

*Issue No. 2 of Reporting Year 2012/13
(19 September 2012)*

Office of The Ombudsman, Hong Kong



*Direct Investigation into
Booking and Use of Sports Facilities of
Leisure and Cultural Services Department*

The Ombudsman has completed a direct investigation into Booking and Use of Leisure and Cultural Services Department (“LCSD”) Sports Facilities.



Complaints received by the Office of The Ombudsman about LCSD sports facilities mainly concern the difficulties in booking by individuals, the booking system unduly favouring organisations, and the existence of touting activities. While supply falling short of demand may be the underlying reason for these problems, our investigation has revealed that the situation has been compounded by deficiencies in LCSD’s booking system and inadequacies in the supervision of the use of the facilities.

A total of 22 recommendations are made to LCSD for improvement.

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

*Direct Investigation into
Administration of Government Policy on
Private Recreational Leases*



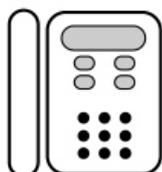
The Ombudsman has completed a direct investigation into the administration of the policy on Private Recreational Leases (“PRLs”) by the Home Affairs Bureau (“HAB”).

Our investigation reveals that Government has granted land at nil or nominal rent by way of PRLs to sports clubs. Although the lease conditions stipulate that the sports clubs shall open their sports facilities for use by outside “eligible bodies”, the number of such opening hours is hardly commensurate with the value of the land granted to the sports clubs. Moreover, there is a lack of proper monitoring and publicity by HAB on the opening of the sports facilities.

HAB is now negotiating with the sports clubs on the renewal of their expired PRLs. Nevertheless, the minimum requirement in respect of such opening hours in the new leases is still rather low.

The Ombudsman urges HAB to make improvement in a number of areas. In particular, HAB should make the best use of the powers conferred on it by the new leases to vet and revise the so-called “Schemes to Implement the Greater Access Requirements” of the sports clubs, with a view to requiring the sports clubs to maximise the types of sports facilities and their opening hours for use by the outside “eligible bodies” .

The summary of the investigation report is at **Annex 2**.



Enquiries

For press enquiries, please contact Ms Kathleen Chan, Senior Manager (External Relations) at 2629 0565 or by email kathleenchan@ombudsman.hk.

Office of The Ombudsman, Hong Kong
19 September 2012

Executive Summary

Direct Investigation Booking and Use of Sports Facilities of Leisure and Cultural Services Department

The Office of The Ombudsman received complaints from time to time about sports facilities of the Leisure and Cultural Services Department (“LCSD”), mostly about their booking and use. Over the past two years, for instance, this Office has handled more than 50 such complaint cases.

2. About 80% of the operating costs of LCSD sports facilities are subsidised by public funds. Users come from all walks of life in different age groups. It is, therefore, of utmost importance to ensure that members of the public have a fair chance to use the facilities and that abuse and wastage should be prevented as far as possible.

3. In this connection, and pursuant to The Ombudsman Ordinance (Cap 397), The Ombudsman announced on 5 July 2011 to initiate a direct investigation into the mechanism and arrangements regarding the booking and allocation of LCSD sports facilities with a view to identifying areas for improvement.

Current Arrangements

4. Demand for sports facilities exceeds their supply in Hong Kong. To foster sports development, LCSD’s policy is to give priority booking rights to certain organisations (including schools, national sports associations (“NSAs”), district or community sports clubs, etc). Nevertheless, to cater for the needs of the general public, bookings by organisations are subject to quota control and certain restrictions as follows:

- **Booking by organisations:** organisations have priority rights to make bookings three to 12 months in advance. However, during peak hours, only one-third of the total available hours of the month may be taken up by organisations, and at any one time not more than half of the total number of facilities available at each venue may be taken up by organisations.
- **Individual booking:** individuals can book the remaining sessions not taken up by organisations. For fee-charging and non-fee charging facilities, different arrangements apply –

- Fee-charging facilities: bookings can be made 30 days in advance on a first-come, first-served basis through the Leisure Link System (“LLS”), which can be accessed by means of telephone, the Internet, LCSD booking counters and LLS self-service kiosks.
- Non-fee charging facilities: bookings can be made one calendar month in advance by filling in and submitting a form by the end of each month. If more than one application is received for the same session at the same facility, LCSD would allocate the venue by drawing lots on the 10th of each month.

Four Areas of Concern

5. Complaints from members of the public and media reports mainly involved the following four areas:

- touting;
- difficulties in booking by individuals;
- difficulties in booking by organisations; and
- the use of venues.

Touting

6. Touting generally refers to the transfer of a permit from the hirer (“A”) to another person (“B”) for profit. Touting is one of the most widely criticised phenomena. On the one hand it makes it difficult for members of the public to book facilities, while on the other hand it is regarded as improper behaviour because the touts are profiteering with public resources.

7. Three common touting practices are given below:

Touting Practices	
I.	<p>a. A books a ballgame court using his own identity card (“ID card”) number and pays the hire charges. He then transfers the right to use the venue to B at a higher price.</p> <p>b. At the scheduled time of use, A personally signs in at the venue for B so that B can enter the venue. A does not use the venue.</p>
II.	<p>a. A books a ballgame court using his own ID card number and pays the hire charges. He then transfers the right to use the venue to B at a higher price.</p>

	<p>b. A does not show up at the scheduled time of use. The permit is in B's hands.</p> <p>c. Holding only the permit but not A's ID card, B may still be able to use the venue should the venue staff fail to check the identity documents diligently.</p>
III.	<p>a. A books a ballgame court using his own ID card number and pays the hire charges. He then transfers the right to use the venue to B at a higher price.</p> <p>b. A does not show up at the scheduled time of use. The permit is in B's hands.</p> <p>c. Where the venue staff checks the identity documents diligently and B, with only the permit, is refused entry to the venue, B can still register as a so-called "stand-by" user and use the venue 10 minutes after the starting time of the booked session. As A will definitely not show up, B can be certain to be able to use the venue for the rest of the session. Such practice is common in venues for team sports where few would appear as a stand-by user.</p>
	<p>In the above three scenarios, if A poses as a disabled person or his/her minder, the venue can be booked at a concessionary rate at about half the normal charge for all sessions (including peak hours), hence an even lower cost for touting.</p>

8. While touting activities can be attributed to an excess in demand for sports facilities, deficiencies in the booking system and its execution have fueled such malpractice. The deficiencies include:

- the advance booking period is too long for individual booking;
- the maximum number of hours allowed for individual booking is too generous;
- that individuals can use different identity documents to make multiple bookings is a loophole;
- abuse of system is easy because immediate payment is not required for telephone reservations by individuals;
- the definition of organisations is too lax;

- reallocation arrangements in case of bad weather is too favourable to the hirer;
- venue staff members do not check carefully identity documents when users sign in;
- the way LCSD handles “no show” and the free “stand-by” arrangements provide opportunities for touting; and
- failure to actively crack down on illegal transfer of permits.

Period Allowed for Individual Booking

9. At present, individual booking for sports facilities can be made 30 days in advance.

10. This would allow the touts ample time to find “buyers”. LCSD should consider shortening the advance booking period.

Booking Limits for Individuals

11. Currently, individual hirers are allowed to book a maximum of two hours each day during peak hours for each type of fee-charging facility at the same venue. For non-fee charging facilities, individuals are allowed to book a maximum of two hours per month for each type of facility at the same venue.

12. Such arrangements mean that bookings for facilities **at different venues** are not subject to any form of control. A hirer can book different facilities at different venues during peak hours on the same day and make a profit through touting.

13. LCSD should consider reducing the maximum booking hours allowed (such as limiting the combined total number of hours each day, each week or each month, etc for different facilities and venues) in order to minimise the chance of touting.

Different Identity Documents Acceptable for Bookings

14. At present, a variety of documents are acceptable as proof of identity when a hirer make bookings and signs in at a venue. The LLS uses the number of the hirer’s identity document to check whether he has booked more hours of facilities than allowed. Therefore, if a hirer uses different identity documents (hence different numbers) to make bookings, the LLS cannot tell whether it is actually the same hirer, thus giving touts an opportunity.

15. We recommend that LCSD find a way to plug this loophole, for example, by accepting only Hong Kong ID card, and, where a hirer has no Hong Kong ID card, his/her passport.

Telephone Reservation

16. Immediate payment is normally required for booking sports facilities. However, for telephone reservations payment within three days is allowed. This again provides touts with a window of opportunity. If a buyer can be found during this period, the hirer will pay the hire charge in time; otherwise, no payment will be made.

17. To curb touting activities, LCSD had introduced a number of measures. For instance, starting from June 2012, telephone reservations must be made at least three days in advance, with payment to be made at least one day before the date of use of venue.

18. We are pleased to see efforts made by LCSD in cracking down on touting activities. In the long term, to completely plug the loophole that immediate payment is not required in telephone reservations, and as a matter of fairness, we recommend that an online system accepting immediate payment for telephone reservations be introduced.

Definition of Organisations

19. At present, organisations that can enjoy the three-month priority booking rights include “associations” registered as limited companies. The reason that LCSD gives these associations priority booking rights is to encourage the working population to do more physical exercise and it is generally believed that organised group participation is more effective in achieving this objective. However, as such associations are easy to set up, people who engage in touting activities can take advantage of the three-month priority booking rights by just setting up a limited company.

20. We consider it necessary for LCSD to keep an eye on the above phenomenon and adopt administrative measures as necessary to stop such activities. For instance, LCSD can monitor information about touting activities on the Internet, check whether the sessions being offered are booked by such limited companies and conduct follow-up investigations. If a company is suspected to be involved in the touting of permits and fails to provide any reasonable explanation, LCSD should impose administrative penalties.

Reallocation in Case of Bad Weather

21. Under the current arrangements, LCSD can close a facility immediately in bad weather or as circumstances require. While affected hirers will not get a refund of

the hire charges, they can book and be reallocated a session on an alternative date and time in the next 60 days. This would mean a 30-day advantage over the ordinary hirer, who can only make bookings 30 days in advance.

22. Some people consider such additional 30-day advance booking privilege an unnecessary concession. Besides, it may encourage touts to book facilities on rainy days and exploit the 60-day gap for touting.

23. We recommend that LCSD review the above arrangements and plug the loophole by, for instance, shortening the 60-day advance booking period or even cancelling the reallocation arrangement altogether.

Registration and Verification

24. To forestall unauthorised transfer of permits, it is crucial that venue staff members verify the users' identities when they sign in and ensure that they are the genuine hirers.

25. According to the LCSD internal guidelines, venue staff are required to collect the permits and check the users' identity documents against the booking records before allowing users to enter the facilities.

26. However, our investigation found that many venue staff failed to follow strictly the verification procedure. Furthermore, the registration records of most venues were quite rudimentary, with no indication of whether the staff members had checked the users' identity documents, making it difficult for the management to conduct any review afterwards.

27. Since the commencement of our investigation, LCSD introduced a number of improvement measures. These included reminding all venue staff members of the importance of following strictly the verification procedure to check carefully the identity documents of all users who sign in. The management will monitor covertly their performance. Meanwhile, an enhanced registration form has been adopted for all venues.

28. We are pleased to see these improvement measures recently introduced by LCSD. We urge the Department to keep up strict observance of the verification procedure and to step up its supervision of venue staff.

“No Show” Cases and “Stand-by” Arrangements

29. People who wish to have free use of facilities not taken up by the original hirers may register at the LCSD counter after the starting time of a session. Such allocation is made on a first-come, first-served basis. However, “stand-by” users are required to surrender the facilities upon subsequent arrival of the original hirers. LCSD will forfeit all hiring charges paid by hirers who fail to show up, but no further penalties will be imposed on them.

30. The “stand-by” mechanism is intended to minimise any waste of available facilities, while protecting the “rights” of the original hirers to use the facilities in case of late arrival. However, the mechanism has provided low-cost opportunities for touting, and given rise to the phenomenon of pre-planned “no show” and “stand-by”, as demonstrated in **Case III** of Touting Practices in **para. 7**.

31. LCSD’s records showed “no show” and “stand-by” to be a common phenomenon, especially in the case of football pitches. Taking the example of artificial turf pitches during July to September 2011, “no show” accounted for 37% of all sessions booked by individuals; and of these “no show” sessions, 87% were taken up by “stand-by” users. These figures suggest that the current arrangements provided an easy opportunity for the touting business. The problem needs to be addressed by LCSD.

32. We recommend that LCSD:

- consider imposing penalties on individuals who fail to show up for their reserved sessions, such as suspending their eligibility to make further bookings; and
- review the “stand-by” mechanism, including considering charging fees on “stand-by” users or abolishing the “stand-by” mechanism on a trial basis at facilities/venues (e.g. football pitches) where the problem is serious.

Measures against Unauthorised Transfer of Permits

33. The Conditions of Use of LCSD sports facilities stipulate that the hirer must be one of the users using the reserved facilities and the permit is not transferable. If any unauthorised transfer is found, LCSD should be able to take administrative measures, such as suspension of the hirer’s eligibility to make any further bookings.

34. According to information from LCSD, there were a total of eight cases of unauthorised transfer of permits detected in 2010/11 and 2011/12. The actions taken by LCSD were as follows:

- In three cases, the persons concerned were not allowed to sign in and use the facilities as their personal data did not match those of the original hirers. No further action was taken in respect of the hirers; and
- The other five cases involved not only unauthorised transfer of permits, but also tampering with the hirers’ ID card numbers recorded on the permits. LCSD reported the cases to the Police for possible

charge of “using false document”. However, it took no follow-up action on the unauthorised transfer of permits.

35. In our view, LCSD was actually condoning touting activities when it failed to impose any administrative penalties on the hirers even though there was evidence of unauthorised transfer. LCSD should use administrative penalties to curb unauthorised transfer of permits, such as not allowing the offenders to make bookings for a certain period of time.

36. If blatant touting activities are found, LCSD should actively track information on the Internet about touting activities. It should step up efforts to investigate suspected cases, such as conducting on-site search for evidence of non-compliance, and also impose appropriate administrative penalties as a deterrent.

Difficulties in Booking by Individuals

37. Complaints about difficulties in booking by individuals are partly attributable to touting activities. In addition, there are four other issues:

- low transparency about the quotas for booking by organisations;
- difficulties of accessing the LLS to book fee-charging facilities during the morning rush hour;
- lack of a convenient computerised system for booking non-fee charging facilities; and
- the inconvenience caused by the stipulation that only hirers are allowed to sign in.

Transparency of Quotas for Booking by Organisations

38. According to the guidelines and notices issued by LCSD:

- During peak hours, only one-third of the total number of available hours each month may be allowed for block booking by organisations at each venue.
- Activities organised by the Home Affairs Bureau (“HAB”) and LCSD are not subject to any quota control in the booking of facilities.
- For urban venues, peak hours are from 5 pm to 11 pm on weekdays (i.e. from Monday to Friday, except public holidays), and the whole day on Saturday, Sunday and public holidays. For venues in the New Territories, the definition is similar with some variations.

39. Under the above arrangements, the general understanding is that for peak hours, individuals should be allowed to book and use two-thirds of the total available hours of the month at each venue.

40. The records of LCSD venues showed that, if the quotas taken up by HAB and LCSD were excluded, the total number of peak hours booked by general organisations normally did not exceed 33%. However, when HAB and LCSD were taken into account, bookings by organisations often exceeded 33%, and were as high as **65%** in some venues, leaving as little as 35% for individuals. If we focus only on the most popular time slots during peak hours (e.g. from 7 pm to 10 pm), the bookings by organisations at certain venues even exceeded **80%**, with less than 20% available for individuals.

41. The above figures show that the calculation of block booking quotas lacks transparency. Though LCSD has already explained in the booking procedures that HAB and LCSD are not subject to any quota control in the booking of facilities, we recommend that LCSD reviews the situation in order to increase transparency and considers:

- setting quotas for the most popular time slots; and
- increasing the transparency of bookings made by HAB and LCSD (such as setting separate quotas or including them in the quotas for booking by organisations).

LLS Operations during Morning Rush Hour

42. Booking of fee-charging facilities by individuals, whether by means of LCSD counter service, LLS self-service kiosks, the Internet or telephone reservation, must be made by accessing the LLS on a first-come, first-served basis. A number of complaints alleged that it often took a long time to log on to the LLS during the morning rush hour when the system started to accept bookings. When one finally managed to log in, the most desirable sessions and venues had often been reserved. Furthermore, since the LLS did not have any automatic queuing function, users had to keep trying to log on when there was network congestion. This was very time-consuming.

43. After the first phase of upgrade for the LLS was completed, the situation has improved recently. According to statistics provided by LCSD, the number of online transactions completed during the morning peak session (from 7:00 am to 7:05 am) has increased from 360 to 560 (up 56%) on average.

44. We recommend that LCSD continue to explore further improvement measures to shorten the time needed for accessing the LLS during the morning peak session,

such as increasing the system capacity and processing speed, as well as adding an automatic queuing function for online bookings.

Online Booking of Non-fee Charging Facilities

45. The LLS does not support the booking of non-fee charging facilities. Individuals who wish to book these facilities are required to submit an application in writing one calendar month in advance. Allocation may be made by drawing lots where necessary. This arrangement is inadequate because:

- applicants have to rely on sheer luck to get their desirable sessions;
- applicants are not informed immediately of the results;
- information about facilities available cannot be checked online; and
- without computerised records, it would be difficult for LCSD to enforce any maximum limit on booking by individual applicants.

46. We take the view that LCSD should provide a computerised system for booking non-fee charging facilities as soon as possible.

Signing In by Original Hirers Only

47. Currently, LCSD stipulates that hirers must sign in personally at the time of use. If the hirers are absent or late due to sickness or other reasons, their friends may not be allowed to enter the facilities even though they have the valid permits. Some members of the public complained that such an arrangement caused them inconvenience.

48. We recommend that LCSD, while enforcing strictly the registration procedure, consider making the system more flexible, such as allowing a hirer to authorise at the time of booking another user to sign in. LCSD may thus strike a better balance between curbing touting activities and allowing genuine users to sign in under special circumstances.

Difficulties in Booking by Organisations

49. The two major difficulties that organisations have encountered in making bookings are:

- the long period taken for approving applications; and
- the long notice period required for cancellation.

Processing Time for Booking Applications

50. Some NSAs told us that although they could make bookings 12 months in advance, confirmation from LCSD about the availability of their selected sessions

often came very late. Sometimes, it only confirmed around one month before the date of use, thereby causing difficulties to NSAs in organising competitions and training events (including enrolment of participants). They suspected that LCSD deliberately delayed the confirmation because other hirers with higher priority rights (namely LSCD or HAB) had also indicated their intention to hire the same venues but had not decided on which sessions.

51. Based on four cases we studied and the relevant LCSD guidelines, we had the following observations:

- Delay in replying to applications: According to LCSD, its staff should send confirmation to the NSAs regarding their applications four months before the date of use. In all the four cases studied LCSD staff had failed to comply with this requirement. Our study of the relevant staff guideline showed that the wording was unclear and inadequate.
- Priority of HAB and LCSD: LCSD explained that its departmental policy was to give priority to LCSD and HAB over other organisations only when their applications were received on the same day. Otherwise, the principle of first-come, first-served should apply. In the cases we studied, there was no evidence to show that LCSD had, as NSAs suspected, held up the applications from NSAs on account of unconfirmed applications from LCSD and HAB. However, the relevant guidelines, which only stated that LCSD and HAB “should be given higher priority in making advance bookings”, were unclear and over-simplistic. It might have led LCSD staff to think that they should wait until LCSD and HAB had confirmed their sessions before processing applications from other organisations. LCSD should revise the guidelines and clarify with its staff as soon as possible.
- In one of the cases, LCSD staff tried to contact an NSA by telephone nine times over a period of four months without success, and yet did not try any other means of communication.

52. It is our view that LCSD should:

- carefully review and amend the unclear guidelines so that its staff members can be given adequate guidance and instructions; and
- adopt improvement measures to better communicate with organisations (e.g. use of emails).

Notice Period for Cancellation

53. At present, organisations that intend to cancel their booked sessions of sports facilities must notify LCSD 40 days before the date of use, because LCSD allows individuals to book the remaining sessions 30 days in advance. Those who fail to do so without reasonable justification will be penalised.

54. A number of organisations told us that they needed lead time for enrolment of participants when organising a sports event or competition. Deadline for enrolment was usually set at 30 days prior to the date of the event. In case of insufficient number of applicants, the event would be called off, but then the 40-day notice period for cancellation of the venue/session booked would have already expired. The requirement of 40-day notice period for cancellation was, therefore, causing difficulties to the organisations and not practical.

55. We recommend that LCSD consider shortening the notice period for cancellation of booking by organisations, at the same time as it considers shortening the advance booking period for individuals.

The Use of Venues

56. The use of venues and waste of venue resources can be examined from the following perspectives:

- individuals failing to cancel their bookings;
- organisations failing to use their bookings; and
- adjustments on opening hours to increase the availability of venues.

Cancellation of Individual Bookings

57. Individuals who want to cancel their bookings must do so in writing. They must produce an identity document or its copy and they need to surrender the permit to LCSD. The procedure is inconvenient, and they do not get any refund. On the other hand, if they simply do not show up without cancelling their bookings, there is no penalty. So, it is not uncommon that hirers choose not to cancel their bookings even when they cannot use the venues, resulting in a waste of venue resources.

58. We recommend that LCSD consider simplifying the procedure for cancelling individual bookings.

Organisations Failing to Use the Booked Venues

59. At present an organisation which cannot use its booking is required to cancel it 40 days in advance. Under LCSD guidelines, an organisation which fails to comply with this rule three times at the same venue within 12 months will get a warning letter.

If the organisation fails to comply with the rule again at the same venue in the ensuing 12 months, its priority booking rights will be suspended for a period of 12 months.

60. In other words, an organisation will be penalised only after it has failed to comply with the rule four times at the same venue. This penalty is rather lenient and should be reviewed. At present many organisations fail to comply with the rule because the 40-day notice period for cancellation is not practical. We recommend that LCSD review the penalty for non-compliance after it has shortened the 40-day notice period for cancellation.

Adjusting the Opening Hours

61. With demand exceeding supply, LCSD has the responsibility to maximise the use of its venues. After reviewing the opening hours of a number of facilities, we consider there to be room for adjustment to increase supply. For example, if the artificial turf football pitches can open earlier in the morning and the sprinkling time is shortened, or the time reserved for nurturing the natural grass pitches can be slightly reduced, then more sessions would be available. We, therefore, recommend that LCSD consider adjusting the opening hours of the venues to increase supply.

Our Recommendations

62. After examining the existing system and arrangements, we have a total of 22 recommendations for LCSD:

- 11 recommendations on curbing touting activities (**paras. 10, 13, 15, 18, 20, 23, 28, 32, 35 and 36**);
- 4 recommendations on booking by individuals (**paras. 41, 44, 46 and 48**);
- 3 recommendations on booking by organisations (**paras. 52 and 55**);
- 3 recommendations on use of venues (**paras. 58, 60 and 61**); and
- Overall, LCSD should fully consult its stakeholders before introducing major changes. It should also continue to listen to stakeholders' opinions and review its system and arrangements from time to time in order to meet the needs of the public.

**Office of The Ombudsman
September 2012**

Executive Summary

Direct Investigation Administration of Government Policy on Private Recreational Leases

Background

For many years, in order to meet the shortage of recreational and sports facilities in Hong Kong, Government has granted land at nil or nominal rent to some organisations to establish and operate sports clubs. Such organisations comprise private bodies committed to promoting sports development and providing recreational facilities, social welfare organisations, uniformed groups, national and district sports associations and civil servants associations. Grants are made under Private Recreational Leases (“PRLs”). The facilities of the sports clubs are dedicated for use mainly by their members.

2. These sports clubs are funded by fees collected from members or facility users, or money raised by the clubs themselves. At present, there are altogether 73 PRLs granted to various sports clubs, with a membership of over 700,000.

3. PRLs were generally for a term of 15 years. As at 30 June 2012, 55 of the 73 PRLs had expired. Most of the sports clubs concerned had applied for renewal of their leases. These expired PRLs are currently on temporary extension, pending the conclusion of negotiations with the Home Affairs Bureau (“HAB”).

4. HAB is responsible for administering the policy on granting land by way of PRLs for establishing and operating sports clubs (“PRL policy”). The PRL policy and lease conditions stipulate that all sports clubs shall open their sports facilities for use by “eligible bodies” when requested by “competent authorities”*. The competent authorities are responsible for vetting the applications to use the sports facilities of the sports clubs submitted by eligible bodies within their respective purview.

5. This direct investigation aims at assessing:

- (1) the PRL policy hitherto administered by HAB;

* “Eligible bodies” include schools as defined in the Education Ordinance, social and welfare organisations receiving subvention from the Social Welfare Department, national sports associations eligible for subvention from the Leisure and Cultural Services Department, Government departments, and youth and uniformed groups receiving subvention from HAB. Their respective “competent authorities” are the Education Bureau, the Social Welfare Department, the Leisure and Cultural Services Department, the Civil Service Bureau and HAB.

- (2) at the juncture of the current PRL renewal exercise, the merits of the arrangements proposed by HAB to enhance public access to sports club facilities.

Our Findings

Rationale for Access to Facilities

6. According to HAB, the object of requiring the sports clubs to make available their facilities to eligible bodies was to motivate the public to do more physical exercises, and thus promote sports development, by providing through the sports clubs the types of sports facilities not commonly provided by Government itself. HAB considers that while the sports clubs' contributions should be recognised and the right of their own members to priority use of their facilities should be respected, the sports clubs should benefit the public by making available their facilities to use by non-members.

Past and Present Situations

Opening Hours Grossly Inadequate

7. The current lease conditions stipulate that the sports clubs shall open their sports facilities to eligible bodies for *no more than three sessions of three hours each per week*. There is no minimum requirement.

8. In Hong Kong, land is a precious resource. We note that in granting land at nil or nominal rent under the PRL policy, Government is in effect giving the sports clubs significant subsidies on a long-term basis. In particular, some sports clubs are located on prime sites of very high value. The present scale of eligible bodies' access to their facilities is not commensurate with such subsidies enjoyed by the sports clubs.

Ineffective Monitoring

9. HAB admitted that before July 2010, it had not laid down any criteria or procedures with the competent authorities for vetting applications from eligible bodies to use the facilities of the sports clubs. Nor had the Bureau required the sports clubs to regularly report on the use of their facilities by eligible bodies to facilitate its monitoring.

10. HAB's past efforts in monitoring the enforcement of the lease conditions were clearly inadequate.

Lack of Publicity

11. HAB admitted that apart from reminding all competent authorities in 2001, 2010 and 2011 to inform eligible bodies that they might apply for using the sports facilities of the sports clubs, there had been no further publicity or promotion on the opening of their sports facilities.

12. In the absence of Government publicity, it is no wonder that no eligible body had ever applied to the competent authorities for using the sports facilities of the sports clubs.

Arrangements on Renewal

Arrangements for Opening Facilities

13. In the current exercise of renewing the PRLs, HAB has focused only on the sports clubs' contributions in respect of "promoting sports development" and "continuing to provide job opportunities", but paid little attention to whether the clubs should make adequate repayment to society after enjoying all the land subsidies. It is indeed only reasonable for the community to expect that the sports clubs would reciprocate by enhancing public access to their facilities.

14. The new leases will require the sports clubs to open their facilities for use by eligible bodies for *at least 50 hours per month* with no upper limit. HAB will also require the sports clubs to allocate certain sessions for priority use by eligible bodies.

15. Nevertheless, we notice that the requirement of opening the sports facilities for at least 50 hours per month actually refers to the aggregate total of all the sports facilities of a sports club. In other words, all it takes is for a sports club to open five of its sports facilities for ten hours each per month, and the minimum requirement in the new lease will be deemed met.

16. In our view, if all or most of the sports clubs just meet this bare minimum, it would be difficult to convince the public that the clubs' repayment to society matches the resources that they have enjoyed. Furthermore, given the different scales of operation of the sports clubs (some have only a few sports facilities, while others may have ten or more), HAB's across-the-board requirement for them to open their facilities for not less than 50 hours may constitute disparity of treatment.

17. Fortunately, the new leases also stipulate that sports club must set out a Scheme to Implement the Greater Access Requirements ("the Scheme"), giving details regarding the opening of their sports facilities (such as the available facilities, and the number of hours and sessions of opening) for HAB's approval. In addition, HAB has the power to revise the content of the Scheme at any time during the new lease. These two provisions serve to empower HAB to a certain extent to urge the sports

clubs to make such arrangements for opening their facilities as to be more in accord with public expectations.

18. As the policy bureau responsible for the formulation and administration of the PRL policy, HAB is the final gatekeeper in ensuring that the sports clubs adequately open their facilities. We consider that in vetting and revising the Scheme of the sports clubs, HAB should always bear public interests in mind and ask the sports clubs to:

- (1) open all types of sports facilities as far as possible, especially the more popular ones; and
- (2) as far as the clubs' respective scale of operation permits, maximise the number of hours open to eligible bodies, the timing of which to be of convenience to the latter.

Monitoring Mechanism

19. According to HAB, the new leases will require the sports clubs to submit quarterly reports, so that the Bureau can monitor their compliance with the lease conditions and their implementation of the Scheme. Meanwhile, the Bureau is also planning to set up an electronic database to keep a watch over the use of the facilities of the sports clubs. Random checks will also be conducted at the sports clubs and follow-up actions will be taken in case of non-compliance.

Publicity Strategy

20. After renewing the leases, HAB will step up publicity. To enable eligible bodies to know the availability of the sports facilities, HAB will require the sports clubs to publish the relevant information on their websites. Eligible bodies will also have access to such information from the websites of HAB and the other competent authorities. Furthermore, HAB will release information to eligible bodies on a regular basis about the facilities available for their use.

Complaint Handling Mechanism

21. In case eligible bodies have any complaints about access to the sports facilities of the sports clubs, the relevant competent authorities will handle such complaints by way of "consultation and coordination". If the competent authorities could not resolve the disputes, HAB would intervene and start an investigation. However, HAB does not have the power to override the decisions of the other competent authorities.

22. We consider that HAB should develop a proper mechanism for handling complaints concerning the opening of the sports facilities of the sports clubs. There

should also be clear stipulation as to who has the authority to make the final decision in case of disputes.

Policy Review

23. It is HAB's plan that when all the leases are renewed and the above arrangements implemented, it would conduct a comprehensive review on the PRL policy jointly with the relevant policy bureaux and departments in order to determine the future of the PRLs.

24. We expect HAB to conduct the review as soon as possible and hold wide consultation in the process so that the future policy would be more in keeping with public interests.

Our Recommendations

25. The Ombudsman urges HAB to:

- (1) take into account fully public interests when vetting and revising the Schemes of the sports clubs such that they would make their sports facilities as readily accessible as possible to meet the needs of eligible bodies;
- (2) strengthen the publicity arrangements concerning the opening of the sports facilities of the sports clubs, such as requiring the various competent authorities to disseminate the relevant information to those eligible bodies within their purview, while checking closely whether the competent authorities and the sports clubs have uploaded such information on to their websites;
- (3) implement with vigour its measures to monitor the sports clubs' compliance with the lease conditions and the Schemes, including the setting up of the electronic database, frequent random checks and immediate actions to rectify inadequacies where necessary;
- (4) enhance the mechanism for handling complaints regarding the opening of sports facilities and, in particular, stipulate clearly who has the authority to make the final decision in case of disputes; and
- (5) embark on a comprehensive policy review as soon as possible, involving wide public consultation.

**Office of The Ombudsman
September 2012**