



香港申訴專員公署
OFFICE OF THE OMBUDSMAN, HONG KONG



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Office of The Ombudsman, Hong Kong



*Direct Investigation into
Special Education Services for Students with Moderate to Severe
Emotional and Behavioural Difficulties*

The Ombudsman has completed a direct investigation into the special education services for students “with moderate to severe emotional and behavioural difficulties”.



Our investigation has revealed a continuous shortfall in the provision of residential places in Schools for Social Development (“SSDs”), which provide an adjusted curriculum and counselling services to those students. The Education Bureau (“EDB”) and the Social Welfare Department (“SWD”) have failed to resolve the problem effectively, resulting in a very long waiting time for some applicants. Meanwhile, the use of the existing school places and residential places has not been maximised. There is room for improvement in the mechanism for reporting and filling vacancies, the procedures for case referrals and the duration of SSD schooling.

Recommendations are made to EDB and SWD for improvement.

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

***Summary of Investigation Report
Complaint against Lands Department for Refusal to Deal with
an Unauthorised Structure on “Government Property”***

The Ombudsman has completed an investigation into a complaint against the Lands Department (“Lands D”) for its refusal to deal with the problem of water seepage from a “Government property” and that of the structural safety of an unauthorised structure on that property.



The “Government property” is the roof of a certain building, with the Financial Secretary Incorporated (“FSI”) as temporary owner and Lands D as its agent. Water seepage from the roof had long been a nuisance to the residents of the flats below, and the unauthorised structure had a structural safety problem. However, Lands D refused to take any action on the grounds that FSI was not the permanent owner of the roof.

We considered that Lands D should not have shied away from the problems. It could have resolved the critical problems expeditiously with public funds and afterwards claimed the expenses from the parties concerned.

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

***Investigation Report
Complaint against Agriculture, Fisheries and Conservation
Department for Failure to Discharge Its Duties to Properly Handle
Stray Cat Nuisance***

The complainant was concerned about environmental hygiene problems caused by stray cats roaming the locality where she lived. She complained to the Agriculture, Fisheries and Conservation Department (“AFCD”) about the nuisance and requested a reply. AFCD replied that since an animal welfare organisation was running its “Cat Colony Care Programme” (“CCCP”) in the locality, her complaint was referred to the organisation for follow-up action and she should contact the organisation direct. Dissatisfied that AFCD was shifting the responsibility and allowing the organisation to run CCCP, abandon cats in the district and thus cause nuisance to the local residents, she lodged a complaint with this Office.

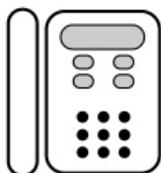


AFCD claimed that it only played an assisting role in CCCP, which “did not require its approval, permission or monitoring”. However, our investigation found that AFCD had all along supported and subsidised CCCP launched by the organisation. Since the start of CCCP in the locality in question in 2005, AFCD had never reviewed or assessed its effectiveness, nor had it monitored whether the Government subsidy spent by the organisation on CCCP had been used properly.

We considered AFCD to have been indifferent to the progress of CCCP and the complaints it generated. It had stayed out of the matter and failed to discharge its duty in abating the nuisance caused by stray animals to the local residents. Nor had it ensured that CCCP could meet the target of stabilising and reducing the population of stray cats.

We have made a number of recommendations to AFCD, including: to conduct a comprehensive review of the effectiveness and future direction of CCCP; to formulate improvement measures in its complaint handling procedures; to strengthen communication and cooperation with the organisations concerned; and to step up publicity and public education.

The executive summary of the investigation report is at **Annex 3**.



Enquiries

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Office of The Ombudsman, Hong Kong

23 February 2012

Executive Summary

Direct Investigation

Special Education Services for Students with Moderate to Severe Emotional and Behavioural Difficulties

Background

During their growth and development, some children and adolescents may have different kinds of adaptation problems, resulting in some transient emotional and behavioural difficulties of varying degrees of severity. In general, their physical and mental developments are normal, but their academic performance is below average. They are also susceptible to various learning difficulties and lacking in effective learning skills.

2. Under the current education system, students “with moderate to severe emotional and behavioural difficulties” can be transferred from mainstream schools as a transitional arrangement to Schools for Social Development (“SSDs”) for more intensive guidance. SSDs help students to overcome their transient adaptation problems and to improve their daily living skills so that they can return to mainstream schooling as soon as possible. Each class of SSDs comprises only 15 students to afford every student sufficient attention and counselling.

3. At present, there are seven SSDs in Hong Kong, including five boys’ schools¹ and two girls’ schools. The services offered are in two main categories, i.e. day placements for non-resident students; and day-cum-residential places for Primary Two to Secondary Three students aged between 7 and 18 who need to attend SSD and receive after-school hostel care.

4. The authorities concerned are the **Education Bureau** (“EDB”) and the **Social Welfare Department** (“SWD”). EDB is responsible for the coordination and formulation of policy and planning regarding SSDs and the “teaching” aspects of SSDs, while SWD is responsible for the hostel service provided by the SSDs.

5. This direct investigation was initiated in September 2010, the beginning of the 2010/11 school year, to examine the administration by EDB and SWD in respect of the vetting of applications and allocation of students to SSDs and the subsequent re-integration of those students into mainstream education.

¹ One of the boys’ schools provides day placements only.

Vetting of Applications

6. Students applying for admission to SSDs must be referred by their original schools or by social workers or student counsellors of social service agencies. Before making referrals, such referrers should provide the students and their families with appropriate professional assessment and counselling to ascertain students' needs and obtain their parents' consent.

7. All applications for SSD placements are vetted and approved by the Vetting Committee under the Central Co-ordinating Referral Mechanism ("CCRM") jointly managed by EDB and SWD.

8. After their applications for day-cum-residential places are approved, students will be put on the central waiting list of CCRM pending allocation. During the period, referrers shall report immediately to EDB and SWD any change in a student's data or condition. Referrers are also required to give monthly updates of students in a standard form to EDB and SWD.

Shortfall in the Provision of Residential Places

9. Statistics on the supply and demand of day-cum-residential places in the four school years from 2007/08 to 2010/11 are as follows:

	2007/08			2008/09			2009/10			2010/11		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
Residential places (with day placements)	429	188	617	457	200	657	457	200	657	457	200	657
Approved applications for day-cum-residential places ²	492	301	793	445	323	768	354	273	627	366	286	652
Average no. of applicants waiting for admission per month	188	141	329	181	139	320	161	157	318	52	91	143
No. of students having waited 6 months or more before admission ³	126 (49%)	55 (44%)	181 (48%)	104 (48%)	91 (85%)	195 (60%)	39 (26%)	49 (60%)	88 (38%)	21 (10%)	22 (30%)	43 (15%)
Withdrawals during waiting time	253	179	432	182	189	371	188	161	349	159	151	310

² Around 90% of applications were approved.

³ Figures in brackets represent the percentage of the students concerned over the total number of students approved in the same school year.

10. As shown in the table above, there were over 300 applicants on average waiting for day-cum-residential places per month before the 2010/11 school year. Despite EDB's streamlining of the admission procedures in that school year⁴, the average number of waiting applicants still stood at 143 per month. However, the number of residential places has remained unchanged since the addition of 40 places in the 2008/09 school year.

11. The table also indicates that before the 2010/11 school year, about 38% to 60% of the students had to wait six months or more before they got their day-cum-residential places in SSDs. In the 2010/11 school year, 15% of the students still had to wait six months or more. Ironically, the waiting time was shortened by the relatively high withdrawal rate, which in effect lowered the demand for SSD services.

12. We consider that too long a waiting time would not only mean that applicants cannot obtain the needed services in time, but may also aggravate the emotional or behavioural difficulties of applicants such that they become even more difficult to handle.

13. EDB and SWD, though aware that demand for the services exceeds supply, have all along been unable to resolve the situation effectively.

Inadequacies in the Mechanism for Reporting and Filling Vacancies

14. SSDs have to provide every month, in a standard form, updates to SWD on their "existing vacancies" and "estimated vacancies available soon" regarding day places and residential places. Updates can also be provided by telephone as and when necessary. With such information, SWD will activate the mechanism for filling the places.

15. Nevertheless, some monthly reports submitted by SSDs have been found far from complete. For instance, the numbers of "existing vacancies" and "estimated vacancies available soon" were not provided. Besides, SSDs tended to report mainly "existing vacancies".

16. Regarding "estimated vacancies available soon", most SSDs would, between March and July each year, report the number of such vacancies in respect of the coming school year. In other months, only a few SSDs would make such reports and invite new referrals from Government to fill their estimated vacancies.

⁴ According to a circular issued by EDB in September 2010, if a student fails to turn up for admission to the SSD within 28 working days of receipt of the admission notification, the application will be treated as withdrawn.

17. With regard to the filling of places, data provided by EDB and SWD show that there were dozens of, and sometimes over 100, residential places available on many of the cut-off dates⁵ during the last four school years, while the number of applicants on the central waiting lists and those undergoing the SSD admission procedures still stood at several hundred. This reflected a failure to fully utilise the residential places on the part of EDB and SWD.

18. We consider that regardless of the month of the year, whenever a student is known to be leaving an SSD in the near future, the process to fill the expected vacancy should be started without delay. This would effectively shorten the duration of vacancy of day and residential places and ensure proper use of the resources.

19. Moreover, EDB and SWD should standardise the mechanism for reporting and filling available places, clearly defining “estimated vacancies available soon”. Details of the mechanism should be set out in the relevant circulars for stakeholders’ information and compliance. EDB and SWD should also set up a monitoring system to ensure that SSDs comply with the reporting requirements. Furthermore, as some students may withdraw their applications during the admission stage, EDB and SWD should refer more than one applicant to the SSD when a day-cum-residential place becomes available, so as to maximise admission.

Circuitous and Inflexible Allocation Process

20. Once the number of vacancies is confirmed, SWD will start the process of filling those places according to the order of applicants on the waiting list. The Department will notify EDB within two working days and inform the SSDs concerned at the same time. Upon receipt of SWD’s notification, EDB will send the case information to the respective SSDs by post within seven working days⁶.

21. This Office considers that if SWD and EDB can improve the procedures for case referrals to SSDs (such as shortening the time for referrals), SSDs will be able to start admission even earlier.

22. Another observation from EDB data is that the waiting lists for Secondary One and Two day-cum-residential places are much longer than those for other classes. There is often a shortage of Secondary One and Two day places in some SSDs, even though there may be residential places available. As a result, students on the waiting lists cannot be admitted.

⁵ SSDs are required to provide updates to EDB on 15 September, 15 November, 15 January, 15 April and 15 June of every school year on the enrolment of students in all classes as well as those applicants who are undergoing the admission procedures.

⁶ This is the maximum time limit set by CCRM.

23. We consider that EDB should be more flexible with the class size of 15 students to allow more applicants for day-cum-residential places to be admitted to SSDs sooner.

Lengthy Admission Procedures

24. On receipt of referrals from EDB, SSDs will start their admission process. Social workers of the hostels will interview the parents to assess the students' willingness to attend SSD and when they would be ready for admission. After confirming that a student is willing to be admitted, the SSD should notify EDB, in a standard form, of the admission of the student and the official date of admission.

25. Before the 2010/11 school year, EDB allowed SSDs to complete the admission process within two months. In each of the three school years from 2006/07 to 2008/09, about 200 day-cum-residential places on average were left unfilled for two months or more, just because the applicants deferred their admission. In some cases, such places remained unfilled for as long as nine months.

26. We could understand that transfer to SSDs meant a significant change for both the students and their parents and that they needed time to think it over. Nevertheless, we consider it necessary for EDB and SWD to set a timeframe for students' acceptance of an SSD place in view of the long waiting list.

Long Stay of Students in Some Cases

27. According to EDB's policy and objectives, SSDs aim to provide more intensive guidance to students so that they may re-integrate into mainstream schooling as soon as possible. However, in each of the school years between 2006/07 and 2010/11, an average of 20% of the students stayed at SSDs for more than two years, with 6% staying for more than three years.

28. EDB explained that the principals, teachers and social workers of SSDs met regularly (every six months) to review the performance of students and make professional assessment to decide which students could return to mainstream schooling. EDB did not play any role in the review process, nor had it issued any guidelines to SSDs on review mechanism.

29. Certainly, assessment should be made by education and social service professionals as to when a student can leave an SSD. Yet, the duration of schooling in SSDs has a direct bearing on the availability of day and residential places as well as the waiting time of applicants. EDB should address the issue and draw up guidelines for SSDs on criteria for releasing students. EDB should also remind SSDs to pay attention to and report long stay cases so that the Bureau could follow up and review

those cases promptly. Furthermore, EDB should establish a review mechanism for long stay cases.

Recommendations

30. The Ombudsman makes the following recommendations to EDB and SWD:
- (1) to remind referrers to provide updates on students in a timely manner;
 - (2) to take effective measures to meet the unsatisfied demand for SSD places;
 - (3) to adopt effective measures to ensure that all relevant parties, including SSDs, start the process of filling the anticipated vacancies whenever there are students confirmed to be leaving, irrespective of the month of the year;
 - (4) to standardise the mechanism for reporting and filling available places by clearly defining “estimated vacancies available soon” and setting out details of the mechanism in the relevant circulars so that all stakeholders would comply with the requirements;
 - (5) to set up a monitoring mechanism to ensure that SSDs comply with the relevant requirements for reporting and filling available places;
 - (6) to make more than one referral when a vacancy arises in an SSD, so as to maximise admission;
 - (7) to improve the procedures of making referrals to SSDs;
 - (8) to be more flexible with the class size;
 - (9) to draw up guidelines for SSDs on criteria for releasing students and remind SSDs to pay attention to and report long stay cases; and
 - (10) to establish a review mechanism for long stay cases.

**Office of The Ombudsman
February 2012**

Summary of Investigation Report

Complaint about an Unauthorised Structure on “Government Property”

Details of Complaint

The complainant lived on the top floor of a building. She had complained to the Buildings Department (“BD”) that an unauthorised structure on the roof had caused serious water seepage at the ceiling of her flat. BD found out that the roof was owned by the Financial Secretary Incorporated (“FSI”) and so referred the case to the **Lands Department** (“Lands D”), the agent of FSI, for follow-up action. However, Lands D did not take appropriate action on the unauthorised structure or carry out the necessary repairs.

Our Findings

2. The roof was previously private property. Upon the expiry of the land lease for the site of the building at the end of 1992, Government started to make the necessary arrangements with all owners of the building to renew the lease. While the legal formalities regarding the regrant of the lease were in progress, the properties involved were temporarily vested in FSI, with Lands D handling those formalities on behalf of FSI. Meanwhile, the previous owner of the roof passed away and the legal personal representative did not complete the regrant formalities. As a result, Government could not assign the title of the roof to that representative.

3. Between 2006 and 2009, the complainant made a number of complaints to the Joint Office (“JO”) of the Food and Environmental Hygiene Department and BD about water seepage from the roof. Worried that the water seepage would affect the structural safety of her flat, the complainant also requested BD to follow up. BD’s investigation revealed no obvious problem of structural safety at the complainant’s flat and so the Department decided to conclude the case. JO also ceased its investigation, as the complainant had withdrawn her complaint and the seepage at her flat had stopped.

4. In February and March 2010, the complainant complained to BD again that water seepage from the roof had caused concrete spalling and corrosion of the steel

reinforcement at the beams of her flat. After investigation, BD found noticeable cracks on the walls of the unauthorised structure on the roof. Its condition had deteriorated, rendering it potentially dangerous. On learning from the Land Registry that FSI was the owner of the roof, BD wrote to Lands D, the agent of FSI, in mid-March and urged the latter to remove the unauthorised structure as soon as possible. Despite BD's subsequent reminders, Lands D took no action. In early August, Lands D replied to BD, refusing to remove the unauthorised structure on the grounds that FSI was not the permanent owner of the roof.

5. In mid-October, BD issued another reminder to Lands D. It was not until then that Lands D conducted a site inspection and sought legal advice.

6. In March 2011, our staff conducted a site inspection and observed the following:

- (1) water seepage at the ceilings of the living room and bedrooms of the complainant's flat, with concrete spalling at some parts of the ceilings;
- (2) traces of seepage at the ceiling of the common corridor outside the complainant's flat; and
- (3) noticeable cracks on some external walls of the unauthorised structure on the roof.

Response from Lands D

7. Lands D explained that as FSI would eventually have to assign the title of the roof to the legal personal representative of the previous owner, FSI never took possession of or used the roof. It should not, therefore, be liable for any matters related to the roof. Moreover, as some people related to the previous owner (i.e. occupants of the unauthorised structure) were still using the roof, Government would not enter the unauthorised structure without the consent of the previous owner's legal personal representative or the occupants. Besides, the case involved complicated policy and legal issues. To find a feasible solution, Lands D had to seek legal advice on the removal of the unauthorised structure and the handling of the water seepage problem.

8. Subsequently, on receipt of the legal advice, Lands D took action against the legal personal representative of the previous owner and other relevant parties in April 2011. It ordered them to remove the unauthorised structure and to carry out the necessary repairs within a specified timeframe.

Conclusion and Recommendations

9. This Office was aware of the complicated legal issues involved. Nevertheless, as the agent of the current owner of the roof (i.e. FSI), Lands D had an obligation to resolve the problems as quickly as possible when the regrant formalities of the roof were still dragging on. Lands D should not have let the complainant and other residents suffer from prolonged nuisance caused by the water seepage and face the hazards posed by the unauthorised structure.

10. In the incident, Lands D initially made no attempt to clarify the condition of the unauthorised structure and the responsibility of FSI. It also procrastinated in responding to BD's advice and reminders. Lands D argued that it had not taken any action because Government was not the permanent owner of the roof. We found its argument untenable. Lands D could have resolved the critical problems expeditiously with public funds and afterwards claimed the expenses from the parties concerned. In any event, the Department should protect public interest and ensure building safety rather than shying away from the problems.

11. In this light, The Ombudsman considered the complaint partially substantiated.

12. Lands D finally took possession of the roof and, following our recommendations, removed the unauthorised roof structure and carried out repairs on the seepage.

Office of The Ombudsman
February 2012

Summary of Investigation Report

Complaint against Agriculture, Fisheries and Conservation Department for Failure to Discharge Its Duties to Properly Handle Stray Cat Nuisance

Details of Complaint

In mid-May 2010, the complainant complained to the Agriculture, Fisheries and Conservation Department (“AFCD”) about stray cats roaming the locality where she lived (“the Locality”), causing environmental hygiene nuisance. Since an animal welfare organisation (“the Organisation”) was running several “zones” under its “Cat Colony Care Programme” (“CCCP”) in the Locality, AFCD referred the case to the Organisation for follow-up action. Afterwards, the complainant expressed her dissatisfaction to AFCD repeatedly and requested that AFCD capture the stray cats and provide her with details regarding the captures. However, AFCD never gave her a clear reply and only advised her to contact the Organisation direct.

2. The complainant considered that AFCD had failed to discharge its duties of capturing stray cats and had shifted the responsibility to the Organisation. It had allowed the Organisation to run CCCP and abandon cats in the Locality, causing environmental hygiene problems. She also alleged that AFCD had passed the work of clearing up cat faeces in the street and in playgrounds in the Locality to the Food and Environmental Hygiene Department (“FEHD”) and the Leisure and Cultural Services Department (“LCSD”). She, therefore, lodged a complaint with this Office.

CCCP

3. In 2000, the Organisation started to launch CCCP in various localities in Hong Kong. The Programme aims at improving the life and health of stray cats and eventually stabilising and reducing their population by way of “Trap, Neuter and Return (to where they were trapped)” (“TNR”). Volunteers, known as carers, are recruited under the Programme. Apart from feeding and taking care of stray cats in their zones of responsibility, carers capture and take them to the Organisation for de-sexing. De-sexed cats are microchipped and have one of their ears “tipped” as identification. As at December 2011, there were about 1,200 CCCP zones in the territory and several of them were within the Locality.

Response from AFCD

4. AFCD explained that upon receipt of complaints about stray cat nuisance, its staff would capture the stray cats pursuant to section 2 of the Pounds Ordinance, Cap. 168. Environmental hygiene problems caused by the cats are the responsibility of FEHD. Complaints involving stray cats within CCCP zones would be referred to the Organisation for handling. AFCD staff would conduct site inspections and capture stray cats outside the zones in question.

5. At present, the law does not stipulate any rules governing the keeping, feeding, capturing and neutering of cats. Therefore, it could be said that CCCP would not need the approval, permission or monitoring of AFCD. However, the Department supported the Programme in principle and played an assisting role. For example, it would return microchipped cats that have been captured to the Organisation.

6. AFCD and the Organisation drew up the “Basic Criteria and Requirements” for CCCP in 2005. The document stated that complaints received by AFCD about stray cat nuisance within CCCP zones would be referred to the Organisation for follow-up action. AFCD normally would not enter those zones to capture cats there. Carers were required to handle and solve the environmental hygiene problems arising from CCCP within their zones.

7. AFCD had referred the complainant’s case to the Organisation and FEHD. Its staff had also conducted site inspections in the Locality at different times of the day. Some stray cats that had been “ear-tipped” were spotted and stray cats that roamed outside the zones were captured. Nevertheless, AFCD considered that the Organisation had failed to handle this complaint properly as cats not “ear-tipped” had still been found in a CCCP zone in the Locality. AFCD, therefore, notified the Organisation in July 2010 that it would no longer endorse the CCCP in that zone. It also asked FEHD to step up site inspections in that zone. As at February 2011, AFCD staff had conducted 30 site inspections in the vicinity and captured 17 stray cats.

8. AFCD asserted that it had asked the Organisation to provide information and data for assessing the effectiveness of CCCP, but the data it received were not

detailed enough or sufficient. A comprehensive review, therefore, had not been possible.

Findings and Comments

9. The Organisation stated that in 2002, AFCD agreed and indicated its support to CCCP. In June 2006, representatives from both the Organisation and AFCD attended a meeting of the local District Council (“DC”) to explain the objectives and operations of CCCP. The Organisation would follow up complaints about stray cat nuisance referred by AFCD and notify the latter of its investigation results. It would also provide AFCD with the information and data requested. The Organisation did not accept AFCD’s view that it had failed to handle this complaint properly and manage CCCP effectively in a zone in the Locality. It estimated that as at April 2011, the number of stray cats in the Locality had decreased by more than 40%.

10. Our investigation found that there were cats kept by shop owners as well as stray cats in the Locality. Some people other than CCCP carers were also feeding cats there. Consequently, the environmental nuisance caused by cats should not be attributed solely to CCCP. Nevertheless, as it was difficult for ordinary people to distinguish domestic cats from stray cats or CCCP carers from other cat feeders, the complainant’s dissatisfaction with AFCD for allowing the Organisation to run CCCP in the Locality was understandable.

11. CCCP in the Locality started in 2005. However, AFCD never reviewed or assessed its effectiveness during the past five to six years. In a document submitted to the local DC in May 2006, AFCD stated clearly that it “had always supported CCCP (run by the Organisation in the Locality).” Furthermore, the chairman of a DC committee had, at a meeting held in October 2006 discussing related matters, requested that AFCD and the Organisation submit a review report nine months after implementation of a pilot scheme in the Locality on TNR. Nonetheless, the DC Secretariat had never received such a review report. Obviously, AFCD had not discharged its duties of handling stray animals conscientiously.

12. Our investigation also found that the Organisation received Government subsidy every year through AFCD for the promotion of animal welfare. Over the last three financial years, 200,000 (i.e. about 32.9%) of the subsidy was spent on CCCP

each year. We consider that AFCD actually played an important role in CCCP. It had the duty to monitor the proper and effective use of the public funds spent on CCCP. When it claimed that it only played an “assisting” role in CCCP and had “no obligation to approve, permit or monitor” the Programme, it was shirking its responsibilities.

13. As regards complaint handling, the complaint was lodged with AFCD. The Department, therefore, had the duty to reply to the complainant direct. However, it only referred the case to the Organisation and asked the complainant to contact the Organisation on her own. It stayed out of the matter and did not bother to find out whether the problem had been properly dealt with. Such indifferent attitude was improper.

14. AFCD had not monitored or reviewed the effectiveness of CCCP and had been indifferent to its progress and apathetic about the complaints generated. It had never pointed out specifically to the Organisation the kind of information it had to submit for review and assessment of the Programme, nor monitored how the Organisation used public funds to run the Programme. This was dereliction of duty from an administrative point of view.

15. Overall, the failure of CCCP in the Locality was attributable to inadequate monitoring by AFCD. The issues involved in this complaint were complicated and the departments concerned included also FEHD and LCSD. Neither FEHD nor LCSD had participated in the Programme, although they did not consider AFCD to have shifted the responsibility of cleaning up cat faeces to them. We consider that AFCD must fulfil its obligation to monitor CCCP properly, work closely with the other relevant departments and animal welfare organisations and step up publicity and public education in order to resolve the cat nuisance problem completely.

16. AFCD had proposed some improvement measures in February 2011, such as to discuss with the Organisation about monitoring of CCCP and complaint handling as well as to amend the “Basic Criteria and Requirements”. It had also intended to ask the Organisation to submit relevant data on CCCP regularly for assessment of the effectiveness of the Programme. However, in July 2011, it suddenly changed its mind, claiming that CCCP was no longer listed in the Organisation’s application for subvention for the year 2011/12 and that therefore it would stop subsidising the Programme. Besides, the Department would no longer have the power to ask the Organisation for any details of CCCP. Accordingly, a review of the Programme’s effectiveness would be unnecessary. We found AFCD’s abrupt change of decision

regarding the Programme in less than six months surprising. Furthermore, AFCD, pleading its heavy workload and that communication with the Organisation was mainly by telephone, was unable to provide us with any documents or records in support of its change of decision. We consider that the Department was either trying to cover its error or very poor in its office administration.

17. We found that the Organisation, in its application to AFCD for subvention, only replaced the item “CCCP” with “controlling the population of stray animals” while the theme of the item remained to “trap and neuter”. Moreover, in the Policy Address published in October 2011, the Administration stated that it would help (animal welfare organisations) implement TNR trial programmes and consult relevant DCs on this matter. Obviously, experimenting with the TNR strategy was still a Government policy objective in the handling of stray animals. AFCD also claimed that, in approving applications by animal welfare organisations for subvention, it would consider each application on its own merits and see if it was in line with prevailing Government policy. Against such a background, AFCD’s sudden stoppage of subsidising CCCP, a TNR programme, appeared to be running counter to the above said Government policy. Had AFCD started monitoring and reviewing CCCP some years ago, it would have accumulated valuable experience and useful data to support the implementation of the Government policy.

18. AFCD failed to discharge its statutory duties to manage stray animals and abate environmental hygiene nuisance to the public. Nor did it proactively tackle CCCP-related complaints or properly monitor CCCP to ensure that the Programme could fulfil its objective of stabilising and reducing the population of stray cats. Its performance had been perfunctory. We could not accept AFCD’s indifferent attitude towards assessing and reviewing the Programme.

19. Overall, The Ombudsman considers the complaint substantiated.

Recommendations

20. The Ombudsman recommended that AFCD:

- (1) conduct a comprehensive review of the effectiveness and future direction of CCCP as soon as possible;

- (2) review the handling procedures of CCCP-related complaints and formulate improvement measures;
- (3) strengthen communication and cooperation with the Organisation regarding CCCP and clarify the kinds of data and information required for assessing the effectiveness of the Programme; and
- (4) step up publicity and public education targeting pet owners in the Locality.

Office of The Ombudsman
February 2012