally parked bicycles;
 - (f) HAD and other departments to work out an inter-departmental agreement for clearing bicycles in PTIs; and
 - (g) HAD, in consultation with relevant other departments and district bodies, to explore ways of managing bicycle parks to encourage quicker turnover and deter prolonged parking.

On-street Promotional Activities

31. On-street promotional activities range from direct advertising on easy-mount stands to setting up a base for hawking of services on site. Such activities are particularly rampant where pedestrian traffic is heavy, thus causing serious inconvenience.

32. The Administration considers that while control of such activities is necessary because of the nuisance caused, some degree of tolerance has to be given, as these activities provide employment for persons with relatively low skills. Enforcement action is, therefore, for maintaining smooth pedestrian flow and environmental hygiene.

Current Legislation and Enforcement

33. FEHD has statutory powers to tackle illegal hawking of goods under section 83B of the Public Health and Municipal Services Ordinance ("PHMSO") (Cap. 132), obstruction to cleansing operations under section 22 and serious obstruction under section 4A of the Summary Offences Ordinance (Cap. 228). Enforcement priority is accorded to cases involving illegal hawking of goods or obstruction to street cleansing operations.

34. For easy-mount stands, FEHD has the power under section 104E of the PHMSO specifically to take action on “bills or posters”. While their definition excludes “structure, apparatus or hoarding used for the display of a bill or poster”, the stands can be seized together with the posters themselves, as evidence of the offence of unauthorised display of bills or posters.

35. Upon receiving a complaint, FEHD staff would inspect the site. If on-street promotional stands or activities are found to cause obstruction, staff would verbally warn the persons concerned and request them to disperse or re-align their stands. Written warning or prosecution would follow if verbal warnings go unheeded. Recently, with easy-mount posters becoming more prolific, FEHD has started to take prosecution action under section 104E of the PHMSO.

36. In case of problems it cannot tackle on its own, FEHD would raise with other departments. Joint operations would be conducted as required.

Our Observations

Administration’s Stance

37. The Administration’s stance towards on-street promotional activities is ambivalent. The Administration does not appear to have a policy to tackle such illegal hawking of services. The argument for tolerance to maintain the employment opportunities provided by on-street promotional activities may well apply to illegal hawking of goods with better justification. On the other hand, those employing mobile or easy-mount stands tend to be major business corporations well able to afford other means of advertising and offer alternative modes of employment. The Administration should attempt to identify and bring to light the ultimate beneficiaries behind the easy-mount stands advertising. We see a need for the Administration to review its outlook, revise its stance and devise a policy for control of on-street hawking of services.

Legislation – long-term measure

38. FEHD cannot rely on section 22 of the PHMSO as the main instrument for enforcement as it is restricted to promotional activities which obstruct cleansing operations. Moreover, it is difficult to establish a case of serious obstruction under section 4A of the Summary Offences Ordinance due to the mobile nature of on-street promotional activities.

39. We appreciate FEHD’s recent initiative to take prosecution action against easy-mount posters under section 104E of the PHMSO. It has initiated pilot enforcement exercises in two districts. We consider that upon successful completion of the pilot scheme, FEHD should extend the scheme on a territory-wide basis.

40. However, we consider that the initiative does not offer a full solution as it cannot cover promotional activities where a base is set up for “hawking of services”. As an ultimate solution, FEHD should review the PHMSO for powers of enforcement action on hawking of *services*, not just goods.

Demarcating departmental responsibilities – immediate measure

41. Currently, there are no specific criteria for determining whether to tackle on-street promotional activities by FEHD alone or joint operations. A clearer demarcation of

responsibilities among the relevant departments is necessary and the District Administration Scheme (paras. 4 – 5) should be invoked.

Monitoring and Prompt Action

42. To enable swift and strong action against mobile on-street promotional activities, we consider it important that district bodies, in particular DCs and DOs, and local residents should help monitor black spots and raise early alert. FEHD should continue to mount prompt operations and step up prosecution.

Public Education and Publicity

43. Public education and publicity campaigns will help focus public attention on the problems caused by on-street promotional activities. If it is possible to name the ultimate beneficiaries in reports of successful prosecution cases, it might deter the self-respecting business community from repeated offences.

Recommendations

44. The Ombudsman makes the following recommendations:

- (a) the Administration to reconsider its stance and come up with a clear statement on enforcement action;
- (b) FEHD to review the PHMSO for powers to take enforcement action on “hawking” of services;
- (c) extend the pilot scheme to take prosecution action on easy-mount stands on a territory-wide basis;
- (d) HAD and FEHD to work out with other departments through the District Administration Scheme a clearer demarcation of departmental responsibilities;
- (e) FEHD to seek assistance from DCs and DOs in monitoring black spots and raising early complaints, with the Department mounting quick operations in response and stepping up prosecution; and
- (f) Government in general, and FEHD in particular, to enhance public awareness of the problems caused by on-street promotional activities, including making public reports on convicted cases.

Conclusion

45. How well street management is effected reflects the Administration’s determination and the effectiveness of the District Administration Scheme. Proper street management requires clear policies, adequate legislation, sufficient resources, consistent enforcement and effective response on the ground. Community support is also crucial: this should be achieved through consultation with district bodies and local residents, civic education and publicity. Where enforcement

responsibility falls on more than one department, we need clear demarcation of responsibilities, cooperative co-ordination of action and development of longer-term strategy. The District Administration Scheme, recently reinforced and more widely empowered by the Government, should enhance district capability for co-ordination and effective response to district problems.

**Office of The Ombudsman
December 2008**

EXECUTIVE SUMMARY

Direct Investigation Control of Roadside Banners

Background

Government has a Management Scheme for the Display of Roadside Non-Commercial Publicity Materials (“the Scheme”), under which Government departments, Legislative Council (“LegCo”) Members, and District Councils (“DCs”), DC Members and certain non-profit making organisations may put up roadside banners at designated spots for display for specified period. This is administered by the Lands Department (“Lands D”).

2. Earlier, in August 2006, we completed a preliminary study on the Scheme, examining whether appropriate measures were in place to prevent proliferation of roadside banners and to ensure their secure installation and timely removal. We have been monitoring progress since.

3. We have continued to receive complaints about unclear rules and misuse of the Scheme, e.g. some banners carrying only minor, or even no, mention of the individual or organisation allocated the banner spot, as if the spot had been “loaned out” or transferred”.

4. The Ombudsman, therefore, initiated a direct investigation to examine the Scheme in greater detail.

The Scheme

5. Under the Scheme, Lands D approves applications from **organisations** for displaying banners case by case, each for two calendar months less the last two days. In contrast, **LegCo** and **DC Members** are allocated spots for the entire tenure of their office. Moreover, their banners are not subject to Lands D’s pre-vetting.

6. According to Lands D, spots created under the Scheme number 21,821 in total. A breakdown of these spots is as follows:

Number of Spots Created

Allocated	
LegCo Members (60)	8,096
DC Members (534)	5,171
Available for Application	
Non-profit making organisations	5,109
DCs (18) and committees	1,117
Government departments (61)	2,328
Total:	21,821

7. Lands D has published Guidelines for the Scheme, which govern, *inter alia*, the approved contents of banners as follows:

Allowed	Not Allowed
<ul style="list-style-type: none"> ■ Events of public interest or non-commercial activities ■ Promotion of community services ■ Information of general interest and benefit to the public provided by LegCo and DC Members and political bodies 	<ul style="list-style-type: none"> ■ Promotion of commodities or services at a fee or fee-paying training courses and activities ■ Contents in breach of the laws of Hong Kong ■ Information of an obscene or objectionable nature

Observations and Comments

8. Roadside banners constitute a form of encroachment upon public space and may cause visual obstruction and pollution. Where they block sightline and distract motorists or wear out and come loose, they pose traffic hazard, for drivers and pedestrians. Display of such banners should, therefore, be properly monitored and controlled.

Absence of Clear Statement of Objective

9. The Scheme impacts on the rights of citizens to traffic safety, unimpeded movement and a pleasant environment. Sacrifice of such rights ought to be justified on grounds of public interest and the justifications should be duly promulgated. Hence, a clear statement of the objective of the Scheme is necessary to explain why there should be authorised displays and why certain individuals, organisations, kinds of activities or messages should be allocated spots for display.

Lack of Rules to Avoid Transfer of Privilege

10. As any individual or organisation allocated a banner spot enjoys a privilege at public expense, such privilege should not be regarded as a freely disposable proprietary right. Consequently, there should be clear rules to prohibit transfer or “loaning out”, particularly a specific requirement for the individual or organisation allocated the spot to be conspicuously acknowledged on the banner.

Loose Guidelines on Banner Contents

11. The current Guidelines are too loosely worded to be useful public information on what is permitted for display on banners. Nor can the Guidelines adequately serve as benchmark for enforcement. For example, “events of public interest”, “non-commercial activities”, “promotion of community services” and “information of general interest and benefit to the public” are all wide open to interpretation and may easily result in contention. Clearer definition is called for.

Inadequate Public Consultation

12. Lands D had in the main consulted LegCo and DCs on the Scheme, without special regard to the fact that all LegCo and DC Members were beneficiaries of the Scheme and their views and decisions inevitably could be perceived as biased towards self-interest.

13. For proper balance of different interests, Lands D should enlist the help of the District Offices of the Home Affairs Department (“HAD”) and seek views from the public at large (e.g. through open consultation or opinion survey), or from organisations representing the interests of affected parties (such as residents groups or motorists organisations) before consulting LegCo and DC Members.

Proposal Unjustifiably Shelved

14. Lands D has proposed to replace the banner spots at central dividers of roads or close to pedestrian crossings with spots posing less risk to motorists and pedestrians. The Government departments consulted raised no objection, but HAD asked that new spots be created in compensation. Lands D eventually decided not to pursue the proposal on the following grounds:

- (a) The central dividers are regarded as prime sites by the users and replacements cannot be easily found.
- (b) When LegCo Members were previously consulted on the Scheme, they had asked for even more banner spots. It was, therefore, unlikely that LegCo and DCs would accept the proposal.

15. We take exception to these points, particularly the assumption that LegCo and DC Members would necessarily object to an overall reduction in the number of banner spots. Surely, road safety should not be compromised for administrative convenience or political expediency. We find it unfair to Members for Lands D to assume that they would not accept the proposal, which was based on self-evident public interest. We urge Lands D to follow up our recommendation and conduct public consultation, involving HAD and the relevant policy bureaux as necessary.

Recommendations

16. In the light of the above observations, The Ombudsman recommends that the Administration take action as follows:

Lands D in conjunction with the relevant bureaux

- (1) to articulate the objective of the Scheme for public information;

Lands D

- (2) to revise the rules for proper administration of the Scheme, including –
 - (i) prohibition of transfer, “loaning out” or assignment of allocated spots;
 - (ii) clearly visible acknowledgement, on the banner, of the individual or organisation allocated the banner spot;
 - (iii) a clear indication in practical terms what contents may be allowed and what not for the banners;

Lands D with the help of HAD

- (3) to seek views from the public at large or interest groups before consulting LegCo and DCs;
- (4) to reconsider replacement or cancellation of the designated spots at central dividers of roads or close to pedestrian crossings.

17. Lands D generally accepted our recommendations.

**Office of The Ombudsman
December 2008**

EXECUTIVE SUMMARY

Direct Investigation Report Prevention of Abuse of Special Grants under the CSSA Scheme

The CSSA Scheme

Our community is always sympathetic towards those in genuine hardship. The Comprehensive Social Security Assistance (“CSSA”) Scheme, administered by the Social Welfare Department (“SWD”), provides a safety net for them.

2. CSSA recipients must be Hong Kong residents satisfying both a means test and a requirement of continuous residence in Hong Kong. The Scheme comprises various standard rates for different categories of recipients, special grants and supplements.

Standard Rates

3. The standard rates, applicable generally to all recipients, cover the basic needs of nourishment, clothing and transport. The amount payable depends on the family size as well as the age and physical condition of the recipient and his or her family members.

Special Grants

4. Grants at the standard rates apart, CSSA recipients may apply for special grants to meet their specific needs: standard special grants and discretionary special grants.

Standard Special Grants

5. Standard special grants cover the following five categories of expenses:

- (a) housing and related grants for rent, water/sewage charge, etc;
- (b) family grants for burial, travel to and from hospital/clinic, early education for children, etc;
- (c) medical and rehabilitation grants for special diet, dental treatment, eye-glasses, care and attention, rehabilitation equipment (e.g. wheelchair) and hygienic items (e.g. diapers), etc;
- (d) child-care grants for baby-sitting, maintenance payment for board and lodging of children, etc; and
- (e) school grants for school fees, school-related expenses, school travelling expenses, etc.

6. Standard special grants can be recurrent or one-off, and are paid subject to proof. Some are subject to prescribed limits, e.g. rent allowance (recurrent) and burial (one-off), while others have no ceiling, e.g. diapers (recurrent) and eye-glasses (one-off).

7. For some “common” items with no prescribed ceiling, SWD has worked out an average, e.g. the average grant for eye-glasses was \$530 in 2006. Over the past four years (2004/05 to 2007/08), grants for eye-glasses amounted to some \$18.8 million.

Discretionary special grants

8. Discretionary special grants are intended to enable recipients to avoid such exceptional hardship as homelessness, family breakdown and lives at risk. Examples of these grants are for replacement and repair of essential household effects and loss of cash.

Supplements

9. To recognise the special hardship of the elderly, sick or disabled, such recipients will receive a supplement. Single parents are also entitled to a supplement.

The Investigation

10. Complaints handled by this Office indicate SWD’s haphazard processing of applications for special grants. As use of CSSA funds on ineligible individuals unfairly drains resources meant for those in genuine hardship, The Ombudsman decided to initiate a direct investigation into SWD’s system for preventing abuse of special grants.

Mechanism for Preventing Abuse

11. CSSA applicants are required to attest to the accuracy of their information regarding income, assets and family status. They have to report any subsequent changes and confirm their understanding of the legal consequences of obtaining welfare by deception. SWD conducts home visits, verifies applicants’ information and regularly reviews recipients’ eligibility. Its Special Investigation Section is responsible for investigating cases of suspected fraud.

12. Special grants are subject to additional safeguard against abuse. Approval of standard special grants and discretionary special grants involves two-tier and three-tier processes respectively. A frontline Investigating Officer, at the level of Social Security Assistant or Senior Social Security Assistant¹, verifies the need for special grants. The Authorising Officer, a Social Security Officer II², approves applications for standard special grants up to certain cash limits, e.g. up to \$1,000 for grants to cover eye-glasses. For discretionary special grants, depending on the nature of the application, a Social Security Officer I³ to Directorate D1 or D2 officer will approve.

¹ At the rank of MPS 7-17 (\$13,120 to \$22,985) and MPS 18-23 (\$24,120 to \$30,615) respectively.

² At the rank of MPS 10-27 (\$15,785 to \$36,740).

³ At the rank of MPS 28-33 (\$38,470 to \$48,400).

13. SWD has guidelines for processing standard special grants and broad principles for discretionary special grants, reminding officers to exercise care and keep the grants to a minimum. It considers absolute consistency in approving these grants impossible. Nevertheless, dossiers on approved cases are on its computer for staff reference to make for **some** consistency. Moreover, the computer system has built-in validation to guard against wrongful input.

Observations and Comments

14. To evaluate SWD's measures to guard against abuse of special grants, we have examined statistical data and case files. Some sample cases are outlined below.

Cases 1 and 2: Cases of meeting genuine need

15. In Case 1, a couple with nine dependent children have been receiving standard rates and standard special grants, totalling over \$1.116 million between 2004/05 and 2007/08, i.e. averaging \$279,000 per year.

16. The recipient in Case 2, bed-ridden and living alone, was issued a one-off grant of \$5,280 and a recurrent grant of \$3,780 a month for employing a foreign domestic helper.

17. **Observations.** Without the special grants, the children in Case 1 and the recipient in Case 2 would be in extreme hardship. These two cases show how CSSA, including special grants, can function well as a safety net for the less fortunate members of our community. They also illustrate that resources for taking care of the needy and the vulnerable are effectively used.

Cases 3, 4 and 5: Cases of ineffective reviews

18. The recipient in Case 3 has been on CSSA since January 2003. His case has been reviewed every six months. From August 2003 to December 2005, he withheld information about his rent arrears and provided forged rental receipts, securing by deception grants totalling over \$35,000. A special survey in 2005 of selected cases revealed the fraud.

19. The recipient in Case 4 had obtained grants totalling some \$11,000, with forged rental agreement and receipts. Then after two years during an SWD review, he inadvertently submitted the real documents and the fraud came to light.

20. Case 5 involved two CSSA recipients, A and B, sharing a room at \$2,000 rent a month. Since 2001, they had each been applying for a standard special grant of \$1,450 a month with fake receipts for rent and deposit. Three reviews by SWD failed to discover the fraud. During a review of B's case, SWD made a telephone check but was fooled by A impersonating the landlord. Finally during a review in 2005, SWD staff telephoned the wife of the real landlord and discovered the fraud. A and B had each secured over \$20,000 by deception⁴.

21. **Observations.** Rent allowance constitutes 72% of the expenditure on standard special grants. Cases 3, 4 and 5 show that SWD's regular reviews of recipients' eligibility are of little use

⁴ The recipients had each received \$1,450 per month from 1 March 2001 to 31 May 2003 and \$1,265 per month (the prescribed ceiling) from 1 June 2003 to 31 October 2007.

where recipients set out to deceive. SWD should perhaps rely more on external checking. A home visit and direct discussion with the landlord would have exposed the deception more readily.

Case 6: Case of ineffective reviews

22. The recipient's disabled mother had to use adult diapers. Between 2001 and 2005, the recipient submitted to SWD 47 receipts, of which only the first two were authentic. During a review in 2005, on verifying with the dispensary concerned, SWD discovered the fraud which involved overpayment of some \$86,000.

23. **Observations.** Despite 17 reviews since the first grant in April 2001, the deception went unnoticed. In the event, it only took a single telephone call to the dispensary to discover the fraud. Most reviews were clearly paper exercises not worth the time and manpower spent.

Case 7: Case of approving applications without due care or reason

Eye-glasses

24. The recipient had been on CSSA since 2003. In May 2004, he wanted a Gucci designer frame for his short-sightedness (right eye 3.25 degrees and left eye 3.50 degrees). With a quotation of \$1,500, he applied for a standard special grant and was granted \$1,000, the maximum amount which SWD frontline officers could approve. In the next two years, he applied for the same grant four times, on grounds of progression by 0.25 degree and damage of glasses by accident or in a fight.

25. In January 2007, with a quotation of \$1,951, he applied for a grant the sixth time to replace his glasses also for progression by 0.25 degree. According to the quotation, the frame (again by Gucci) alone cost \$1,501 after discount and the lenses \$450. SWD telephoned the supplier to verify the quotation and then granted him \$1,000. The recipient complained to this Office against SWD for having verified the quotation.

26. We considered SWD's verification a responsible act. However, we questioned approval of the grant, which is meant to cater for basic albeit "special" needs, rather than luxury items or replacements on such flimsy grounds as a change of only 0.25 degree.

27. Subsequently, the recipient forfeited the \$100 deposit that he had paid to obtain the quotation and bought a pair of contact lenses for \$530 from another supplier instead (4.25 degrees for both eyes). He was required to repay SWD the balance of \$370.

28. In May 2007, the recipient wanted to replace his glasses again as he claimed that the contact lenses were uncomfortable and the shortsightedness of his right eye had reduced by 0.25 degree. SWD granted him yet another \$1,000.

Dental Treatment

29. Between May 2004 and June 2007, the same recipient also made five applications for standard special grant for dental treatment. He presented SWD with quotations after check-up: \$1,650, \$2,330, \$870, \$1,550 and \$1,050. On each occasion, he was granted cash in advance, except for the last time in June 2007 when SWD paid the clinic direct.

30. In fact, he did not receive any treatment until June 2007. While approving the five applications, SWD staff never queried why the recipient had not gone to the clinic for treatment. Subsequently, he agreed to repay the overpayment by deduction from his CSSA by instalments.

Rent Allowance

31. Meanwhile, the recipient was receiving a rent allowance of \$765 a month for public housing. However, he defaulted on rent payment of \$7,650 from June 2006 to March 2007 and was issued a Notice to Quit. After negotiation, the Housing Department allowed him to pay the rent arrears by instalments. He asked SWD to pay for him and deduct the amount by instalments from his future CSSA. SWD refused.

32. **Observations.** Case 7 was a blatant case of abuse. SWD had in effect been offering the recipient ready cash and interest-free loan, as well as the standard rate and special grants:

Item	Ready cash/interest-free loan received
Eye-glasses	\$7,000
Dental treatment	\$6,400
Rent allowance	\$7,650
Total	\$21,050

Eye-glasses

33. The recipient obtained his first pair of glasses in May 2004. Six months later, he sought a new pair because of progression by only 0.25 degree. Reasonable questions would have been:

- Does progression by 0.25 degree require replacement⁵?
- Why does it cost over \$1,000, given the average of \$530 for a pair of glasses?
- Why can the existing frame, only six months old, not be used again?
- Should CSSA recipients be provided with costly designer frames at public expense and at rather frequent intervals?

34. SWD initially explained to this Office that it had not questioned the unusually high prices because certain eye ailments called for special lenses. Later, SWD advised that the recipient was not suffering from any such condition. This suggests that SWD had not processed his applications with due care or reason.

Dental Treatment

35. With only quotations for dental treatment but no evidence of payment, the recipient had obtained cash advance from SWD time and again. In the absence of any receipt to certify treatment actually received, SWD should have raised queries.

⁵ According to the Hong Kong Society of Professional Optometrists, in general, a change of 0.25 degree does not necessitate replacement of eye-glasses.

Rent Allowance

36. Direct payment would ensure timely rent payment and prevent the recipient accumulating arrears or further obtaining cash advance from SWD. Since 1 June 2007, SWD has applied direct payment to rent for public housing. However, unless direct payment becomes the norm, the risk of misuse remains with other special grant items.

Case 8: Case of rejecting unreasonable claim

37. The recipient in Case 8 wanted food, as his money had allegedly been stolen. As he still had \$1,800 in his bank account, SWD declined his request. He then withdrew the amount from the bank and disposed of it. He applied to SWD again for a discretionary special grant but still failed.

38. **Observations.** Claims relating to loss of cash require no receipt. Case 8 shows that some approving officers sensibly refused an unreasonable claim. The efforts are commendable.

Cases 9 and 10: Cases of easy giving away

39. In Case 9, the recipient (able-bodied, aged 29) and his wife (able-bodied, aged 26) had two small children. They had been on CSSA since May 1998. In 2004, SWD approved a discretionary special grant of \$5,355 to cover rent and the children's school fees and school bus fares after the recipient claimed to have been robbed of \$7,600.

40. The recipient in Case 10 claimed to have lost money three times: \$1,900, \$1,300 and \$2,000 respectively. On the first occasion, SWD granted him a travelling allowance to receive free meals from a voluntary agency for six days and another \$1,703 for meals for the rest of the month. On the second, SWD gave him dry rations for nine days and \$1,300 to cover the rest of the month. On the third occasion, he declined free meals or dry rations and SWD gave him \$2,000. He was referred to a medical social worker for appointing an agent to receive his CSSA on his behalf and he refused.

41. **Observations.** Although the recipient in Case 9 might suffer hardship if the alleged loss were not made good, SWD staff should have asked why he was carrying so much cash and also offered him help in kind instead. He should be advised that, like anyone else, he is responsible for the safe custody of his money.

42. For case 10, in addition to providing food, SWD granted cash to the recipient and readily gave in to his refusal to receive assistance in kind. Such easy indulgence could well encourage carelessness and similar applications.

Concluding Comments

43. The community needs, indeed expects, assurance that the CSSA Scheme takes care of the needy and the vulnerable only and has adequate safeguard against abuse. In approving special grants and conducting checks, SWD staff must, therefore, always exercise due care, diligence and sound judgment as well as flexibility and sympathy.

44. We find SWD procedures for handling applications for special grants, its criteria for approving these applications and mechanism for preventing abuse generally in order. It is mainly the mindset of some SWD staff responsible for processing applications for special grants that suggests the need for review. Some of the cases outlined above reflect an abandonment of common sense and lack of practical judgment among some in SWD.

45. In this connection, we note that relatively junior staff are sometimes required to shoulder the responsibility for approving complicated or dubious cases. This is not appropriate or commensurate with their rank or experience.

46. In passing, we wish to point out that as in Case 9, there are able-bodied individuals on CSSA for over ten years. It is questionable whether they would ever leave the safety net. It is high time that our community actively explore the possibility of limiting the period of assistance to such recipients.

Recommendations

47. The Ombudsman recommends that SWD take the following measures for more effective administration of the special grants under the CSSA Scheme:

General

- (1) to continue to impress upon CSSA applicants their obligation for full and truthful disclosure of their particulars as well as any changes thereto and the consequences of failure to do so;

Standard Special Grants

Rent Allowance and Other Recurrent Allowances

- (2) to consider more involvement of senior officers (Social Security Officer I or above) in vetting dubious or complicated cases;
- (3) to require staff to verify supporting documents carefully by home visits and, where possible, clarification with landlords, chief tenants or suppliers of goods as appropriate;

Eye-glasses

- (4) to set a ceiling on the quantity of new eye-glasses normally allowed within a given period of time, except for cases of special need as certified by eye doctors;
- (5) to set a ceiling on the price of eye-glasses;

Dental Treatment

- (6) to require staff to follow up promptly recipients' failure to receive dental treatment and demand their explanation. Unless satisfactorily

explained, no further approvals should be granted;

- (7) to settle costs by direct payment more readily in doubtful cases;

Discretionary Special Grants

- (8) to remind staff that these grants should be approved sparingly and only on justification;

Loss of Cash

- (9) to advise CSSA recipients that, like anyone else, they are responsible for the safe custody of their money; lost cash should not be replaced except in proven circumstances without contributory negligence on the part of the recipient;
- (10) as far as possible, to offer assistance in kind instead of cash;
- (11) repeated claims of loss of cash should be viewed sceptically. “Loans”, rather than grants, should be offered, and to be recovered by deduction from future CSSA payments.

48. SWD accepts these recommendations. We will monitor progress of implementation.

**Office of The Ombudsman
December 2008**