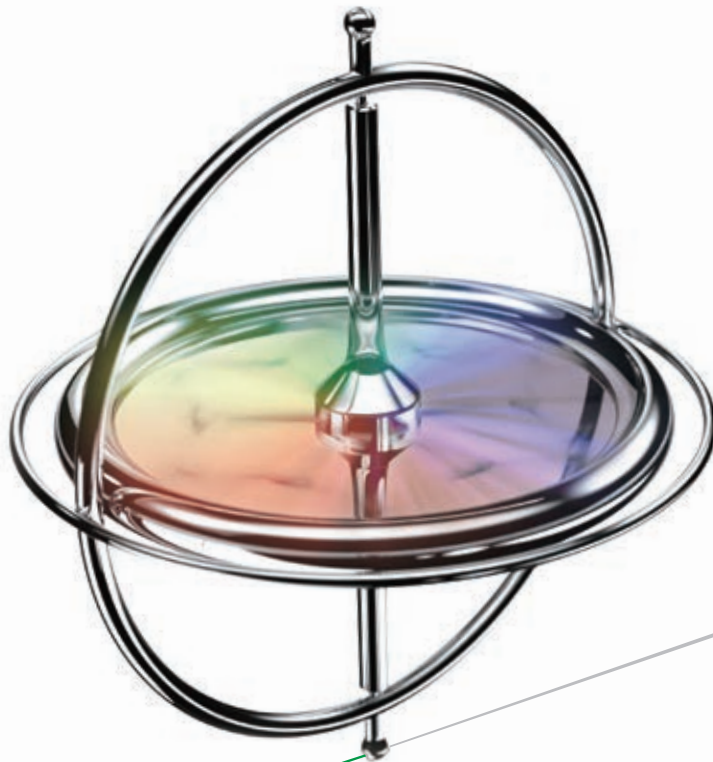


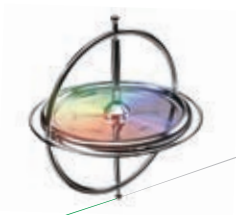
Maintaining Impartiality Without Fear or Favour



The Ombudsman, Hong Kong
Annual Report 2017



**Maintaining Impartiality
Without Fear or Favour**



The Ombudsman, Hong Kong
Annual Report 2017

The Ombudsman, Hong Kong Annual Report 2017

The gyroscope symbolises the neutral and impartial stance maintained by the Office of The Ombudsman in its dealings with citizens on one side and Government departments/public bodies on the other; the Office operates independently without fear or favour, always seeking to find the truth and to make fair conclusions based on objective evidence. The green line represents the Office's professional manner in conducting investigations and clearing up grey areas in public administration.



Vision

To ensure that Hong Kong is served by a fair and efficient public administration which is committed to accountability, openness and quality of service

Mission

Through independent, objective and impartial investigation, to redress grievances and address issues arising from maladministration in the public sector and bring about improvement in the quality and standard of and promote fairness in public administration

Functions

The Ombudsman should serve as the community's watchdog to ensure that:

- Bureaucratic constraints do not interfere with administrative fairness
- Public authorities are readily accessible to the public
- Abuse of power is prevented
- Wrongs are righted
- Facts are pointed out when public officers are unjustly accused
- Human rights are protected
- The public sector continues to improve quality and efficiency

Values

- Maintaining impartiality and objectivity in our investigations
- Making ourselves accessible and accountable to the public and organisations under our jurisdiction
- According the public and organisations courtesy and respect
- Upholding professionalism in the performance of our functions

Performance Measures

- Speed of case work
- Complainants' level of satisfaction with case handling
- Redress obtained
- Recommended improvement measures committed to and/or implemented
- Non-repetition of complaints

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Glossary of Terms

Complainants Charter

1988

20 July

The Commissioner for Administrative Complaints ("COMAC") Bill was passed by the Legislative Council ("LegCo")

1989

1989

1 February

The COMAC Ordinance was enacted

First Commissioner Mr Arthur Garcia, JP assumed office



First Commissioner Mr Arthur Garcia, JP

1 March

The Office of COMAC became operational with staff seconded from Government

15 November

COMAC became a member of the International Ombudsman Institute ("IOI")

1994

1 February

Second Commissioner Mr Andrew So, SBS, OBE, JP assumed office



*Second Commissioner
Mr Andrew So, SBS, OBE, JP*

24 June

The COMAC Ordinance was amended:

- to enable the public to lodge complaints directly, instead of by referral from LegCo Members
- to extend the jurisdiction to some major statutory bodies
- to empower the Commissioner to publish anonymised investigation reports
- to empower the Commissioner to initiate direct investigation

30 June

Advisers were appointed to provide expert advice and professional opinion

1 July

Chinese title of the Commissioner was changed to 「申訴專員」 and the Office to 「申訴專員公署」

1995

1 March

Jurisdiction was extended to investigation into alleged breach of Code on Access to Information

23-25, 27 October

The Commissioner hosted the 15th Australasia and Pacific Ombudsman Conference and the International Ombudsman Symposium

1996

1 March

Non-official Justices of the Peace ("JPs") were enlisted in a JPs Assistance Scheme

24 October

The Ombudsman was elected to the Board of Directors of the IOI

15-16 April

The Ombudsman's Office participated in the establishment of the Asian Ombudsman Association ("AOA") and became a founding member

27 December

English titles were changed to "The Ombudsman" and "Office of The Ombudsman"

1997

1 April

Mediation service was launched as an alternative dispute resolution method

25 July

The Ombudsman's Awards were introduced to acknowledge public organisations handling complaints positively

1998

8 May

The Ombudsman was elected Secretary of the AOA

1999



*Third Ombudsman
Ms Alice Tai, GBS, OBE, JP*

1 April

Third Ombudsman Ms Alice Tai, GBS, OBE, JP assumed office

22 July

The Ombudsman's Awards were extended to acknowledge public officers' contribution towards better quality services

2001

28 March

Telephone complaint service was introduced

19 December

The Ombudsman (Amendment) Ordinance 2001 came into operation:

- to establish The Ombudsman as a corporation sole with full powers to conduct financial and administrative matters
- to empower The Ombudsman to set terms and conditions of appointment for staff
- to adopt systems and processes separate from Government

2000

27 July

The Ombudsman's Awards were further extended to acknowledge public officers handling complaints professionally

2 November

The Ombudsman was elected to the Board of Directors of the IOI

2002

6 September

Office moved to permanent accommodation at Shun Tak Centre in Sheung Wan

16 October

The Ombudsman was elected Secretary of the IOI

2004

1 April

Ms Alice Tai, GBS, OBE, JP started her second term (2004 – 2009) as The Ombudsman

10 September

The Ombudsman was re-elected as Secretary of the IOI

13 December

With the departure of the last civil service secondee, this Office was staffed by a workforce entirely appointed by The Ombudsman under The Ombudsman Ordinance

2005

24 October

A “Memorandum of Administrative Arrangements” (“MAA”) was signed between the Director of Administration and The Ombudsman to set out the general principles and guidelines governing the administrative arrangements for this Office and working relationship with Government



Signing of MAA

28 November – 1 December

The Ombudsman hosted the 9th AOA Conference

2008

5-8 November

The Ombudsman hosted the Board of Directors Meeting of the IOI

2010

19 October

The Ombudsman was elected Treasurer of the IOI

2011

8 December

The Ombudsman was re-elected Secretary of the AOA

2009



*Fourth Ombudsman
Mr Alan Lai Nin, GBS, JP*

1 April

Fourth Ombudsman Mr Alan Lai Nin, GBS, JP assumed office

11 June

The Ombudsman was re-elected to the Board of Directors of the IOI

12 June

Ms Alice Tai, GBS, OBE, JP was awarded IOI Honorary Life Membership

2 November

Ms Alice Tai, GBS, OBE, JP was awarded AOA Honorary Life Membership

2012

5-10 May

The Ombudsman hosted the Mid-term Board of Directors Meeting of the IOI

22-24 May

The Ombudsman coorganised the IOI Regional Training of Asia and Australasia & Pacific Regions with the Commission Against Corruption of Macao

2014

1 April

Fifth Ombudsman Ms Connie Lau, JP assumed Office



Fifth Ombudsman Ms Connie Lau, JP

2016



IOI World Conference

15 November

The Ombudsman was elected Regional President of the IOI (Australasia & Pacific Region)

2015

20 January

Mr Alan Lai, GBS, JP was awarded IOI Honorary Life Membership

20 August

The Ombudsman was elected Director of the IOI (Australasia & Pacific Region)

22 September

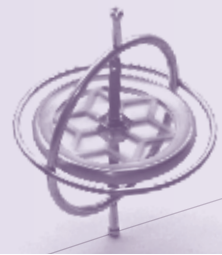
Mr Alan Lai, GBS, JP was appointed to the Pool of Experts of the IOI

25 November

Mr Alan Lai, GBS, JP was awarded AOA Honorary Life Membership



The Ombudsman was re-elected Secretary of the AOA



First of all, I must thank the public for their continued support and trust, Government departments and public bodies for their cooperation and my dedicated staff for their hard work. Together they have helped maintain the forward momentum and output level of the Office.



This year, we have completed 4,974 complaint cases and 11 direct investigations (as compared with 5,242 complaint cases and 8 direct investigations in the year 2015/16). Our complaint investigations and direct investigations together have resulted in 254 recommendations made to Government departments/public bodies, with an acceptance rate of over 80% at the time we compile this Report.

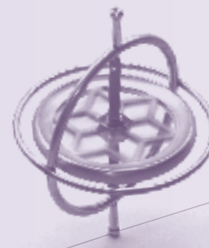
Over the years, we have made hundreds of recommendations covering a wide range of issues to Government departments and public bodies to improve their administration. As in previous years, this Report gives plenty of such examples. My Office monitors the implementation of the recommendations until action is completed and where slippage or default is identified, we demand justifications and supporting evidence from relevant departments. It must be emphasised that we need support from the public, the media, legislators, and from the Government departments/public bodies themselves. And it is precisely for this reason that we publish our direct investigation reports and the reports on major complaint investigations for public knowledge.

I am indeed grateful to our stakeholders for the wide recognition and staunch support given to the work of my Office. Nevertheless, on occasions, people have asked: why do problems we have previously tackled still persist and as such, are we a “toothless tiger” that is not given enough powers to bite?

In the first place, the Ombudsman Office was never meant to be a “tiger”. It functions as an independent watchdog of public administration. The Ombudsman Ordinance empowers it to investigate and report on maladministration of Government departments and public bodies and to make recommendations for remedy or improvement based on the findings of the investigations. Like most of its counterparts in other jurisdictions, it does not have the power of sanctions over Government departments and public bodies. We discover and discern. We instigate changes by laying bare the inadequacies and putting forward persuasive arguments for improvement. The acceptance rate figure stated above shows that most Government departments and public bodies are receptive to my Office’s recommendations. We have never had to resort to reporting non-acceptance or non-compliance to the Chief Executive for subsequent reporting to the Legislative Council as provided for by the Ordinance.

While my Office always strives to offer assistance to aggrieved persons and recommend remedial action by the organisation under complaint, the outcome may not always meet the expectations of the complainant fully. The Ombudsman has to maintain impartiality without fear or favour. We do not take sides. We make comments and recommendations on the basis of solid evidence and objective analysis.

We act as a catalyst for change. Indeed, in some cases, our investigations incite the Government department/public body concerned to make improvements, even before we conclude the investigation and make our recommendations. Two examples of this were our direct investigation on temporary closure of public swimming pools and beaches and our full investigation into a complaint relating to unauthorised alterations of public rental housing units. Better still, in some cases, mere preliminary inquiries by my Office will kick start reviews and reforms. These are unreported and may have gone unnoticed by the public.



It has to be acknowledged, of course, that notwithstanding the actions that have been taken following our recommendations, some problems cannot be eradicated overnight. Notable examples include: complaints regarding street-sleeping, unsolicited telephone calls and unauthorised building works. Many require substantial additional funding, policy change, government re-structuring even, and legislation. These take time. We also have to accept that in the case of some perennial problems, Government departments are in a cat-and-mouse game with the offenders, who constantly devise new ploys to circumvent the enhanced enforcement measures. New circumstances or new technologies will also present new challenges. The once eradicated problems will most likely resurface in a new form or in a new place. Eventually, given our persistence and the collaboration of the Government departments/public bodies concerned, positive results will come about, as in the case of the enactment of the fixed penalty legislation this year, which has helped significantly in tackling the longstanding problem of illegal shop-front extension.

In other instances, proposals for change are bogged down in the political process. I have to express my disappointment over the Government's slow progress in implementing our recommendations made in 2014 for legislation regarding freedom of information and public records. The public has already been waiting too long for a legal safeguard of what amounts to their basic right of access to information held by Government departments/public bodies.

On a happier note, I am pleased that the Government has agreed to introduce an apology legislation, which our Office has strongly advocated and which we believe will encourage Government departments/public bodies to be more forthcoming in extending apologies where due. This will help soothe the sentiments of aggrieved citizens and facilitate settlement of disputes.

Connie Lau

The Ombudsman

31 March 2017



Directorate

Ms Connie Lau, The Ombudsman (Right)

Mr K S So, Deputy Ombudsman (Left)

Mr Tony Ma, Assistant Ombudsman (Second from right)

Mr Frederick Tong, Assistant Ombudsman (Second from left)



Annual Report of The Ombudsman, Hong Kong 2017

Chapters



Our Role, Powers and Obligations



1.1 Established under The Ombudsman Ordinance (“the Ordinance”), Cap 397 of the Laws of Hong Kong, our Office functions as the city’s independent watchdog of public administration. We investigate actions by Government departments and public bodies for administrative deficiencies and recommend remedial measures. We promote good public administration for responsive and responsible, fair and open governance.

Jurisdiction

1.2 The Ombudsman has powers to investigate complaints from aggrieved persons about maladministration by the Government departments and public bodies listed in Part I of Schedule 1 to the Ordinance (see **Annex 1**). We are always on the lookout, and maintain close contact with the Administration, for possible additions to the Schedule.

1.3 Besides investigating complaints received, The Ombudsman may, of her own volition, initiate direct investigation into areas of suspected maladministration usually involving systemic problems or issues of significant public interest.

1.4 Section 2 of the Ordinance defines “maladministration” as inefficient, bad or improper administration, including: unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for others.

1.5 While some organisations such as the Hong Kong Police Force and the Independent Commission Against Corruption are not included in Part I of Schedule 1 to the Ordinance, they are nevertheless subject to our investigation with regard to cases of non-compliance with the Code on Access to Information¹. These organisations are listed in Part II of Schedule 1 to the Ordinance (see **Annex 1**).

Matters Not for Investigation

1.6 The Ombudsman is prohibited by law from investigating certain kinds of matters. For example, cases related to legal proceedings or prosecution decisions, contractual and other commercial transactions, personnel matters and imposition or variation of conditions of land grant are out of bounds. A full list of such prohibitions is at **Annex 2**.



1.7 The Ordinance does not preclude us from investigating **policy** matters, and the way policies are formulated or implemented certainly falls within our ambit; but if a policy is one that has been made after a due process with wide public consultation, publicity and mandate, we normally will not investigate actions that are taken fully in accordance with such a policy. Nevertheless, if The Ombudsman thinks that grave injustice appears to be involved, our Office will not hesitate to start an inquiry and ask the organisation concerned for an explanation. Where a policy is found outdated or inequitable, we will urge the organisation to conduct a review.

¹ The Code was introduced in 1995 to make available to the public as much Government-held information as possible, unless there are valid reasons – related to public, private or commercial interests – to withhold it. It applies to all Government departments, the Hong Kong Monetary Authority and the Independent Commission Against Corruption.

1.8 Similarly, our Office would normally not investigate an organisation's action or decision based purely on **professional judgement**. However, in reality, such cases are few and far between, as most actions/decisions involve, to some extent, managerial/administrative aspects, which come within The Ombudsman jurisdiction. Where necessary, we may consult members of our Panel of Advisers, which comprises experts with good standing in various fields (see **Annex 12**).

Restrictions

1.9 The Ordinance also prescribes other circumstances under which The Ombudsman shall not conduct an investigation. For example, the complainant has had knowledge of the subject of complaint for over two years, is anonymous, unidentifiable or not traceable, or is not the person aggrieved or a suitable representative of that person. Such restrictions are also detailed at **Annex 2**.

1.10 Nevertheless, in some cases, The Ombudsman has discretion whether or not to conduct, or discontinue, an investigation. A case may be taken up, for instance, if the complainant is able to explain satisfactorily why the complaint could not have been lodged within two years.

Powers of Investigation and Recommendation

1.11 Under the Ordinance, The Ombudsman has a wide range of investigative powers: conducting inquiries, obtaining information and documents, summoning witnesses and inspecting premises of organisations under complaint.

1.12 While The Ombudsman's investigation shall not affect any action taken by the organisation under complaint or the organisation's power to take further action with respect to any decision which is subject to the investigation, The Ombudsman may, upon completion of her investigation, report her findings and make recommendations to the organisation for redress or improvement.

1.13 Where an organisation does not adequately act upon her recommendation, The Ombudsman may submit a report to the Chief Executive of the Hong Kong Special Administrative Region. Where a serious irregularity or injustice is found, The Ombudsman may make a further report to the Chief Executive. In such event, the Ordinance requires that a copy of the report be laid before the Legislative Council within one month or such longer period as the Chief Executive may determine.



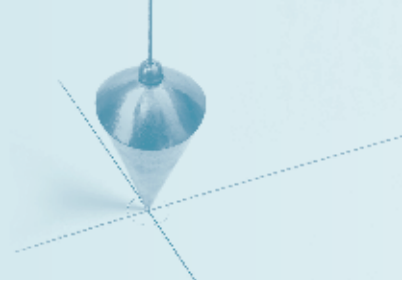
Secrecy Requirement and Transparency

1.14 The Ombudsman, staff and Advisers are all bound by the Ordinance, under penalty of a fine and imprisonment, to maintain secrecy on all matters that arise from any investigation or complaint and come to our knowledge in the exercise and execution of our functions.

1.15 Nevertheless, the Ordinance allows The Ombudsman to publish a report on any of her investigations in such manner as she thinks fit, if she is of the opinion that it is in the public interest to do so.

1.16 Subject to the statutory requirement mentioned in para. 1.14, we consider it our obligation to adopt a policy of openness and transparency. As regards requests for access to information of our Office, we handle them along the lines of the Government's Code on Access to Information¹.

Our Procedures



Complaint Handling

Modes of Complaint

2.1 Complaints may be lodged in person, by email, by fax, or by mail, postage-free if our complaint form is used. Complaints may also be made by telephone for simple cases involving not more than two organisations.

2.2 We can communicate with complainants by email if they so prefer. However, we require complainants to provide us with their postal address for traceability (see **para. 1.9**), because an email address does not provide sufficient information on the whereabouts of the sender.



Complainants' Representation

2.3 For a complaint made by an individual, he/she should normally be the person aggrieved (i.e. the person who may have sustained injustice in consequence of the alleged maladministration) unless that person is unable to act for himself/herself (see **para. 1.9**). For a complaint made on behalf of a body corporate, the complainant has to satisfy The Ombudsman that the body corporate has authorised him/her as its representative. The Ombudsman will allow legal representation if she considers it justified.

Topical Complaints

2.4 From time to time, we receive complaints from more than one person, more or less concurrently, in respect of a particular current issue or hot topic. We term such cases "topical complaints" to distinguish them from complaint cases on disparate issues or topics, so as to reflect more accurately our caseload and the frequency of complaint against different organisations.

Assessment

2.5 Our Assessment Team usually screens all incoming complaints within a day or two to examine whether they come within the statutory purview of The Ombudsman and whether they have a *prima facie* case to warrant investigation. The focus of assessment is on the substance and merits of the complaint, not the number of complainants involved or their degree of persistence. If necessary, the team will seek further information or clarification from the complainant.

2.6 We operate a Duty Officer Scheme under which our investigation officers meet new complainants face-to-face to obtain essential information on their cases for assessment and to brief them on our procedures and restrictions.



2.7 Cases "screened in" go to one of our six investigation teams for inquiry, resolution by mediation or full investigation. For cases "screened out", a recommendation will be made to The Ombudsman for not pursuing the case.

2.8 Where The Ombudsman decides not to pursue a case, we aim to notify the complainant of the reason(s) within 15 working days (see **Annex 3.10** for our performance pledges). Even with cases “screened out” because the complainants are anonymous, unidentifiable, not traceable or not personally aggrieved, we do not dismiss them lightly but may treat such complainants as informers and, based on the information provided, look into the issue for *prima facie* evidence of maladministration. In so doing, we may seek further information from the informers and the organisation(s) concerned as part of our preliminary inquiry to assess the need for initiating a direct investigation (see **paras. 2.22 – 2.25**). More often than not, upon completion of a direct investigation, we publish our investigation report for public knowledge (see **para. 2.28**). Hence, we will not notify informers individually of the outcomes of our investigations.

2.9 In some cases not pursued, as the complainants may be in need of services from some Government departments or public bodies, we take it upon ourselves to advise them where and how to get such services.

2.10 On appeal by complainants of cases “screened out”, the Assessment Team will “re-assess” such cases and present its recommendation to The Ombudsman for decision as to whether the case should be re-opened for follow-up.

Inquiry

2.11 The Ordinance provides that for the purposes of determining whether to undertake a full investigation (see **paras. 2.17 – 2.20**), The Ombudsman may conduct such “preliminary inquiries” as she considers appropriate. In the interest of complainants, we often use this procedure to resolve complaint cases of a general nature more speedily, without unnecessarily resorting to the more time-consuming action of full investigation. For simplicity, we call this “inquiry”.

2.12 Sometimes, substantial relevant information comes with the complaint and/or is available in our previous case files or in publications of the organisation under complaint. It may suffice for us to study and analyse such information and then give the complainant a concluding reply.

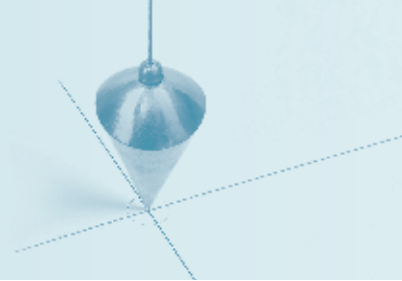
2.13 Where appropriate, we ask the organisation under complaint to respond to us and, to the complainant in parallel. We will examine such response, the complainant’s views, together with any other relevant information or evidence that we may have collected. We will, in conclusion, present our findings to the complainant and make suggestions to the organisation for redress or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.



Mediation

2.14 Alternatively, with the consent of both the complainant and the organisation under complaint, The Ombudsman may try to settle a case by mediation. This dispute resolution method is suitable for cases involving only minor or no maladministration. The two parties meet voluntarily to explore a mutually acceptable solution. Our investigation officers trained in mediation act as impartial mediators.

2.15 For efficiency and convenience to the parties concerned, we also often conduct mediation by telephone and subsequently confirm in writing the agreement reached by the parties.



2.16 If mediation fails to resolve the matter, or the complainant asks for reactivation of his complaint, our Office will assign another investigation officer to start an inquiry or a full investigation afresh. This is to ensure objective processing not influenced by prior knowledge from the mediation process.

Full Investigation



2.17 For complex cases which appear to involve issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, or simply require deeper and fuller probing, our Office will conduct a full investigation.

2.18 This is an extensive and intensive process of probing to establish the facts. Besides examining documents, we may summon witnesses, counter-check data with the complainant and conduct site inspections. Where necessary, we will consult our Advisers.

2.19 We will also invite comments on our preliminary observations from any organisation or individual that may be criticised or adversely affected by the investigation report. When finalised, the report will be presented to the complainant for information and to the head of the organisation concerned for implementation of our recommendations if any.

2.20 In our investigation reports, we usually conclude complaint cases as “substantiated”, “partially substantiated” or “unsubstantiated”. In some other cases, although the specific allegations in the complaint are unsubstantiated, other significant acts or aspects of maladministration are identified. Such cases are concluded as “unsubstantiated but other inadequacies found”¹.

Review

2.21 Complainants dissatisfied with our findings or conclusions may seek a review of their cases by providing supporting arguments and/or information. Such requests are first assessed by the Assistant Ombudsman concerned, who will consider the complainant’s grounds for review and whether the request should be entertained; if so, he will assign a suitable investigation officer to re-examine the case in detail and seek further information or comments from the organisation under complaint as necessary. A submission will eventually be made to The Ombudsman, via the Deputy Ombudsman, to determine whether our original conclusion should be upheld or varied.

Direct Investigation

2.22 The Ombudsman’s power to conduct direct investigations (“DIs”) in the absence of complaints enables her to look at matters at a macro level as opposed to individual cases, and to pursue issues raised by people not personally aggrieved (see **para. 2.8**). Essentially, the former means examining systems with systemic or widespread deficiencies. A DI may be prompted by significant topical issues of community concern, implementation of new or revised Government policies or repeated complaints of particular matters.

¹ Formerly termed “substantiated other than alleged”.

Preliminary Inquiry

2.23 Before deciding whether or not to launch a DI against an organisation, we may conduct a preliminary inquiry², a means that we frequently use to handle complaint cases (see **para. 2.11**). In the process, we, on a confidential basis as in investigations (see **para. 1.14**), seek information/explanation from the organisation concerned. If the inquiry points to the need for further study, we will formally notify the head of the organisation concerned and initiate a DI.

Investigation Methodology

2.24 The procedures for DI are largely akin to those for investigation into individual complaints. However, unlike the latter, we may, depending on the nature of the subject under study, invite views on the subject from relevant sectors and experts as well as the community at large. If so, we will inform the public of the initiation of our investigation.

2.25 In the course of our investigation, we often discuss our preliminary findings with senior officers of the organisation under investigation. Such exchanges are useful in clarifying points of doubt and furthering insight into the issues.

Implementation of Recommendations

2.26 In all our reports, whether on complaint investigation or DI, our recommendations to the organisation concerned aim to make for more open and client-oriented service, transparent and accountable administration, more efficient processes and effective practices.

2.27 Heads of organisations have an obligation to report at regular intervals their progress of implementation of our recommendations. We certainly also consider it our duty to monitor the same.

Publication of Reports

2.28 As empowered by the Ordinance (see **para. 1.15**), if The Ombudsman considers it to be in the public interest to do so, she may announce at media conferences or place on our website DI reports and anonymised reports on complaint investigation, or where appropriate, summaries of the reports. As far as possible, our Office will also answer related enquiries from the media, withholding names and other personal data.



2.29 Naturally, DIs may not all come to a conclusion that there is serious maladministration on the part of the organisation(s) concerned, and some organisations may have taken remedial/improvement measures in the course of our investigation. Nevertheless, the public would wish to know what we have done and what we have found. Hence, with the exception of those DIs on single incidents of little concern to the public, all our DI reports are published in one way or another.

² We used to call such work "DI assessment".

Performance and Results



Enquiries and Complaints Processing

3.1 During the year under report we received 4,862 complaints, including 74 secondary cases¹ in *topical complaints*, and 11,564 enquiries.

Table 3a

Enquiries and Complaints Received			
Year	Enquiries	Complaints	
		Total	Excluding secondary cases
2012/13	12,255	5,501	5,263
2013/14	12,767	5,624	5,226
2014/15	12,940	5,339	4,911
2015/16	12,159	5,244	5,031
2016/17	11,564	4,862	4,788

3.2 With 870 complaint cases brought forward from last year and 4,862 cases received this year, we had a total of 5,732 complaints for processing this year. We concluded a higher proportion (86.8%) of the cases processed than last year and left fewer cases brought forward to the next.

3.3 A breakdown on the number of enquiries and complaints received and processed in the past five years is given in **Annex 3.1**.

Topical Complaints

3.4 We received fewer topical complaints this year, with 74 secondary cases compared to 213 last year. There were two relatively significant groups of topical complaints. The group that generated the largest number of secondary cases (41 cases) concerned the Transport Department's alleged unreasonable demand for a car manufacturer to remove some functionality from the visual display unit of the car. The other group (with 18 secondary cases) related to the alleged change of policy of the Agriculture, Fisheries and Conservation Department in approving applications for trail running events in country parks.



Mode of Lodging Complaints

3.5 The trend of lodging complaints by email (including by the e-complaint form of our official website) continued in the year under report, with 52.4% (2,550 cases) of all the complaints received being lodged through this channel. Complaint by letter through post remained the second most popular mode, bringing in 887 (18.2%) complaints.

¹ For counting purposes, each group of topical complaints is recognised by a "leader case" and the rest are taken as "secondary cases".

Table 3b

Mode of Lodging Complaints					
Mode	2012/13	2013/14	2014/15	2015/16	2016/17
In person	769	633	527	545	515
In writing –					
by complaint form	621	332	361	294	244
by letter through post	752	1,066	918	1,069	887
by fax	540	467	485	403	355
by email	2,144	2,455	2,617	2,507	2,550
By telephone	675	671	431	426	311
Total	5,501	5,624	5,339	5,244	4,862

Complaints Handled

3.6 We completed processing 4,974 (86.8%) of all cases received during the year and those brought forward from last year. Among these, 2,907 (58.4%) were concluded by way of inquiry, full investigation or mediation. The rest (2,067, 41.6%) were closed after assessment for jurisdictional or legal restriction reasons.

3.7 While inquiry remained the chief mode of our complaint handling, comprising about 88% of all cases pursued and completed, a significant proportion of the cases were concluded by full investigation (7.5%) and mediation (4.6%) (see **Table 3c**). Among those assessed and closed, over half were due to the fact that there was insufficient ground to pursue the complaint (**Table 3d**).

Table 3c

Complaints Pursued and Concluded in 2016/17		
	No. of Cases	Percentage
By inquiry	2,556	87.9%
By full investigation	218	7.5%
By mediation	133	4.6%
Total	2,907	100.0%

Table 3d

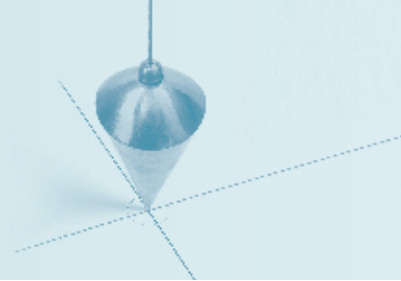
Complaints Assessed and Closed in 2016/17		
	No. of Cases	Percentage
Insufficient ground to pursue	1,102	53.3%
Legally bound	965	46.7%
Total	2,067	100.0%

Major Causes for Complaint

3.8 Based on the allegations made by the complainants, the top five causes for complaint were:

- error, wrong decision or advice (33.8%);
- ineffective control (14.3%);
- delay/inaction (12.9%);
- lack of response to complainants/enquirers (8.4%); and
- faulty procedures (4.3%).

The first four were the same as last year in terms of order but “faulty procedures” retook the fifth position this year, replacing “staff attitudes”. More details are given in **Annex 3.3**.



3.9 Based on the outcome of full investigations into cases, the top five forms of maladministration substantiated, partially substantiated or otherwise found were:

- error, wrong advice or decision (27.4%);
- ineffective control (19.5%);
- delay/inaction (16.8%);
- faulty procedures (14.2%); and
- lack of response to complainants/enquirers (7.1%).

More details are given in **Annex 3.8**.

Most Popular Targets of Complaint



3.10 The most popular targets of complaint based on the number of complaints we pursued and concluded during the year are presented by the league of “Top Ten Organisations” in **Annex 3.6**. While the first six were the same as in last year, the order for some has changed. The Food and Environmental Hygiene Department now topped the league, followed by the Housing Department. The Buildings Department and Lands Department swapped their positions as the third and fourth, followed by the Transport Department and Leisure and Cultural Services Department. With no topical complaints received against the Education Bureau, the Post Office and the Fire Services Department during the year, two of these departments dropped out from the league while the Social Welfare Department came back to the seventh position. The Post Office became ninth and the Immigration Department came in as the tenth.



Outcome of Investigations and Inquiries

3.11 Among the 218 complaints we concluded by full investigation this year, including 24 secondary cases from three groups of topical complaints, 85 (39%) were *substantiated*, *partially substantiated* or *unsubstantiated but other inadequacies found*. The outcome of our full investigations is summarised in **Table 3e**.

Table 3e

Substantiation Rates of Complaints Concluded by Full Investigation		
Classification	No. of Complaints	Percentage
Substantiated	24	11.0%
Partially substantiated	49	22.5%
Unsubstantiated but other inadequacies found	12	5.5%
Unsubstantiated	132	60.5%
Withdrawn/discontinued	1	0.5%
Total	218	100.0%

3.12 Among the 2,556 inquiry cases concluded, inadequacies or deficiencies were found in 452 (17.7%). Details are in **Annex 3.9**.

Direct Investigation



3.13 During the year we completed eleven direct investigations, three more than last year. The issues examined included tree management, mechanism for follow-up actions on marine incident investigation reports, regularisation of illegal occupation of Government land, temporary closure of public swimming pools and beaches due to shortage of lifeguards, regulation of kindergarten application fees, special transport services for persons with mobility difficulties, regulation relating to non-local higher and professional education courses, provision of public columbarium niches, arrangements on display of publicity materials in public housing estates and mechanism for taking follow-up actions against unauthorised alterations by public housing tenants. Fifteen direct investigations were in progress at the end of the year.

3.14 A list of the direct investigations completed is in **Annex 5**.

Recommendations

3.15 We made 177 recommendations on completion of 218 full investigations and 77 recommendations in eleven direct investigations, giving a total of 254 recommendations. Of these 211 (83.1%) have been accepted by the organisations for implementation and 43 (16.9%) were under consideration as at 31 March 2017.



Our Performance

3.16 This year we were able to be fully compliant with our pledged time frames in arranging talks and answering all enquiries. On acknowledging receipt of complaints, we issued acknowledgement within five working days in 99.5% of all complaints received.

3.17 On complaint processing, we concluded 97.3% of the cases falling outside jurisdiction or under restriction within ten working days, as compared with the service pledge of not less than 70%. 99.9% were concluded within the target timeframe of 15 working days (see **Table 3f**). For other cases we concluded 87.6% within three months, as compared to the service pledge of not less than 60%. We further lowered the percentage (to 0.2%) of cases not concluded within our pledge timeframe of six months for reasons such as case complexity, new developments of the case in the mid-stream of the process and delay of organisations under complaint in tendering their replies to us (see **Table 3g**).

3.18 Our performance pledges and record of achievement are listed in **Annex 3.10**.

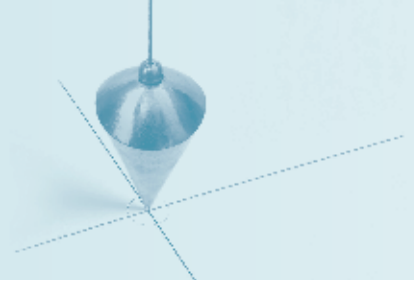


Table 3f

Processing Time for Cases Outside Jurisdiction or Under Restriction			
Year	Response Time		
	Within 10 working days (target: >70%)	Within 11-15 working days (target: <30%)	More than 15 working days
2012/13	89.5%	8.7%	1.8%
2013/14	88.9%	9.7%	1.4%
2014/15	90.9%	8.6%	0.5%
2015/16	98.4%	1.6%	0.0%
2016/17	97.3%	2.6%	0.1%

Table 3g

Processing Time for Other Cases Concluded			
Year	Response Time		
	Less than 3 months (target: >60%)	Within 3-6 months (target: <40%)	More than 6 months
2012/13	86.3%	12.8%	0.9%
2013/14	81.7%	17.2%	1.1%
2014/15	86.3%	13.1%	0.6%
2015/16	84.8%	14.7%	0.5%
2016/17	87.6%	12.2%	0.2%

Overview

3.19 The number of complaints received this year was slightly less than last year, partly because there were fewer topical complaints coming in. Meanwhile, we completed a higher proportion of cases processed and left fewer cases brought forward to next year. We also embarked on more direct investigations, completing eleven compared to eight last year, with 15 still going on. We maintained our effort to promote mediation as a means to resolve suitable complaints and further enhanced our efficiency in handling enquiries and complaint cases.





Reward and Challenge



Enhancing Quality Administration

4.1 On conclusion of our inquiries into complaints we always try to make recommendations to the public organisations concerned to assist them to improve their administration. Very often, this would result in clearer guidelines, new mechanisms or measures and strengthened staff training to achieve higher quality operation, better inter-departmental coordination, enhanced efficiency, improved client service, more effective regulation, more reasonable decisions, and clearer information to the public.

4.2 We monitor the implementation of the more significant recommendations until action is completed. Some of the new measures are easy to take and are quickly introduced. Others may require more in-depth review by the organisation(s) concerned and even a change in policy or legislation. These will usually take longer time to implement. **Annex 10** gives a list of examples of the improvement measures implemented in the year under report.

Mediating Disputes

4.3 This year we resolved almost the same number of cases by mediation as last year. Among the 2,907 cases pursued and concluded, we concluded 133 cases (4.6%) by mediation, compared to 134 cases (4.3%) last year. A total of 22 Government departments and public organisations (21 last year) participated in resolving complaints by mediation (see **Table 4a**), with four newly participating Government departments/bureau, namely, the Civil Engineering and Development Department, Labour and Welfare Bureau, Labour Department and Marine Department.

The top three organisations with the largest numbers of successfully mediated cases were, same as last year, the Housing Department (38 cases, 28.6%), Food and Environmental Hygiene Department (20 cases, 15.0%), and Leisure and Cultural Services Department (12 cases, 9.0%).

Table 4a

Successfully Mediated Cases by Organisation (2016/17)	
Organisation(s)	No. of Cases
Housing Department	38
Food and Environmental Hygiene Department	20
Leisure and Cultural Services Department	12
Transport Department	11
Buildings Department	8
Post Office Water Supplies Department (each with 7 cases)	14
Agriculture, Fisheries and Conservation Department Highways Department Lands Department (each with 5 cases)	15
Social Welfare Department	3
Hong Kong Housing Society	2
Civil Engineering and Development Department Drainage Services Department Environmental Protection Department Fire Services Department Labour and Welfare Bureau Judiciary Labour Department Marine Department Rating and Valuation Department Working Family and Student Financial Assistance Agency (each with 1 case)	10
Total	133

4.4 In terms of nature of complaint, most of these successfully mediated cases concerned complaints about delay/inaction (50 cases, 33.6%), followed by errors or wrong advice/decision (26 cases, 17.4%) and ineffective control (23 cases, 15.4%) (see **Table 4b**). The subject matters under complaint covered a wide spectrum of livelihood issues, ranging from public housing estate management, water seepage/dripping, postal delivery services, park and tree management, booking and use of recreational facilities, stray dogs, noise nuisance and car registration.

Table 4b

Successfully Mediated Cases by Nature of Complaint (2016/17)	
Nature of Complaint	No. of Cases
Delay/inaction	50
Error, wrong advice/decision	26
Ineffective control	23
Lack of response to complaint	22
Poor staff attitude (rudeness, unhelpfulness)	7
Faulty procedures	7
Others [#]	14
Total	149

* One complaint case may have more than one nature of complaint

[#] "Others" include: "Failing to follow procedures", "Negligence, omissions", "Disparity in treatment, unfairness", etc.

4.5 The modes of mediation adopted included face-to-face meetings for more complex cases and telephone mediation for simpler ones. This year we significantly shortened the average processing time in handling a mediation case to 13.4 days (compared to 19 days last year), with 54.9% of the cases completed within 10 days and 88.7% within a month. In some cases the complainant, being unwilling to mediate initially, expressed complete satisfaction after mediation.

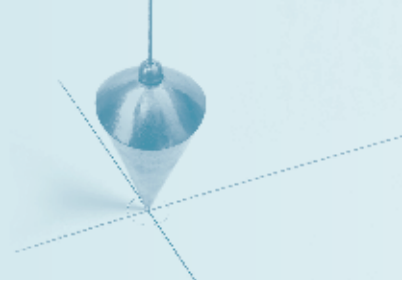


4.6 We sent out questionnaires to the participating parties on conclusion of the cases to obtain their feedback on the process. Among those who had returned the questionnaire, 91.7% of the complainants and all of the participating organisations considered the process to have achieved what they wanted, and 97.2% of the complainants and all of the organisations were satisfied with the work of our mediators. The additional comments given by the complainants were mostly positive, showing their appreciation of the performance of our staff as mediator and our providing a platform for them to resolve the disputes in question in a speedy manner. We were also encouraged by the comments from some Government departments that they would welcome more use of our mediation service to resolve complaints.

4.7 During the year under report, there was only one case not successfully mediated, which was subsequently handled by way of inquiry.

Apology in Complaint Resolution

4.8 We have continued to encourage public organisations to adopt a more open mind towards making of apologies. This year, in the 248 concluded cases where apologies were given by the organisations under complaint, 92.7% (230 cases) were given in the course of or after intervention by our Office. We are happy to note that the Government has initiated the process of enacting an apology legislation.



Transparent Government and Access to Information

4.9 Transparency is an important aspect of good governance. For this the Government has set up a merely administrative regime, namely the Code on Access to Information (“the Code”), to commit itself to openness. Although we have a mandate to investigate Code-related complaints and point out Government’s unreasonable refusals of public requests for information, our decisions are not statutorily binding and we cannot impose sanctions for non-compliance with the Code.

4.10 Back in March 2014, upon completion of a direct investigation on the access to information regime in Hong Kong, we recommended that Government consider introducing a law to underpin citizens’ right of access to information. We note Government’s position to wait for the outcome of the Law Reform Commission’s study on the current regime before taking onboard our recommendation. Yet, citizens’ expectations for open and accountable government are bound to rise over time, as reflected in the number of Code-related complaints we received in recent years. Government should, therefore, take the matter forward sooner rather than later.

4.11 During the year, we received a total of 85 complaints about access to information which strikes a new record high of this category of complaints.



Government departments/agencies covered by the Code

4.12 Among the 85 access-to-information complaints we received, 72 were Code complaints against Government departments or agencies, compared to 60 last year. Most of these complaints were made by individual citizens who had made requests for information related to their own particular circumstances or experience with public services. Some other complaints were made by journalists, politicians and social advocates who understandably wanted to know about the activities and decisions of public authorities.

4.13 We concluded 72 cases, including 16 carried forward from last year. Failings were found in 32 (44.4%) of those concluded cases, with 16 cases involved unjustifiable refusal. One of the commonly but often inappropriately cited reasons for refusal to provide information was confidentiality of third party information. In some cases, Government departments were found to have mistakenly interpreted information they possessed to be information owned by third parties and refused disclosure.

4.14 Notably in Case No. OMB2016/0117(I) (see **Annex 9**), the Housing Department refused to give the complainant, a tenant in a factory estate of the Department who was faced with a rent increase, information on the percentages of rent increases and the actual amount of rents applicable to other tenants in the same factory estate. In Case No. OMB2015/4140(I) (see **Annex 9**), the Leisure and Cultural Services Department refused to disclose to a legislator the management agreement in relation to the Avenue of Stars in Tsim Sha Tsui signed between the Department and a property developer. In both cases, the departments wrongly “disowned” the information in question, treating it as third party information, and refused disclosure. We consider the departments to have erred in applying the Code and neglected the public interest in disclosure for the public to monitor whether public resources and facilities were allocated, utilised and managed in a fair and just manner.

Organisations not covered by the Code



4.15 The Code is applicable to Government departments and a few named Government agencies only. Some public organisations have voluntarily adopted the Code, but some have not. When we receive complaints against organisations that have not adopted the Code, we will examine the allegations along the lines of the major principles of the Code.

4.16 During the year, we received 13 complaints against eight organisations not covered by the Code, with eight cases against the Hospital Authority. We concluded 13 cases during the year, with failings found in four of them.

Table 4c

Number of Access-to-Information Complaints Received in the Past Five Years		
Year	No. of Complaints Received	
	Organisations covered by the Code	Organisations not covered by the Code [#]
2012/13	62*	—
2013/14	78	—
2014/15	46*	9
2015/16	60*	6
2016/17	72	13

* The figures include cases (three in 2012/13, one in 2014/15 and two in 2015/16) not recognised as such complaints in the year when they were received but so classified on conclusion in the subsequent year.

[#] Statistics for this category of cases only started to be kept from the year of 2014/15.

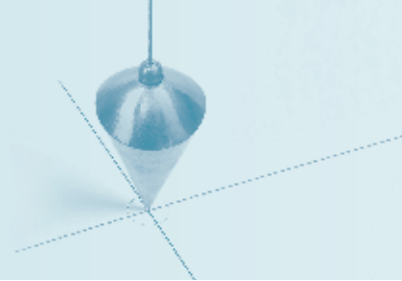
Issues Examined by Direct Investigations

4.17 During the year we completed 11 direct investigation ("DI") on a wide range of systemic issues in public administration. The findings of nine were publicly announced at press conferences, the summaries of which are given in **Annex 6** and briefly described below. For the remaining two, we uploaded the full reports on our official website and issued press releases to inform the public.

Government's tree management regime and practices



4.18 The Government's decisions to remove trees requires a balance between public safety and conservation. This DI aimed to examine the Government's tree management regime and practices, with the focus on the effectiveness of the Government's work to ensure public safety. Our investigation found five major inadequacies of the Government, including the lack of a dedicated grade of officers responsible for tree management, need for the Tree Management Office ("TMO") under Development Bureau ("DEVB") to enhance its monitoring of the performance of tree management duties by other Government departments, TMO's failure to effectively oversee Government departments' actions on public complaints/reports, lack of legislation and limited regulation for management of trees on private land, and the need to enact legislation on tree management. We made 11 recommendations to the DEVB for improvement.



Government's handling of four stonewall trees



4.19 On 7 August 2015, the Highways Department ("Hy D") removed from a stonewall on Bonham Road four Chinese banyan trees for the sake of ensuring public safety. On the day the four trees were removed, the local District Office under the Home Affairs Department ("HAD") only notified a few members of the District Council of Hy D's decision and justifications of removing the trees. The incident aroused public debate and queries. Our investigation found that the actions taken by Hy D and HAD appropriate and reasonable. We nevertheless suggested that HAD set out clear guidelines for determining whom to be notified in case of similar incidents to avoid unnecessary queries and challenges.

Marine Department ("MD")'s follow-up mechanism on marine incident investigation reports

4.20 In October 2012, a serious marine incident occurred off Lamma Island ("the Lamma Incident"). One of the vessels involved was found not fitted with a watertight door, resulting in water ingress and rapid sinking of the vessel after the collision. Subsequently, the media reported that in 2000, a Government vessel

sank after water had entered its hull because the watertight bulkheads on board were not intact, and that the relevant marine incident investigation report had recommended MD to examine the watertight bulkheads for all vessels of the same type. The Lamma Incident cast doubt on whether MD had fully implemented the recommendations of marine incident investigation reports all along.

4.21 Our investigation found that MD had in the past adopted a "lax" approach in its follow-up actions and in some cases, not taken action for years after completion of investigation. The undesirable situation had continued until June 2013 when MD set up a computer database to monitor the progress of implementation of the recommendations made in marine incident investigation reports ("the new mechanism"), following criticism from the Audit Commission. Nonetheless, there was still much room for improvement in the new mechanism, since MD mainly relied on the vessel companies and related agencies to report their progress of implementation without itself making further verification. We made five recommendations to MD for improvement.



Lands Department (“Lands D”)’s system of regularisation of illegal occupation of Government land and breach of lease conditions



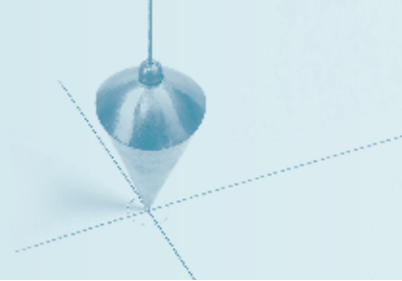
4.22 Lands D has legal power to take land control actions against illegal occupation of Government land and lease enforcement actions against breach of lease conditions by a landowner. Nevertheless, in practice, Lands D allowed illegal occupiers of Government land and landowners in breach of the lease conditions to apply for regularisation of such irregularities by way of short-term tenancy and short-term waiver of lease conditions respectively. Moreover, when an application for regularisation is being processed, Lands D would normally suspend its enforcement actions, resulting in possible prolonged nuisance or inconvenience caused to nearby residents as the irregularities persist. Our investigation found that the Lands D had been too lax and passive in dealing with illegal occupation of Government land and breach of lease conditions. The regularisation system itself was not well thought out and prone to abuse as the applicants did not have to pay a price for the breaches they had already committed. We made five recommendations to Lands D for improvement.

Temporary closure of public swimming pools/beaches due to shortage of lifeguards



4.23 In recent years, there have been increasing incidents of partial or even complete closure of swimming pools/beaches under the Leisure and Cultural Services Department (“LCSD”) because of insufficient lifeguards on duty. Such suspension of services has not only caused a waste of public facilities and resources, but also inconvenience to the public. While industrial actions staged by lifeguards had at times led to partial or complete closure of swimming facilities, LCSD has a duty to ensure the effective operation of the facilities under normal circumstances.

4.24 Our investigation revealed the following inadequacies in LCSD’s management of swimming pools/beaches: (a) ineffective deployment of lifeguard manpower upon lifeguards taking leave at short notice due to sickness or other reasons; (b) lax monitoring of sick leaves taken by staff and ineffective execution of Civil Service Regulations governing sick leave; (c) failure to set out clear working guidelines for lifeguards who can only perform light duties due to health reasons; (d) mishandling of lifeguards reporting late for work; (e) failing to establish clearly the induction training requirements for newly recruited lifeguards affecting manpower deployment; and (f) inadequate communication with lifeguards’ unions. We made 12 recommendations to LCSD for improvement.



Education Bureau (“EDB”)’s regulation of kindergarten application fees

4.25 A publication by EDB revealed that 36 kindergartens in Hong Kong had the Bureau’s approval for collecting an application fee that exceeds the \$40 ceiling. EDB stated that, before giving its approval, it always examined the justifications given by the kindergartens for charging an application fee above the ceiling. However, our investigation found that EDB did not have specific criteria for vetting and approving kindergartens’ applications for collecting application fees above the ceiling. It also failed to scrutinise whether the kindergartens were using various pretexts to make a profit through collection of application fees. We made five recommendations to EDB for improvement.

Government regulation of special transport services (“ST services”) for persons with mobility difficulties



4.26 There were about 320,500 persons with mobility difficulties in Hong Kong in 2013 (about 4.5% of the total population). While barrier-free facilities for persons with disabilities are available on some means of public transport, to those disabled persons who cannot use public transport because of physical handicaps, the provision of ST services is very important. Back in 2007, the Rehabilitation Advisory Committee formulated the Hong Kong Rehabilitation Programme Plan (“the Programme Plan”) which set out the policy objectives to facilitate the integration of persons with disabilities into the community and included a proposal for the Government to provide ST services to those who cannot use public transport.

4.27 Our investigation revealed a serious undersupply of ST services, resulting in tens of thousands of unsuccessful requests every year and very long time of advance booking for such services. Some even had to resort to unlicensed rehabilitation vehicles (“URVs”), leaving the safety of the disabled passengers worrisome and the adequate safeguard of their rights and interests questionable.

4.28 Our investigation also revealed inadequacies at the policy level and in policy implementation: the Labour and Welfare Bureau (“LWB”), being the relevant policy bureau, failed to seriously assess the demand for ST services, set targets for service provision and coordinate the effective utilisation of ST services; the Transport Department (“TD”), being the executive department monitoring the performance of Rehabus (an ST service) and other public transport services, was not proactive enough to promote the introduction of wheelchair accessible taxis and minibuses; both LWB and TD disclaimed responsibility in combating the problem of URVs; and the Government adopted a passive attitude in implementing the Programme Plan. We made 11 recommendations to the Government for improvement.

Education Bureau (“EDB”)’s regulation of institutions offering non-local higher and professional education courses



4.29 Noting media reports that unscrupulous operators of non-local courses of higher and professional education might have conspired with students for premature award of academic or professional qualifications, or omission of part of the

course requirements, we conducted this DI to examine EDB's mechanism for regulating non-local courses. Our investigation found that EDB did not conduct periodic inspections of non-local course operators' premises though it is empowered under the law to do so, nor did it devise any regulatory procedures to prevent operators from conspiring with students such that the students could be awarded academic or professional qualifications with omission of part of the course requirements. We made three recommendations to EDB for improvement.

Housing Department ("HD")'s mechanism for action against unauthorised alterations by public housing tenants



4.30 Under the Tenancy Agreement public housing tenants are not allowed to remove any original fixtures or facilities in their units without prior written permission of HD, or damage, alter or tamper with any interior fixtures or other facilities. These requirements are to ensure structural safety of the buildings and encourage tenants to make good use of the original fixtures and facilities. Noticing from complaints received that HD had failed to properly follow up cases of unauthorised alterations by tenants, we initiated this DI.

4.31 Our investigation revealed that HD had introduced a new mechanism for handling cases of unauthorised alterations in August 2016 ("the new system"), in response to our recommendations made in the full investigation report of a complaint case of

similar nature. The mechanism prior to August 2016 ("the old system") was found to have been plagued with various problems including delay in taking follow-up actions, failure to follow established procedures by staff and lack of monitoring by senior management. The new system has plugged some of the loopholes of the old system but the reclassification of permissible alteration items under the new system may pose risk of seepage nuisance. We consider it necessary for HD to regularly review the effectiveness of the new system and make further enhancement as and when necessary. We made a total of nine recommendations to HD for improvement.

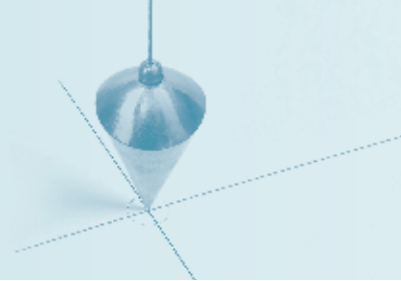
Challenges from Parties



Re-assessment of Cases

4.32 All incoming complaints are first assessed as to whether we can or should take up in accordance with the provision of The Ombudsman Ordinance. Complaints that are legally out of bounds or otherwise inappropriate for us to investigate will be screened out. Complainants disagreeing with our decision may request to have their cases re-assessed.

4.33 During the year we received 254 requests for re-assessment, with 152 subsequently re-opened for inquiry.



Review of Cases

4.34 For cases concluded after we have examined the issues under complaint, complainants dissatisfied with our findings or conclusions may seek a review. If the complaint provided material new facts or arguments, a review will be conducted.

4.35 This year we received 67 requests for review. We declined 34 requests and conducted 33 reviews. I varied my decision in three cases after review and upheld my original decision for the remaining 30, as shown in **Table 4d**.



Judicial Review and Litigation

4.36 A complainant not satisfied with my decision may, apart from requesting a review by me, seek a judicial review by the court. During the year a complainant who had complained against the Immigration Department for unreasonably approving his wife's application for their child's re-entry permit based on insufficient documents applied for judicial review against my decision that his complaint was not substantiated. The application was refused by the judge in February 2017 on paper examination of the application.

Challenging Complainant Behaviours

4.37 Complainants with challenging behaviours pose a problem to all organisations engaged in complaint handling work. In the year we had complainants who kept pressing us for review of their cases despite that we had explained to them in detail multiple times the reasons for our findings and conclusion of their cases. Some of them would continuously send in voluminous materials, while others would engage our case officers in lengthy telephone conversations, or make complaints against all staff who have handled their cases. We deal with such demands according to laid down procedures. When we consider to have given sufficient response to these complainants, we have to cut our communication, lest we would not be able to dedicate the necessary staff time and resources to other complainants and our other duties.

Response Time of Organisations

4.38 This year there were again a few occasions when organisations took relatively long time to respond to our inquiries and sought repeatedly an extension for reply. This is understandable in some cases where wider consultation within the Government, including seeking legal advice, was needed by the organisations concerned before giving an appropriate response to us. In other cases the organisations seemed to have difficulty in formulating their responses to us. To expedite the process, we would hold meetings with the organisations' senior managements to bring the pertinent issues under focus. Such meetings proved useful in assisting organisations to give us earlier responses.

Table 4d

Outcome of Review Cases						
Result	Reason	New evidence		New perspective		Total
		Yes	No	Yes	No	
Decision varied		1	–	2	–	3
Decision upheld		–	30	–	–	30
						33

Overview



4.39 We are pleased that our investigation work and recommendations have resulted in administrative improvements in many Government departments and public organisations in a wide range of areas, in terms of higher quality administration and better services to the public. While we also saw more training given to public servants on the Code on Access to Information following our recommendations on conclusion of our investigations into individual complaints, we still found many Government departments and public organisations not paying adequate attention to the issue of transparency in governance. As a matter of fact, we received more complaints relating to access to information in recent years, against both Government agencies covered by the Government Code and public organisations not bound by it. We consider it important for the Government to speed up its pace in legislating for freedom of information.

4.40 Our effort to promote mediation as a means to resolve disputes has continued to bear fruit. A higher proportion of complaints were settled by mediation in a shorter timeframe and more organisations have indicated their willingness and even preference to resolve complaints through mediation.

4.41 We dedicated more resources to direct investigation work during the year and completed three more investigations than last year. This area of our work continued to attract high media attention, in terms of both coverage and editorial commentaries.

4.42 As in the past, we will always strive for better results and greater efficiency in discharging our functions and look forward to continual support from the public and cooperation from Government departments and public organisations.



Office Administration

Staffing

5.1 Our strategy of recruiting graduates at the entry rank of Assistant Investigation Officer, offering them a clear career path and early nurturing, had started to bear fruit. A healthy contingent of home grown investigation officers had gradually taken shape. As in previous years, we supplemented our regular staff with temporary investigation officers who had rich experience in public administration to meet the service demand for ad hoc projects.

5.2 During the year, we appointed seven investigation staff (three at Investigation Officer level and four at Assistant level) through internal promotion and open recruitment. Our organisation chart is at **Annex 11**.

Training

5.3 As an ongoing effort to equip our staff with the skills required for efficient and effective discharge of their duties, we continued to enrich our training programme. Apart from organising our own vocational training workshops, officers were supported to attend training programmes available in the market.

5.4 In the year, we organised two rounds of induction programmes for new recruits to facilitate their integration into the new working environment and enable them to become fully operational as quickly as practicable.



Induction programme

5.5 To promote the use of mediation as a means of conflict resolution in suitable complaint cases, we organised a mediation and complaint handling workshop for investigation staff, with a view to keeping them abreast of latest mediation theories, techniques and practices. A workshop on Effective English Writing for investigation staff and other officers was conducted to enhance their mastery of the language in report writing and other official correspondences.



Mediation workshop

Table 5a

Staff Establishment			
Staff Category	As at 31.3.2015	As at 31.3.2016	As at 31.3.2017
Directorate	4	4	4
Investigation	63	65	65
Administrative & Support	49	51	51
Total establishment	116	120	120

5.6 On our invitation, the Government Records Service provided briefing to our staff on the latest practice in record management and filing practice. We also supported staff to attend training courses on the use of software applications for better visual design and presentation.

5.7 To enhance our exposure to best practices in complaint handling in different jurisdictions, we sent our officers to attend two conferences, one organised by the Australian and New Zealand Ombudsman Association in Melbourne in May 2016 and the other by the International Ombudsman Institution (“IOI”) in Bangkok in November 2016.



IOI World Conference

Occupational Health and Safety

5.8 In the year, we continued implementing the Employee Assistance Programme to promote and offer necessary coaching and counselling to our staff in achieving personal and professional effectiveness as well as work-life balance. Two wellness promotion workshops were held to equip staff with techniques and tips in managing stress and staying healthy.

5.9 We attach great importance to providing a healthy working environment to our staff. We have participated in the Indoor Air Quality Certification Scheme for Offices and Public Places since 2014 and have continued to attain the “Good” class certification.



Wellness promotion workshop

Complaints against the Office

5.10 This year, we handled a total of 46 complaints against the manner of our staff and/or our work procedures. Of these, four were found partially substantiated. On each occasion, we provided appropriate counselling to the officers concerned.

5.11 Over 60% of the complaints against this Office stemmed from complainants’ dissatisfaction with our conclusions and decisions on their cases against Government departments and public organisations. In fact, these are the comments on our findings and do not reflect on the quality of our inquiries/ investigations. There is a review mechanism for review of our findings. Where there are reasonable grounds for re-assessment or review, we will do so. Nevertheless, we take complaints most seriously as each complaint provides us with an opportunity to review our work systems and practices.

Table 5b

Complaints against the Office concluded in 2016/17		
Classification	No. of complaints concluded	Percentage
Substantiated	0	0.0%
Partially-substantiated	4	8.7%
Unsubstantiated	42	91.3%
Total	46	100.0%

Publicity and External Relations

6.1 We have continued to attach great importance to our publicity efforts. This year, we have increased the use of social and online media to reach out to our stakeholders. Traditional media and promotion activities remained to be the major carrier of our messages.

Public Education and Promotion

TV Programme

6.2 While we must keep complaint information confidential as required by law, I am empowered to publicise anonymised cases if I consider it to be in the public interest. To illustrate our work in a more palatable way, we re-created some representative cases in the form of drama stories. With the support of Radio Television Hong Kong, “The Ombudsman 5-minuter”, comprising five episodes, was produced and broadcast in various media starting April 2016, including local television channels, online social platforms and public transport. We further promoted online viewership through advertising on social platforms. The result was encouraging. Building on this momentum, another series of eight episodes of 30-minute drama was being produced for broadcast in April 2017. All our TV programmes are available on our official website.



The launching ceremony of “The Ombudsman 5-minuter”

Advertising Commercials

6.3 Our TV commercial under the theme of “Say NO to Maladministration” was well-received by the public. We therefore decided to continue using this “Tai-Chi”, a Chinese traditional physical exercise, metaphor to hammer home our message through TV and radio channels.



Campaign of “Say NO to Maladministration”

Press Conferences and Media Events

6.4 In the year under report, I hosted four press conferences to announce the results of eight direct investigation reports and two investigation reports on complaints cases. I also announced, through press release, another two direct investigation reports and declared the initiation of four direct investigations inviting public views on the issues concerned.



Press Conference

6.5 Apart from press conferences, I attended a number of media interviews in which I elaborated on my work and promoted public understanding of my role and jurisdiction.



Media gathering



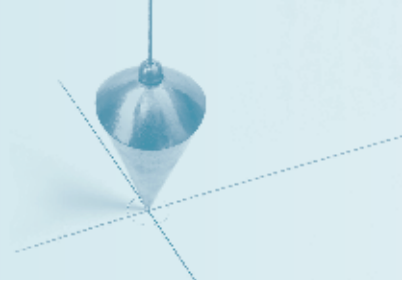
15th Anniversary of becoming an independent statutory body



Media interview

Table 6a

Press Conferences/Media Events	
20 April 2016	The Ombudsman 5-minuter launching ceremony
12 May 2016	Declaration of direct investigation into Education Bureau's regulation of application fees collected by kindergartens
31 May 2016	Declaration of direct investigation into Housing Department's mechanism for taking follow-up action against unauthorised alterations by public housing tenants
14 June 2016	Announcement of findings of direct investigation on: <ul style="list-style-type: none"> i) Marine Department's follow-up mechanism on recommendations made in marine incident investigation reports ii) Government's tree management regime and practices iii) Government's handling of four stonewall trees along Bonham road
28 June 2016	Announcement of findings of direct investigation on Government's follow-up actions regarding insufficient provision of public columbarium niches
12 July 2016	Media gathering: briefing on annual report 2016
23 July 2016	Radio interview on the work of the Office
4 August 2016	Declaration of direct investigation into Social Welfare Department's support services for persons with mental health problems and their families, carers and neighbours
13 September 2016	Announcement of findings of direct investigation on: <ul style="list-style-type: none"> i) Lands Department's system of regularisation of illegal occupation of Government land and breach of lease conditions ii) Temporary closure of public swimming pools/beaches under Leisure and Cultural Services Department due to shortage of lifeguards
16 November 2016	Declaration of direct investigation into Government's control over landfilling and fly-tipping activities on private land
19 December 2016	Announcement of findings of: <ul style="list-style-type: none"> i) Direct investigation on Education Bureau's regulation of kindergarten application fees ii) Two full investigation reports on "Complaints against Buildings Department for defective follow-up actions on removal orders"
19 January 2017	Announcement of findings of direct investigation on arrangements on display of publicity materials in public housing estates
2 & 9 February 2017	Radio interview on our role, jurisdiction and case sharing
9 March 2017	Announcement of findings of direct investigation on: <ul style="list-style-type: none"> i) Education Bureau's regulation of institutions offering non-local higher and professional education courses ii) Government regulation of special transport services to persons with mobility difficulties



Talks for Departments and Organisations

6.6 Government departments and organisations under our schedule are our important stakeholders. My office conducted a total of ten outreach talks to share with public officers our scope of work and experience in complaint handling.



Talk for Government department

Working with Professionals, Community Leaders, etc.

Advisers and JPs

6.7 In the course of our work, we came across professional and technical issues on which we have sought expert advice. For this, I relied on the unstinting support from my Advisers. The Justices of the Peace (“JPs”) under the JPs Assistance Scheme has also



Seminar on “Electronic Road Pricing Scheme”

helped promote our work through their extensive network. In June 2016, a seminar on “Electronic Road Pricing Scheme” was conducted in which speakers from the Transport Department elaborated on the Pricing Scheme and our Advisers and JPs shared their opinions.

Legislative Councillors

6.8 I meet Members of the Legislative Council annually to update them on our work and hear their views. This year’s meeting was held on 21 December 2016 and we had a fruitful exchange of views on issues of public concern.

The Ombudsman’s Awards

6.9 This year marked the 20th year of The Ombudsman’s Awards. Every year, the Awards honour government departments/public organisations and officers’ exemplary performance in complaint handling and serving the public. This year’s Grand Award went to the Legal Aid Department, whereas the Mandatory Provident Fund Authority and the Transport Department were the runners-up. Individual awards were presented to 37 public officers. Over 200 guests attended the presentation ceremony to celebrate and share the joy with the award recipients on 27 October 2016.



The Ombudsman’s Awards presentation ceremony

Table 6b

Winning Organisations for 2016
Legal Aid Department – Grand Award
Mandatory Provident Fund Schemes Authority
Transport Department

Table 6c

Individual Awards for 2016	
Organisation	No. of Awardees
1823, Efficiency Unit	1
Airport Authority	2
Buildings Department	1
Civil Engineering and Development Department	1
Companies Registry	1
Consumer Council	2
Correctional Services Department	1
Customs and Excise Department	1
Drainage Services Department	2
Electrical and Mechanical Services Department	2
Estate Agents Authority	2
Fire Services Department	2
Food and Environmental Hygiene Department	1
Highways Department	2
Home Affairs Department	1
Hong Kong Examinations and Assessment Authority	1
Hospital Authority	2
Immigration Department	2
Land Registry	1
Mandatory Provident Fund Schemes Authority	2
Post Office	2
Social Welfare Department	1
Water Supplies Department	2
Working Family and Student Financial Assistance Agency	2

Overseas and Mainland Liaison

6.10 My Office has participated actively in international events to stay in touch with development in the ombudsman arena worldwide. As Honorary Secretary of Asian Ombudsman Association (“AOA”), I attended the AOA Conference and its Board of Directors Meeting in Kazan, Tatarstan in August 2016 and delivered a keynote speech on “Experience in the Implementation of Electronic Services for the Public”.

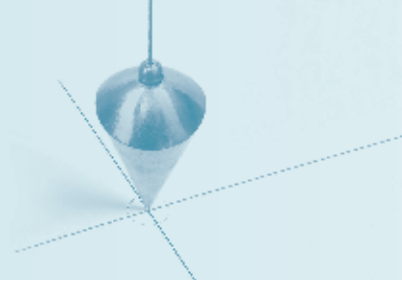


AOA Board of Directors Meeting in Kazan, Tatarstan

6.11 I joined the Australasia and Pacific Ombudsman Region (“APOR”) Conference and the Australian and New Zealand Ombudsman Association Conference (“ANZOA”) in Melbourne, Australia in May 2016. At the Conference, I spoke on “Building Relationships with Stakeholders”. In November 2016, I led a delegation from my Office to the International Ombudsman Institute (“IOI”) Board of Directors Meeting, General Assembly and World Conference held in Bangkok and delivered a keynote speech on the “Evolution of Ombudsmanship of Hong Kong”. At the meeting, I was greatly honoured to be elected as the Regional President of the Australasia and Pacific Region of IOI.



APOR Regional Meeting & ANZOA Conference in Melbourne



IOI Board of Directors Meeting, General Assembly and World Conference in Bangkok

6.12 To foster exchanges on the practices of public administration, we welcome local, mainland and overseas visiting groups. Throughout the year, we received 22 group visits. The list of visitors is at **Annex 13**.



Visit of Dr Mehdi Fakheri, the Consulate General of Iran



Visit of Mr Wang Xie, Deputy Director General, Shanghai Municipal Bureau of Justice

Looking Ahead

6.13 The society is evolving at an unprecedented pace. New technologies and new modes of communication are constantly emerging. We will continue to be creative and flexible in our promotion work. We hope we could extend our reach as far as possible so that everyone can play a part in realising our vision and mission.



Poster of "The Ombudsman Special II"



One Year at a Glance



Press Conference on 13 Sep 2016



Media Gathering on 12 Jul 2016



Press Conference on 19 Dec 2016



Press Conference on 14 Jun 2016



Launching Ceremony of "The Ombudsman 5-Minuter" on 20 Apr 2016



Our Investigation Officers conducted outreach talk for Social Welfare Department on 28 Nov 2016



Seminar for Advisers and JPs on 21 Jun 2016



In the capacity as Honorary Secretary of the Asian Ombudsman Association ("AOA"), The Ombudsman attended the AOA Conference and its Board of Directors Meetings in Kazan, Tatarstan on 10-11 Aug 2016



The Ombudsman delivered a presentation at The Chinese General Chamber of Commerce Luncheon on 10 Jun 2016



The Ombudsman attended the Australasia and Pacific Ombudsman Regional Meeting in Melbourne on 3 May 2016



Ms Deborah Glass, the Victorian Ombudsman visited the Office on 29 Jul 2016



Mr Wang Zhenmin, Director General of the Legal Department of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region visited the Office on 29 Jun 2016



*Media Interview
on 2 Feb 2017*



*Presentation ceremony of The Ombudsman's
Awards on 27 Oct 2016*



The Ombudsman led a delegation to the World Conference of International Ombudsman Institute ("IOI") in Bangkok on 17-19 Nov 2016. She was elected as the Regional President of the Australasia and Pacific Region of IOI at the Board Meeting



As officiating guest, The Ombudsman gave a keynote speech at the Graduation Ceremony of Pentecostal School on 28 May 2016

Annual Report of The Ombudsman, Hong Kong 2017

Annexes





List of Scheduled Organisations



Organisations Listed in Part I of Schedule 1, Cap. 397

	Organisation	Abbreviation
1.	Agriculture, Fisheries and Conservation Department	AFCD
2.	Airport Authority	AA
3.	All registries and administrative offices of courts and tribunals for which the Judiciary Administrator has responsibility	JA
4.	Architectural Services Department	Arch SD
5.	Audit Commission	Aud
6.	Auxiliary Medical Service	AMS
7.	Auxiliary Medical Service (Government department)	AMS
8.	Buildings Department	BD
9.	Census and Statistics Department	C & SD
10.	Civil Aid Service	CAS

	Organisation	Abbreviation
11.	Civil Aid Service (Government department)	CAS
12.	Civil Aviation Department	CAD
13.	Civil Engineering and Development Department	CEDD
14.	Companies Registry	CR
15.	Competition Commission	Com C
16.	Consumer Council	CC
17.	Correctional Services Department	CSD
18.	Customs and Excise Department	C&ED
19.	Department of Health	DH
20.	Department of Justice	D of J
21.	Drainage Services Department	DSD
22.	Electrical and Mechanical Services Department	E & MSD
23.	Employees Retraining Board	ERB
24.	Environmental Protection Department	EPD
25.	Equal Opportunities Commission	EOC
26.	Estate Agents Authority	EAA
27.	Financial Reporting Council	FRC
28.	Fire Services Department	FSD
29.	Food and Environmental Hygiene Department	FEHD
30.	General Office of the Chief Executive's Office	GOCEO
31.	Government Flying Service	GFS
32.	Government Laboratory	Govt Lab
33.	Government Logistics Department	GLD
34.	Government Property Agency	GPA
	Government Secretariat	GS
35.	– Chief Secretary for Administration's Private Office	CSAPO
36.	– Chief Secretary for Administration's Office	CS
37.	– Civil Service Bureau	CSB



	Organisation	Abbreviation
38.	– Commerce and Economic Development Bureau	CEDB
39.	– Constitutional and Mainland Affairs Bureau	CMAB
40.	– Development Bureau	DEVB
41.	– Education Bureau	EDB
42.	– Environment Bureau	ENB
43.	– Financial Secretary's Private Office	FSPO
44.	– Financial Secretary's Office	FS OFF
45.	– Financial Services and the Treasury Bureau	FSTB
46.	– Food and Health Bureau	FHB
47.	– Home Affairs Bureau	HAB
48.	– Innovation and Technology Bureau	ITB
49.	– Labour and Welfare Bureau	LWB
50.	– Security Bureau	SB
51.	– Transport and Housing Bureau	THB
52.	Highways Department	Hy D
53.	Home Affairs Department	HAD
54.	Hong Kong Arts Development Council	HKADC
55.	Hong Kong Housing Authority	HKHA
56.	Hong Kong Housing Society	HKHS
57.	Hong Kong Monetary Authority	HKMA
58.	Hong Kong Observatory	HKO
59.	Hong Kong Sports Institute Limited	HKSIL
60.	Hospital Authority	HA
61.	Housing Department	HD
62.	Immigration Department	Imm D
63.	Information Services Department	ISD
64.	Inland Revenue Department	IRD

	Organisation	Abbreviation
65.	Intellectual Property Department	IPD
66.	Invest Hong Kong	Invest HK
67.	Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service	JSSCS
68.	Kowloon-Canton Railway Corporation	KCRC
69.	Labour Department	LD
70.	Land Registry	LR
71.	Lands Department	Lands D
72.	Legal Aid Department	LAD
73.	Legislative Council Secretariat	LCS
74.	Leisure and Cultural Services Department	LCSD
75.	Mandatory Provident Fund Schemes Authority	MPFA
76.	Marine Department	MD
77.	Office of the Communications Authority	OFCA
78.	Official Receiver's Office	ORO
79.	Planning Department	Plan D
80.	Post Office	PO
81.	Privacy Commissioner for Personal Data	PCPD
82.	Property Management Services Authority	PMSA
83.	Radio Television Hong Kong	RTHK
84.	Rating and Valuation Department	RVD
85.	Registration and Electoral Office	REO
86.	Securities and Futures Commission	SFC
87.	Social Welfare Department	SWD
88.	The Hong Kong Examinations and Assessment Authority	HKEAA
89.	Trade and Industry Department	TID
90.	Transport Department	TD



	Organisation	Abbreviation
91.	Treasury	Try
92.	University Grants Committee, Secretariat	UGC
93.	Urban Renewal Authority	URA
94.	Vocational Training Council	VTC
95.	Water Supplies Department	WSD
96.	West Kowloon Cultural District Authority	WKCDA
97.	Working Family and Student Financial Assistance Agency	WFSFAA

Organisations Listed in Part II of Schedule 1, Cap. 397

	Organisation	Abbreviation
1.	Independent Commission Against Corruption	ICAC
2.	Hong Kong Auxiliary Police Force	HKAPF
3.	Hong Kong Police Force	HKPF
4.	Secretariat of the Public Service Commission	PSC

Circumstances where Complaints are not Followed up or Investigated



Actions not Subject to Investigation – Schedule 2, Cap. 397

1. Security, defence or international relations
2. Legal proceedings or prosecution decisions
3. Exercise of powers to pardon criminals
4. Contractual or other commercial transactions
5. Personnel matters
6. Grant of honours, awards or privileges by Government
7. Actions by the Chief Executive personally
8. Imposition or variation of conditions of land grant
9. Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Buy-backs
10. Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

Restrictions on Investigation of Complaints – section 10(1), Cap. 397

1. Complainant having knowledge of subject of complaint for more than two years
2. Complaint made anonymously
3. Complainant not identifiable or traceable
4. Complaint not made by person aggrieved or suitable representative
5. Subject of complaint and complainant having no connection with Hong Kong
6. Statutory right of appeal or remedy by way of legal proceedings (except judicial review) being available to complainant

Circumstances where The Ombudsman may Decide not to Investigate – section 10(2), Cap. 397

1. Investigation of similar complaints before revealed no maladministration
2. Subject of complaint is trivial
3. Complaint is frivolous or vexatious or is not made in good faith
4. Investigation is, for any other reason, unnecessary

Statistics



Annex 3.1	Caseload
Annex 3.2	Enquiries/Complaints Received
Annex 3.3	Nature of Complaints Processed
Annex 3.4	Distribution of Enquiries/Complaints Received
Annex 3.5	Distribution of Complaints Completed
Annex 3.6	Complaints Pursued and Concluded: Top Ten Organisations
Annex 3.7	Results of Complaints Concluded by Full Investigation
Annex 3.8	Forms of Maladministration Substantiated by Full Investigation
Annex 3.9	Results of Complaints Concluded by Inquiry
Annex 3.10	Achievement of Performance Pledges



Caseload

	Reporting year ¹				
	12/13	13/14	14/15	15/16	16/17
Enquiries	12,255	12,767	12,940	12,159	11,564
Complaints					
(a) For processing	6,349	6,572	6,241	6,112	5,732
– Received	5,501[238]	5,624[398]	5,339[428]	5,244[213]	4,862[74]
– Brought forward	848	948	902	868	870
(b) Completed	5,401[235]	5,670[367]	5,373[472]	5,242[224]	4,974[74]
Pursued and concluded					
– By inquiry ²	2,383[196]	2,605[36]	2,573[78]	2,740[175]	2,556[16]
– By full investigation ³	169	321[12]	314[125]	226[30]	218[24]
– By mediation ⁴	22	38	138	134	133
Assessed and closed					
– Insufficient grounds to pursue ⁵	1,908[32]	1,432[192]	1,091[1]	1,187[4]	1,102
– Legally bound ⁶	919[7]	1,274[127]	1,257[268]	955[15]	965[34]
(c) Percentage completed = (b)/(a)	85.1%	86.3%	86.1%	85.8%	86.8%
(d) Carried forward = (a) – (b)	948	902	868	870	758
Direct investigations completed	6	6	7	8	11

Note 1. From 1 April to 31 March of the next year.

Note 2. Pursued under section 11A of The Ombudsman Ordinance, for general cases.

Note 3. Pursued under section 12 of The Ombudsman Ordinance, for complex cases possibly involving serious maladministration, systemic flaws, etc.

Note 4. Pursued under section 11B of The Ombudsman Ordinance, for cases involving no, or only minor, maladministration.

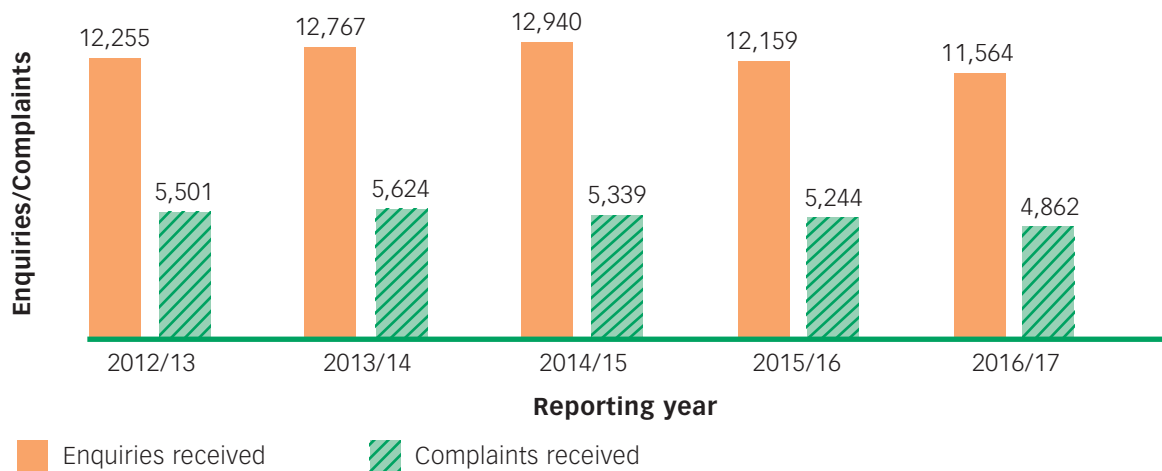
Note 5. Not pursued but closed for reasons such as lack of *prima facie* evidence, organisation concerned is taking action, mere expression of opinion.

Note 6. Outside the Office's jurisdiction or restricted by The Ombudsman Ordinance.

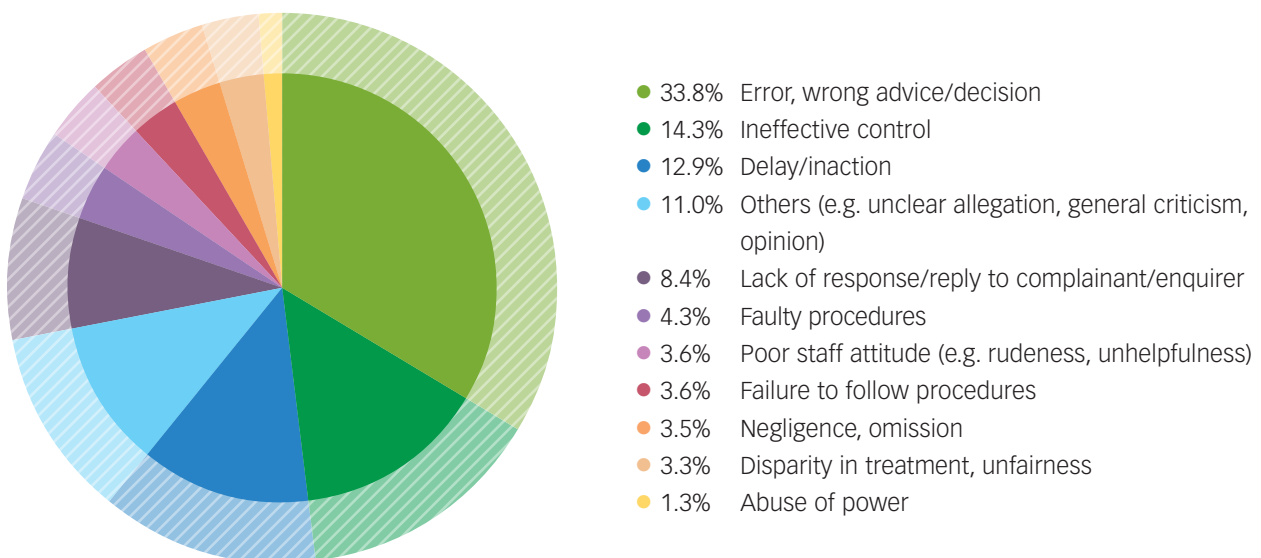
[] Number of topical complaints.

– See "Glossary of Terms" for detailed definitions of the above terms

Enquiries/Complaints Received



Nature of Complaints Processed



Distribution of Enquiries/ Complaints Received

Organisation	Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	40	60[18]
Airport Authority	29	18
Architectural Services Department	11	15
Audit Commission	2	2
Auxiliary Medical Service	2	4
Buildings Department	340	288
Census and Statistics Department	9	2
Civil Aid Service	4	2
Civil Aviation Department	8	8
Civil Engineering and Development Department	8	8
Companies Registry	13	14
Competition Commission	3	2
Consumer Council	32	16
Correctional Services Department	41	63
Customs and Excise Department	59	52
Department of Health	70	82
Department of Justice	24	25
Drainage Services Department	22	22
Electrical and Mechanical Services Department	20	23
Employees Retraining Board	22	10
Environmental Protection Department	60	60
Equal Opportunities Commission	48	31
Estate Agents Authority	14	12
Fire Services Department	56	44
Food and Environmental Hygiene Department	599	603[2]
General Office of the Chief Executive's Office	8	7
Government Logistics Department	4	2
Government Property Agency	3	5
Government Secretariat		
– Chief Secretary for Administration's Office	74	54
– Civil Service Bureau	12	10
– Commerce and Economic Development Bureau	14	7



Organisation	Enquiries	Complaints
– Constitutional and Mainland Affairs Bureau	2	1
– Development Bureau	10	10
– Education Bureau	103	97[1]
– Environment Bureau	3	1
– Financial Secretary's Office	2	1
– Financial Services and the Treasury Bureau	6	8
– Food and Health Bureau	4	14
– Home Affairs Bureau	5	10
– Innovation and Technology Bureau	2	3
– Labour and Welfare Bureau	5	5
– Security Bureau	14	6
– Transport and Housing Bureau	11	17
Highways Department	58	74
Home Affairs Department	103	93
Hong Kong Arts Development Council	3	2
Hong Kong Examinations and Assessment Authority	14	14
Hong Kong Housing Authority	33	13
Hong Kong Housing Society	40	29
Hong Kong Monetary Authority	50	35
Hong Kong Observatory	6	5
Hong Kong Police Force	313	122
Hong Kong Sports Institute Limited	1	2
Hospital Authority	357	185
Housing Department	851	570
Immigration Department	146	108
Independent Commission Against Corruption	17	4
Information Services Department	0	4
Inland Revenue Department	103	63
Intellectual Property Department	3	3
Judiciary Administrator	80	31
Kowloon-Canton Railway Corporation	0	1
Labour Department	132	64

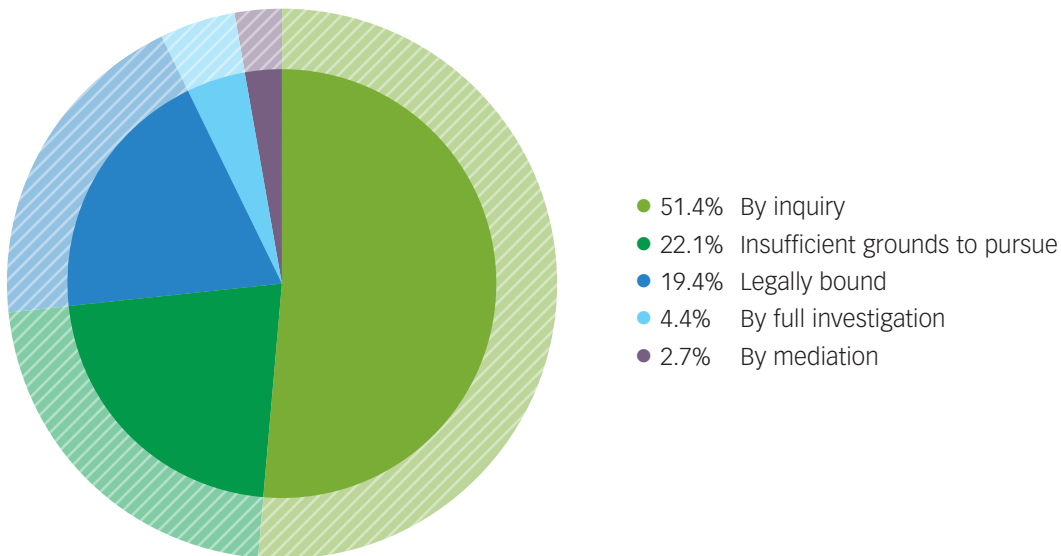
Organisation	Enquiries	Complaints
Land Registry	16	9
Lands Department	262	274[2]
Legal Aid Department	105	62
Legislative Council Secretariat	4	3
Leisure and Cultural Services Department	190	190
Mandatory Provident Fund Schemes Authority	27	18
Marine Department	17	14
Office of the Communications Authority	14	20
Official Receiver's Office	29	21
Planning Department	12	31[6]
Post Office	122	89
Privacy Commissioner for Personal Data	23	18
Radio Television Hong Kong	14	13
Rating and Valuation Department	29	22
Registration and Electoral Office	26	26[4]
Securities and Futures Commission	11	15
Social Welfare Department	394	178
Trade and Industry Department	2	2
Transport Department	175	245[41]
Treasury	10	7
University Grants Committee, Secretariat	1	2
Urban Renewal Authority	14	8
Vocational Training Council	25	8
Water Supplies Department	146	92
West Kowloon Cultural District Authority	0	2
Working Family and Student Financial Assistance Agency	48	29
Total	5,844	4,544

Note 1. The total number of enquiries and complaints received in Annex 3.1 are 11,564 and 4,862 respectively. They are different from the figures shown in Annex 3.4 because enquiries/complaints involving organisations not falling within Schedule 1 to The Ombudsman Ordinance are not shown in Annex 3.4.

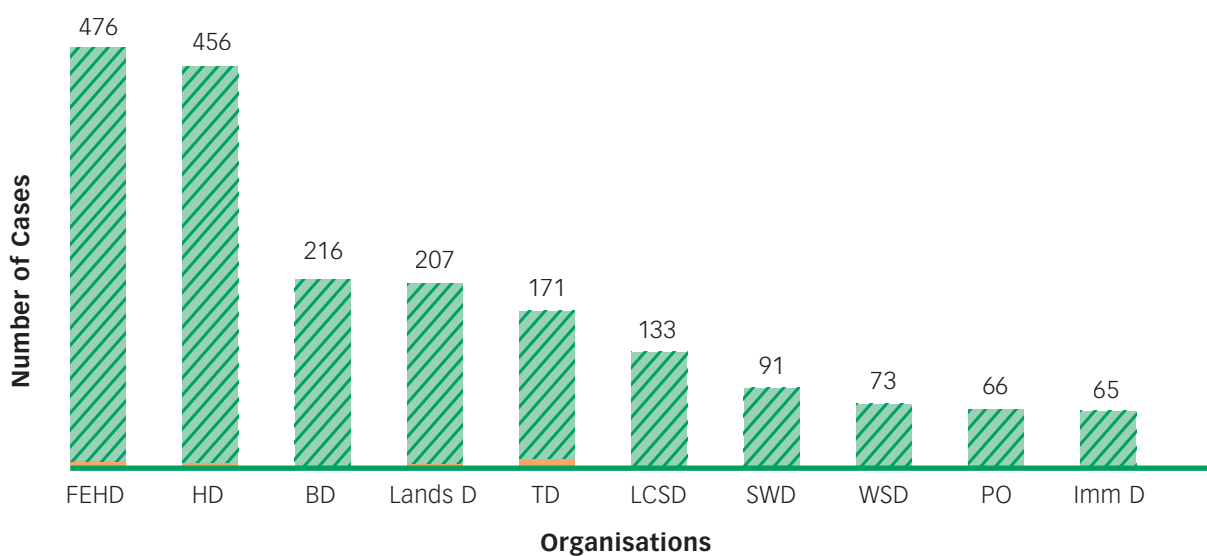
Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

[] Number of topical complaints

Distribution of Complaints Completed: 4,974 Cases



Complaints Pursued and Concluded: Top Ten Organisations

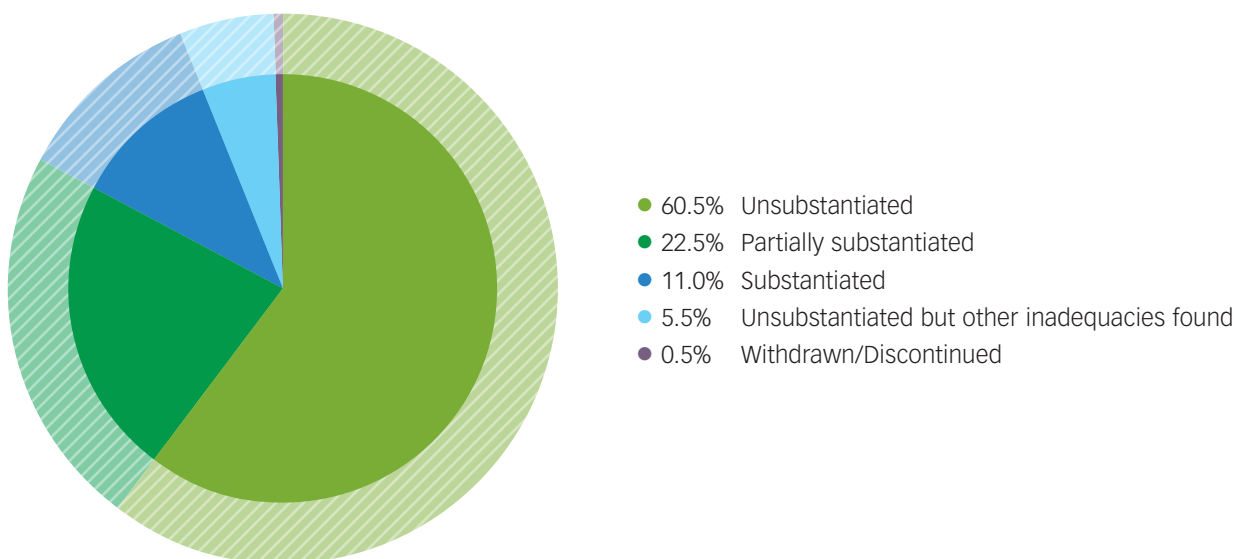


Note 1. "Complaints Pursued and Concluded" are cases handled by way of inquiry, full investigation or mediation.

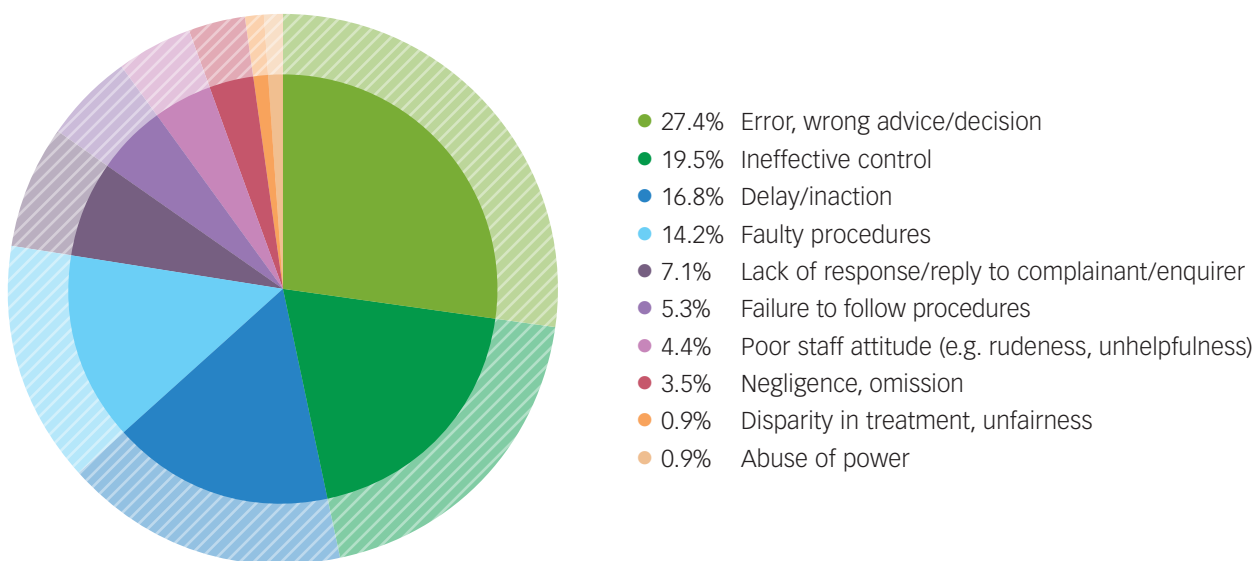
Note 2. These top ten organisations accounted for 67.2% of the 2,907 complaints pursued and concluded.

Note 3. ■ signifies topical complaints.

Results of Complaints Concluded by Full Investigation: 218 Cases



Forms of Maladministration Substantiated by Full Investigation



Results of Complaints Concluded by Inquiry



Organisation	No. of complaints	Cases with inadequacies/ deficiencies found
Agriculture, Fisheries and Conservation Department	24	2
Airport Authority	10	1
Auxiliary Medical Service	1	0
Architectural Services Department	8	1
Audit Commission	1	0
Buildings Department	190	57
Civil Aviation Department	3	0
Civil Engineering and Development Department	5	0
Companies Registry	7	0
Competition Commission	2	1
Consumer Council	6	2
Correctional Services Department	24	2
Customs and Excise Department	23	0
Department of Health	24	3
Department of Justice	8	2
Drainage Services Department	13	1
Electrical and Mechanical Services Department	14	3
Employees Retraining Board	3	0
Environmental Protection Department	41	4
Equal Opportunities Commission	14	3
Estate Agents Authority	8	0
Fire Services Department	20	2
Food and Environmental Hygiene Department	416	133
Government Logistics Department	1	1
General Office of the Chief Executive Office	3	0
Government Property Agency	5	0
Government Secretariat		
– Chief Secretary for Administration's Office	29	11
– Civil Service Bureau	2	1

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found
– Commerce and Economic Development Bureau	1	0
– Development Bureau	4	0
– Education Bureau	54	8
– Financial Secretary's Office	1	0
– Financial Services and the Treasury Bureau	5	0
– Food and Health Bureau	8	0
– Home Affairs Bureau	5	1
– Innovation and Technology Bureau	2	1
– Labour and Welfare Bureau	3	1
– Security Bureau	3	2
– Transport and Housing Bureau	16	2
Highways Department	39	2
Home Affairs Department	48	6
Hong Kong Arts Development Council	1	0
Hong Kong Examinations and Assessment Authority	8	1
Hong Kong Housing Authority	8	0
Hong Kong Housing Society	20	1
Hong Kong Monetary Authority	21	0
Hong Kong Observatory	1	0
Hong Kong Police Force	14	1
Hong Kong Sports Institute Limited	2	0
Hospital Authority	47	13
Housing Department	411	25
Immigration Department	64	9
Independent Commission Against Corruption	1	0
Information Services Department	1	0
Inland Revenue Department	39	8
Judiciary Administrator	10	2
Labour Department	22	6



Organisation	No. of complaints	Cases with inadequacies/ deficiencies found
Land Registry	3	0
Lands Department	185	40
Legal Aid Department	24	3
Legislative Council Secretariat	1	1
Leisure and Cultural Services Department	116	17
Mandatory Provident Fund Schemes Authority	15	2
Marine Department	6	0
Office of the Communications Authority	3	0
Official Receiver's Office	15	3
Other Organisations	11	0
Planning Department	14	1
Post Office	57	18
Privacy Commissioner for Personal Data	6	2
Radio Television Hong Kong	5	2
Rating and Valuation Department	6	2
Registration and Electoral Office	12	4
Securities and Futures Commission	8	0
Social Welfare Department	76	4
Trade and Industry Department	1	1
Transport Department	145	20
Treasury	2	0
Urban Renewal Authority	4	0
Vocational Training Council	4	1
Water Supplies Department	63	10
Working Family and Student Financial Assistance Agency	10	2
Total	2,556	452

Note 1. Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by inquiry are not shown.

Achievement of Performance Pledges

(1 April 2016 to 31 March 2017)

(A) Enquiries

	Response Time		
	Immediate	Within 30 minutes	More than 30 minutes
By telephone or in person	11,395 (100.0%)	0	0
In writing	Within 5 working days	Within 6-10 working days	More than 10 working days
	169 (100.0%)	0	0

(B) Complaints*

	Response Time	
	Within 5 working days	More than 5 working days
Acknowledgement	4,385 (99.5%)	24 (0.5%)

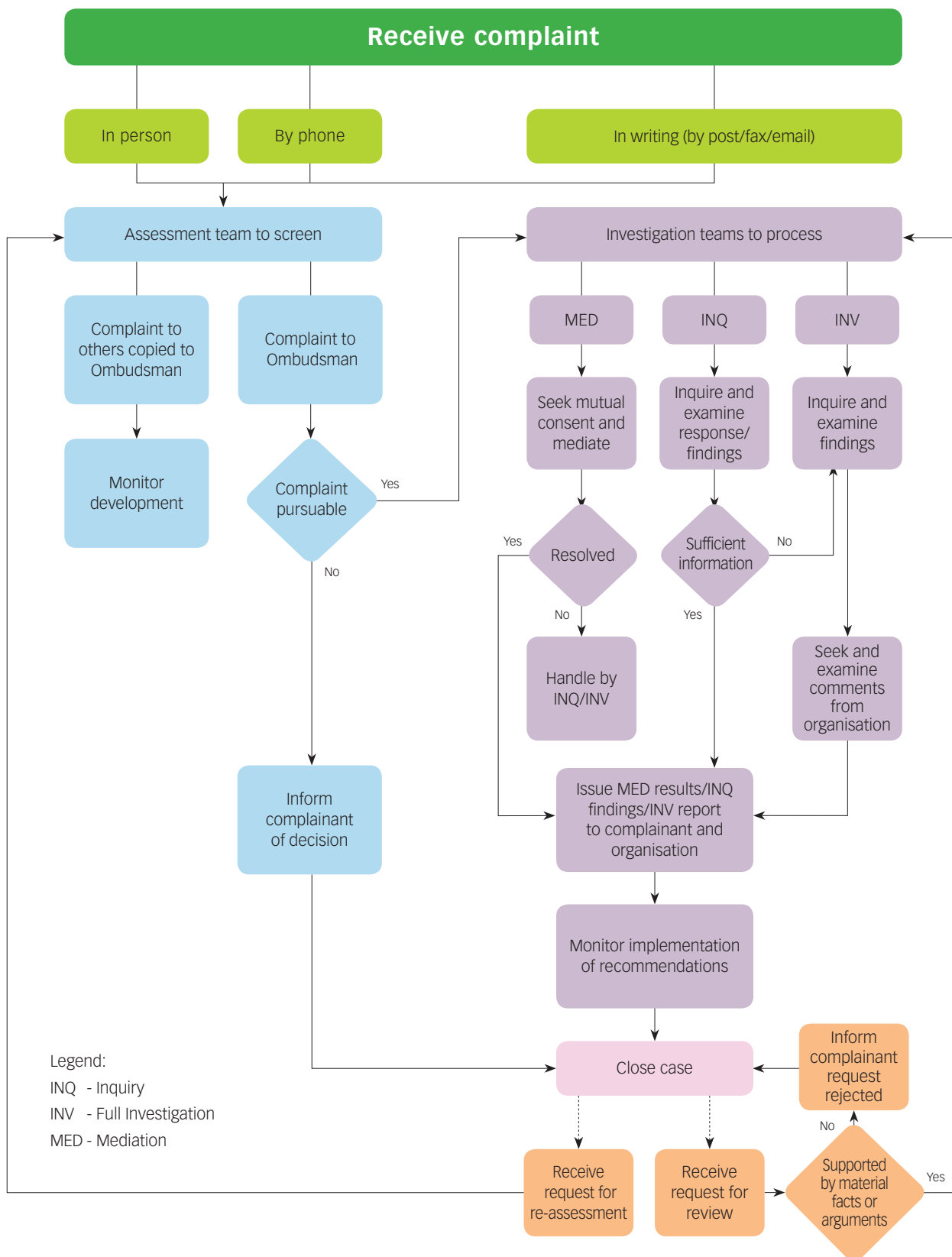
* Excluding cases where acknowledgement is not necessary or practicable.

	Cases outside jurisdiction or under restriction			Other cases		
	Within 10 working days	Within 11-15 working days	More than 15 working days	Less than 3 months	Within 3-6 months	More than 6 months
Cases concluded	939 (97.3%)	25 (2.6%)	1 (0.1%)	3,512 (87.6%)	490 (12.2%)	7 (0.2%)
Target	Not less than 70%	Not more than 30%	–	Not less than 60%	Not more than 40%	–

(C) Outreach Talks

	Response Time	
	Within 10 working days	More than 10 working days
Requests for outreach talks	10 (100.0%)	0

Flow Chart on Handling of a Complaint



Index of Direct Investigations Completed

Direct Investigations	
OMB/DI/310	Government's Tree Management Regime and Practices
OMB/DI/401	Government's Handling of Four Stonewall Trees along Bonham Road
OMB/DI/334	Marine Department's Follow-up Mechanism on Recommendations Made in Marine Incident Investigation Reports
OMB/DI/399	Government's Follow-up Actions Regarding Insufficient Provision of Public Columbarium Niches
OMB/DI/368	Temporary Closure of Public Swimming Pools/Beaches under Leisure and Cultural Services Department Due to Shortage of Lifeguards
OMB/DI/371	Lands Department's System of Regularisation of Illegal Occupation of Government Land and Breach of Lease Conditions
OMB/DI/373	Education Bureau's Regulation of Kindergarten Application Fees
OMB/DI/383	Arrangements on Display of Publicity Materials in Public Housing Estates
OMB/DI/360	Government Regulation of Special Transport Services for Persons with Mobility Difficulties
OMB/DI/407	Education Bureau's Regulation of Institutions Offering Non-local Higher and Professional Education Courses
OMB/DI/404	Housing Department's Mechanism for Follow-up Action against Unauthorised Alternations by Public Housing Tenants

* Listed in order of completion dates



Summaries of Selected Reports of Direct Investigations



Education Bureau ("EDB")

Case No. OMB/DI/373
Education Bureau's Regulation of Kindergarten Application Fees

(Investigation declared on 18 April 2016 and completed on 14 December 2016; full report available at www.ombudsman.hk)

Background

According to the Profile of Kindergartens and Kindergarten-cum-Child Care Centres for the 2015/16 School Year published by EDB, 36 kindergartens in Hong Kong had the Bureau's approval for collecting an application fee that exceeds the \$40 ceiling. In response to media reports about some kindergartens charging very high application fees, EDB stated that before giving its approval, it always examined the justifications given by the kindergartens for charging an application fee above the ceiling. Nevertheless, there are voices in the community that some cases of kindergartens charging an application fee way above the ceiling may be attributed to EDB's laxity in its approval mechanism and connivance at the collection of unreasonable application fees by kindergartens.

2. We are very concerned about the effectiveness of EDB's regulation of kindergarten application fees that exceed the ceiling. The Ombudsman, therefore, initiated this direct investigation into EDB's approval mechanism and regulatory system to identify any inadequacies.

Our Findings

Approval Mechanism and Regulatory System

3. The Education Regulations stipulate that all schools including kindergartens must obtain prior written approval from the Permanent Secretary for Education ("PSEd") before collecting any fees (including application fees and tuition fees). PSEd has assigned officers at supervisory levels the task of approving/reviewing applications from schools.

4. In 2014, EDB raised the ceiling of application fees to \$40. Once a kindergarten has obtained PSEd's approval to collect an application fee above the ceiling, it is not required to re-apply for approval in subsequent years. As at October 2016, 36 kindergartens, accounting for 4% of all kindergartens (about 1,000) in Hong Kong, had obtained approval for collecting an application fee above the ceiling, and the application fees they charged ranged from \$50 to \$3,700 (which was 92.5 times the ceiling). Of those 36 kindergartens, 30 were international kindergartens, and the application fees they charged ranged from \$300 to \$3,700; while the remaining six were local kindergartens, all charging application fees of \$90 or below.

5. When considering kindergartens' applications for collecting an application fee above the ceiling, EDB examines the merits of each application and the justifications and information provided by the kindergarten. This is to ensure that the application fees collected by kindergartens reasonably reflect the actual expenses directly relating to their admission procedures.

6. Upon receipt of an application, EDB's education professionals at different ranks collate and analyse the information provided, with reference to previous applications and approval records, before submitting the case to their supervisors for vetting and approval.

Lax Approval Mechanism with Inconsistent Criteria and Sloppy Procedures

7. We find that EDB has not laid down any specific criteria for vetting and approving applications by kindergartens for collection of application fees above the ceiling, resulting in inconsistent treatment of application cases by different officers, and failure to accurately evaluate whether the expense items estimated/claimed by the kindergartens are reasonable or not.

8. According to EDB's file documents on the aforementioned 36 kindergartens, 17 kindergartens had itemised their expenses in their applications to EDB, while the remaining 19 had only given a general account of the workflow and staffing arrangements for handling admission applications. Without asking those kindergartens to give further details on the expense items, EDB approved their applications outright.

9. While claiming on the one hand that in certain cases it would require kindergartens to provide a detailed breakdown of their expenses, EDB has on the other hand indicated that it would not audit the detailed expense items covered by the application fees and any surplus that may be generated. We consider EDB's current vetting and approval procedures too lax and incapable of properly evaluating whether the kindergarten application fees are reasonable, or ascertaining whether the kindergartens are making a profit from the application fees.

Failure to Query Calculation of Staff Costs

10. EDB has not required the kindergartens concerned to provide any substantive proof for the huge expenses claimed in certain applications, especially the additional salary costs for the teaching and administrative staff engaged in admission-related matters.

11. Generally speaking, handling of admission-related matters should be part of the duties of the teaching and administrative staff employed by a kindergarten. If admission-related matters are handled during normal office hours or such duties are specified in their employment contracts with no extra remuneration payable by the kindergarten, we believe that the salaries of those staff members are already covered in the kindergarten's general income and expenditure account, sufficiently offset by the tuition fees and other general revenues received by the kindergarten. If so, counting part of their salaries towards admission-related expenses would amount to double counting and result in extra income for the kindergarten. We notice that some kindergartens charging an application fee of more than \$1,000 included in their admission-related expenses the remuneration/time cost incurred by the teaching and administrative staff/the principal, thus arriving at a much higher figure for those expenses. Yet, EDB has never queried such inclusion.

Failure to Query Profit-making Element in High Application Fee

12. We note that in one case, an international kindergarten applied to EDB for retrospective approval to collect an application fee exceeding the ceiling. From the information submitted, including the number of applications received and details of admission-related expenses in the previous school year, we can easily see that the total amount of application fees collected far exceeded the costs incurred, thus generating a surplus of more than \$1 million for the kindergarten. Again, without querying whether the kindergarten's application fee was just for offsetting its admission-related expenses or for making a profit, EDB approved its application. The Bureau did not bother to ask how the surplus had been disposed of. We consider that even if the surplus was eventually used on pupils of the kindergarten, it would still constitute unfairness to the parents of the applicants, who had to pay an exceedingly high application fee, and the applicants were in effect subsidising existing pupils.



13. Furthermore, the same kindergarten indicated that one of its expense items was for venue and facilities, amounting to more than \$100,000. According to its official website, however, the kindergarten had a well-equipped campus covering several thousand square metres with a gross floor area exceeding 10,000 square metres. Yet, EDB failed to query why the kindergarten still had to rent a separate venue, before approving the kindergarten's application for collecting an application fee above the ceiling. It has also come to our attention that in its application for approval to charge an application fee of more than \$1,000, the kindergarten included the cost of setting up an online application system (around \$700,000) as an admission-related expense item. EDB granted its approval without noting that the cost of setting up the system was actually a one-off item and the kindergarten should not have treated it as a recurrent item in calculating admission-related expenses. The point is that once the kindergarten has obtained approval to collect an application fee above the ceiling, it is not required to re-apply for approval in subsequent years, and so for cases like this one, the kindergarten could thereafter collect an application fee not commensurate with its actual expenses.

Failure to Handle Rigorously Cases of Overcharging Application Fees

14. We discover that in May, October and November 2012, EDB asked/reminded three international kindergartens separately to stop collecting their exceedingly high application fees pending the Bureau's approval. EDB did not approve their collection of application fees above the ceiling until October and December 2013, and March 2014 respectively. However, while processing their applications, EDB did not bother to investigate whether those three kindergartens were still charging application fees above the ceiling. Furthermore, instead of requiring them to refund the excess amounts to the parents of all applicants, EDB merely gave those kindergartens a verbal advice.

15. Between 2009 and 2014, EDB handled 18 cases of overcharging application fees, but only issued a written warning to one kindergarten. And in issuing that warning, EDB was essentially acting on parents' complaints against that kindergarten for collecting an application fee above the ceiling without EDB's approval and failing to handle properly the parents' requests for refund of the application fee. The parents were given a refund only after they had lodged their complaints and claims for refund with EDB.

16. In fact, even when EDB discovered that a kindergarten was collecting an application fee exceeding the ceiling without approval, it would not bother to ask the kindergarten to refund the excess to the parents of all applicants. No proactive follow-up action would be taken by the Bureau unless some dissatisfied parents came forward. This is very unfair to those parents who do not know that they can ask for a refund. EDB should shoulder the blame for being so passive and slack in its regulation of kindergarten application fees.

Recommendations

17. The Ombudsman recommends that EDB:

- (1) expedite its formulation of specific working guidelines so that its officers can vet and approve applications for collecting application fees above the ceiling in a strict, fair and just manner;
- (2) require kindergartens to give clear details of each estimated expense item together with detailed and substantive evidence, especially those on admission-related staffing and big or year-round expense items, and ask kindergartens also to keep their income and expenditure records relating to application fees for EDB's scrutiny;

- (3) raise queries with kindergartens whose budgets show likely surplus from the application fees collected or questionable expense items (including non-essential and non-recurrent expense items), or even reject their applications;
- (4) take rigorous action to follow up on reports on false expense items relating to application fees, or on kindergartens failing to deliver services to applicants' parents as promised; where such reports are confirmed, withdraw the approval granted for a higher application fee and require the kindergartens concerned to provide more detailed information (including the expenditure or audit report of the previous school year) for the Bureau's vetting when making a fresh application for approval to collect application fees above the ceiling; also ask the kindergartens to account for the whereabouts and uses of the surplus from the application fees collected, so as to ensure that they are not making any profit through collecting application fees; and
- (5) require kindergartens which have collected application fees above the ceiling without EDB's approval to refund the overcharged amounts to parents; and invoke its statutory power to stop those kindergartens from continuing to charge application fees that have not been approved.



Education Bureau ("EDB")

Case No. OMB/DI/407

**Education Bureau's Regulation of
Institutions Offering Non-local Higher and
Professional Education Courses**

**(Investigation declared on 23 May 2016
and completed on 3 March 2017; full
report [Chinese version only] available at
www.ombudsman.hk)**

Background

In Hong Kong, any person intending to offer a course leading to the award of any higher or professional qualification by a non-local institution (non-local course, or "NLC") has to apply for registration, or exemption from registration, with the Non-local Courses Registry ("the Registry") of EDB. The Registry processes such applications in accordance with the Non-local Higher and Professional Education (Regulation) Ordinance ("the Ordinance").

2. We initiated this direct investigation to examine the regulation of NLCs, with a view to identifying any inadequacies in EDB's regulatory mechanism. Our investigation covered how EDB monitors the operations of NLCs to prevent fraudulent activities.



Our Findings

Legislation on and Mechanism for Regulation of NLCs

3. According to EDB, the main purpose of the Ordinance is to regulate, through a registration system, the operations of non-local institutions in order to prevent substandard NLCs from being provided in Hong Kong and thereby protect the interests of students enrolled in those courses.

4. To ensure the standards of NLCs, the Ordinance provides that any NLC offered in Hong Kong by an institution must be at a level comparable to that of the course leading to the same academic/professional qualification awarded by the institution in its home country.

5. Pursuant to the Ordinance, the Registry requires the operators to submit annual returns to show that the courses they offer continue to meet the requirements set out in the Ordinance. Moreover, the Registry carries out random checks on NLC advertisements and websites and follows up on cases that may involve violation of the Ordinance. Upon receipt of complaints, the Registry will also take follow-up actions.

Systemic Problems Revealed in the Lifelong College Incident

6. In November 2015, there were media reports that a certain institution, Lifelong College, might have forged documents, backdating the registration of some students to enable premature award of academic qualifications to those students. The systemic problem thus revealed warrants attention.

7. EDB indicated that falsification in any material particular by operators through forging or doctoring documents/information involves serious criminal offences under other legislation, and such offences are outside the Bureau's purview under the Ordinance. Therefore, the Registry has no specific procedures for monitoring this aspect.

8. Section 33 of the Ordinance nevertheless provides that any person who in purported compliance with the provisions of the Ordinance or a requirement under the Ordinance makes any statement or representation of facts which he knows to be false in a material particular commits an offence. Yet, EDB is unable to give a definite answer as to whether the registration of an NLC would or could be cancelled by the Registry in case of non-compliance with this provision of the Ordinance.

Our Comments

Students' Interests Generally Protected

9. We find that EDB's current regulatory mechanism for NLCs has generally achieved the objective of the Ordinance in protecting the interests of students enrolled in such courses. We believe that the mechanism is capable of ensuring that:

- (1) NLCs offered in Hong Kong meet the equivalent standards of those courses recognised in their home countries;
- (2) prospective students of NLCs are well aware before enrolment that it would eventually be up to employers to decide whether the qualifications are recognised, and the Government will not provide any guarantee; and
- (3) appropriate assistance is available to students if they encounter problems or unreasonable treatment.

Inadequacies of the Regulatory Mechanism

10. However, if an operator conspires with some students such that those students can be awarded academic/professional qualifications with omission of part of the course requirements and set criteria, it would bring about all sorts of negative impacts on our society, including unfairness to the following parties: students who have faithfully pursued the course and satisfied all the requirements, employers who have hired the bogus graduates in the mistaken belief that they have attained the course standards, and clients served by the bogus graduates at work.

11. From the perspective of preventing fraudulent activities by course operators, EDB's current regulatory mechanism is seriously inadequate.

Lack of Self-initiated Monitoring

12. Prevention is better than cure. But EDB does not conduct any regular inspections of operators' premises, nor has it devised any monitoring procedures specifically for detecting falsification in any material particular by operators that involves forging or doctoring documents. By the time it intervenes after suspected violations are revealed, it may be too late for the Registry to gather the necessary evidence.

No Requirement for Operators of Registered Courses to Keep Relevant Documents

13. In the course of our investigation, EDB introduced an additional condition to new applications for registration of NLC: the operators are required to maintain documentary records relating to their students as well as the courses taken for the duration of their study and up to two years after completion or discontinuation of their courses, so as to facilitate the Registry's future regulatory and enforcement actions. However, the above additional condition is not imposed on courses already registered. We find that the Ordinance has in fact conferred such power on the Registry, and so EDB should have brought registered courses into the coverage of this enhanced regulatory measure.

Lack of Specific Legal Provisions and Enforcement Guidelines

14. According to EDB, even when an operator is found to have engaged in fraudulent activities, there is no provision in the Ordinance or the Education Ordinance that EDB can confidently invoke to cancel the registration of the NLCs or the school registration of the operator concerned. This is clearly a deficiency in the system.

Recommendations

15. The Ombudsman recommends that EDB:

- (1) devise a mechanism for periodically conducting surprise inspections of the operators' premises and random checks on documentary records relating to the courses taken by students, in order to prevent more effectively falsification in any material particular by operators that involves forging or doctoring documents;
- (2) deliberate further with the Department of Justice on the feasibility of imposing an additional condition on courses already registered, under which the operators will be required to maintain documentary records relating to the courses taken by students for the duration of their study and up to two years after completion or discontinuation of their courses; and
- (3) consider amending the Ordinance and the Education Ordinance; pending legislative amendments, EDB should at least devise clear enforcement guidelines as soon as possible, including setting out for staff's information under what circumstances the Bureau can invoke the relevant laws to cancel the registration of fraudulent NLCs and the school registration of the operators concerned.



Development Bureau (“DEVB”)

Case No. OMB/DI/310
Government’s Tree Management Regime and Practices

(Investigation declared on 23 September 2014 and completed on 10 June 2016; full report [Chinese version only] available at www.ombudsman.hk)

Background

Hong Kong is a densely populated city. Falling of branches or collapse of trees could easily result in injuries or damage to property in their surrounding areas.

2. This direct investigation is meant to examine the Government’s tree management regime and practices with a view to identifying any inadequacies. Our focus is on the effectiveness of the Government’s work to ensure public safety.

Our Findings

Tree Management Regime

3. Currently, trees on Government land and those on private land are regulated under two different regimes.

4. The day-to-day management of trees on Government land is shared by various Government departments according to the management responsibility of the land concerned. Their duties include maintenance, inspection and risk assessment of trees. The Tree Management Office (“TMO”) under DEVB acts as a central coordinator and oversees tree management work.

5. The Expert Panel on Tree Management (“the Expert Panel”) under TMO is an advisory group made up of local and overseas tree experts. The Expert Panel advises the Government on policies on tree management and maintenance as well as the implementation of those policies.

6. As regards trees on private land, only some land leases contain a tree preservation clause, which stipulates that, unless there is an emergency, the land owners must obtain written consent from the Lands Department before they can remove or prune any tree within the land boundary.

Manpower Issues

Lack of Registration System for Arborists

7. Landscape architects and arborists are the major professional practitioners in tree management.

8. In Hong Kong, accreditation of landscape architects’ professional qualifications is governed by the Landscape Architects Registration Ordinance. The Landscape Architects Registration Board is the statutory authority that verifies the qualifications of applicants for registration as landscape architects and deals with the conduct and disciplinary matters of registered landscape architects. This registration system serves to maintain the professional standards in the field as well as to safeguard the rights and interests of organisations/individuals who engage the services of registered landscape architects. Arborists, however, are not subject to any registration system in Hong Kong. There is no avenue for the public to file a complaint against an arborist in case of poor quality of service or misconduct.

No Specific Requirements for Arboricultural Practitioners

9. The expertise and work experience of practitioners who conduct inspections and review inspections are crucial for the prompt and accurate identification of trees that are problematic or at risk of collapse. However, the Government merely requires those practitioners to meet some basic standards in these two aspects. Besides, the relevant training programmes offered by TMO are only two-day courses. It is doubtful whether practitioners who just meet such basic requirements are really capable of conducting proper tree inspection work.

10. As frontline practitioners are responsible for routine tree maintenance work such as pruning, prevention and treatment of insect pests and diseases, and fertiliser application, their work quality has a direct and significant bearing on the health condition of trees. It is incongruous that they do not need to meet any specific requirements of qualifications or work experience before they take up their jobs.

Manpower Resources Planning Long Overdue

11. Established in 2010, TMO has organised training courses for Government employees responsible for tree management and also encouraged tertiary and training institutions to offer tree management programmes. However, it was not until mid-2015 that TMO started to study the manpower resources for tree management in Hong Kong for long-term planning purposes. We consider that long overdue.

Issues Regarding Management of Trees on Government Land

Inapt Deployment of Staff Resulting in Wastage of Experience

12. Currently, within the civil service, there is not a dedicated grade of officers responsible for tree management. The work is taken up by officers who

are also responsible for other tasks (for example, the Leisure Services Managers in the Leisure and Cultural Services Department). Officers in those grades are often deployed to posts not quite related to tree management, resulting in wastage of professional knowledge and experience. That is not conducive to tree management work (including supervision of contractors), which requires specialised knowledge and expertise.

Need for TMO to Enhance Monitoring Work of Government Departments

13. It is essential for Government departments to select the right species and planting locations with adequate growing space for trees. All these factors have a direct impact on the well-being of the trees and their safety in the future.

14. We consider that while the various departments are not hierarchically under TMO, the Office should enhance its communication with them. It should require the departments concerned to properly carry out the duties and monitor their performance in scrutinising the landscape design at the planning stage of works projects and following the DEVB guidelines in selecting the right tree species and planting locations. This would help prevent tree collapse and obviate the need for hasty removal of dangerous trees in the future.

Inadequate Criteria for Risk Assessment

15. We also find it necessary for TMO to revise the criteria adopted in its “Form 2” designed for conducting risk assessment of tree. While the condition of a tree itself and its growing environment are separately recorded in “Form 2”, the assessment criteria in “Form 2” have not taken into account the combined risk factors caused by the two together (for example, whether the weight of the tree itself plus external loading can cause a problem).



TMO's Failure to Effectively Oversee Government Departments' Actions on Public Reports/Complaints

16. In some cases, there was serious delay on the part of both the department concerned and its contractors in handling reports of hazardous trees by the public. While it is the responsibility of the departments concerned to follow up on those public reports/complaints, TMO, being the central body for regulating and coordinating the tree management work of various departments, should certainly step up its monitoring of their performance in this regard. TMO may even consider positioning itself as the reviewing body for any inadequacies in Government departments' handling of public reports/complaints, thereby directing such departments to take appropriate improvement measures.

Need to Enhance the Expert Panel's Transparency and Accountability

17. By setting up the Expert Panel under DEVB's TMO, the Government can tap expert opinions from independent professionals on matters relating to tree management. To enhance its transparency and accountability, we consider that DEVB should keep proper records of the opinions from the Expert Panel/ Panel members and make them available to the public.

No Legislation and Limited Regulation for Management of Trees on Private Land

18. Compared with trees on Government land, the regulation of trees on private land appears to be even more inadequate. Even for those private leases that contain a tree preservation clause, it is outside the regulatory scope of the clause as to whether and how the owners have maintained their trees. There is also no law at present to require owners of private land to inspect and maintain their trees within their property. In other words, the Government has no power to intervene even if the land owners have not properly maintained their trees to mitigate the risk of tree collapse.

19. Cases have shown that tree collapse on private land as a result of improper management can have very serious consequences.

Need for Legislation on Tree Management

20. Tree legislation in other jurisdictions and related information show that introduction of tree management laws could help cope with certain tree management problems in Hong Kong, for example, formulating basic criteria for planting, pruning and removal of trees; conferring powers on government authorities to make it compulsory for private land owners to prune or remove dangerous trees on their land; requiring specific works relating to tree care and other tree management aspects to be carried out; as well as publishing the names of approved training providers and training courses on tree management.

21. We consider that the Government should promulgate its intention to introduce tree laws to remedy the inadequacies of the current regulatory regime. The Government cannot just rely on providing public education/advice/guidance, as that is unlikely to get the desired results in the foreseeable future. Besides, studying for and drafting of legislation take time. The Government should start the necessary preparations as soon as possible. Once its intention to legislate is promulgated, that may help change the public's mindset and heighten their awareness of tree management responsibility. Moreover, business opportunities, and hence job openings relating to tree management, will emerge as a result. This will in turn help nurture professionals and practitioners in the field to meet future demand for manpower resources after the enactment of legislation.

22. Meanwhile, when making preparations for legislation, the Government can consider further enhancing the status of the Expert Panel, as well as its participation and accountability. For instance, it can, based on the model of the Antiquities Advisory Board, convert the Expert Panel into a statutory body as part of the proposed tree legislation, thus enabling the Expert Panel to provide the Government with more authoritative and representative opinions.

Recommendations

23. The Ombudsman urges DEVB/TMO to:

Manpower Resources

- (1) consider setting up a registration or certification system for arborists;
- (2) raise the professional knowledge and work experience requirements of arboricultural practitioners, especially those responsible for inspection and review inspections;
- (3) step up technical training for frontline staff;
- (4) speed up manpower resources planning;

Management of Trees on Government Land

- (5) review the current deployment and training arrangements for staff with tree management duties, or even consider central deployment of dedicated tree management officers to various departments;
- (6) step up the monitoring of tree planting arrangements of Government departments;
- (7) supplement the criteria for tree risk assessment;
- (8) set up a mechanism to strengthen the monitoring of Government departments' handling of public reports/complaints;
- (9) enhance the transparency and accountability of the opinions offered by the Expert Panel, record the opinions of the Expert Panel/Panel members and make such records available to the public;

Management of Trees on Private Land

- (10) continue to step up publicity and education on tree maintenance for owners of private land; and

Legislation on Trees

- (11) clearly and firmly promulgate its intention to legislate and complete the necessary preparations as soon as possible to enable comprehensive and more effective regulation of tree management and preservation in Hong Kong.



Highways Department (“Hy D”), Development Bureau (“DEVB”) and Home Affairs Department (“HAD”)

Case No. OMB/DI/401
Government’s Handling of Four Stonewall Trees along Bonham Road

(Investigation declared on 4 September 2015 and completed on 10 June 2016; full report [Chinese version only] available at www.ombudsman.hk)

Background

On the surface of a masonry retaining wall (“the stonewall”) between Bonham Road and St Stephen’s Lane in the Central and Western District, there used to be six Chinese banyan trees (“stonewall trees”, “T1” – “T6”). On 22 July 2015, T2 suddenly collapsed, causing personal injuries and damage to property. After the incident, Hy D, the department responsible for maintaining those six stonewall trees, removed the remaining five trees for the sake of public safety (T3 was removed on 22 July; and T1, T4, T5 and T6 on 7 August).

2. Hy D’s removal of the four stonewall trees on 7 August aroused extensive media coverage and public debate. The Ombudsman, therefore, initiated this direct investigation to probe whether Hy D had sufficient grounds for removal of those four stonewall trees, whether the departments concerned had followed established policies and procedures

in removing the trees and in conducting prior consultation, and whether they had acted in an open and fair manner. The ambit of this investigation covered Hy D, DEVB and its Tree Management Office (“TMO”), and HAD.

The Events

Expert Assessment, Maintenance of Stonewall Trees and Mitigation Measures

3. As early as in 2012, Hy D had commissioned a tree expert to assess the structure and health condition of the six stonewall trees. T4 and T5 were rated at “high risk level”, and T1, T2, T3 and T6 at “low risk level”. Hy D then carried out major pruning works on T4 and T5 in 2013 to mitigate the risk of tree collapse.

4. Hy D also studied various proposals for stabilising or supporting the stonewall trees. It concluded that none of those proposals were feasible. The proposed installation of anchorage structures for the trees was not pursued mainly because of the narrow carriageway and footpath, heavy vehicular traffic, presence of major underground utilities, and the question of extra loading on the adjacent building structures.

Collapse of T2

5. On 22 July 2015, when the amber rainstorm warning signal was in force, T2, which had been rated at “low risk level”, suddenly collapsed. Later in the evening, Hy D found some cracks on the surface of the parapet wall behind T3 (the parapet wall was built along the footpath on St Stephen’s Lane near the crest of the stonewall). Hy D and TMO considered that the cracks indicated anchorage instability and T3 was at risk of imminent collapse. Hy D, therefore, removed T3 that evening.

Hy D's Assessment of the Remaining Four Stonewall Trees and Decision to Remove Them

6. As for the remaining four stonewall trees (T1, T4, T5 and T6), Hy D monitored their condition almost daily after 22 July. On 3 August, Hy D and TMO, together with TMO's Expert Panel consisting of tree experts, conducted a site inspection and held a meeting. The participants were of the view that the trees were not at risk of imminent collapse and the stonewall showed no sign of instability. On that occasion, members of the Expert Panel put forward three proposals for supporting or stabilising the trees. Hy D concluded that none of those proposals was feasible.

7. Between 5 and 7 August, Hy D continued to discover new cracks and gaps on the surface of the parapet wall. After assessment, it considered that those were "warning signs" of tree anchorage instability, outward shift of the tree anchorage, and weakened resistance against toppling.

8. Hy D's assessment showed that upon failure of any one of T4, T5 and T6, the falling tree would generate a traction force through the probably interwoven roots, resulting in the collapse of all three trees at once. The collapse could cover an extensive area, leaving little chance for pedestrians (especially those waiting at the bus stop underneath the trees) and vehicles on Bonham Road to escape and thus possibly resulting in injuries or even deaths. As the trees were quite tall, the residential flats and ground level shops of the opposite buildings might also be severely damaged. As for T1, since it was located at a rather high point, the risk of causing casualties and damage to property in the event of collapse should not be underestimated either.

9. Moreover, with a Super Typhoon approaching and continual unstable weather forecast by the Hong Kong Observatory ("HKO"), Hy D considered the problem urgent and decided on 7 August to remove the four stonewall trees to ensure public safety.

Notification to Relevant Parties by Hy D and HAD

10. Having decided to remove the four stonewall trees, Hy D sent an email to the Central and Western District Office ("DO") of HAD that afternoon (7 August), requesting DO to forward a letter ("notification letter") to the Chairman of the Working Group on Environmental Improvement, Greening and Beautification Works ("the Working Group") under the Food, Environment, Hygiene and Works Committee of the Central and Western District Council ("DC") to inform him of Hy D's decision and justifications. Hy D also copied the notification letter to DEVB by fax.

11. DO then forwarded the notification letter by email to all DC Members, including the Chairman of the Working Group. DO also notified by telephone six DC Members, namely, the Chairman and Vice Chairman of DC, the Chairman of the Working Group, and the Elected Members of the three DC constituencies which were more likely to be affected by the ensuing road closure and traffic diversion.

Our Comments

12. We have the following comments regarding the incident.

Decision to Remove the Stonewall Trees Not Unreasonable

13. With regard to some people's queries on Hy D's justifications for removing the four stonewall trees, we accept the clarification/explanation given by the Department:

- (1) Hy D has explained in detail why the "warning signs" concerning the risk of collapse of the four stonewall trees were credible.
- (2) While the Civil Engineering and Development Department had confirmed the structural integrity of the stonewall, the risk of tree collapse could not be ruled out if the tree anchorage had already deteriorated, even though the stonewall itself might be stable.



- (3) Hy D has pointed out that after studying various proposals for installing structural supports to reinforce the four stonewall trees, all were found infeasible.

14. We appreciate that tree lovers were saddened by Hy D's abrupt decision to remove the four stonewall trees. Nevertheless, the rapid deterioration of the parapet wall and tree anchorage in a matter of three days between 5 and 7 August 2015 indicated that the trees might collapse anytime. Moreover, in view of HKO's forecast of continual unstable weather, it is not unreasonable of Hy D to adopt a cautious attitude to ensure public safety. We have consulted engineering experts, who concurred with Hy D's decision to remove the trees and its justifications. Having taken into account the views of different parties, we have holistically examined this controversial issue from an administrative and rational perspective. Our conclusion is that there is no substantive evidence that Hy D's decision to remove those four stonewall trees was rash or unreasonable.

Involvement of the Expert Panel Should be Strengthened

15. As to whether Hy D was disrespectful to the Expert Panel in having failed to notify Panel members prior to the Department's removal of the stonewall trees, we noticed that the Department had previously reported to the Expert Panel on all the proposals (including their infeasibility) to stabilise/support the six stonewall trees. TMO had also consulted Panel members on the health and stability of the four stonewall trees in question. When Hy D decided to remove those four trees, it had also followed established procedures and informed DEVB (TMO). The problem was that TMO had not made use of the hour or so before the removal to inform the Expert Panel to allow its members to voice their last-minute opinions. We consider this a case of TMO failing to make the best use of the Panel's expertise and professional views.

16. In future, the Government should as far as possible allow Expert Panel members to express their opinions on any decision to remove trees involving controversy or of special value. Their opinions should be clearly recorded and made known to the public in order to enhance the transparency and accountability of the Government's decisions.

Not Unreasonable of DO to Notify Selected DC Members by Telephone

17. Besides notifying all DC Members by email of Hy D's decision to remove the trees and its justifications, DO had also separately telephoned the Chairman and Vice Chairman of DC, the Chairman of the Working Group as well as the DC Members whose constituencies were more likely to be affected by the incident. We consider DO's action reasonable and appropriate. The DC Members concerned, having received early notification, could help explain the situation to the residents affected.

Public Awareness Should be Heightened of the Potential Danger Posed by Certain Kinds of Trees

18. This incident reflected that some trees might be potentially less stable because of their size, form/shape or the special environment of their locations, thus posing a bigger risk to public safety. The public's awareness of such kinds of risk needs heightening.

Recommendations

19. The Ombudsman recommends that:

- (1) DEVB clearly record and make known to the public the Expert Panel's opinions in future to enhance transparency and accountability;
- (2) HAD draw up clear and specific criteria for deciding whom to be specially notified by telephone of the Government's decisions to remove trees, so as to avoid queries; and
- (3) TMO explore ways to raise public awareness of the potential danger posed by certain kinds of trees.



Housing Department (“HD”)

Case No. OMB/DI/404
Housing Department’s Mechanism for Taking Follow-up Action against Unauthorised Alterations by Public Housing Tenants

(Investigation declared on 27 May 2016 and completed on 31 March 2017; full report [Chinese version only] available at www.ombudsman.hk)

Background

Public housing units allocated to tenants by HD are generally provided with various fixtures and fittings. Under the Tenancy Agreement, tenants are not allowed to install any fixtures, partitions or other erections, or to remove any original fixtures or fittings in their units without prior written consent of HD. These agreement terms aim to ensure the structural safety of public housing as well as better utilisation of original fixtures and fittings.

2. Nevertheless, this Office has found from handling past complaint cases that HD has failed to properly follow up cases involving unauthorised alterations by public housing tenants. It should be noted that unauthorised alterations may not only adversely affect nearby housing units but, in more serious cases, also affect the building loading. In order to gain a better understanding of the issue, The Ombudsman decided to initiate a direct investigation into HD’s mechanism for taking follow-up action against unauthorised alterations by public housing tenants.

Our Findings

Classification of Fixtures in Public Housing Units

3. HD has classified the fixtures provided in public housing units into three categories, namely Categories A, B and C. Tenants who intend to apply for altering fixtures should comply with the following requirements:

Category of Fixtures	Specification
A	Alteration is not permitted
B	Prior written application to HD for alteration is required
C	Prior written application to HD for alteration is not required

Procedures and Requirements for Applications for Alterations to Fixtures

4. Under the procedures stipulated by HD, estate management offices should explain to prospective tenants about the renovation arrangements when they complete the intake formalities at the offices. The tenants are to sign an undertaking immediately to indicate that they understand the requirements relating to renovation and agree to comply with such requirements.

5. Generally speaking, alterations to Category A fixtures may constitute imminent danger or obvious hazard, lead to water seepage or serious nuisance to health or the environment, impair the uniformity of housing estates, contravene prevailing statutory requirements, and breach the statutory acoustic requirements. Applications for alterations to Category A fixtures will, therefore, be rejected by HD.

6. Alterations to Category B fixtures require prior written application to HD and compliance with prescribed requirements. Besides, successful applicants must comply with requirements for such alteration works to ensure that only appropriate works are carried out and appropriate materials used.



7. Prior approval from HD is not required for alterations to Category C fixtures. Nor is it necessary to notify the estate management office concerned on completion of such alteration works.

HD's Mechanism for Follow-up Action against Unauthorised Alterations to Public Housing Units

8. Subsequent to a review on regulation of alterations to fixtures in public housing units, HD issued a set of internal guidelines in November 2009. Based on the recommendations for improvement we made in relation to a complaint case involving unauthorised alterations, HD amended the aforesaid guidelines in August 2016. For the purpose of discussion below, the mechanism used prior to August 2016 is referred to as "the Old Mechanism" and the one adopted thereafter "the New Mechanism".

The Old Mechanism

9. Under the Old Mechanism, if a tenant was found to have altered any of the Category A fixtures, HD would carry out works to reinstate the original set-up of the housing unit and charge the tenant for the costs. That was to ensure that the materials used and installation method adopted would meet established standards and criteria. Where unauthorised alterations to Category B fixtures were found, the tenants must reinstate the housing unit at their own cost.

10. Some tenants might refuse to cooperate. In such cases, HD would invoke the Marking Scheme for Estate Management Enforcement in Public Housing Estates ("the Marking Scheme") and allot penalty points to the tenant concerned. A tenant having accrued 16 points within two years may have his/her tenancy terminated. Moreover, under section 19(1)(b) of the Housing Ordinance, HD may also issue a notice to quit to the tenant concerned, requesting him/her to vacate and return the housing unit to HD by a prescribed date.

11. According to internal guidelines under the Old Mechanism, estate management offices were not required to inspect the housing units to check if alterations made would meet the requirements on completion of such works. Nor had HD laid down in those guidelines the duties of frontline officers in following up cases involving unauthorised alterations, the actual procedures and timeframes, or the responsibilities of supervising officers.

The New Mechanism

12. There are three major areas of differences between the Old and New Mechanisms:

(1) Categories of Fixtures

13. Based on the categorisation of fixtures under the Old Mechanism, HD has added some new items of fixtures while deleting some others. HD has also reclassified some of the fixtures. One of the major changes to the categorisation under the New Mechanism is relaxing the requirements by transferring some items from Category A to Category B. Those items include: floor tiles of balcony/toilet/bathroom/kitchen, shower tray, shower cubicle, bathtub, water closet pan, cooking bench, branch pipe and fitting.

(2) Timeframes for Monitoring and Enforcement Actions

14. Under the New Mechanism, the timeframes for monitoring and taking enforcement actions are clearly stated in the guidelines. HD adheres to its previous practice of rejecting all applications for alterations to Category A fixtures while requiring tenants to obtain its consent before making any alterations to Category B fixtures. Normally, on receipt of an application, the estate management office concerned should conduct a site inspection within 90 calendar days to check for any irregularities, especially those involving alterations to Category A fixtures.

(3) Duties of Frontline and Supervising Officers

15. The guidelines under the New Mechanism include provisions that set out the duties of various ranks of officers. If estate management offices are aware of any unauthorised alterations by tenants, frontline officers must conduct site inspections with the support of works staff to verify the unauthorised alterations. Besides, the officers must, within 60 calendar days upon knowledge of the situation, serve an enforcement notice to the tenant concerned demanding reinstatement.

16. Where the tenant refuses to cooperate, HD should carry out reinstatement works as soon as possible. If the estate management office encounters any difficulties, it should seek support from the District Tenancy Management Offices under HD. If the tenant concerned is willing to cooperate, he/she should complete the reinstatement works within 60 calendar days after the receipt of the enforcement notice. If the tenant has difficulty to comply, he/she may request to extend the works completion date by up to 90 or 180 calendar days, provided that he/she has obtained prior approval from the Housing Managers/Property Service Managers (for applications for an extension for 90 days) or from the Senior Housing Managers/Senior Property Service Managers (for applications for an extension of 180 days). In fully justified cases, works completion may be extended to beyond 180 calendar days, provided that prior approval is granted by the Regional Chief Manager.

17. Regional Chief Managers should maintain proper records of cases involving unauthorised alterations and review their progress as appropriate.

Our Comments

Problems under the Old Mechanism

18. On the whole, problems in HD's monitoring work under the Old Mechanism are mainly reflected in the following areas:

Delay in Following up Cases

19. Under the Old Mechanism, HD did not set any procedures or timeframes for following up cases, or laid down the duties of officers concerned. According to HD's records, of the 65 cases of reinstatement works completed in the past four financial years, 10 cases took six months or longer (in fact 7 cases took more than nine months), while the longest-standing case was not successfully handled until after more than two years. As at 30 June 2016, there were 27 pending cases of unauthorised alterations, of which 18 cases took six months or longer and yet the reinstatement works had not been completed (in fact 13 cases took nine months or longer), while the oldest pending case had been pursued for nearly three years. The delay by the Department was clearly serious.

Staff Failure to Follow Guidelines

20. Under established guidelines, reinstatement works of Category A fixtures must be carried out by HD in order to ensure that the materials used and installation method adopted meet established standards and criteria and to guarantee building safety. Nevertheless, according to HD's records, 61 of the 65 cases of reinstatement works completed involved unauthorised alterations to Category A fixtures, of which 28 cases were reinstated by the tenants themselves and not HD. Such practice violated established guidelines and can pose a potential danger to building safety.

21. Meanwhile, for some long-standing cases of delay in reinstatement of housing units with unauthorised alterations, HD's attitude was too lax and it failed to exercise the Marking Scheme or exercise tenancy control to enhance deterrent effects.



Rashness in Follow-up Actions and Laxity in Enforcement

22. When following up individual cases, estate management offices, rather than requesting tenants to fully rectify all unauthorised alterations, accepted the tenants' "promise" to reinstate the housing units when they were to return their units in future. The offices would then close the case without further follow-up actions, showing rashness in their follow-up actions and laxity in enforcement.

Ineffective Monitoring

23. The problems noted in paras. 19 to 22 above concerning the estate management offices' following up of individual cases reflected ineffective monitoring on the part of HD's management of the problems of unauthorised alterations to fixtures, as well as the progress and quality of follow-up actions by its staff. They simply allowed the problems to persist.

Still Inadequacies under the New Mechanism; Need to Review Effectiveness for Further Improvement

24. The new guidelines issued in August 2016 offer a set of standardised criteria for follow-up actions. This would help to avoid inconsistencies in practices among different estate management offices and even different officers.

25. However, under the new guidelines, some fixtures are reclassified from Category A to Category B (see para. 13). We consider that this may be a potential hazard to tenants' living environment, such as causing water seepage or unstable structure. In fact, according to information from HD, of the 92 cases of unauthorised alterations mentioned in para. 19 above, 33 cases (i.e. more than one-third) involved water seepage from ceiling. The causes of water seepage from ceiling were mostly due to unauthorised alterations to kitchen/toilet/bathroom installations and floor slab, such that the waterproof layer beneath the floor slab was damaged, resulting in water seepage.

HD has reclassified alterations involving kitchen, toilet, bathroom installations and floor slab from Category A to Category B. It is questionable whether this would affect building structures over the long term and hence lead to more cases of water seepage from ceiling.

26. Moreover, although the new guidelines require that estate management offices conduct a site inspection within 90 calendar days of those units with approved alteration works, if the relevant works are still in progress, the guidelines do not require estate management offices to conduct another inspection to ensure that all the alterations meet stated requirements. On the other hand, where the works are completed, it is still unknown whether a site inspection can discern any hidden works/materials like water-proofing works/materials and meet required standards.

27. Anyhow, the new guidelines have been in operation for only a few months and the results are still to be assessed. HD should regularly review the effectiveness in implementing the New Mechanism and, where necessary, further improve the guidelines in order to properly follow up the problems of unauthorised alterations to fixtures by tenants.

Our Recommendations

28. In the light of the above, The Ombudsman recommends that HD:

- (1) regularly review the effectiveness in implementing the New Mechanism to ensure that the expected results are achieved, prevent any recurrence of faults under the Old Mechanism, and, where necessary, enhance the working guidelines, which include formulating clearer provisions, stipulating that estate management offices should arrange inspections following completion of alteration works in order to ensure that all alterations are in line with the regulations on relevant categories of fixtures;

- (2) closely monitor the impacts after revising the categories of fixtures, with particular attention to whether the reclassification of those fixtures from Category A to Category B would affect building structures and lead to more cases of water seepage from ceiling and, whereas necessary, further revise the categories of fixtures;
- (3) step up monitoring to ensure that frontline officers follow the guidelines, including resolutely exercising the Marking Scheme and other punitive measures where necessary;
- (4) actively follow up those outstanding cases of unauthorised alterations, especially those cases that have been pending for more than six months;
- (5) review those cases with unauthorised alterations not being fully rectified, and with Category A fixtures being reinstated by tenants. That is to ensure that appropriate follow-up action have been taken;
- (6) regularly hold training courses for frontline officers with a view to enhancing their abilities to handle unauthorised alteration cases, especially those difficult ones;
- (7) step up inspections and actively detect cases of violations;
- (8) step up publicity on the categories of fixtures and installations under the New Mechanism, and demonstrate determination to deal with cases of unauthorised alterations; and
- (9) consider imposing heavier penalties on tenants who refuse to reinstate unauthorised alterations to fixtures made in their units.

29. We are pleased to note that HD has accepted all our recommendations and has started its follow-up actions. We will continue to monitor the progress until our recommendations are fully implemented.



Lands Department ("Lands D")

Case No. OMB/DI/371

**Lands Department's System of
Regularisation of Illegal Occupation of
Government Land and Breach of Lease
Conditions**

(Investigation declared on 5 May 2015
and completed on 8 September 2016; full
report [Chinese version only] available at
www.ombudsman.hk)

Background

Lands D is responsible for taking enforcement actions against illegal occupation of Government land and breach of lease conditions. Where illegal occupation of Government land is found, Lands D can take land control actions pursuant to the Land (Miscellaneous Provisions) Ordinance. In case of breach of lease conditions by a landowner, Lands D can take lease enforcement actions.

2. Nevertheless, in practice, Lands D has all along allowed illegal occupiers of Government land and landowners in breach of lease conditions to apply for regularisation of such irregularities by way of short-term tenancy ("STT") and short-term waiver ("STW") of lease conditions respectively.



3. Lands D often takes more than a year to complete processing regularisation applications. Moreover, when an application is being processed, Lands D would normally suspend its enforcement actions, resulting in possible prolonged nuisance or inconvenience caused to nearby residents as the irregularities persist. The Ombudsman, therefore, conducted this direct investigation to probe inadequacies in the existing system of regularisation.

Procedures for Processing Regularisation Applications

4. Applications both for regularisation of illegal occupation of Government land by way of STT and for regularisation of breach of lease conditions by way of STW are processed by the local District Lands Office (“DLO”).

5. Once an STT application is approved, DLO will require the applicant to pay rent and an administrative fee. Upon approval of an STW application, DLO will charge the applicant a waiver fee and an administrative fee. In general, charging of rent or waiver fee will take retrospective effect from the date when the irregularities first came to DLO’s attention.

6. DLO should complete processing simple STT applications within 24 weeks. With regard to applications for STW for changing industrial premises to commercial use, after the applicant has obtained the permission from the Town Planning Board and paid the administrative fee to DLO, the latter should issue within 4 months a notification letter specifying the basic terms (including the amount of waiver fee) of the STW.

Our Findings and Comments

7. Our investigation has found clear inadequacies in Lands D’s enforcement policy against illegal occupation of Government land and breach of lease conditions, as well as in its system of regularisation of such breaches.

Enforcement Policy against Illegal Occupation and Lease Breaches

8. For years, citing resource constraints as the reason, Lands D has not proactively conducted regular inspections to detect illegal occupation of Government land and breach of lease conditions. Normally, Lands D will conduct inspections only upon receipt of public complaints or referrals from other departments. Even so, Lands D allows those who have committed breaches to apply for regularisation. This amounts to encouraging and conniving at cases of people first committing breaches and then applying for regularisation or not applying for regularisation at all, thus aggravating the problem of illegal occupation and breach of lease conditions. We consider that in order to resolve the problem effectively, Lands D should as soon as possible discontinue its enforcement policy of not conducting self-initiated inspections.

Design and Implementation of the Existing Regularisation System

9. Deficiencies are found in the following four aspects of Lands D’s system for regularising illegal occupation of Government land and breach of lease conditions:

- (1) Applications for regularisation of breaches are at “zero cost”. Furthermore, when an application is being processed, the applicant can have the “benefit” of continuing with the breaches during the period. This amounts to encouraging those caught having committed breaches to stall Lands D’s enforcement actions by simply applying for regularisation. We consider that Lands D should introduce the concept of “paying a price for breaches” into the regularisation system. For example, Lands D should require the applicants to pay a “forbearance fee”, so as to deter them from abusing the regularisation system.

(2) There were often delays on the part of DLOs in processing regularisation applications. Some applications were even left idle for years. Such delays resulted in deferred enforcement actions, and also led to decrease in (and in some cases, even non-collection of) revenue in respect of rent or waiver fees. We consider that Lands D should seriously review its system for monitoring the progress of processing regularisation applications.

(3) Some cases show that even though public complaints had already been received about the premises in question or relevant Government departments had already raised concerns about the regularisation applications, DLOs still suspended enforcement actions.

(4) Lands D does not maintain statistics on STTs granted for regularisation of illegal occupation of Government land. In other words, the Department has no way of grasping the overall situation with respect to those STTs, such as the area and distribution of the land involved, and the amount of revenue generated.

Lands D's Response to Our Comments

10. Lands D reiterated that with limited resources, the Department found it hard to proactively conduct regular inspections. Nevertheless, in the last two years, the Department had strategically conducted self-initiated inspections and stepped up enforcement actions in targeted areas.

11. After considering our comments on the existing regularisation system, Lands D at long last agreed to make improvement, i.e. to tighten up the practice of suspending enforcement actions during DLOs' processing of regularisation applications. Unless there are "special reasons" for suspending enforcement actions, DLOs will no longer suspend enforcement actions even if those having committed the breaches have applied for regularisation. "Special reasons" include cases where enforcement action would:

(1) contradict a policy direction of the Government;

(2) have an adverse impact on people's livelihood; or

(3) pose a safety risk.

12. Lands D also proposed the following improvement measures:

(1) to consider charging regularisation applicants a "forbearance fee" in cases where enforcement actions have to be suspended, and to strengthen its monitoring of the processing of such cases;

(2) to consider requiring all applicants for regularisation by way of STT or STW to pay the administrative fee as soon as DLO starts processing their applications; and

(3) to enhance its database on STTs by adding a new field of data to record whether the STTs are for regularisation.

Our Views on Lands D's Response

13. We note that in recent years, Lands D has stepped up inspections and enforcement actions in response to major incidents revealed by the media. However, such reactive actions could at best cope with those specific cases only. We do not think that the Department can deter illegal occupation of Government land or breach of lease conditions by conducting inspections only when it has learned about the breaches from public complaints, referrals from other departments, or media reports. The reasons are as follows:

(1) Ordinary citizens may not know what amounts to a lease breach. They only make complaints when they find themselves subject to nuisance or their safety under threat.



- (2) By the time a problem gets reported in the media, the situation is likely to have become so serious and widespread that the problem can hardly be resolved.

14. We welcome Lands D's positive move to abandon its practice of generally suspending enforcement actions during DLOs' processing of regularisation applications. However, the Department must implement the new measure strictly, otherwise its purpose could not be achieved. The Department should not conveniently invoke the "special reasons" to avoid taking enforcement actions.

Recommendations

15. In the light of the above, The Ombudsman urges Lands D to:

- (1) re-deploy its resources to set up a mechanism for proactive inspections to detect illegal occupation of Government land and breach of lease conditions, and enhance its enforcement efficiency, so as to deter irregularities more effectively;
- (2) tighten up, as soon as possible, its practice of suspending enforcement actions while processing regularisation applications (including introduction of "forbearance fee"), devise clear, specific guidelines on "special reasons" for suspension of enforcement actions, and restrict the authority to suspend enforcement actions to high-ranking officers of the Department only;
- (3) set a timeframe for processing cases where enforcement actions have not been suspended, and closely monitor and timely escalate the enforcement actions to ensure that the breaches can be rectified as soon as possible;
- (4) implement, as quickly as possible, the new measure of requiring applicants for regularisation by way of STT or STW to pay the administrative fee as soon as DLO starts processing their applications; and
- (5) add, as soon as possible, a category of regularisation to the database on STTs, and record by phases all old and new STTs under that category.



Leisure and Cultural Services Department ("LCSD")

Case No. OMB/DI/368

Temporary Closure of Public Swimming Pools/Beaches under the Leisure and Cultural Services Department Due to Shortage of Lifeguards

(Investigation declared on 22 July 2015 and completed on 9 September 2016; full report [Chinese version only] available at www.ombudsman.hk)

Background

Suspension of services at public swimming pools/beaches due to shortage of lifeguards happened at times, for a number of reasons. While some cases were caused by industrial actions staged by the lifeguard unions, some were due to LCSD's inadequacies in the management and deployment of lifeguards. We learned while investigating a complaint case that between June and September 2013, the number of days that some swimming pool facilities at the Kowloon Park Swimming Pool were closed due to concurrent sick leave of lifeguards far exceeded that during the same periods in 2011 and 2012. That means the problem may be getting worse.

2. Concerned that the suspension of services at LCSD's swimming pools due to shortage of lifeguards has caused not only a waste of public facilities and resources but also inconvenience to the public, The Ombudsman initiated this direct investigation. As stipulated in The Ombudsman Ordinance, this Office cannot investigate personnel matters in respect of the pay, conditions of service, discipline, etc. of Government departmental positions, the focus of this direct investigation was not on LCSD's personnel management matters but on how the Department managed its swimming pools/beaches, including the deployment of lifeguards, to protect the public's rights to use swimming pools/beaches, with a view to identifying any inadequacies and areas for improvement.

Our Findings

3. Our investigation revealed the following inadequacies and areas for improvement in LCSD's handling of closures of swimming pools/beaches due to shortage of lifeguards.

Ineffective Deployment of Lifeguard Manpower

4. According to LCSD, apart from deploying an adequate number of basic manpower for each shift, it would in general deploy one or two extra lifeguards as buffer staff to strengthen lifeguard service. Where the number of lifeguards on sick leave at short notice exceeds the buffer manpower, leaving insufficient lifeguards on duty at a swimming pool or beach, the officer-in-charge of the venue concerned will follow established procedures and immediately contact the substitute staff, staff on the next shift and those on vacation leave of the same venue or in the same district to cover the duties of absentees. Or, the officer-in-charge may contact other swimming pools/beaches in the same district to discuss possible staff secondment to maintain the services of the swimming pool or beach concerned.



Insufficient Buffer Manpower and Lack of Substitute Staff Duty Rosters

5. Nevertheless, in reality, the substitute staff or staff on vacation leave are not yet ready to go to work. Even if they agree to report for duty, it would still take some time for them to get to the venue. As regards secondment of lifeguards between venues, from the perspective of a venue's officer-in-charge, seconding the buffer manpower to help resolve the shortage of lifeguards at other venues may result in partial or even complete closure of his own venue should something unexpected happen and affect the venue's manpower. Besides, LCSD has no clear instructions on secondment between swimming pools/beaches. If the lifeguards to be seconded believe that the lifeguards of the swimming pool concerned are staging a boycott by concurrently taking sick leave, they would be reluctant to cover their duties because they do not want to be rejected by their colleagues. LCSD, therefore, should consider increasing the buffer manpower where appropriate and rationalise the staff secondment arrangements to avoid disputes. This should also make the officers-in-charge feel more comfortable with secondment arrangements as needed.

Manpower Strain during Peak Season (June to August)

6. Some lifeguards choose to take vacation leave between June and August, the busiest period of the year, thereby affecting the deployment of staff. LCSD should take effective measures to ensure that there is adequate manpower for smooth operation of the facilities during the peak season. It should also make arrangements for lifeguards to take leave in the non-peak season.

Difficulties in Hiring Seasonal Lifeguards

7. In recent years, hiring seasonal lifeguards has become more and more difficult for LCSD, with the ever-growing demand for lifeguards of the swimming pools of large clubhouses in new private estate developments. Given the increasing market competition, LCSD must adopt a flexible approach

in searching for a solution to the hiring problem of seasonal lifeguards, such as considering restructuring their grade and pay package, having regard to their job nature and requirements in experience and skills.

Arranging Part-time Hourly-rated Seasonal/Voluntary Lifeguards

8. The services of part-time hourly-rated seasonal/voluntary lifeguards can enhance LCSD's flexibility in deploying manpower of lifeguards and its ability to handle contingencies. Part-time hourly-rated seasonal/voluntary lifeguards are not as experienced as full-time lifeguards. However, through regular training (such as drills) and awards schemes, LCSD can enhance their professional skills, boost their confidence and ability in carrying out lifesaving duties and increase the incentive for them to provide services. In the meantime, the Department should also improve the current duty rosters for part-time hourly-rated seasonal/voluntary lifeguards by obtaining more precise information on when and where these lifeguards (especially students not in employment) can be on lifesaving duties. By doing so, LCSD can deploy manpower more swiftly when substitutes are suddenly needed so as to minimise the chance of partial or even complete closure of swimming pools/beaches because of insufficient lifeguards on duty.

Outsourcing Lifeguard Services

9. Management for the Island East Swimming Pool and Tai Kok Tsui Swimming Pool was once outsourced by LCSD to private companies in 2001 and 2005 respectively. Later on, the service contractor of Island East Swimming Pool was accused of falsifying the shift duty records of lifeguards. Concerned with the safety of swimmers, LCSD finally decided in 2011 to terminate all plans to outsource lifeguard services. We consider that whether LCSD should reconsider outsourcing lifeguard services hinges mainly on whether it can set up a proper monitoring mechanism. In the long run, outsourcing lifeguard services can be a viable means to augment the lifeguard manpower. We shall leave the matter to LCSD for further study and planning.

Lax Measures to Monitor Sick Leaves Taken by Staff Members Compared with Other Departments and Ineffective Execution

10. Under section 1291 of the Civil Service Regulations (“CSR 1291”), if there are reasonable grounds for a Government department to suspect that an officer might have abused sick leave, it can require the officer to attend a particular Government or Hospital Authority clinic and produce medical certificates issued by them before sick leave is granted. However, we noticed a rising trend in both the number of cases in the lifeguard grade where the LCSD management had to invoke CSR 1291 and the percentage of such cases among LCSD staff cases as a whole, with the number of grade members involved increasing from 4 to 57 in the past five years and the overall percentage reaching 80% in the past two years. In recent years, the number of days on which individual swimming pools/beaches had to be partially or even completely closed owing to lifeguards being absent or on sick leave was on the rise.

11. Regarding the monitoring of sick leaves taken by staff members (including lifeguards) by invoking CSR 1291, LCSD’s practice had been laxer than that of other Government departments. The “trigger point” for LCSD to invoke CSR 1291 was nine days of sick leave in three months, as opposed to five days in three months for other departments. Besides, before invoking CSR 1291, the LCSD management would first meet with the staff members concerned in person for reviewing the sick leave situation (“pre-monitoring procedure”), instead of taking action right away. This was also laxer than other Government departments.

12. As can be seen from the cases cited in Chapter 4 of our investigation report, while invoking CSR 1291 early might not eradicate abuses of sick leave, it did have a certain deterrent effect on some lifeguards. In some more serious cases, invoking CSR 1291 had made it costlier and riskier for the lifeguards involved to defy the Regulations. Nevertheless, we noticed that

LCSD had failed to set off the procedure to invoke CSR 1291 early in a number of cases where the lifeguards had taken nine days of sick leave in three months. In some cases, LCSD activated the procedure only after the problem had persisted for more than a year.

Failing to Set Out Clear Guidelines for Lifeguards Who Can Only Perform Light Duties (“Lifeguards on Light Duties”)

13. Lifeguards on light duties usually refers to cases where after medical assessment, the staff concerned are recommended to perform only light duties. Our investigation reveals that the number of lifeguards on light duties, though relatively stable, is slightly on the rise. We consider that notwithstanding this, the operation of individual swimming pools/beaches would still be affected to a certain extent. LCSD should, therefore, come up with a definition of “lifeguards on light duties” and set out clearer guidelines on the kind of duties they can take up so that officers-in-charge of venues can deploy adequate manpower accordingly. For instance, while a lifeguard on light duties cannot perform weight-lifting duties (such as lifesaving), he can still assume other duties such as patrol or maintenance of order, etc. Prolonged cases of light duties would be subject to LCSD’s regular review and seasonal lifeguards would be recruited to perform the original duties of the lifeguards involved during the swimming season should there be operational needs. Nonetheless, we consider that sufficient manpower must also be maintained at major positions at swimming pools/beaches even during the non-swimming season. If individual lifeguards have to be on light duties for a time long enough to affect the basic operation of a swimming venue, it is imperative that LCSD consider deploying more regular lifeguards. In other words, LCSD should set out clear guidelines on the work arrangements for lifeguards on light duties. This can facilitate fair and reasonable allocation of duties by officers-in-charge of venues and avoid imposing extra workload on the other lifeguards on duty.



Deducting Time-off in Lieu to Offset Lateness for Work Not Appropriate

14. While the frequency that lifeguards reported late for work might not be very high (about 0.8 time per month for each lifeguard on average), it might still be high enough to cause delays in opening swimming pools/beaches to the public fully and on time. Records showed that more than 20% of late cases involved lifeguards being late for work for more than 15 minutes, and 70% of the late cases would not be so regarded once the lifeguards' time-off in lieu had been deducted in recompense. We consider that the LCSD management should be held responsible for having acquiesced in such inappropriate practice. They should take stringent monitoring measures to correct the lifeguards' bad habit of being late, properly handle the time-off in lieu arrangements and conscientiously discharge supervision duties.

Failure to Establish Clear Induction Training Requirements for Lifeguards Affecting Manpower Deployment

15. A lifeguards' union indicated to us that many newly recruited lifeguards failed to complete the three-stage induction training, including diving lessons, which is required to be completed in three years after recruitment. Those lifeguards were, however, still given passage over probation and continued to perform lifesaving duties. Our investigation report revealed that, of the three-stage training programme that all newly recruited lifeguards are required to complete, each had at least several dozens of the newly recruited lifeguards who have yet to participate in the programme. Between 2012/13 and 2014/15, as many as 87 lifeguards were still to take part in the rescue diving course. Some of them had not even attended the introductory practical training of the first stage. Besides, not all of those who had taken part in the courses could attain a pass. For example, the average passing rate of the diving courses was just 87%.

16. On this issue, LCSD indicated that upon appointment, lifeguards already possess the professional qualifications necessary for carrying out lifesaving duties. On-the-job drills will also be arranged. As such, even if some lifeguards have failed in their induction training programme, manpower deployment would not be adversely affected. For newly recruited lifeguards who cannot complete the three-stage induction training programme during the first three years of service, LCSD's Training Section will still arrange for them to participate in the remaining part of the training in the following year.

17. We consider that LCSD's explanations cannot stand. On the one hand, it maintained that those courses are not compulsory, but on the other hand, the Department would continue to arrange for those who did not pass or participate in those courses to complete the remaining part of the training, implying that those courses are actually compulsory in nature. This also shows that LCSD's policy is confusing. In fact, if certain lifeguards cannot provide the most suitable lifesaving service because they have yet to complete or even participate in the relevant training courses, rescue action would be delayed even if other colleagues could render help. This would not only damage the professional image of lifeguards but, most importantly, also affect the safety of swimmers. LCSD must not take the training of lifeguards lightly.

Arrangements to Close Swimming Pools

18. LCSD issues press releases to announce complete closure but not partial closure of swimming pools. Members of the public are informed of partial closures only by a notice put up at a prominent place near the entrance of the swimming pools or through the 1823 hotline. We consider that the public will be affected even when a swimming pool is only partially closed (e.g. if all the swimmers are using the only available lanes, their enjoyment would be dampened by the crowds). LCSD should at least put up a notice on its website so that members of the public can decide for themselves whether they still want to go to the venue concerned for swimming.

Inadequate Communication with Lifeguards' Unions

19. Although LCSD has conducted regular reviews on manpower and recruited more lifeguards accordingly, and has invited staff and union representatives to join the working group on manpower review, lifeguards still took industrial action occasionally, resulting in service suspension of swimming pools/beaches. This indicates that the working group has not been effective in helping the management and staff to reach a consensus. Specifically, there are substantial differences in the perspectives and points of view between LCSD management and lifeguards' unions on a number of basic issues pertaining to the operation of swimming pools/beaches. LCSD has to further enhance its actual communication with the lifeguards' unions to facilitate mutual understanding and consensus, in order not to dampen lifeguards' morale and affect the operation of swimming pools/beaches.

Recommendations

20. From the perspective of swimming pool/beach operation, The Ombudsman makes the following recommendations for improvement to LCSD:

Manpower Deployment

- (1) to review the adequacy of existing arrangements for buffer manpower, and formulate more specific arrangements for deploying substitute staff (such as drawing up staff secondment duty rosters), and to explore measures to strengthen the capability and flexibility in deploying lifeguards, with a view to maintaining the normal operation of all facilities;
- (2) to explore ways of strengthening the monitoring of lifeguards taking vacation leave during the peak season (June to August), so as to relieve manpower strain, and measures to allow lifeguards to take leave in the non-peak season instead;

- (3) to formulate measures (such as setting up regular training and awards schemes) for enhancing the professional skills of part-time hourly-rated seasonal/voluntary lifeguards, and obtain more precise information on the time slots they are available for carrying out lifeguard duties in order to draw up a more functional duty roster;
- (4) to study the feasibility of reintroducing outsourced lifeguard service, including the setting up of a comprehensive monitoring mechanism to ensure swimmer safety, and consulting the public and lifeguards' unions where necessary;

Mechanism for Monitoring Sick Leave

- (5) although LCSD has now followed the practice of other departments in invoking CSR 1291 for monitoring suspected abuse of sick leave, LCSD should still regularly examine the effectiveness of its new measures. In particular, officers-in-charge at venues should be reminded to closely monitor the sick leaves taken by staff and take timely action where necessary;
- (6) to closely monitor any rising trend in cases of light duties and, if such trend is identified, to review whether potential risks of occupational injury exist in swimming pools/beach facilities and make improvements. The need for stepping up training on occupational safety and health for lifeguards should also be considered;
- (7) to issue more reference materials on the definition of light duties and the nature of work assignments for the staff concerned, and regularly examine prolonged cases of light duties. If the situation has a long-term impact on the operation of swimming pools/beaches, LCSD should consider deploying more manpower to resolve the problem;



- (8) to rigorously deal with the problem of punctuality among lifeguards and avoid allowing them to work overtime as compensation for being late; to closely monitor repeated latecomers and take disciplinary action in a timely manner to achieve a deterrent effect;

Arrangement to Close the Pool

- (9) in case of temporary partial closure of swimming pool facilities, to consider issuing a press release as in cases of complete closure, or at least making an online announcement, so that the public can decide whether they still want to go to those venues;

Enhancing the Lifeguard Management Regime

- (10) to review the compulsory training programmes for lifeguards and the target timeframe of completing them so as to ensure that lifeguards are equipped with basic lifesaving knowledge and given the opportunities to acquire new skills, thereby improving their competence and professional standard. This can promote the smooth and safe operation of swimming pools/beaches, as well as boost lifeguards' sense of missions towards the job and their professional image;
- (11) to comprehensively review and explore more flexibly ways to overcome the difficulty that LCSD is currently facing when hiring seasonal lifeguards. Besides, LCSD should step up publicity on its recruitment campaign and make advance preparations before the start of swimming season to prevent manpower wastage; and
- (12) to enhance its communication with lifeguards' unions and staff for reaching a consensus and common understanding on basic issues pertaining to the daily operation of swimming pools/beaches.



Marine Department ("MD")

Case No. OMB/DI/334

Marine Department's Follow-up Mechanism on Recommendations Made in Marine Incident Investigation Reports

(Investigation declared on 2 November 2015 and completed on 8 June 2016; full report [Chinese version only] available at www.ombudsman.hk)

Background

In October 2012, a serious marine incident occurred off Lamma Island ("the Lamma Incident"). After investigation, it was found that one of the vessels involved was not fitted with a watertight door, resulting in water ingress and rapid sinking of the vessel after collision. Subsequently, the media reported that in 2000, a Government vessel under maintenance at a dockyard sank after water had entered its hull because the watertight bulkheads on board were not intact. While the relevant incident investigation report had already recommended that MD examine the watertight bulkheads for all vessels of the same type, the occurrence of the Lamma Incident cast doubt on whether MD had fully implemented the recommendations of marine incident investigation reports all along.

2. In this light, The Ombudsman decided to initiate a direct investigation. Since an independent Commission of Inquiry has inquired into the Lamma Incident and submitted a report, this direct investigation would not look into the causes of the Lamma Incident and the question of accountability.

Investigation of Marine Incidents

3. Where a Hong Kong registered ocean-going vessel in any waters, or a certificated local vessel or any other non-local vessel within Hong Kong waters is involved in an accident, the owner/master/proprietor of the vessel or their agent(s) must report the occurrence to the Director of Marine.

4. The Marine Accident Investigation and Shipping Security Policy Branch (“MAI”) under MD is responsible for investigating marine incidents reported and preparing a marine incident investigation report (“incident report”) for such incidents. Where necessary, MAI will make recommendations for improvement.

Follow-up Mechanism on Recommendations in Incident Reports

5. Prior to June 2013, MD had basically adopted a lax approach in following up recommendations made in the incident reports. It would mainly rely on the officers of relevant divisions and the related vessel companies/vessel owners to take voluntary actions to rectify the inadequacies, without any specific records of the follow-up actions and monitoring system. In response to Report No. 59 of the Audit Commission, MD set up a computer system in June 2013 and input into the system all the recommendations made in the incident reports for continued monitoring of the progress of implementation. Furthermore, in December 2014, MD revised its guidelines on marine incident investigation with a new section on following up recommendations made. For ease of discussion below, the operational mechanisms before and after MD’s setting up of the above computer system are referred to as “the Old Mechanism” and “the New Mechanism” respectively.

Lax Approach under the Old Mechanism

6. When the computer system was set up in June 2013, MD did not input into its database information about implementation of recommendations arising from investigation cases concluded before that time. Upon our request, MD retrieved from different divisions its old records and manually searched the relevant information. It then collated and compiled the information related to its follow-up actions on recommendations made in the incident reports. According to the information so obtained, during the period between January 2005 and May 2013, MD concluded 114 marine incident investigations and made 308 recommendations in total.

7. Regarding MD’s follow-up actions on the recommendations made in the above 114 incident reports under the Old Mechanism, we have the following observations.

No Follow-up Actions by MD for Years after Completion of Investigation

8. In five cases, MD had not taken any follow-up actions for years after completing the investigation. For the case with the most serious delay, MD only took “retrospective” action to follow up the recommendations made in the incident report eight years and seven months after completion of the investigation. In the other three cases, MD only took “retrospective” follow-up actions some seven years after completion of the investigation.

9. As for the remaining case, MD checked the relevant records once again on receipt of our draft investigation report and found that the recommendations made in the incident report had actually been followed up in a timely manner. Nevertheless, MD could not locate any record about the “follow-up action taken” when it collated and compiled the information upon our request in mid-2014, and so it took “retrospective” follow-up action again in July 2014. This showed that MD’s records were indeed muddled and confusing.



10. We notice that MD's "retrospective" follow-up actions were all taken after July 2014, subsequent to our request for MD to search and collate its old records. It appeared that had it not been because of our direct investigation, MD might not have discovered its omissions of follow-up actions in those cases.

Omissions in Following up on Some Recommendations

11. In following up on 11 cases, MD had omitted its follow-up actions on at least one recommendation in each case, and "retrospective" follow-up actions were only taken years later. In the case which involved the most serious delay, MD completed the investigation in May 2005 and made seven recommendations. Only three of those recommendations were followed up in the same month and in January 2006. For the remaining four recommendations, however, it was not until August 2014 (i.e. more than nine years later) that MD took follow-up actions.

12. MD only took "retrospective" actions to follow up its recommendations after July 2014. We believe that it was upon checking of records at our request that MD discovered the omissions and took retrospective follow-up actions.

Case Information Incomplete and Confusing

13. According to the records provided by MD during our investigation, a total of 114 incident reports were completed between January 2005 and May 2013. However, we found from MD's website that in addition to those 114 incidents, there were another six marine incidents.

14. Upon receipt of our draft investigation report, MD searched and found the case files of those six incidents. The Department explained that when it first provided us with the case information, those six cases were involved in legal proceedings.

15. Nevertheless, we must point out that during our investigation, MD had provided us with information on a number of marine incident investigations. Many of those cases involved on-going litigations but the six cases just mentioned were not among them. Besides, because MD's information was confusing, we had specifically asked MD in November 2015 to confirm that the information and data provided to this Office in the course of our investigation were accurate. MD replied in December and confirmed their accuracy. This clearly implied that the Department had not been rigorous at all in checking its records, and reflected how incomplete and confusing its records had been.

The New Mechanism Still Inadequate

16. Between June 2013 and November 2015, MD had completed 77 marine incident investigations and made 215 recommendations in total.

17. The New Mechanism requires that in addition to informing the related agencies and parties of its recommendations made in the incident report, MD should also enter those recommendations into its computer system, so that timely reminders will be issued to the responsible officers for follow-up actions while senior management can monitor the progress until all the recommendations are implemented.

Inadequate Follow-up Actions on Recommendations Regarding Vessels Not Registered in Hong Kong or Not Certificated Locally

18. In effect, the New Mechanism is only applicable to vessels registered in Hong Kong or certificated locally. For recommendations relating to vessels not registered in Hong Kong, MD would basically follow the Old Mechanism. We consider that the Department should at least attempt to know whether improvements have been made to the vessels in question so that it could assess the possible marine safety hazards should those vessels enter Hong Kong waters again.

Failure to Follow up Each Case Rigorously

19. In most cases where the New Mechanism was applicable, follow-up actions would come to an end once MD received replies from the related agencies indicating that the recommendations had been, or were about to be, implemented. No further verification on the implementation process would then be made.

20. We consider that MD should rigorously follow up each and every recommendation to ensure their full implementation. For example, MD should wrap up its follow-up actions only after it has received documentary proofs from the related agencies, or after its officers have conducted inspections to confirm implementation of all the recommendations.

MD Not Applying the New Mechanism to Old Cases

21. According to MD, it has completed its follow-up actions on 308 recommendations made under the Old Mechanism. In response to our enquiries, MD clarified that if the New Mechanism were to apply to the aforesaid 308 recommendations, then 20 cases involving 22 recommendations would require continued follow-up actions. However, because of manpower and resource constraints, and because its review on the 20 cases mentioned above had confirmed absence of similar incidents recurring in the same vessels, MD did not see any need to apply the New Mechanism to follow up those 22 recommendations.

22. We find MD's decision not to apply the New Mechanism to follow up those 22 recommendations on such grounds unacceptable, as this may put our marine safety at risk.

Recommendations

23. In the light of the above, The Ombudsman urges MD:

- (1) to actively verify whether all the recommendations in incident reports are implemented, instead of relying on reports by the agencies or parties concerned, and to include this procedure in the regular routines for following up implementation of recommendations;
- (2) to take appropriate follow-up actions on implementation of recommendations regarding cases involving vessels not registered in Hong Kong or not certificated locally;
- (3) to reconsider applying the New Mechanism to follow up those 22 recommendations under the Old Mechanism, with a view to ensuring marine safety;
- (4) to consider reviewing the information on cases under the Old Mechanism to prevent the problem of confusing records, and to ensure that appropriate actions will be taken to follow up on recommendations made in the incident reports; and
- (5) to review regularly the follow-up actions on all recommendations made in incident reports under the New Mechanism and ensure the achievement of expected results.



Transport Department (“TD”) and Labour and Welfare Bureau (“LWB”)

Case No. OMB/DI/360

Government Regulation of Special Transport Services to Persons with Mobility Difficulties

(Investigation declared on 20 November 2014 and completed on 3 March 2017; full report [Chinese version only] available at www.ombudsman.hk)

Background

According to Government statistics published in 2014, there were about 320,500 persons with restriction in body movement (i.e. about 4.5% of the total population) in the territory in 2013.

2. The last time the Rehabilitation Advisory Committee formulated a rehabilitation policy concerning transport services for persons with disabilities was in 2007. The Hong Kong Rehabilitation Programme Plan (“the Plan”) published in that year set out the policy objectives to facilitate the integration of persons with disabilities into the community. The Plan included a proposal for the Government to build a barrier-free environment on access to facilities and transportation for persons with disabilities, and to provide special transport (“ST”) services to those who cannot use public transport. Nevertheless, because

of excess demand, quite a number of persons with disabilities who cannot use public transport had no access to legitimate ST services, and could only resort to transport services provided by some rehabilitation vehicles illegally converted from private cars or light goods vans (unlicensed rehabilitation vehicles, or “URVs”). However, whether the facilities and installations on such vehicles meet the standard requirements and whether the safety of passengers with disabilities can be assured and their rights and interests protected remain questionable.

3. In this connection, pursuant to The Ombudsman Ordinance (Cap 397), The Ombudsman declared on 20 November 2014 a direct investigation to examine the implementation of the policy on ST services by the Government (the relevant departments being the Labour and Welfare Bureau (“LWB”) and the Transport Department (“TD”)), the progress in encouraging the introduction of barrier-free taxis and Government measures against the operations of URVs.

Our Findings

4. Our investigation reveals that existing ST services are plagued with problems and the Government has not been proactive enough in implementing the Plan.

Problems of ST Services

Serious Undersupply of Rehabus Services

5. There were more than 10,000 unsuccessful requests for the Rehabus scheduled route and dial-a-ride services every year between 2011 and 2014. There were nearly 10,000 unsuccessful requests in 2015. Over 20,000 withdrawals of bookings were recorded each year. The number of withdrawals of bookings showed a drop in 2012 and 2013, only to climb again in 2014 and soared to more than 30,000 in 2015. Our case studies and stakeholders’ views indicated that quite a number of Rehabus services applicants simply withdrew from or did not even apply for the services because of the exceedingly long time needed for booking the said services. They unanimously pointed out that bookings for Rehabus services often took several months or even a year in advance, yet provision of the services requested was not guaranteed. For instance, their return trips could not

be arranged, or the requested number of vehicles was not available, etc. More regrettably, over half of the unsuccessful bookings for Rehabus services involved patients who needed to attend follow-up consultations or receive medical treatment. This reflected that Rehabus services were so unacceptably inadequate that the basic needs of persons with disabilities to seek medical consultation had been affected. Since Rehabus is the only prevalent mode of ST services, we find it unacceptable that its services should have been so gravely inadequate.

Government's Failure to Seriously Assess Demand for ST Services and Set Targets for Service Provision

6. LWB indicated that the Social Welfare Department ("SWD") has been providing vehicles for rehabilitation centres ("centre vehicles") under non-governmental organisations ("NGOs") based on their operational needs. Those centre vehicles provide transport service to users between the rehabilitation centres and their homes, or when they need to attend follow-up consultations or join outdoor activities. Yet, SWD does not require those NGOs to submit data on their number of users and user-trips. As such, LWB does not maintain any relevant information. On the other hand, TD stated that it is not responsible for the regulation and monitoring of centre vehicles operated by NGOs, nor Accessible Hire Cars of the Hong Kong Society for Rehabilitation ("HKSR"). So, it has never assessed the overall demand for ST services. In a nutshell, the Government has never seriously assessed the overall demand for ST services. At present, the only information it has at hand is those about Rehabus services, including the number of unsuccessful bookings and withdrawals of bookings.

7. Our view is that the Government's inability to understand the overall demand for ST services makes it impossible to assess the effectiveness of implementing the proposed measures in the Plan, let alone encourage social participation and integration of persons with disabilities into the community.

Government's Failure to Fully Coordinate the Effective Utilisation of ST Services

8. Statistics show that the fleet of Rehabus increased to 156 vehicles by the end of 2016, with more than 800,000 user-trips annually. Meanwhile, the number of centre buses operated by the 34 NGOs subvented by SWD was set to increase from 199 to 272 in 2016-17, far exceeding the number of Rehabus operated by HKSR, but the numbers of users and user-trips remain unknown. It is questionable how many user-trips of ST services have actually been arranged by those rehabilitation centres, and whether the resources have been fully and effectively utilised.

9. Moreover, according to information from TD, around 30% of the users of the Rehabus scheduled route service are students travelling to and from schools. Their demand has put pressure on Rehabus services. To enhance the availability of Rehabus services for other needy persons with disabilities, LWB should consider liaising with the Education Bureau ("EDB") to study the feasibility of allocating educational resources for schools to arrange ST services for students with such needs in order to ease the shortage of Rehabus services.

10. Besides, TD indicated that most non-organisation users of the Rehabus dial-a-ride service would reserve a whole vehicle for their exclusive use. Yet, a Rehabus fitted with five to six wheelchair spaces should not be regarded as a personalised transport vehicle. TD will suggest HKSR implement the mandatory requirement for users of the dial-a-ride service to share a vehicle, so that more persons with disabilities can have access to the services they need.

11. In sum, LWB is duty bound to coordinate and review the existing mechanism, collect relevant data and conduct analysis, so as to ensure that all resources allocated for ST services are adequately and effectively utilised.



Government's Inadequate Efforts in Combating the Problem of URVs

12. URVs pose a safety threat to users with disabilities. Nevertheless, both LWB and TD asserted that the duties of combating the problem of URVs fell outside their purviews. The fact that the Police has conducted very few decoy operations in the past years reflects that because of the lack of attention from LWB/TD, the Police may not accord proper priority to enforcement action against those vehicles offering unauthorised transport services. To ensure the safety of passengers with disabilities, LWB and TD should discuss with the Hong Kong Police Force on stepping up enforcement action against such unauthorised activities, such as increasing the number of decoy operations to catch offenders and produce a deterrent effect.

Government Should Further Promote Introduction of Wheelchair Accessible Taxis and Minibuses

13. The number of wheelchair accessible taxis introduced by the taxi trade since 2007 was few. It was not until the past year that their number has increased at a faster rate. We have written to some relevant government departments in mainland China and overseas to enquire about how they have introduced wheelchair accessible taxis. From the information they provided, we can see that the governments in many countries and areas have actively provided incentives and subsidies to encourage the introduction of wheelchair accessible taxis to facilitate mobility of persons with disabilities. Hong Kong, by contrast, has lagged behind those countries and areas in this regard. We consider that in the long term the Government should explore feasible ways of actively encouraging the trade to import wheelchair accessible taxi models, and speed up the progress of introduction. At the same time, TD should review the role played by taxis as a point-to-point barrier-free transport option and set the target of supply, so as to study how to resolve the persistent shortage of and supplement the Rehabus services.

14. As for low-floor minibus, TD is now studying with the trade the feasibility of introducing such models. We urge TD to consider offering incentives for the trade to introduce those new models, especially for those routes serving hospitals, in order to meet the demand for ST services.

Government's Passive Attitude in Implementing the Plan

No Specific Timeframe Set by LWB for Implementing "Transport for All" Policy

15. As the policy bureau tasked with safeguarding the welfare of persons with disabilities, LWB has an unshirkable responsibility for implementing the "Transport for All" policy. However, it has never set a specific timeframe for its implementation. Since its formulation, the Plan has been in place for eight to nine years, but the provision of ST services remains unsatisfactory, and the public have no way to monitor whether the Government has reviewed the progress of various measures stated in the Plan, and how it would conduct such reviews, in a timely manner.

LWB and TD Treating "Transport for All" Policy as a Concept

16. It is clearly stated in the Plan that implementing "Transport for All" is a policy, but LWB and TD, in their responses to our investigation, both explained "Transport for All" as a concept. We consider that if the Government deliberately gives less importance to the "Transport for All" policy, as originally said in the Plan, and treats it as a mere concept, achievement of the targets under the Plan will be even more distant and remote. Such mentality is undesirable. It is essential for the Government to set quantifiable target levels of basic transport services provided to meet the needs of persons with disabilities. It should also draw up a specific timeframe for achieving those targets so that it can monitor the progress of implementation and demonstrate its determination to implement the measures. Otherwise, "Transport for All" will probably be just empty talks and remain at the stage of a "concept" for a long time.

TD's Failure to Proactively Give Professional Support to HKSR Earlier and Enhance Rehabus Services

17. Many of the service users we interviewed during our investigation expressed that the manual scheduling of Rehabus services has led to under-utilisation of resources and caused inconvenience to service users. TD and HKSR have different explanations as to why the Rehabus management system was not computerised earlier. Regardless of whose explanations are true, it should be indisputable that the Rehabus management system has not kept pace with the times. If only TD had proactively offered its professional advice on transport earlier to help HKSR solve the problems, the operational efficiency of Rehabus services would have long been enhanced.

18. Moreover, since the Plan was formulated in 2007, the demand for Rehabus services has clearly exceeded supply over the years. What is most worrying is that the needs of persons with disabilities to attend medical appointments have not been met. Nevertheless, TD only started to urge for more Rehabus routes serving hospitals two years ago. TD has admitted that some routes serving hospitals were cancelled after their trial periods because of insufficient publicity. After generating more publicity, some of those routes have resumed and the numbers of passengers have increased. Considering the figures of unsuccessful bookings of Rehabus services in the past years, perhaps TD should have urged for these improvement measures much earlier.

TD Should Adjust Its Mentality about Demand for ST Services

19. TD has argued that increasing the supply of ST services would bring greater demand, and that there is no causal relationship between the supply of ST services and the URVs. TD also stressed that even increasing the supply of ST services would not reduce the number of users waiting for Rehabus services to zero. We have great reservations about such mentality of TD. In our view, to boost demand by supplying

more services is exactly in line with the Plan's target of encouraging the integration of persons with disabilities into the community. If there is adequate supply of legitimate ST services in the market, no one would choose to hire the URVs and put their own lives at risk. And URVs would naturally fade out. More importantly, if the Government sticks to such mentality when planning for the provision of ST services, it will be difficult to obtain the necessary resources.

More Efforts on Publicity and Education Needed

20. One of the proposals in the Plan is to strengthen publicity and public education to enhance public understanding of "Transport for All". Nevertheless, the cases cited in our investigation report show that persons with disabilities are being ignored or even discriminated against to various extents when using public transport. On the other hand, operators of wheelchair accessible taxis have indicated that many people do not even know that their taxis serve both able-bodied passengers and persons with disabilities, resulting in their reluctance (avoidance) to hire those taxis and so their business development is affected. Meanwhile, our investigation report reveals that Rehabus had previously offered trial shuttle bus services to and from hospitals, but many of those routes were suspended because there were not enough passengers.

21. We consider it necessary for the Government to put more efforts on public education so as to enhance public understanding of "Transport for All". It would foster the public's empathy for and voluntary assistance to persons with disabilities so that social integration of the able-bodied and persons with disabilities could be achieved. The Government should also step up the publicity of hospital shuttle bus services to let potential users know about these services so that the operation of those routes would be sustained.



Recommendations

22. In the light of the above, The Ombudsman makes 11 improvement recommendations to the Government:

Demand for ST Services

- (1) LWB and the departments concerned should conduct a comprehensive assessment of the demand for ST services. That should include requesting SWD to collect data regularly from NGOs, service users and self-help groups, and considering inviting academics or advisers to conduct studies to investigate the actual demand for ST services in order to re-allocate resources in a better way;
- (2) LWB and TD should urge HKSR to speed up the consultancy study so that Rehabus services could be enhanced as soon as possible and resources better utilised to meet the demand;

Review and Coordinate the Current Allocation of Resources for ST Services and Set Service Targets

- (3) LWB should coordinate the utilisation of resources for ST services and consider more comprehensive arrangements, which include liaison with those departments concerned and HKSR to facilitate more flexible resources allocation such that more people with such needs can use ST services and that public money can be used wisely;
- (4) LWB should continue its discussion with EDB to examine the feasibility of deploying educational resources for assisting schools to arrange ST services for students with such needs;

More Stringent Regulation of URVs

- (5) LWB and TD should discuss with the Hong Kong Police Force about stepping up actions to combat this kind of illegal activities and institute prosecutions against those offenders as a deterrent. Meanwhile, LWB and TD should also assist the Police, social welfare organisations and persons with disabilities

to maintain communication and exchange information with one another so that the Police can step up its enforcement actions;

- (6) TD should consider drawing up a code of safety for facilities on rehabilitation vehicles (i.e. wheelchair accessible vehicles, but excluding non-emergency ambulances of the Hospital Authority) and the required training for drivers;

Take into Account the Needs of Persons with Disabilities When Planning Public Transport Services

- (7) apart from requiring operators of the proposed Quality Taxi Services to provide more wheelchair accessible taxis, TD should also make reference to practices of foreign governments in introducing such taxis to the market, and actively consider providing incentives for the taxi trade to purchase appropriate models;
 - (8) TD should study the feasibility of introducing low-floor minibus models and provide incentives for the trade (especially operators offering routes serving hospitals) to do so;
- ### Monitor the Full Implementation of Proposals in the Plan
- (9) LWB should, in implementing the proposals in the Plan and the "Transport for All" policy, set quantifiable target levels of basic transport services for persons with disabilities as well as work out the schedules for meeting this objective;
 - (10) LWB should strengthen public education on "Transport for All" to facilitate the implementation of ST services so that social integration of the able-bodied and persons with disabilities can be achieved; and
 - (11) the Government should step up the publicity of hospital shuttle bus services to let potential users know about these services, in particular those routes of low patronage, in order to sustain the continued operation of those routes.

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Agriculture, Fisheries and Conservation Department			
2016/1996 2016/2353 2016/2354 2016/2355 and others	Changing the policy on issuance of permits for holding trail racing events in country parks without proper public consultation	Unsubstantiated	0
Architectural Services Department			
2016/1771B	Wrongly installing three removable bollards on an emergency vehicular access	Substantiated	2
2016/3437B	Delay in repairing a public toilet	Unsubstantiated	0
Buildings Department			
2015/4096	Shirking responsibility in handling a complaint about unauthorised building works	Unsubstantiated	0
2015/4527A	Delay in embarking on an investigation or conducting tests regarding a seepage problem found at the ceiling of a bus station	Unsubstantiated	0
2015/4825B	(1) Ineffective seepage investigation methods (unsubstantiated); and (2) Unreasonably posting a Notice of Intended Entry outside the complainant's flat (unsubstantiated)	Unsubstantiated	0
2016/0425	Failing to take enforcement action against unauthorised flat roof structures	Substantiated	2
2016/0471C	Ineffective control against the unauthorised building works on a private land lot	Unsubstantiated	0
2016/1033A	Ineffective control against the unauthorised building works of an industrial building	Partially substantiated	2
2016/1360	Failing to register at the Land Registry a removal order issued in 2009	Substantiated	2
2016/1487B(I)	(1) Staff omission on the water seepage during the confirmatory test (unsubstantiated); (2) Failing to ensure that the tenant upstairs had carried out proper maintenance (unsubstantiated); and (3) Failing to bring the requested documents to the complainant (unsubstantiated)	Unsubstantiated	0



Case No.	Complaint	Overall Conclusion	No. of Recommendations
2016/1578B	(1) Delay in handling a seepage complaint (unsubstantiated); and (2) Inappropriately allowing consultants to leave the flat suspected to be the source of seepage during inspection (substantiated)	Partially substantiated	2
2016/3036	Delay in taking enforcement action against unauthorised building works at a building	Partially substantiated	1
2016/3191A	(1) Wrongly allowing the erection of a large electronic signboard at the junction of two roads, causing distraction to drivers (unsubstantiated); and (2) Failing to take immediate enforcement action against the signboard (unsubstantiated)	Unsubstantiated	0
2016/3429A	Failing to inspect the installation project of a fire services water tank at the complainant's building, and unreasonably requiring the contractor to break open the concrete enclosure of the water tank for inspection after project completion	Unsubstantiated	0
2016/3729B	Failing to take proper action against continuous occupation of a pavement by a renovation worksite	Unsubstantiated	0
2016/3748C	Ineffective control against environmental nuisance caused by oil and water seepage from a shop	Unsubstantiated	0
2016/3823B	Failing to properly follow up the problems of water seepage and defective drainage pipe of a flat, and providing investigation results that contradicted with those from other departments	Unsubstantiated	1
2016/3944C	Failing to take proper follow-up action against unauthorised building works of a shop	Unsubstantiated	1
2016/3949	Unreasonably stopping a prescribed registered contractor from removing a signboard	Unsubstantiated	1
Consumer Council			
2016/1489	(1) Applying different standards in granting legal assistance under the Consumer Legal Action Fund ("CLAF") (unsubstantiated); and (2) Unreasonably declining an application for CLAF assistance (unsubstantiated)	Unsubstantiated but other inadequacies found	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Correctional Services Department			
2016/2470A	Delay in arranging proper medical treatment for the complainant	Unsubstantiated	0
2016/3554A	Unreasonably refusing to handle the complainant's complaint about mistreatment during his imprisonment	Unsubstantiated	0
2016/4515	Failing to provide food of sufficient quantity and properly heated food and drink to the complainant	Unsubstantiated	0
Department of Health			
2015/4532	Unreasonably seizing the complainant's Chinese medicine	Unsubstantiated	0
2016/2161	(1) Failure to provide the complainant with the date of assessment for his daughter (partially substantiated); and (2) Prolonged waiting time for the assessment (unsubstantiated)	Partially substantiated	1
2016/2400	(1) Failure to inform the complainant of the date of assessment for her son (partially substantiated); (2) Charging an unreasonable registration fee (unsubstantiated); and (3) Failing to address her complaint properly (unsubstantiated)	Partially substantiated	1
2016/2470B	Delay in arranging proper medical treatment for the complainant	Unsubstantiated	0
2016/2746A	Mishandling a private dentist's demand note for payment regarding his provision of dental treatment to an injured employee in accordance with the Employee's Compensation Ordinance	Substantiated	1
Department of Justice			
2015/5309A	Delay in searching for the complainant's valid address to deliver the Court Order regarding a claim against the complainant for outstanding student loan	Partially substantiated	4
2016/1198A	(1) Delay in claiming compensation from the complainant (unsubstantiated); and (2) Depriving him of the right of appeal (unsubstantiated)	Unsubstantiated	1
2016/1392(I)	Failing to provide the complainant with the medical records of the injured persons as requested	Unsubstantiated	1



Case No.	Complaint	Overall Conclusion	No. of Recommendations
Drainage Services Department			
2016/0302A	(1) Unreasonably resuming part of the complainant's land lot (unsubstantiated); (2) Unreasonably refusing to provide the notes of a meeting and providing incomplete notes of another meeting (unsubstantiated); and (3) Improperly assigning a complaint case to the officer under complaint (unsubstantiated)	Unsubstantiated	0
2016/1095A	Failing to provide a written explanation for having wrongly demolished the canopy of the complainant's house	Unsubstantiated	0
2016/1152A	(1) Failing to explain the details of rural drainage works to the affected villagers and consult them (unsubstantiated); and (2) Failing to deposit the plans and the scheme of drainage works at a designated place for public inspection, as stated in a gazette notice (unsubstantiated but other inadequacies found)	Unsubstantiated but other inadequacies found	1
2016/4093A	Failing to properly handle a complaint about leakage of drainage pipe	Unsubstantiated	0
Electrical and Mechanical Services Department			
2016/1749(I)	Failing to properly handle the complainant's request for the investigation report on an escalator incident	Substantiated	2
Environmental Protection Department			
2015/4276	Failing to properly investigate a report on dumping of construction waste and to promptly prosecute an offender	Unsubstantiated	0
2016/1048	Failing to properly follow up complaints about suspected illegal landfilling or fly-tipping at a site	Unsubstantiated	1
2016/1152B	(1) Failing to explain the details of rural drainage works to the affected villagers and consult them (unsubstantiated); and (2) Failing to deposit the plans and the scheme of drainage works at a designated place for public inspection, as stated in a gazette notice (unsubstantiated)	Unsubstantiated	1
2016/2616	Wrongly issuing an Emission Testing Notice	Unsubstantiated	0
2016/3748A	Ineffective control against environmental nuisance caused by oil and water seepage from a shop	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Equal Opportunities Commission			
2015/4044	Selective disclosure of the content of the minutes of a meeting of the Commission	Substantiated	2
2016/0140	Failing to enforce the entire conciliation agreement, thus rendering the complainant unable to obtain service from the other party to the agreement	Unsubstantiated	0
Estate Agents Authority			
2015/4314	Failing to properly follow up on complaints about the misconduct of two estate agencies	Unsubstantiated	0
Fire Services Department			
2016/1198B	(1) Delay in claiming compensation from the complainant (partially substantiated); and (2) Unreasonable repair charge for the ambulance (inconclusive)	Partially substantiated	3
2016/1205B	Failing to follow up on the problem of potential fire hazard caused by a suspected unlicensed restaurant	Partially substantiated	1
2016/3429B	Failing to inspect the installation project of a fire services water tank at the complainant's building, and unreasonably requiring the contractor to break open the concrete enclosure of the water tank for inspection after project completion	Unsubstantiated	0
Food and Environmental Hygiene Department			
2015/4138	Delay in taking follow-up action against water dripping from air-conditioners	Partially substantiated	2
2015/4305	Failing to reply to the complainant regarding food complaint	Substantiated	0
2015/4490	Ineffective enforcement action against the retractable canopies of two hawker food stalls	Partially substantiated	1
2015/4502A	Ineffective control against the obstruction problem caused by a squatter	Unsubstantiated	0
2015/4527B	(1) Failing to take enforcement action against the relevant management company regarding the nuisance caused by a seepage problem found at the ceiling of a bus station (unsubstantiated); and (2) Unreasonably advising the complainant to contact the Buildings Department directly for enquiry on the progress of the case (unsubstantiated)	Unsubstantiated	0



Case No.	Complaint	Overall Conclusion	No. of Recommendations
2015/4825A	(1) Ineffective seepage investigation methods (unsubstantiated); and (2) Unreasonably posting a Notice of Intended Entry outside the complainant's flat (unsubstantiated)	Unsubstantiated	0
2015/5029A	Shirking of responsibility in following up a seepage complaint	Unsubstantiated	0
2015/5330(I)	(1) Failing to provide the complainant with complete information about relocation of a refuse collection point (partially substantiated); (2) Failing to contact the complainant to clarify the scope of his information request (substantiated); (3) Delay in responding to the complainant's subsequent request for information (substantiated); (4) Failing to provide the complainant with the list of individuals/organisations consulted and consultation result when providing him with the consultation paper (unsubstantiated); (5) Including information not requested by the complainant in his scope of request (unsubstantiated); and (6) Advising the complainant to approach the Lands Department for information which was in fact also held by the Food and Environmental Hygiene Department (partially substantiated)	Partially substantiated	5
2015/5345	(1) Failing to take effective measures to tackle the noise problem at the loading area of a market (unsubstantiated); (2) Failing to reply to the complainant (partially substantiated); and (3) Impropriety in setting an email auto reply when officers were on leave (partially substantiated)	Partially substantiated	1
2016/0051	(1) Failing to give substantive reply in a timely manner when handling a complaint about an unlicensed food business (partially substantiated); and (2) Failing to take effective enforcement actions (substantiated)	Partially substantiated	2
2016/0310	Failing to take enforcement action against a food factory for breach of licence conditions	Unsubstantiated	0
2016/0430	Ineffective control of obstructions caused by stalls in a market	Partially substantiated	2
2016/1199	Unreasonably refusing to provide information on the seating capacities of two restaurants	Unsubstantiated	1
2016/1205A	Failing to follow up on a complaint about operation of an unlicensed restaurant	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2016/1487A(l)	(1) Staff omission on the water seepage during the confirmatory test (unsubstantiated); (2) Failing to follow procedures in conducting the test (unsubstantiated); (3) Failing to ensure the tenant upstairs had carried out proper maintenance (unsubstantiated); (4) Failing to bring the requested documents to the complainant (unsubstantiated); (5) Unreasonably requesting the complainant to obtain his complaint record under the requirement of the Code on Access to Information (substantiated); (6) Poor staff attitude (partially substantiated); and (7) Improperly disclosing the details of his complaint case (inconclusive)	Partially substantiated	1
2016/1578A	Delay in handling a seepage complaint	Partially substantiated	2
2016/1638A	Failing to take enforcement action against the shop-front extension and illegal hawking activities of several shops, and against the operation of an illegal food factory and shop-front extension of a food premises	Partially substantiated	2
2016/1827	Ineffective enforcement action against water dripping from air-conditioners	Partially substantiated	2
2016/2113	Improper handling of applications for change of trade by some market stalls	Unsubstantiated	1
2016/2514A	Shirking responsibility in handling a water seepage complaint	Unsubstantiated	0
2016/2574	Failing to properly follow through a food complaint and failing to reply to the complainant	Substantiated	1
2016/2627	(1) Ineffective enforcement action against street obstruction problem caused by on-street promotional activities (partially substantiated); and (2) Failing to provide a substantive reply to the complainant (partially substantiated)	Partially substantiated	1
2016/2667	Setting unreasonable charge for placing additional cremated ashes into an urn grave	Unsubstantiated	0
2016/2684A	Shirking responsibility in handling a complaint about rubbish found in a flower bed	Unsubstantiated but other inadequacies found	0
2016/2958	Failing to properly handle a report about a taxi driver throwing a cigarette butt from his vehicle	Substantiated	0



Case No.	Complaint	Overall Conclusion	No. of Recommendations
2016/3063	(1) Failing to properly follow up on complaints about water dripping (partially substantiated); and (2) Failing to provide assistance to the complainant when handling his complaint (unsubstantiated)	Partially substantiated	2
2016/3073	(1) Failing to properly follow up the problem of illegal disposal of pig carcasses (unsubstantiated but other inadequacies found); and (2) Failing to reply to the complainant (substantiated)	Partially substantiated	1
2016/3248A	Failing to effectively tackle street sleeper problems	Unsubstantiated	0
2016/3344A	Failing to properly follow up unlicensed hawking problems	Unsubstantiated	0
2016/3361A	(1) Delay in informing the complainant of the removal of his unauthorised roadside banners (unsubstantiated); (2) Failing to explain the irregularities found on the complainant's banners and to provide supporting photographs (unsubstantiated); and (3) Varying charges for removal of banners (unsubstantiated)	Unsubstantiated	1
2016/3437A	Delay in repairing a public toilet	Unsubstantiated	0
2016/3441	Failing to properly follow up a complaint about water dripping from air-conditioners	Unsubstantiated	0
2016/3562	Failing to take effective enforcement action against the street obstruction problem caused by illegal extension of business area by a fruit stall	Partially substantiated	2
2016/3748B	Ineffective control against environmental nuisance caused by oil and water seepage from a shop	Unsubstantiated	0
2016/3777	Failing to properly monitor the works of contractors responsible for two refuse collection points	Partially substantiated	2
2016/3823A	Failing to properly follow up the problems of water seepage and defective drainage pipe of a premises, and providing investigation results that contradicted with those from other departments	Unsubstantiated	1
2016/3944B	Failing to properly follow up the problem of street obstruction caused by a shop	Unsubstantiated	1
2016/4093B	Failing to properly handle a complaint about environmental nuisance caused by leakage of a drainage pipe	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2016/4136	(1) Shirking responsibility in handling complaint about an incident occurred in a public toilet (unsubstantiated); (2) Failing to properly respond to the complainant's allegations (unsubstantiated); (3) Providing unreasonable explanations to the complainant's allegations (inconclusive); and (4) Unreasonably refusing to continue to follow up the complaint (unsubstantiated)	Unsubstantiated	0
2017/0483A	Shirking responsibility in handling a complaint about littering problem at the staircase of a ferry pier	Unsubstantiated	0
Government Secretariat – Chief Secretary for Administration's Office			
2016/1771C(I)	Failing to comply with the timeframe as set out in the Code on Access to Information when replying to the complainant's information requests	Substantiated	2
2016/2896	Impropriety in handling a complaint about illegal occupation of pavement by street sleepers	Unsubstantiated	0
2016/3944D	Failing to make proper referral of a complaint	Unsubstantiated	0
2016/4033C	Failing to refer a complaint to relevant Government departments in a timely manner	Substantiated	1
Government Secretariat – Education Bureau			
2015/4487	(1) Failing to conduct a full inspection of the drainage system of a school and to properly monitor the work of a contractor (partially substantiated); (2) Failing to properly answer questions from the complainant (unsubstantiated); and (3) Failing to reply to the complainant (substantiated)	Partially substantiated	2
2016/0169	(1) Insufficient notification of the Territory-wide System Assessment ("TSA") seminars for parents (unsubstantiated); (2) Shirking responsibility in notifying parents of the seminars (unsubstantiated); and (3) Failing to properly record the TSA seminars and lack of media attendance in the seminars (unsubstantiated)	Unsubstantiated	0
2016/0348	(1) Insufficient notification of the Territory-wide System Assessment ("TSA") seminars for parents (unsubstantiated); (2) Shirking responsibility in notifying parents of the seminars (unsubstantiated); and (3) Failing to properly record the TSA seminars and lack of media attendance in the seminars (unsubstantiated)	Unsubstantiated	0



Case No.	Complaint	Overall Conclusion	No. of Recommendations
2016/0378	(1) Insufficient notification of the Territory-wide System Assessment ("TSA") seminars for parents (unsubstantiated); (2) Shirking responsibility in notifying parents of the seminars (unsubstantiated); and (3) Failing to properly record the TSA seminars and lack of media attendance in the seminars (unsubstantiated)	Unsubstantiated	0
2016/1833	Failing to properly follow up on a notice returned by Hongkong Post concerning the allocation of Primary One place for the complainant's daughter	Partially substantiated	1
2016/1964(I)	(1) Failing to properly answer the specific questions when handling the complainant's two information requests (substantiated); and (2) Delaying its replies without reasonable explanation (unsubstantiated); and (3) Providing false and misleading information in response to the information requests (unsubstantiated)	Partially substantiated	1
2016/2802(I)	Refusing the complainant's request for information regarding the number of admissions and enrolments of certain types of students at a primary school	Unsubstantiated	0
2016/2951	Failing to properly investigate a complaint against a subsidised school and being biased towards the school	Unsubstantiated but other inadequacies found	1
Government Secretariat – Security Bureau			
2016/3554B	Failing to handle a complaint and reply to the complainant	Unsubstantiated	0
Government Secretariat – Transport and Housing Bureau			
2016/2514B	Shirking responsibility in handling a water seepage complaint	Unsubstantiated	0
2016/3823D	Failing to properly follow up the problems of water seepage and defective drainage pipe of a premises, and providing investigation results that contradicted with those from other departments	Unsubstantiated	0
Highways Department			
2015/2105A	Lack of coordination in resolving the ponding problem at a vehicular access	Partially substantiated	1
2016/1114	Delay in providing an invoice for making compensation to the Government for damaging a fence on the road	Unsubstantiated	0
2016/3195	Ineffective in tackling street sleeper problems	Unsubstantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Home Affairs Department			
2015/2105C	Lack of coordination in resolving the ponding problem at a vehicular access	Partially substantiated	1
2015/3888	Failing to take enforcement actions under the Building Management Ordinance	Unsubstantiated	0
2016/1152C	Failing to deposit the plans and the scheme of drainage works at a designated place for public inspection, as stated in a gazette notice	Substantiated	1
2016/1938	Improper exclusion of certain stakeholders from consultation on an application for lease modification	Substantiated	1
2016/2047A	Wrongly stating that a village house had been leased out and thus cancelling its rates exemption	Partially substantiated	0
2016/3248B	Ineffective in tackling street sleeper problems	Unsubstantiated	0
2016/3273A	Failing to ensure the notice-posting procedures agreed with a village be effectively carried out	Unsubstantiated	0
2016/4033A	Shirking responsibility in handling a complaint about flooding	Unsubstantiated	0
Hong Kong Examinations and Assessment Authority			
2015/4510	Unfair imposition of the Specified Margin Requirement in the remarking process of the Hong Kong Diploma of Secondary Education Examination	Unsubstantiated	0
Hong Kong Housing Society			
2015/4292	(1) Failing to follow through a complaint about water dripping from air-conditioners (unsubstantiated); and (2) Unreasonably refusing to disclose the source of the water dripping problem (unsubstantiated)	Unsubstantiated	0
2016/0976	Unreasonable increase in the rentals of motorcycle parking spaces in a public rental housing estate	Unsubstantiated	0
2016/1003	Mishandling a complaint against a security guard for acceptance of red packets during the Lunar New Year	Substantiated	0
2016/2502(R)	(1) Refusing to provide the relevant pages of a Service Agreement on which the complainant's name and registration number as a Registered Inspector had been entered without his permission nor knowledge (unsubstantiated); and (2) Negligence and failure to follow relevant procedures in vetting the Mandatory Building Inspection Subsidy Scheme application (unsubstantiated)	Unsubstantiated	0



Case No.	Complaint	Overall Conclusion	No. of Recommendations
Hong Kong Monetary Authority			
2016/2413	(1) Failing to set up an appointment with the complainant to clarify her allegations (unsubstantiated); (2) Failing to refer the complainant's further allegations to the bank under complaint for direct responses (unsubstantiated); (3) Unreasonably refusing the complainant's request for a meeting (unsubstantiated); and (4) Failing to notify the complainant or seek her consent prior to telephone recordings (substantiated)	Partially substantiated	2
Housing Department			
2015/4242	Failing to properly handle complaints about unauthorised operations by some market stalls	Unsubstantiated	1
2015/4608	Mishandling complaints against the complainant as an operator of a market stall	Unsubstantiated	1
2016/0079(I)	(1) Failing to provide proper assistance to the complainant in respect of her claim for compensation and poor attitude of staff (partially substantiated); and (2) Reneging on its promise to release information relating to her claim (inconclusive)	Partially substantiated	3
2016/0117(I)	Unreasonably refusing to provide information about the actual rents and rental increases of some factory units	Substantiated	3
2016/1205C	Failing to follow up on a complaint about operation of an unlicensed restaurant in a public housing estate	Unsubstantiated	0
2016/2180A	Failing to take care of the complainant's housing needs	Unsubstantiated	0
2016/3344B	Failing to properly follow up unlicensed hawking problems	Unsubstantiated	0
Immigration Department			
2015/3190A	Failing to provide a Government department with accurate travels records	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Information Services Department			
2016/1692	Unreasonably denying an online media organisation access to cover Government press conferences and briefings	Substantiated	3
2016/2126	Unreasonably denying online media organisations access to cover Government press conferences and briefings	Substantiated	3
2016/2962	Unreasonably denying online media organisations access to cover Government press conferences and briefings	Substantiated	3
Labour Department			
2016/0744	(1) Refusing to follow up complaints against an elderly home (unsubstantiated); (2) Insufficient inspections of elderly homes (unsubstantiated); (3) Lack of punitive measures against employers for violating the Supplementary Labour Scheme (unsubstantiated); and (4) Failing to monitor the employment period of imported workers (unsubstantiated)	Unsubstantiated	0
2016/2746B	Mishandling a private dentist's demand note for payment regarding his provision of dental treatment to an injured employee in accordance with the Employee's Compensation Ordinance	Unsubstantiated but other inadequacies found	5
2016/3528	(1) Failing to notify the complainant that his application for Work Incentive Transport Subsidy had been randomly selected for investigation (substantiated); and (2) Failing to pay the subsidy during the application investigation stage (partially substantiated)	Partially substantiated	1
Lands Department			
2015/2105B	Lack of coordination in resolving the ponding problem at a vehicular access	Partially substantiated	1
2015/3394B	Repeatedly carrying out heavy pruning on a tree, ignoring opposing views and relevant guidelines, and unreasonably refusing to provide the arborist's report and its justification for pruning the tree	Unsubstantiated	0
2015/4502B	Delay in handling the irregularities of a squatter hut and ineffective control against the obstruction problem caused by its occupier	Partially substantiated	3



Case No.	Complaint	Overall Conclusion	No. of Recommendations
2016/0122(I)	(1) Delay in responding to the complainant's request for information (substantiated); (2) Failing to fully respond to the complainant's request for information (substantiated); (3) Giving inconsistent responses in the Department's replies to the complainant (unsubstantiated but other inadequacies found); (4) Wrongly using gross building area/gross floor area in the allocation of the undivided shares to a Government building in a property development (inconclusive); and (5) Failing to identify the type of undivided shares allocated to the Government building in the Department's letter to the developer and in the Sub-deed of Mutual Covenant for the Government building (unsubstantiated)	Partially substantiated	0
2016/0271	Ineffective control against purported breach of lease conditions by a private estate	Unsubstantiated	0
2016/0302B	(1) Failing to point out and rectify the unreasonable decision by the Drainage Services Department on resuming part of the complainant's land lot (unsubstantiated); and (2) Delay in following up and replying to a request by the complainant (unsubstantiated)	Unsubstantiated	0
2016/0471A	Ineffective control against the unauthorised structures on a private land lot	Partially substantiated	1
2016/1033B	Ineffective control against breach of lease conditions of some units of an industrial building	Partially substantiated	2
2016/1095B	(1) Wrongly demolishing the canopy of the complainant's house (unsubstantiated); and (2) Failing to repair the damaged floor tiles outside the complainant's house (unsubstantiated)	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2016/1183(I)	(1) Improperly classifying the legal opinion given by a third party as third party information and giving the third party assurance that it would be kept confidential (unsubstantiated); (2) Failing to give the complainant a substantive reason for non-disclosure (substantiated); (3) Allowing an officer who had earlier on refused to release the legal opinion to handle the complainant's appeal against the Department's decision (unsubstantiated); (4) Failing to give the complainant a summary of the information contained in the legal opinion (unsubstantiated); and (5) Adopting an overly narrow definition of "public interest" in handling the complainant's request for the legal opinion (unsubstantiated)	Partially substantiated	0
2016/1638B	Failing to take enforcement action against illegal occupation of Government land	Unsubstantiated	2
2016/3248D	Ineffective in tackling street sleeper problems	Unsubstantiated	0
2016/3273B	Failing to post a notice according to established procedures agreed with a village	Unsubstantiated	0
2016/3361B	(1) Delay in informing the complainant of the removal of his unauthorised roadside banners (unsubstantiated); and (2) Failing to explain the irregularities found on the complainant's banners and to provide supporting photographs (unsubstantiated)	Unsubstantiated	0
2016/3729A	Failing to take proper action against continuous occupation of a pavement by a renovation worksite	Unsubstantiated	0
2016/3944A	Failing to properly follow up the problem of illegal occupation of Government land by a shop	Substantiated	1
2016/4033B	Shirking responsibility in handling a complaint about flooding	Unsubstantiated	0



Case No.	Complaint	Overall Conclusion	No. of Recommendations
Leisure and Cultural Services Department			
2015/4140(I)	Refusing to provide the full text of the management deed signed with a private organisation concerning the management and maintenance of the Avenue of Stars	Substantiated	2
2016/1771A(I)	Refusing to admit its fault of installing three removable bollards on an emergency vehicular access and failing to comply with the timeframe as set out in the Code on Access to Information inreplying to the complainant's information requests and requests for review	Substantiated	3
2016/2190(I)	Unreasonably refusing to provide tree inspection reports and failing to respond to the complainant's email	Substantiated	4
2016/2483	(1) Failing to restrict a Leisure Link user from abusing the telephone reservation service to enrol in a training course (substantiated); and (2) Failing to impose a penalty on that user in accordance with the Conditions of Use (substantiated)	Substantiated	1
2016/2684B	Shirking responsibility in handling a complaint about rubbish found in a flower bed	Unsubstantiated	0
Marine Department			
2016/2381	Failing to take proper follow-up investigation regarding a dangerous incident report	Unsubstantiated but other inadequacies found	0
2017/0483B	Shirking responsibility in handling a complaint about littering problem at the staircase of a ferry pier	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Office of the Communications Authority			
2016/3185	(1) Failing to take enforcement action against two unregistered Mark Six newspapers (inconclusive); (2) The Director-General of Communications refusing to talk to the complainant over the phone (unsubstantiated); (3) Unreasonably taking different enforcement actions against newspapers (unsubstantiated); and (4) Lack of effective control over unregistered newspapers and books (unsubstantiated)	Unsubstantiated	1
Official Receiver's Office			
2016/1703	Unreasonably requesting the complainant's employer to provide information without prior notice to the complainant, thereby disclosing the complainant's identity as a bankrupt	Partially substantiated	1
Planning Department			
2016/0471B	Ineffective control against unauthorised developments on a private land lot	Unsubstantiated	1
2016/0881	Failing to properly follow up complaints about suspected illegal landfilling or fly-tipping at a site	Unsubstantiated	1
2016/1517(I)	(1) Delay in handling the complainant's request for documents relating to a planning application (substantiated); and (2) Unreasonably rejecting the complainant's request for the meeting minutes relating to a planning application (partially substantiated)	Partially substantiated	0
Post Office			
2015/4796	Improperly delivering a prohibited article and failing to trace it upon its getting astray	Unsubstantiated	1
2016/4154	Delay in handling and unreasonably refusing a request for compensation arising from damaged mail item	Partially substantiated	3



Case No.	Complaint	Overall Conclusion	No. of Recommendations
Radio Television Hong Kong			
2016/1709	(1) Failing to resolve the problem of time lag in digital broadcasting of live football commentaries (unsubstantiated); and (2) Failing to respond to the complainant's request for resumption of FM broadcast for live football commentaries (substantiated)	Partially substantiated	2
2016/2199	(1) Failing to activate the telephone voicemail box for a staff as promised (unsubstantiated); and (2) Failing to respond to telephone calls (unsubstantiated)	Unsubstantiated but other inadequacies found	1
Rating and Valuation Department			
2016/2047B	Wrongly stating that a village house had been leased out and thus cancelling its rates exemption	Unsubstantiated but other inadequacies found	0
Social Welfare Department			
2015/3190B	Unreasonably asking the complainant's wife to produce proof of their son's return	Unsubstantiated but other inadequacies found	1
2016/0207	Unreasonably asking the complainant to provide supplementary information in considering the application for Conditional Tenancy, which was against the original intent of the scheme	Unsubstantiated	0
2016/0208	Unreasonably asking the complainant to provide supplementary information in considering the application for Conditional Tenancy, which was against the original intent of the scheme	Unsubstantiated	0
2016/0209	Unreasonably asking the complainant to provide supplementary information in considering the application for Conditional Tenancy, which was against the original intent of the scheme	Unsubstantiated	0
2016/0800	Refusing to take legal action against a residential care home for the elderly which had allegedly failed to take proper care of the complainant's grandmother	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2016/0971	(1) Ineffective monitoring of a residential care home for the elderly which had allegedly failed to take proper care of the complainant's father (partially substantiated); and (2) Unreasonably allowing another residential care home for the elderly to delay admitting the complainant's father (partially substantiated)	Partially substantiated	2
2016/2180B	Failing to take care of the complainant's housing and welfare needs	Partially substantiated	6
2016/3054	Ineffective in tackling street sleeper problems	Unsubstantiated	1
2016/3225C	Failing to handle the complainant's case and staff complaints properly	Partially substantiated	0
2016/3248C	Ineffective in tackling street sleeper problems	Unsubstantiated	0
2016/3405	Wrongly terminating allowance that the complainant was entitled to	Substantiated	0
2016/3826	(1) Delay in handling the complainant's case (unsubstantiated); and (2) Failing to conduct a thorough investigation into the complainant's complaint against a Residential Care Home for the Elderly (unsubstantiated)	Unsubstantiated	0
Transport Department			
2015/2982	Failing to resolve the frequent malfunctioning of Bus Stop Announcement System on franchised buses	Unsubstantiated	3
2015/3989	Delay in handling the complainant's Personalised Vehicle Registration Mark application and responding to her complaint	Partially substantiated	1
2015/5159	Faulty procedures in registration of imported cars from Japan	Unsubstantiated	3
2016/0660(I)	(1) Unreasonably refusing to accept the payment advice issued by a professional organisation as an acceptable address proof for the complainant's vehicle licence renewal application (unsubstantiated); (2) Refusing to release the internal guidelines for assessing the acceptability of address proof and the list of acceptable address proofs (partially substantiated); and (3) Providing ambiguous and misleading information about acceptable address proof in its publicity leaflet (partially substantiated)	Partially substantiated	1



Case No.	Complaint	Overall Conclusion	No. of Recommendations
2016/1725	Improperly registering three vehicles not belonging to the complainant under his name	Unsubstantiated	0
2016/2065 2016/2070 2016/2071 2016/2085 2016/2090	Selective enforcement of regulations, forcing a vehicle manufacturer to remove the calendar functionality from the visual display unit originally installed inside the vehicle	Unsubstantiated	0
2016/2794	Unreasonably reducing the residents' bus services of some housing estates in a district without considering the residents' transport needs	Unsubstantiated but other inadequacies found	6
2016/2797	Lack of response to the complainant's complaints and requests of deleting the registration of two cars which were wrongly registered under his name	Unsubstantiated	0
2016/2842	(1) Unreasonably reducing the residents' bus service of a housing estate (unsubstantiated); and (2) Failing to consult the residents concerned (substantiated)	Partially substantiated	6
2016/2916	Unreasonably reducing the residents' bus service of a housing estate	Unsubstantiated but other inadequacies found	6
2016/3191B	Failing to take immediate enforcement action against a large electronic advertisement signboard erected at the junction of two roads, causing distraction to drivers	Unsubstantiated	0
Water Supplies Department			
2015/5029B	Shirking of responsibility in following up a seepage complaint	Unsubstantiated	0
2016/1979	Unreasonably entering private land to repair a fresh water pipe	Unsubstantiated but other inadequacies found	0
2016/3823C	Failing to properly follow up the problems of water seepage and defective drainage pipe of a flat, and providing investigation results that contradicted with those from other departments	Unsubstantiated	0
Working Family and Student Financial Assistance Agency			
2015/5309B	Delay in searching for the complainant's valid address to deliver the Court Order regarding a claim against the complainant for outstanding student loan	Partially substantiated	3

Summaries of Selected Cases Concluded by Full Investigation

(The summaries of selected cases in this Annex cover the main allegations and related conclusion of those complaints. For details of the overall conclusion and number of recommendations, please refer to Annex 7)

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of this case summary)



Buildings Department ("BD")

**Case No. OMB 2016/0425 –
Unauthorised building works on flat roof**

Allegation: failing to take vigorous enforcement action against unauthorised building works items on a flat roof, thereby hindering compliance with a Building Inspection Notice - substantiated

Details of Complaint

In July 2012, BD issued a removal order ("Order") against some unauthorised building works items on the flat roof ("UBW items") of Building A. Nevertheless, the UBW items remained.

2. In April 2013, BD issued a Building Inspection Notice ("BIN") to the Owners' Corporation ("OC") of Building A, requiring that inspection and repairs to the common parts of the building be completed before a specified date. However, the existence of the UBW items made it difficult to replace the drainage pipes of the building and carry out waterproofing works on the flat roof. The OC was dissatisfied that BD should have been so slow in taking enforcement action against the UBW items such that the OC was unable to comply with the BIN.

Main Events

3. In May 2011, BD confirmed that the UBW items were categorised as "actionable", but they did not pose obvious danger.

4. In June 2012, BD issued a statutory order ("2012 Order"), requiring the owner to remove the UBW items within 60 days. However, part of the UBW items ("the Structure") still remained.

5. In February 2013, BD issued a warning letter to the owner of the Structure ("Mr X"), urging him to comply with the Order or face prosecution. In March, Mr X wrote to BD, stating that the five tenants living in the Structure were either financially stricken or in poor health and so were unable to move out within a short time. He asked for extension of the deadline for removal.

6. In April 2013, BD issued a BIN to the OC under its Mandatory Building Inspection Scheme.

7. In September 2013, Mr X telephoned BD, reiterating the tenants' hardships and requesting social worker service.

8. Between November 2013 and March 2015, a social worker contacted Mr X several times to explain the requirements of the Order. Mr X repeated that his tenants encountered hardships in moving out but he would continue to try to persuade them. Though he promised that he would demolish the Structure, he never took any real action. In mid-March 2015, the social worker closed the case after reminding him again of the consequences of non-compliance with the Order.



9. As Mr X did not demolish the Structure, BD twice prosecuted him in May 2015 and April 2016. He was convicted on both occasions and fined by the court.

10. In July 2016, the Structure was removed.

BD's Explanation

11. BD presented the following arguments.

12. The removal deadline specified in the 2012 Order was mid-August 2012. Since the Structure posed no obvious danger, BD followed its order of priority and issued a warning letter only in February 2013. And while the social worker was following up on the case, BD would not institute prosecution against Mr X.

13. The social worker had visited the tenants of the Structure in order to understand their hardships and offer help. He recalled that the tenants had, nevertheless, been hostile and even threatened to call the police for reason of being harassed. So, the social worker failed to persuade them to move out. BD had continued reviewing case progress with the social worker, handling the case pragmatically.

14. Since the OC's appointment of a registered surveyor in October 2014, BD had maintained contacts with the registered surveyor, his representative and the OC. It was not until October 2015 that BD learned from the chairman of the OC that the Structure was hindering the maintenance works of Building A.

Our Comments

15. BD issued a warning letter to Mr X more than six months after the removal deadline specified in the 2012 Order had expired. We found such delay unreasonable and detrimental to BD's authority.

16. The so-called follow-up action taken by the social worker was actually no more than endless contacts with Mr X. Little progress had been achieved on the case. If the tenants were hostile and refused help, as the social worker so recalled, it would simply be asking for the impossible to expect that the social worker could convince Mr X to ask those tenants to move out. Such efforts were destined to fail.

17. As BD had already issued an Order against the Structure, the Department should have taken vigorous enforcement action against it to facilitate the OC's early completion of the inspection and repairs works for Building A. We considered that a legitimate expectation of the OC.

18. BD had failed to take decisive enforcement action, causing hindrance to the OC's compliance with the BIN. That was indeed improper. The Ombudsman, therefore, considered this complaint substantiated.

Recommendations

19. The Ombudsman urged BD to:

- (1) take reference from this case and take prompt and rigorous prosecution action upon non-compliance with an order; and
- (2) review the way its social workers follow up on cases such that owners of unauthorised structures could find no excuse to delay their removal.

**A case of indecisiveness
in enforcement action**





Buildings Department (“BD”)

Case No. OMB 2016/1360 – Removal order against unauthorised building works

Allegation: failing to register at the Land Registry (“LR”) a removal order against an unauthorised building works (“UBW”) item at a residential flat, resulting in the purchaser of the flat not knowing the existence of the UBW item – substantiated

Details of Complaint

The complainant had in August 2015 purchased a residential flat (“the Flat”). Before completing the transaction, the complainant’s solicitors had searched LR’s land registers twice, and found no removal order having been issued by BD against UBW items at the Flat. However, after becoming the new owner of the Flat, the complainant received an order from BD in November 2015 (“2015 Order”) requiring her to demolish a UBW item projecting from the external wall of the Flat (“the UBW item”). It was stated in the 2015 Order that a removal order had already been issued to the former owner in March 2009 (“2009 Order”).

2. The complainant was dissatisfied that BD had failed to register the 2009 Order at LR during the past six years, as a result of which, she had purchased the Flat without knowing the existence of the UBW item, and the responsibility for removing the UBW item had become hers.

Response from BD

3. BD’s explanation was as follows.

4. In 2009, BD issued removal orders (including the aforementioned 2009 Order) to a number of property owners of the building concerned, which had been selected as a target building for the Department’s “Blitz UBW Clearance” operation. According to BD’s enforcement guidelines at that time (“the Old Guidelines”), removal orders issued under “Blitz UBW Clearance” operations were not required to be immediately registered at LR, as experience had shown that most property owners would comply with removal orders before the deadline. In order to minimise inconvenience to property owners and to save registration costs, BD would only register those outstanding orders after several months of non-compliance.

5. Moreover, the former owner of the Flat had lodged an appeal against the 2009 Order. Under the Buildings Ordinance (“BO”), BD should not enforce a removal order when the appeal was under way. Therefore, BD did not send the 2009 Order to LR for registration.

6. BD argued that even if no removal order has been issued against a property, it does not necessarily mean that the property is free from UBW. Prospective buyers are responsible for taking measures, such as inspecting the property by themselves or professionals, in order to ascertain whether there is any UBW item in the property. BD would provide prospective buyers with the information if they enquire of BD about any outstanding orders, or whether there is any order pending issue.

7. BD had already amended its enforcement policy in April 2011, stipulating that all removal orders issued under “Blitz UBW Clearance” operations must be promptly sent to LR for registration.



Our Comments

8. We considered that BD's practice of deferring registration of removal orders basically defeated the original purpose of registering an order, viz., to impose an encumbrance on the property concerned, thereby urging the owner to demolish the UBW item voluntarily, and to protect the interests of prospective buyers and mortgage institutions by enabling them to know the existence of the removal order (and hence the UBW item) when they conduct a search of the land registers. We found it inconceivable that BD should defer registration of removal orders for the sake of administrative convenience and cost saving. It prejudiced the right to information of prospective buyers and mortgage institutions, and indirectly favoured the former owners who sold their properties despite the existence of UBW items. In fact, any so-called "inconvenience" to the owners would disappear once they had followed the removal orders.

9. Moreover, most people would not know that BD might follow the Old Guidelines and deferred the registration of some statutory orders. We acknowledged that prospective buyers have a responsibility to ascertain whether there is any UBW item in the property they intend to purchase and that there was a reminder on BD's website alerting the public that they should search the records at LR or write to BD to enquire. Nevertheless, the public would not know that making a land search was actually not sufficient to safeguard the interests of prospective buyers and that they must at the same time make an enquiry of BD. The Department's practice of deferring registration of removal orders had undermined the confidence of prospective buyers in LR as a source for verifying the status of a property before completing a transaction.

10. Furthermore, the BO only stipulates that BD should not enforce a statutory order until an appeal is disposed of. Registering a statutory order is different from taking enforcement action. A statutory order remains valid until the appeal is successful. BD should discharge its duty owed to the public by promptly

registering a statutory order. At the end of the day, if an appeal proves to be successful, all BD has to do is to cancel the registration. We found it extremely improper of BD not to have registered the 2009 Order at LR.

11. In the light of the above analysis, The Ombudsman considered the complaint substantiated.

BD's Improvement Measures

12. In response to our comments, BD undertook to adopt the following improvement measures:

- (1) amending its website information to remind the public that some of the removal orders issued by BD have not been registered at LR. Prospective buyers should take measures to ensure that there is no UBW item in the property they intend to purchase; and
- (2) registering the outstanding removal orders at LR when following up on cases of non-compliance with the orders.

Recommendations

13. The Ombudsman recommended that BD:

- (1) amend its website information as soon as possible, and bringing the amendments to the attention of the Law Society of Hong Kong, the Estate Agents Authority and other institutions/organisations engaging in property transactions; and
- (2) conscientiously implement the improvement measure stated in paragraph 12(2) above.

A case of faulty procedures





Buildings Department (“BD”) and Lands Department (“Lands D”)

Case No. OMB 2016/1033A&B – Irregularities in an industrial building

Allegation: BD and Lands D – failing to take effective enforcement actions against irregularities in an industrial building – partially substantiated

Details of Complaint

The complainant had complained to BD and Lands D about irregularities at four units in an industrial building, including removal of fire resisting walls, unauthorised installation on the external wall of a cooling tower of an air-conditioning system, and leasing out of the units for retail business in violation of the lease conditions.

2. However, BD and Lands D merely respectively issued removal orders and warning letters to the owners of the units to urge for rectification. The two departments took no follow-up actions, and allowed the irregularities to persist.

Our Findings

Powers and Responsibilities of BD and Lands D

3. BD is empowered, pursuant to the Buildings Ordinance, to take enforcement actions against unauthorised building works (“UBW”) items that pose obvious hazard or imminent danger to life and property. Such items are categorised as “actionable with high priority”. Enforcement actions include issuing removal orders and instituting prosecutions. Lands D is responsible for control actions relating to land lease. It issues warning letters to those who violate lease conditions. In case of non-compliance, Lands D will take further actions, which include registration of its warning letters with the Land Registry (“LR”), and re-entry upon the land if the breach of lease condition persists.

Response from BD

4. BD stated that the industrial building in this case was the target of a large-scale operation against UBW items. As over 500 units were involved, BD had asked the consultancy firm to conduct inspections by phases. After the units with UBW items were identified, BD would issue by phases removal orders to their owners and then let the consultancy firm follow up on those cases.

5. According to BD, one of the units in question involved unauthorised removal of fire resisting walls, which fell within the “actionable with high priority” category. Hence, BD issued a removal order to the owner concerned. When the 60-day timeframe for rectification specified in the order expired, BD did not take any follow-up action because further inspections of the whole building by the consultancy firm had been scheduled for later months. The owner concerned later submitted a proposal for rectification works, but the information he provided was insufficient. BD thus issued a warning letter to the owner, indicating that it would consider prosecution. Finally, BD accepted the revised proposal for rectification works and issued a consent letter. It also undertook to closely monitor the progress of the works.



6. Two of the other units were involved in opening up fire resisting walls and adding protected lobbies. After checking, BD confirmed that those works were carried out pursuant to the simplified requirements under the Minor Works Control System. Hence, they were not UBW items.

7. As regards the bracket installed on the external wall of a unit for supporting a cooling tower, BD noted that the bracket fell within the “actionable with high priority” category. BD had issued an advisory letter, a warning letter, and eventually a removal order to the owner concerned, and subsequently initiated prosecution procedures.

Response from Lands D

8. Lands D stated that Short Term Waivers had been granted to the units in question for changing their use of “Factory” as originally set out in the lease to “Showroom” or “Canteen”. Lands D had separately received reports about unauthorised retail activities being carried out in two of the units whose permitted uses were “Showroom”. During site inspections, Lands D confirmed that there were irregularities at one of those units and so issued warning letters to the owner concerned, urging for rectification. In subsequent inspections, Lands D did not find any irregularity. Hence, the Department took no further action. As regards the other unit, likewise no irregularity was found during Lands D’s inspections. However, after our intervention, Lands D found irregularities at those two units during inspections and so issued warning letters. Since the owners concerned still did not make rectification, Lands D proceeded to register the warning letters with LR. Lands D admitted that it could have issued a warning letter much earlier to the owner of one of those units.

9. Unauthorised retail activities had also been found at another unit whose permitted use had been allowed to change to “Showroom”. However, soon after Lands D had issued a warning letter to the owner concerned, the latter moved out. Hence, the Department ceased its enforcement action. As regards the unit whose permitted use was allowed to change to “Canteen”, Lands D conducted a site inspection on receipt of a report and found retail activities there. However, as subsequent inspections confirmed that the unit had ceased operation, Lands D saw no need for further action.

Our Comments

10. In this case, although BD had followed its established enforcement policy and issued removal orders against those UBW items which belonged to the “actionable with high priority” category, it had failed to follow up in a timely manner on the removal orders after the expiry of such orders. That not only took away the meaning of the timeframe for rectification specified in the orders, but also undermined the Department’s authority. We considered that even if BD could not immediately compel the owners to make rectification, it should have conducted regular inspections to monitor the situation.

11. Lands D had admitted that it had not taken timely enforcement action against the irregularities in one of the units in question. We also found impropriety in the Department’s inspections of another unit. Had its inspections been more thorough, Lands D would have noticed irregularities in that unit as well and taken enforcement action expeditiously.

Conclusion and Recommendations

12. In view of the above, The Ombudsman considered the complaint against both BD and Lands D partially substantiated.

13. The Ombudsman recommended that:

BD

- (1) conduct a comprehensive review of the procedures for following up on the UBW items found during large-scale operations and actively follow up on those items that fall within the “actionable with high priority” category;
- (2) continue to closely monitor the implementation of the removal orders issued in this case, and institute prosecutions promptly if the owners concerned still fail to comply with the orders;

Lands D

- (3) conduct more inspections on units where irregularities have yet to be rectified and consider taking further enforcement actions, including re-entry upon the land concerned, if the situation continues or worsens; and
- (4) pay attention to the areas around to look for irregularities when inspecting units in industrial buildings, so that early enforcement actions can be taken.

A case of ineffective enforcement actions



Consumer Council (“CC”)

**Case No. OMB 2016/1489 –
Consumer Legal Action Fund**

Allegations: applying different standards in granting legal assistance under the Consumer Legal Action Fund (“CLAF”) and unreasonably declining an application for CLAF assistance – unsubstantiated but other inadequacy found

Details of Complaint

The complainant’s sister (“Ms A”) had purchased from a beauty salon (“Company X”) in 2010 some beauty treatment packages (“the Packages”) that cost around \$95,000 in total. A large portion of the Packages was left unutilised when Ms A passed away in May 2012. In October 2014, Ms A’s father applied to CLAF for assistance to take legal action for seeking refund from Company X for the unutilised treatments (“the Application”). CC declined the Application in May 2015.

2. Noting that CC had granted legal assistance to the applicants in two other cases of a similar nature, the complainant complained to this Office that CC had applied different standards in granting legal assistance under CLAF and unreasonably declined the Application.



Our Findings

3. CC is the trustee of CLAF and is advised by a Management Committee (“MC”) on the eligibility and merits of cases seeking CLAF assistance. In considering CLAF applications, the MC takes into account a number of factors (“the Factors”), which include the chance of success of the matter, the bargaining power of the aggrieved consumer(s) and whether court action is the most effective means of resolution in the circumstances.

4. Ms A’s father lodged a complaint with CC against Company X in May 2013. Company X refused to transfer the amount of the unutilised treatments (“the Unused Balance”) to the estate of Ms A, and CC failed to settle the dispute. The father subsequently made the Application. The MC refused the Application. CC informed Ms A’s father of the decision by letter (“the Refusal Letter”).

CC’s Response

5. CC explained to us that each case involves different facts and evidentiary strength. The MC had not applied different standards when handling other applications of a similar nature. It had tested the Application against the eligibility criteria by weighing the relevant Factors in the circumstances of the case, and considered that a claim against Company X for refund of the Unused Balance might have a low or uncertain chance of success because:

- (1) there was a term printed on the official receipt of the Packages stating that they would be valid only for one year (i.e. until October 2011, according to Company X), although the complainant maintained that Ms A had told her about the shop manager’s promise of this time limit not applying to the Packages. The MC considered that “promise” merely a verbal representation purportedly made by someone in Company X whose identity was unknown and under unclear circumstances; and

- (2) the aforesaid unconditional waiver of the one-year time limit as alleged was contrary to Company X’s requirement of a specified form for extension of the time limit.

6. The MC thus advised CC to decline the Application for lack of cogent evidence.

7. The Trust Deed which established CLAF states that an applicant for legal assistance under CLAF has no right to ask for an explanation for refusal of his application. CC considered that the Refusal Letter had already highlighted the material factors/matters specific to the case that had been taken into account.

Our Comments

8. We found that the MC had duly considered the relevant facts and merits of the Application before reaching its decision, which was not unreasonable. We also accepted that each case might involve unique circumstances that the MC has to consider.

9. However, the public nowadays expects public bodies to account properly for their decisions. In this light, we found the Refusal Letter unsatisfactory as it just listed all Factors, without specific reference to the facts pertinent to the Application that had been considered and why the Application was refused. That was poor administrative practice. Besides, the Trust Deed actually does not prohibit CC from giving reasons for refusal to grant CLAF assistance. In this case, giving reasons would be a much better course to take.

10. Overall, The Ombudsman considered this complaint unsubstantiated, but found other inadequacy on the part of CC.

Recommendation

11. The Ombudsman recommended that CC review its practice of not giving CLAF applicants exact reasons for refusal of applications.

**A case of poor
administrative practice**





Department of Health ("DH")

Case No. OMB 2016/2161 – Child Assessment Service

Allegation: failing to provide a specific date for child assessment service and requiring prolonged waiting time for the service – partially substantiated

Details of Complaint

In April 2016, the complainant registered with a Child Assessment Centre ("CAC") under DH for an assessment for his daughter. He was dissatisfied that no specific date could be provided for the assessment. The CAC staff simply told him that the waiting time was about nine months to one year and that he would be notified by telephone. Besides, he considered that such a long waiting time might delay the treatment for his daughter.

Our Findings

General Procedures for Assessment Service

2. CACs provide services for children under 12 years of age referred by registered doctors or psychologists for suspected developmental problems. Within three weeks after parents have made a registration, CACs will arrange a preliminary interview of the child. Afterwards, CAC's Assessment Team will

hold a pre-assessment case conference, during which information collected via the preliminary interview will be considered. The Assessment Team will then assess the child's development needs and make a professional judgement on the time for the child to receive the detailed assessments. The CAC will then, subject to availability of the professionals concerned, fix a date for the detailed assessment. Urgent and serious cases will be given higher priority.

Response from DH

3. According to DH, the actual waiting time for child assessment service depends on the complexity and condition of each individual case as well as the professional assessments required. For better resource utilisation, CAC would usually notify the parents by telephone of the date and time of the assessment within one to three weeks prior to the assessment date.

4. A preliminary interview was conducted on the day the complainant made the registration for his daughter. As the detailed assessments required would need to be decided in the pre-assessment case conference, CAC staff could not specify a date for the assessment but only provide the general waiting time.

Our Comments and Recommendation

5. Since CACs only ask the parents to wait for notification without providing any further information as to how long they need to wait, parents will naturally feel anxious. Therefore, we recommended that CACs provide a tentative assessment date for the parents after the pre-assessment case conference is conducted. This could help make the whole process more transparent and let parents better understand their children's condition so that they could decide whether they should wait for CAC's assessment or take their children to private organisations for assessment/treatment.



6. On the waiting time required, CACs already have a triage system in place to ensure that children with more serious problems would be accorded higher priority to receive assessment. In this case, the actual waiting time for the complainant's daughter was just three months.

Conclusion

7. Overall, The Ombudsman considered this complaint partially substantiated.

8. We were pleased to note that DH accepted our recommendation to provide a tentative assessment date on the briefing note given to parents. The briefing note will also state that, if the subsequent case conference considered that the assessment should be advanced, CAC would inform the parents as soon as possible (usually within three months).

A case of inadequacies in work procedures



Department of Justice ("D of J") and Working Family and Student Financial Assistance Agency ("WFSFAA")

Case No. OMB 2015/5309A&B – Recovery of debt

Allegation: D of J and WFSFAA – failing to conduct timely search for the complainant's new address after obtaining a court order, resulting in her being liable for extra interest accrued over the years – partially substantiated

Details of Complaint

In 2000 and 2002, the complainant undertook to act as indemnifier when her husband ("Mr A") applied for two student loans from the Student Financial Assistance Agency (now WFSFAA). In 2003, she divorced Mr A and moved out of the address ("the Old Address") stated on the deed of indemnity. However, she never notified WFSFAA about this.

2. In September 2015, the complainant received a letter from D of J posted to her new address ("the New Address"), requesting her to repay for Mr A the defaulted student loans together with interest and administration fees according to a court order issued in October 2009. The total amount was more than \$60,000, of which some \$20,000 was interest. The complainant was dissatisfied that D of J had delayed its action until 2015 in searching the land register for her New Address. She considered it unfair for her to bear the extra interest accrued over the years.

Our Findings

Sequence of Events

3. In July 2009, D of J instituted legal action in the Small Claims Tribunal against Mr A and the complainant to recover the defaulted student loans. In their absence, the Tribunal allowed D of J's claim in October 2009. In March 2012, a bailiff went to the Old Address to execute the writ of *fiery facias* but was unsuccessful. It was not until then did D of J learn that they were no longer residing at that address.

4. D of J then issued a memo to WFSFAA in April 2012 to report the case status and seek further instructions, but did not receive any reply from WFSFAA. In September 2015, D of J searched the land register and found that the complainant was the owner of another property, so it wrote to her New Address and requested her to repay the arrears.

D of J's Explanation

5. D of J pointed out that since the complainant had failed to notify WFSFAA of her New Address as undertaken in the deed of indemnity, it had affected the efficiency in handling the case. Although it became clear in 2012 that the Old Address was invalid, due to the large number of default cases, it was not unreasonable that its law clerk did not take any further action in the subsequent three years. On its communication with WFSFAA, D of J explained that since the law clerk had used a standard form document to issue the memo to WFSFAA, and since the wording of that document was rather complicated, she did not quite accurately express what sort of instructions she was seeking. D of J undertook to liaise with WFSFAA on revising the memo in question.

WFSFAA's Response

6. WFSFAA stated that it would follow up with D of J on the progress of referral cases on a regular basis and maintain close communication with D of J. It regarded the memo issued by D of J in April 2012 as just a notification about the first execution of the writ of *fiery facias*. As such, it did not reply to D of J after receiving the memo.

Our Comments and Conclusion

7. Since the complainant did not take the initiative to notify WFSFAA of her New Address, she was partly responsible for the incident.

8. Despite that both D of J and WFSFAA emphasised time and again that a collaboration mechanism with well-defined division of responsibilities was in place between them, there was evidently inadequate communication in this case. This case had remained inactive for more than three years, during which D of J had failed to actively search for the complainant's latest address, nor had it made any enquiry with WFSFAA. Although WFSFAA noticed the inaccurate information in D of J's memo, it did not make any clarification or reply. We did not see any "close communication" between the two departments as they claimed.

9. We understood that D of J had to prioritise its tasks because of resource constraints and the large number of default cases. However, if a large number of cases are only followed up after years of inactivity, it will build up a large backlog. After making all the efforts to institute the legal proceedings, D of J should also ensure that its follow-up procedures are efficient and effective. If the recovery rate of debts remains low, it will not only fail to protect public money, but also lead to further wastage of resources. We considered D of J's existing internal guidelines inadequate in that its frontline staff were only reminded to trace the whereabouts of defaulters as soon as practicable. It is essential for D of J and WFSFAA to draw up more specific guidelines and timeframes for the case handling procedures.

10. The Ombudsman considered the complaint against D of J and WFSFAA partially substantiated.



Recommendations

11. The Ombudsman recommended that:

D of J

- (1) review existing practice and internal guidelines regarding cases involving missing defaulters, and draw up more specific timeframes for follow-up actions;

D of J and WFSFAA

- (2) jointly examine the implementation of the collaboration mechanism to ensure timely follow-up actions by their frontline staff;
- (3) strengthen their communication and set up arrangements for regular and joint review of cases involving missing defaulters; and
- (4) complete reviewing the memo in question as soon as possible and make improvement.

A case of inadequate inter-departmental communication and low efficiency



Education Bureau (“EDB”)

Case No. OMB 2016/1833 – Procedures for Primary One Admission

Allegation: failing to properly follow up on cases of non-delivery of letters inviting parents to state their school preferences – partially substantiated

Details of Complaint

The complainant had submitted an application for his daughter to participate in the Primary One Admission (“POA”) for the 2016/17 school year. As at mid-April 2016, the complainant still had not received EDB’s letter inviting him to state his school preferences (“the Notification Letter”). On 19 April, he called and enquired of EDB about the Notification Letter. The Bureau replied to him: the Notification Letter sent to him was undelivered and had been returned to the Bureau; he no longer could state his school preferences; his daughter would be accorded the lowest priority in the Central Allocation stage and might end up being allocated a primary school place in another district.

2. The complainant was dissatisfied that EDB had failed to properly follow up on the non-delivery of the Notification Letter, thereby depriving him of the opportunity to state his school preferences.

EDB's Explanation

3. EDB's explanation was as follows.

4. The Bureau had distributed a leaflet to parents, informing them that EDB would issue a letter (i.e. the Notification Letter) in mid-January 2016 inviting them to go to designated Central Allocation centres by late January to state their school preferences for their children. Moreover, EDB had made public announcements on the arrangements through television, radio and press release, reminding parents to contact the Bureau as soon as possible if they did not receive the Notification Letter by 26 January 2016.

5. For parents who had not stated their school preferences by late January, EDB allowed a grace period ("the Grace Period") ending in late March, so that they could still have a chance to state their school preferences.

6. Every year in the past, when the Grace Period expired, many parents who had applied for Central Allocation of school places failed to state their school preferences for various reasons. In early April, EDB would generate by computer a list of children whose parents had not stated their school preferences at the Central Allocation stage. The Bureau would then contact the parents on the list to ascertain whether they still required a public Primary One place for their children. If so, the Bureau would randomly allocate one to each of those children from the pool of remaining school places within their respective school nets.

7. When an undelivered Notification Letter was returned to EDB, the Bureau would check the address on the Notification Letter. If the address on the Notification Letter differed from that stated by the parent in the application form for POA, EDB would immediately re-issue the Notification Letter to the address stated in the application form. However, EDB would not follow up on those Notification Letters with addresses that matched the ones stated by the

parents in the application forms, because the time between the issuance of Notification Letters and the dates set for parents to state their school preferences was very tight. Nevertheless, after the Grace Period (i.e. in early April), EDB would contact those parents who had not stated their school preferences and ascertain whether they still needed a public Primary One place.

8. In 2016, 177 Notification Letters were returned by Hongkong Post. All the postal addresses of those Notification Letters matched the addresses stated in the application forms for POA. Subsequently, 162 parents took the initiative to contact EDB. The remaining 11 parents (including the complainant), together with other parents who had not stated their school preferences, totalled 1,370. They were contacted individually by telephone by a team comprising 20 EDB staff members from 20 April onwards.

Our Comments

9. The purpose for the issuance of a Notification Letter by post to parents in mid-January 2016 was to give them an opportunity to state their school preferences. We considered that it would not have been difficult for EDB to follow up on the cases of undelivered Notification Letters. Taking the 177 undelivered Notification Letters in 2016 as an example, assuming that the 20 EDB officers were to call each of those parents twice during the two-month Grace Period, each officer would only have to make 18 telephone calls, with each call probably lasting for just a few minutes. It would be entirely within EDB's capacity to make such telephone calls. We were of the view that EDB should not have refused to promptly contact those parents by telephone on the pretext of manpower constraints.

10. The Ombudsman, therefore, considered the complaint partially substantiated.



Recommendation

11. The Ombudsman recommended that in future EDB try to contact parents promptly by suitable means (such as telephone calls) in case of non-delivery of the Notification Letters, so that parents can state their school preferences in time.

A case of room for improvement in work procedures



Estate Agents Authority (“EAA”)

**Case No. OMB 2015/4314 –
Complaints against estate agencies**

Allegation: failing to properly follow up on complaints about the misconduct of two estate agencies – unsubstantiated

Details of Complaint

The Owners’ Corporation (“OC”, “the complainant”) of a building (“the Building”) complained to EAA about the misconduct of two estate agencies (“Agency A” and “Agency B”) on the basement level of the Building. Allegedly, the two agencies had affixed signs on the external wall of the Building without the complainant’s permission and placed advertisement boards in public area. Besides, they were operating business in premises with unauthorised building works (“UBW”).

2. The complainant was dissatisfied that EAA had failed to take proper follow-up actions and so lodged a complaint with this Office, alleging that EAA had:

- (1) treated the two agencies differently, imposing sanctions on Agency A for the first two items of misconduct (relating to the affixed signs and advertisement boards) but did not take action against Agency B;

- (2) refused to investigate the misconduct relating to UBW; and
- (3) unreasonably responded to its solicitor's letter by sending a reply to the OC's Chairman direct and to a wrong address.

Our Findings

Regulation of Estate Agents

3. EAA is empowered to investigate possible breaches of the Estate Agents Ordinance and its subsidiary legislation, the Code of Ethics ("the Code") and EAA's Practice Circulars. An estate agent affixing advertisements on a wall without the owner's consent and/or placing advertisements in public area may be in breach of the Code. However, operating business in premises with UBW does not constitute misconduct.

Ownership of the External Wall of the Building

4. The ownership of the external wall of the Building had been a subject of dispute. Both Agencies A and B considered that their tenancy included the right to use the wall, but the complainant deemed itself the owner of the wall and it had not consented to their using it. The complainant had initiated legal proceedings against the two agencies and their landlords and the Court was yet to decide on the ownership issue.

EAA's Response

5. EAA first received the complainant's complaints against the two agencies in March 2014. An inquiry hearing, presided by EAA's Disciplinary Committee (the "DC"), was recommended to decide whether the alleged misconduct would breach the Code. If a breach was confirmed, the agencies might lose their licences.

Allegation (1)

6. Agency A and Agency B were two separate legal entities subject to separate disciplinary proceedings. Agency A denied having affixed advertisements on the external wall without the owner's consent but admitted to placing advertisements in public area. Its admission allowed expeditious disposal of the case. In April 2015, the DC found it in breach of the Code. Agency A was reprimanded and fined. On the other hand, Agency B denied misconduct. It further requested that disciplinary proceedings be stayed pending the Court's decision on the ownership issue. The DC accepted its request.

7. In July 2015, the complainant lodged a new complaint, alleging that Agency B had placed advertisements in public area. While using a photograph to support the allegation, the complainant failed to provide additional information despite EAA's repeated reminders. As EAA found no evidence to prove the breach after nine site visits, this case was closed in late January 2016.

Allegation (2)

8. The allegation against the two agencies for operating business in premises with UBW was also made in July 2015. EAA had since explained repeatedly to the complainant its stance that this would not constitute misconduct. Besides, both UBW and building safety were issues outside its jurisdiction.

Allegation (3)

9. The OC's Chairman had raised some queries with EAA during a joint site visit. As the Chairman had approached EAA direct instead of through the solicitors, EAA considered it reasonable to send its reply to the return address printed on the envelope used by him when he first lodged the complaints in March 2014.



Our Comments and Conclusion

Allegation (1)

10. The two agencies were entitled to their own defence strategies and the DC had responded by handing down different decisions accordingly. This Office saw no irregularity in EAA's decision to accept Agency A's "guilty plea", or to stay the proceedings against Agency B pending the Court's decision on the ownership of the external wall. We, therefore, considered allegation (1) unsubstantiated.

Allegation (2)

11. EAA has no jurisdiction over UBW, which is the Buildings Department's responsibility. It had explained clearly to the complainant that operating business in premises with UBW would not constitute misconduct. Since what would constitute misconduct is a judgement made by EAA having taken into account various factors, this Office normally would not intervene. Allegation (2) was unsubstantiated.

Allegation (3)

12. We did not consider it wrong for EAA to address the Chairman's queries raised with it direct, or to send its reply to the return address as shown on the envelope. This allegation was also unsubstantiated.

13. Therefore, The Ombudsman considered this complaint unsubstantiated.



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2015/4138 – Complaint about dripping air-conditioner

Allegation: delay in following up on a complaint about water dripping from an air-conditioner – partially substantiated

Details of Complaint

On 12 September 2015, the complainant lodged a complaint with FEHD via 1823 about nuisance caused by water dripping from an upper floor air-conditioner. Although FEHD's local District Environmental Hygiene Office ("DEHO") did follow up on his complaint, the water dripping problem remained unresolved as at mid-October.

Our Findings

Procedures for Handling Water Dripping Complaints

2. According to FEHD's operational guidelines, if no one answers the door on their first visit for inspection of a suspected dripping air-conditioner, DEHO officers should issue a Notice of Appointment to ask the occupants to contact DEHO. In case of no response from the occupants, the officers should visit the premises again within seven working days after issuance of the Notice. On the second visit, if the officers still cannot gain access to the premises, they should issue a Notice of Intended Entry. The guidelines also stipulate that the officers should as far as possible conduct inspections at the time of water dripping alleged by the person making the complaint.

The Events

3. On 17 September 2015, DEHO contacted the complainant and the property management agent (“PMA”) of his housing estate. It was learned that the dripping problem mainly occurred between 7 pm and 12 midnight, and that an upper floor flat (“Flat X”) was probably the source of water dripping. On 23 September, DEHO issued an advisory letter to Flat X, reminding the occupants to check their air-conditioner. Between 17 September and 6 November, DEHO officers went to Flat X many times but no one was at home, and so they issued a total of three Notices of Appointment. The officers did not observe water dripping during those visits. In late November, the occupants contacted DEHO, undertaking to check their air-conditioner and have the problem fixed before using it again.

4. FEHD explained to us that DEHO officers had indeed actively followed up on the water dripping problem, but they had encountered certain difficulties in their investigation, namely: the suspected source of dripping was somewhere in the building’s light well, the light was dim at night, their sight lines were obstructed, and the occupants of Flat X were seldom at home. Since neither DEHO officers nor PMA staff had witnessed any water dripping from the air-conditioner of Flat X and how nuisance was caused to the lower floors, there was insufficient evidence for taking further enforcement action, such as issuing a statutory Nuisance Notice to Flat X. However, FEHD admitted that the progress of investigation had been affected because after issuance of the first Notice of Appointment on 17 September, DEHO officers had failed to issue in a timely manner a Notice of Intended Entry in accordance with the guidelines.

Our Comments

5. We found clear inadequacies on the part of DEHO officers in handling the water dripping complaint, such as their failure to issue in a timely manner a Notice of Intended Entry in accordance with the guidelines. Furthermore, while DEHO officers had already learned from the complainant that the water dripping problem mainly occurred between evening and midnight, they conducted investigation repeatedly in the morning or afternoon instead. Consequently, they were unable to ascertain the source of water dripping despite the time and efforts spent. The way they conducted their investigation was indeed far from satisfactory.

6. In the light of the above, The Ombudsman considered this complaint partially substantiated.

Recommendations

7. The Ombudsman recommended that FEHD:

- (1) step up staff training and remind officers from time to time that they should adhere strictly to the operational guidelines in handling complaints about water dripping from air-conditioners; and
- (2) be on the lookout for water dripping from the air-conditioner of Flat X next summer and take decisive enforcement action to prevent further nuisance to the complainant.

**A case of staff’s failure
to follow guidelines**





Food and Environmental Hygiene Department (“FEHD”)

Case No. OMB 2016/0051 – Operating unlicensed food business

Allegations: (1) failing to give a substantive reply in a timely manner when handling a complaint about unlicensed food business – partially substantiated; and (2) failing to take effective enforcement action – substantiated

Details of Complaint

The complainant, the owners’ corporation of a building, had lodged a complaint with FEHD about the sale of lunch boxes without a licence at a shop (“Shop A”) in the building. However, FEHD neither gave a substantive reply to the complainant (“Allegation (1)”) nor took any effective enforcement action against Shop A, as a result of which, the problem persisted (“Allegation (2)”).

Our Findings

FEHD’s Operational Guidelines

2. According to FEHD’s operational guidelines, all complaints should be handled promptly. Within 10 calendar days after receipt of a complaint, the case officer should try to provide a substantive reply or, if that is not possible, give an interim reply to the complainant.

3. Within 30 calendar days after the interim reply, the case officer should try to give the substantive reply. Where the case is complex and requires more time to process, the case officer should inform the complainant of progress, review the case regularly (at least once a month) and issue another interim reply if necessary. Meanwhile, supervising officers should monitor the progress of handling of the complaint.

FEHD’s Response

4. FEHD’s local District Environmental Hygiene Office (“DEHO”) first received the complainant’s complaint in August 2015. About two weeks later, DEHO managed to contact the complainant and promised to take follow-up action. DEHO then conducted inspections but failed to gather sufficient evidence to prove the operation of unlicensed food business at Shop A. The complainant complained to FEHD again in October, pointing out that the food business in question operated between 11 am and 3 pm. Eventually, in mid-February 2016, during an inspection, DEHO staff found Shop A’s shop attendants collecting money from customers and so prosecuted the shop immediately for operating unlicensed food business.

Allegation (1)

5. FEHD admitted that DEHO staff had only given a verbal reply to the complainant initially and had not followed the operational guidelines to give a written interim reply within 10 calendar days. FEHD has reminded its staff to follow the guidelines and update complainants on progress in a timely manner.

Allegation (2)

6. FEHD also admitted that DEHO had failed to take targeted enforcement action according to the business hours of Shop A as indicated by the complainant, and that DEHO should have conducted more frequent inspections to investigate whether the shop was operating unlicensed food business. FEHD has instructed the staff concerned to take targeted enforcement actions for greater effectiveness.

Our Comments

7. We noted that after receiving the complainant's first complaint, DEHO had, in the first two weeks, merely given a verbal interim reply without issuing any written interim reply. DEHO wrote to inform the complainant of progress only a month or so later, i.e. 40 days after receiving the first complaint. Subsequently, the complainant complained again and DEHO took more than three months to issue a written reply, although this time a written interim reply was issued within 10 calendar days. The Ombudsman considered that although DEHO had informed the complainant of progress by telephone, it had failed to adhere to the Department's guidelines. Therefore, Allegation (1) was partially substantiated.

8. Moreover, the initial inspections by DEHO were not conducted within the business hours of Shop A as indicated by the complainant. Consequently, despite a number of inspections, DEHO staff could not gather any evidence to prove the operation of unlicensed food business at Shop A. It was not until after our intervention in January 2016 that DEHO conducted inspections within the business hours indicated by the complainant. The Ombudsman, therefore, considered Allegation (2) substantiated.

9. Overall, The Ombudsman considered this complaint partially substantiated.

Recommendations

10. The Ombudsman urged FEHD to take reference from this complaint case, remind DEHOs to pay more heed to the information on time schedules provided by complainants when investigating similar cases, and instruct all staff to follow its operational guidelines.

**A case of failure to
follow work procedures**



Food and Environmental Hygiene Department ("FEHD")

**Case No. OMB 2016/2627 –
Street obstruction by flyers distributor**

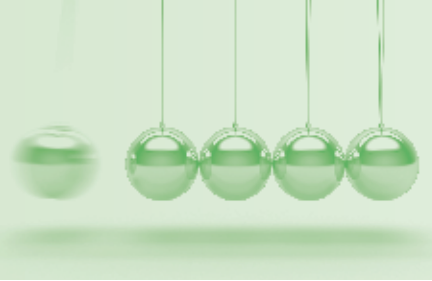
Main allegation: failing to take rigorous enforcement action to prosecute a flyers distributor, thus allowing the problem of street obstruction to persist – partially substantiated

Details of Complaint

The complainant alleged that at the junction of the entrance of an alley ("the alley entrance") and a pavement, there is limited space and busy pedestrian traffic, and yet a person ("Ms A") sat there on a folding stool for hours during peak periods every day, displaying a promotional placard she hung on her body and distributing flyers to passers-by. That caused serious obstruction, and the complainant had repeatedly complained to FEHD. However, FEHD was lax in enforcement and did not invoke its statutory powers to prosecute Ms A for street obstruction, thus allowing the problem to persist.

Relevant Legislation and FEHD's Powers

2. The Summary Offences Ordinance stipulates that except with lawful authority or excuse, no person shall set out or leave any matter or thing which obstructs, inconveniences or endangers any person or vehicle in a public place ("street obstruction provision").



3. The Public Health and Municipal Services Ordinance contains provisions which respectively prohibit articles or things to be so placed as to obstruct scavenging operations (“obstruction to scavenging operations provision”); or bills or posters to be displayed or affixed on any Government land, except with the written permission of the Authority (“unlawful display of bills provision”).

4. FEHD is empowered to take enforcement action against those who violate the above laws.

Response from FEHD

5. FEHD contended that its District Environmental Hygiene Office (“DEHO”) had conducted site inspections every time it received the complainant’s complaint. On several occasions, Ms A was found with a promotional placard hanging on her body and she was distributing flyers to passers-by while moving around the alley entrance. DEHO staff at once advised her not to cause obstruction to pedestrians.

6. FEHD held that Ms A had not caused obstruction to its scavenging operations as the promotional placard was being hung on her body and not placed on the pavement (which is Government land). Hence, the Department could not invoke the “obstruction to scavenging operations provision” or the “unlawful display of bills provision” and take enforcement action against Ms A.

7. Moreover, its staff had followed internal guidelines and considered such factors as the width of the pavement, pedestrian flow and whether passers-by had to walk circuitously to avoid Ms A’s articles, before they determined whether to invoke the “street obstruction provision” and take enforcement action. Since Ms A did not leave behind any article that would obstruct pedestrians or vehicles, it was not appropriate to invoke the “street obstruction provision” and take enforcement action against her.

Our Comments

8. We accepted FEHD’s explanation on why it had not invoked the “obstruction to scavenging operations provision” or the “unlawful display of bills provision” to take enforcement action against Ms A.

9. Nevertheless, the complainant was actually complaining about “street obstruction” caused by Ms A. She had been complaining about that for years, and with photographs as supporting evidence. Besides, the alley entrance was on a very busy street with heavy pedestrian flow. We believed that Ms A’s conduct did amount to causing obstruction to pedestrians by setting out an article/ thing (i.e. the folding stool) in a public place. This met the legal definition of “street obstruction” under the “street obstruction provision” and should be actionable according to FEHD’s internal guidelines on enforcement against such irregularity. FEHD, therefore, should have taken enforcement action to at least issue Ms A a warning, and not just a verbal advice.

Conclusion and Recommendations

10. The Ombudsman considered the above complaint partially substantiated.

11. The Ombudsman recommended that FEHD continue to monitor the situation and take enforcement action pursuant to the “street obstruction provision”. If in doubt, it should seek advice from the Department of Justice.

**A case of failure to take
rigorous enforcement action**





Food and Environmental Hygiene Department ("FEHD")

**Case No. OMB 2016/2958 –
Littering from vehicle**

Allegation: failing to properly handle a report about a taxi driver throwing a cigarette butt from his vehicle – substantiated

Details of Complaint

The complainant alleged that while he was driving one day, he saw the driver ("the Suspect") of a taxi ("the Taxi") in front throw a cigarette butt out of the window. He made a report to FEHD and provided video footage of the whole incident that he had filmed. However, FEHD replied that the offender could not be identified despite its efforts to track him down by various means. The Department, therefore, could not take further action.

2. FEHD later explained that since the person who was allowed by the taxi owner ("the Owner") to drive the Taxi could not remember whether he had driven the Taxi on the day in question, FEHD had no sufficient evidence to prosecute him. The complainant considered such explanation unreasonable.

Response from FEHD

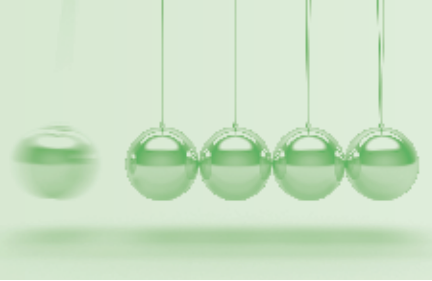
3. The Owner, upon FEHD's request, had provided the particulars of the Suspect. Nevertheless, the Suspect claimed while giving his statement that he could not remember whether he had driven the Taxi at the time of the incident or whether he had thrown a cigarette butt on the road. Furthermore, the video footage, taken from the rear of the Taxi, showed only a hand throwing a cigarette butt-like object out of the window next to the driver's seat but not the face of the offender.

4. As FEHD could not identify the offender or confirm without reasonable doubt that the Suspect was the offender, the Department considered there to be insufficient evidence to institute prosecution. Therefore, FEHD did not seek legal advice on the case.

Our Comments

5. This Office considered that although the face of the offender was not visible in the video footage, FEHD could still have deduced from the following crucial and indisputable facts that the Suspect was the offender:

- (1) the footage clearly captured the moment when someone threw a cigarette butt-like object out of the window next to the driver's seat of the Taxi;
- (2) the Owner had confirmed that on the day of the incident, the Taxi was given to the person who gave his statement at FEHD's request; and
- (3) while the Suspect did not admit having committed the offence, he did not say that he had let another person drive the Taxi either.



6. If FEHD officers were unsure whether there might still be “reasonable doubt” that could affect the decision and the result of prosecution, they should have sought legal advice from the Department of Justice (“D of J”) instead of making a judgement on their own.

Conclusion

7. The Ombudsman considered this complaint substantiated.

8. We were glad to note that FEHD had agreed to seek the views of D of J on this case for future reference when dealing with similar cases.

A case of wrong decision



Highways Department (“Hy D”),
Lands Department (“Lands D”),
and Home Affairs Department
 (“HAD”)

**Case No. OMB 2015/2105A, B&C –
Ponding problem**

Allegation:

Hy D, Lands D and HAD – lack of coordination
in resolving the ponding problem at a vehicular
access – partially substantiated

Details of Complaint

The complainant alleged that on rainy days, puddles of rain water would be formed at a vehicular access (the “Access Road”) which runs across the public footpath of a road and leads to the housing estate where he lives. He found this a risk to public safety and so lodged a complaint with 1823. Although the Access Road was resurfaced subsequent to his complaint, the problem persisted. He considered that Hy D, Lands D and HAD lacked coordination in fixing this problem.

Our Findings

Maintenance Responsibilities for the Access Road

2. The ponding problem involved three locations of the Access Road (hereinafter called Locations A, B and C). Location A is a public footpath maintained by Hy D while Locations B and C are on unleased Government land falling within a Temporary Government Land Allocation ("TGLA") granted to Water Supplies Department ("WSD") for carrying out some works at the time the complaint was lodged. There is no maintenance party for Locations B and C.

3. Improvement works were carried out specifically at Location B by WSD to address the ponding problem during the TGLA period. Hy D also did some improvement works at Location A in response to this complaint. However, the ponding problem remained unresolved. WSD advised that the ponding problem at Location B was caused by a congenital defect at the Access Road that required extensive upgrading works to rectify.

Response from Hy D

4. Hy D stated that it was only responsible for the maintenance of Location A but not Locations B and C, which were outside its purview. It had already carried out improvement works at Location A. As regards Locations B and C, Hy D had referred the complaint to Lands D for follow-up actions and it later learned that Lands D had requested HAD to carry out improvement works.

Response from Lands D

5. Lands D indicated that it was not responsible for road maintenance and it did not have the expertise to solve the ponding problem at Locations B and C. Based on WSD's advice (see para. 3), the District Lands Office ("DLO") concerned had requested the local District Office ("DO") to consider carrying out upgrading works under HAD's Minor Works Programme.

Response from HAD

6. HAD explained that the Access Road was not a public village access, but an exclusive access to the housing estate concerned and some village-type houses. It was outside the scope of Rural Public Works eligible for the use of funds under the Minor Works Programme. HAD considered that if the improvement works that Hy D and WSD carried out could not resolve the ponding problem, the Government departments concerned should review holistically and in a coordinated manner the design and the works done with a view to devising further remedial action.

Our Comments

7. Our investigation revealed that none of the three departments under complaint were willing to take the lead in tackling the ponding problem. We found it highly undesirable that these departments continued to explain and delineate their own respective purview instead of putting their heads together to really resolve the problem. This kind of compartmental mentality should be cautioned against.

8. Upon our intervention, the departments concerned were willing to discuss the issue and they ultimately worked out a proposal: Hy D would act as a works agent for Lands D to carry out on a one-off basis improvement works on the Access Road including slanting of the road and building additional gullies; Lands D would provide the funding for the improvement works; while HAD would liaise with Hy D, Lands D and the Owners' Corporation ("OC") of the housing estate concerned and convene a meeting to explain the way forward.

Conclusion and Recommendations

9. In view of the above, The Ombudsman considered the complaint against Hy D, Lands D and HAD partially substantiated.



10. The Ombudsman recommended that the three departments expedite their actions:

- (1) Lands D to arrange for the necessary funding for the improvement works;
- (2) Hy D to carry out the works; and
- (3) HAD to liaise with the parties concerned to facilitate the works and secure the agreement of the OC to take up the future maintenance responsibilities of the gullies on the private road.

11. The improvement works were completed and the local residents recognised that the works had effectively improved the ponding problem. We were pleased to note that, with the concerted efforts of all the parties concerned, the matter was resolved satisfactorily.

**A case of lack of
coordination in
resolving problems**



**Home Affairs Department
("HAD")**

**Case No. OMB 2016/1938 – Consultation on
applications for lease modification**

**Allegation: improper exclusion of certain
stakeholders from consultation on an application
for lease modification – substantiated**

Details of Complaint

The complainant enquired of HAD about the consultation on an application for lease modification for residential redevelopment of a land lot along a certain road in the Peak and Mid-Levels area. In its reply, HAD noted that nearby residents and the relevant Area Committee ("AC") were consulted, but Members of the District Council ("DC") concerned were not consulted because it would be unfair to other candidates in the DC election, which would soon be held. Allegedly, all houses along the road in question were vacant. The complainant considered HAD's explanation absurd.

Our Findings

HAD's Role in and General Practices for Local Consultation

2. In carrying out local consultation on Government policies and local matters, Government bureaux/departments take the lead in determining the time, duration, scope and method while the District Offices ("DOs") of HAD play a supporting role by providing advice and assistance as necessary. Where the requirements for consultation are not specified, the consultation will be launched in accordance with the established practices of DOs.

3. Local consultation usually lasts for two weeks and its scope covers DCs, local and residents' organisations and other local residents affected by the proposal/issue. Where consultation starts during the suspension of DCs' operation pursuant to section 28 of the District Councils Ordinance, DC Members are generally not consulted, but they may express their views in their personal capacity like any other members of the public.

HAD's Explanation

4. HAD explained that when the Lands Department ("Lands D") requested this local consultation, it did not set any specific requirement. The local DO then conducted a two-week consultation in accordance with its established practices.

5. Apart from household(s) of adjacent building(s) (it happened that there was only one standalone house in the vicinity of the subject location), members of AC, except those who were DC Members, were consulted. The exclusion of DC Members was to ensure a level playing field for all candidates in the DC election which would be held shortly afterwards.

Our Comments

6. In our view, it is essential to solicit opinions and comments from stakeholders or their representatives in any consultation exercises. Normally, HAD's usual practice could have served the purpose, but in this case, the DC Members concerned were not consulted owing to the suspension of DCs' operation during the election period.

7. Given that the local consultation was related to a development in an area that would likely attract community concern, the arrangement was clearly unsatisfactory. We considered that the local DO should have devised some special consultation arrangements to cater for the circumstances and advised Lands D accordingly.

Conclusion and Recommendation

8. In view of the above, The Ombudsman considered this complaint substantiated.

9. The Ombudsman urged HAD to take reference from this case and ensure that in future stakeholders or their representatives are duly covered in local consultation.

A case of faulty procedures





Home Affairs Department (“HAD”) and Rating and Valuation Department (“RVD”)

Case No. OMB 2016/2047A&B – Rates exemption for New Territories village house

Allegations:

HAD – mistaking a New Territories village house used for self-residence for one that had been leased out, and wrongly cancelling rates exemption – partially substantiated

RVD – same – unsubstantiated but other inadequacy found

Details of Complaint

The complainant, a New Territories indigenous villager, lived in a New Territories village house (“the House”), and had been granted rates exemption.

2. In May 2016, HAD issued a letter to the complainant, stating that as the House had been leased out between April 2011 and March 2013 (“the Period”), the rates exemption for the Period (“the Exemption”) had been cancelled. The complainant immediately explained to RVD that the House had never been leased out. However, RVD still required him to pay the rates for the Period.

3. The complainant considered it unreasonable of HAD and RVD for determining that the House had been leased out and cancelling the Exemption.

Our Findings

4. The Rating Ordinance provides that the Director of Home Affairs may grant rates exemption to village houses in the New Territories which fulfil certain criteria, e.g. they are occupied by indigenous villagers or their immediate family members.

5. After receiving an application for rates exemption for a village house, HAD would refer the application to RVD, which would then provide information (including rental information) about the village house. RVD would also regularly provide HAD with rental information of village houses. The rates exemption already granted would be cancelled right away if HAD received RVD’s update that the village house in question had been leased out.

6. Every year, RVD issued more than 300,000 Requisition for Particulars of Tenements forms (“Requisition Forms”) for collecting rental information from property owners/occupiers. RVD would only conduct random checks on the Requisition Forms completed by property owners/occupiers. It would not verify whether a Form was actually completed by the owner/occupier of the property concerned.

HAD’s Response

7. According to HAD, the complainant, as the owner of the House, submitted an application for rates exemption in March 2014. Exemption was granted in September 2014. In November 2014, HAD received a notification from RVD that the House had been leased out during the Period. HAD trusted that the contents of the notification were correct. The Department had no reason to doubt or to verify the opinions or information provided by RVD, a professional Government department, in exercising its powers.

RVD's Response

8. RVD's explanation was as follows.

9. In August 2011, RVD issued a Requisition Form to the owner/occupier of the House. A Mr X, who claimed himself to be the owner of the House, completed the Requisition Form, stating that the House had been leased out, and returned the Requisition Form to RVD in September 2011. RVD admitted that it had not until November 2014 apprised HAD that the House had been leased out, though it had received HAD's referral of the complainant's application for rates exemption in April 2014.

10. Upon HAD's cancellation of the Exemption, the complainant filed another application for rates exemption in May 2016. In response to HAD's enquiries, RVD clarified that the Requisition Form was completed by Mr X, who was in fact the owner of another property in the vicinity, and that the owner of the House was in fact the complainant.

Our Comments

11. We noted that this complaint had resulted from the following inadvertences: the Requisition Form was not filled in by the owner of the House (i.e. the complainant); RVD would not verify whether a Requisition Form was completed by the owner of the property concerned (see para. 6); and RVD mistakenly notified HAD that the House had been leased out.

12. The way HAD handled rates exemption applications was also questionable. HAD argued that rates exemption would be re-granted if there was evidence of error in RVD's information and a grantee would not suffer any loss in such circumstances. Our view, however, was that if HAD, instead of cancelling the rates exemption right away upon receipt of RVD's notification that the House had been leased out, had contacted the complainant to give him a chance to explain, all his grievances and HAD's subsequent trouble of reviewing the case could have been avoided.

13. And while RVD had already received in September 2011 the Requisition Form on which Mr X declared that the House had been leased out, it waited until November 2014, i.e. after HAD had granted rates exemption, to furnish HAD with the information (see para.9). As a result, the matter was not clarified in a timely manner. We considered that an inadequacy on the part of RVD.

14. In view of the above, The Ombudsman considered that the complaint against HAD was partially substantiated, and the complaint against RVD was unsubstantiated but the Department had other inadequacy.

Final Remarks

15. We were pleased to note that HAD had re-granted rates exemption to the complainant. It had also taken an improvement measure of sending grantees of rates exemption a letter before formally cancelling the exemption so that they would have a chance to raise objections and make clarification. RVD had also reminded its staff to carefully check rental information of properties and notify HAD in a timely manner, such that similar omissions in providing updates would not occur again.

A case of omissions and faulty procedures





Hong Kong Housing Society (“HKHS”)

Case No. OMB 2016/0976 – Rentals of motorcycle parking spaces in public housing estates

Allegation: excessive increase in the rentals of motorcycle parking spaces in a public housing estate – unsubstantiated

Details of Complaint

The complainant lived in a public rental housing estate under HKHS and rented a covered motorcycle parking space at the estate’s car park. With effect from 1 April 2016, HKHS increased the monthly rent of that type of motorcycle parking spaces by about 15%. The complainant considered the percentage too high for residents of public rental housing.

Our Findings

Policy and Mechanism for Rental Adjustment of Car Parks

2. Each year, HKHS reviews and adjusts the rentals of parking spaces in public housing estates. The policy objective is to charge the use of the parking spaces at market rates. The Commercial Letting Panel (“the

Panel”) under HKHS will discuss after taking into consideration such factors as the valuation report prepared by estate surveyors and the operators’ market researches on parking fee levels, utilisation rates and operating costs of private car parks. It will then determine the rental adjustment.

HKHS’s Response

3. HKHS explained that the Panel’s decision to increase the rental by 15% was in line with the aforesaid policy objective and would bring the rental level of the car park closer to that of the nearby private car parks in the district.

4. Since HKHS is a self-financing, non-governmental organisation, and car parks in public housing estates are not subsidised facilities, HKHS must operate its car parks according to commercial principles. Moreover, the rental adjustment in question was determined according to HKHS’s established policy and mechanism. Car park users may choose the type of parking spaces (such as those uncovered parking spaces, which are cheaper) based on their affordability and needs.

Our Comments and Conclusion

5. Having scrutinised the relevant documents, we found no evidence of any maladministration on the part of HKHS. Nor were there any grounds for us to interfere with HKHS’s decision on the rental adjustment. In our opinion, it was not unreasonable for HKHS to make reference to the market rates in determining the rentals of its car parks given that those are not subsidised facilities.

6. In view of the above, The Ombudsman considered the complaint unsubstantiated.



Hong Kong Housing Society (“HKHS”)

**Case No. OMB 2016/1003 –
Outsourced security guard in public housing
estate accepting red packets**

Allegation: shirking responsibility in handling a complaint about acceptance of red packets by an outsourced security guard in a public housing estate – substantiated

Details of Complaint

During the 2016 Lunar New Year, the complainant witnessed a security guard of the public housing estate in which he lived accepting red packets from residents. He lodged a complaint with HKHS but was told that HKHS would not intervene in the acceptance of red packets by the security guards of its security guard services (“SGS”) contractors. The complainant considered that outsourced security guards of HKHS should not accept red packets and queried whether different public housing estates adopted different approaches.

Response from HKHS

2. HKHS staff, subject to the Prevention of Bribery Ordinance, shall not solicit or accept any advantage, including red packets. As for the security guards of SGS contractors, HKHS had stipulated the same in the outsourced service contracts. However, red packets were just tokens of thanks from residents during the Lunar New Year, and contractors had the discretion to decide whether their employees could accept them.

3. The SGS contractor which hired the security guard in question forbade its employees from accepting red packets. It had investigated the incident but found no evidence to prove that the security guard had accepted any red packets.

Our Observations

4. We considered that HKHS’s practice of allowing its SGS contractors to decide whether their employees could accept red packets might give rise to a series of questions. For instance, different practices in different housing estates might confuse the residents. If SGS contractors allowed their employees to accept red packets as “tokens of thanks” from residents during the Lunar New Year, could their employees also accept gifts (such as moon cakes) as “tokens of thanks” on other festive occasions? Besides, had HKHS informed all SGS contractors clearly that they had discretion in formulating policies on the acceptance of red packets and gifts? Moreover, some contractors did not set a ceiling on the value of red packets. This might be a loophole for corruption.

5. In fact, employees of SGS contractors had the same duties as those employed directly by HKHS. HKHS’s management principles towards them should largely be the same, and requirements of them similar.



Further Response from HKHS

6. Upon our referral of the case, HKHS commenced a review of its practices. To avoid misunderstanding and to promote integrity and combat corruption, HKHS decided that all SGS contractors in its public rental housing estates shall not allow their employees to accept red packets or other festive gifts. All contractors were then informed of the decision through various channels.

Our Comments and Conclusion

7. HKHS stipulated clearly in the contracts that employees of its SGS contractors should not accept advantages in the form of cash or gifts, but at the same time allowed the contractors the discretion to decide whether their employees could accept red packets during the Lunar New Year. This was indeed questionable. The Ombudsman, therefore, considered the complaint substantiated.

8. This Office was pleased to learn that HKHS had reviewed and revised its current practices to remedy the situation.

A case of improper practices



Housing Department (“HD”)

Case No. OMB 2015/4242 – Management of market stall tenants

Allegation: failing to take proper action against alleged irregularities of market stall tenants – unsubstantiated

Details of Complaint

The complainant was a tenant in a market under HD (“the Market”) and she operated a flower stall. She had lodged numerous complaints with HD, alleging that several stalls operated by members of a family were frequently in breach of the tenancy agreements, including selling paper offerings and joss sticks at a flower stall, and selling flowers at a leather goods stall and a storeroom. Meanwhile, the family concerned also made frequent complaints against her for illegal extension of business area.

2. The complainant considered HD to have acted unfairly and delayed in taking follow-up actions and giving her replies. Moreover, the property management agent (“PMA”) had often informed the stall tenants under complaint before inspections, casting doubt on whether it was trying to harbour those tenants. As for those complaints from others against her, HD actually followed up immediately and directed the PMA to inspect her stall on a daily basis.

Response from HD

3. To ensure that the goods offered by the markets in housing estates can serve the needs of residents, HD's tenancy agreement for market stalls specifies the nature of the trade, such as "florist" or "leather goods". Tenants are not permitted to engage in business outside the specified trade. The agreement also stipulates that tenants should not use their stalls for storage of goods other than a reasonable level of stock for their business.

4. HD had contracted out the day-to-day management of the Market to the PMA. In addition to daily routine patrols of the Market, the PMA would also conduct special inspections on stalls that allegedly violated the tenancy conditions. In response to the complainant's allegation that the family concerned had engaged in business other than the specified trade, the PMA conducted a number of inspections. While it was found that some commodities and advertisement notices unrelated to the specified trade were stored and displayed in their stalls, the PMA did not consider that as breaching the tenancy conditions. An officer of the PMA had in the capacity as a customer asked to buy those commodities, but was advised to go to another stall designated for that kind of trade.

5. Regarding the complaint about selling flowers at a storeroom which should only be used for storage, the PMA did not notice any irregularities after repeated inspections. Since it was necessary to contact the tenant to open the storeroom for inspection, the PMA had to give prior notice.

6. On the complainant's allegation regarding HD's handling of complaints from others against her, HD expressed that the PMA would inspect the market on a daily basis and conduct special inspections on the stalls concerned on receipt of complaints. This practice was applied to all complaints received.

Our Comments and Conclusion

7. We considered it imperative for market stall tenants to exercise self-discipline and show tolerance and respect to other tenants. If tenants always make and reciprocate complaints to harass each other, HD would have to deploy a lot of manpower and resources to handle such complaints and it would be difficult for HD to foster an amicable business environment. HD should give advice and issue warnings to such tenants. If the situation persisted, HD should seriously consider not to grant renewal upon expiry of their tenancies.

8. After scrutinising the relevant work records, we were satisfied that the PMA had conducted inspections and given replies to the complainant in a timely manner. There was no evidence that HD or the PMA had tried to condone the alleged irregularities of the tenants.

9. The Ombudsman, therefore, considered this complaint unsubstantiated.

Other Observations

10. While the PMA had not found any sale of commodities outside the scope of specified trade by the family concerned, it found that they had stored or displayed in their stalls goods and advertisement notices unrelated to the specified trade. We considered that since HD had imposed restrictions on the inventory level through the tenancy conditions, it should not have allowed tenants to place unrelated goods or other articles in their stalls. It would be against the original intent of regulation and control if HD were to argue that the tenancy conditions covered only "goods of the specified trade" but not other articles. In fact, HD should have exercised more stringent control over display of articles unrelated to "goods of the specified trade" in market stalls.



Recommendation

11. The Ombudsman recommended that HD consider imposing control over the storage or display of goods and other articles unrelated to the specified trade of market stalls.

A case calling for control over the storage of goods unrelated to the specified trade of market stalls



Information Services Department ("ISD")

**Case No. OMB 2016/1692 –
Refusal of requests from new media for news coverage**

Allegation: unreasonably denying an online media organisation access to cover Government press conferences and briefings – substantiated

Details of Complaint

The complainant is an online media organisation that publishes a monthly periodical ("Periodical A") on the Internet. After being denied access repeatedly to cover press conferences hosted by Government officials at different levels, the complainant asked ISD for an explanation. ISD replied that it was not possible to admit journalists of all mass news media organisations, including registered printed and broadcasting media and news agencies, for on-the-spot reporting. Moreover, given that the online media organisation in question belongs to the new media, and there was as yet no universally accepted or clear definition of new media, it was difficult for ISD to distinguish which new media organisations belong to the category of mass news media organisations.

2. In the complainant's view, Periodical A is a registered publication that fits the definition of news reporting media. It was, therefore, unfair that ISD should refuse the complainant's requests for on-the-spot news reporting. Besides, online media have become increasingly popular. It was unreasonable for ISD to deny such newly emerged media a proper avenue to cover Government news.

Our Findings

ISD's Explanation

3. ISD issues press releases and invitations to press conferences through its Government News and Media Information System ("GNMIS"). However, even organisations registered under the Registration of Local Newspapers Ordinance do not automatically become GNMIS users. GNMIS users must be "mass news media organisations", such as newspapers, radio and television stations and news agencies, engaged mainly in current news reporting.

4. In ISD's terminology, "mass news media organisations" generally refers to news organisations that are mainly engaged in current news reporting. When deciding whether an organisation is a "mass news media organisation" acceptable as a GNMIS user, ISD takes into account a number of factors such as the organisation's background and history, and the contents of its publications. As the media industry has yet to agree on what constitute online media, and it is impossible for ISD to grant access to representatives from all online media organisations for on-the-spot reporting, imposition of certain restrictions is necessary. Currently, ISD grants access to those online media organisations affiliated to traditional "mass news media organisations" to cover Government events. Other online media organisations can always enquire of ISD about information relating to the Government.

5. Since Periodical A is mainly for the purpose of advocating the thoughts and ideology of a certain political body rather than current news reporting, the complainant was not regarded as a "mass news media organisation". ISD, therefore, did not accept the complainant as a GNMIS user.

Our Comments

6. The public's right to freedom of the press should always be upheld. We consider that any control and restrictions imposed by ISD on any media have to be justifiable, and their scope and magnitude should not exceed what are necessary. According to ISD, it had the following justifications or legitimate purpose for imposing restrictions on media reporting:

- (1) to avoid overcrowding the venue and hence disrupting the proceedings; and
- (2) to satisfy security requirements and maintain order in venue.

When such needs arise, ISD would even limit the number of journalists from "mass news media organisations" that have received invitations via GNMIS, or adopt the mode of pool coverage.

7. Nevertheless, we noticed that ISD would reject all requests for on-the-spot reporting by organisations other than "mass news media organisations", irrespective of the venue size and level of security risks. Such restriction was clearly excessive. In our view, even though some organisations might have previous records of disrupting order in venues, ISD should not across the board reject all requests from organisations other than "mass news media organisations".



8. Furthermore, ISD does not have a clear set of criteria or any mechanism to determine whether an organisation engages mainly in current news reporting. ISD just generally said that it would take into account various factors when deciding whether an organisation can become a GNMIS user. This is far from being ideal. The media industry and the public are not clear about the requirements for registration as a GNMIS user. Neither would ISD staff know what factors should be taken into account when there are no internal guidelines to follow. At the Legislative Council meeting on 22 January 2014, the Government indicated that it would discuss with the media industry for formulating a new set of criteria. It also undertook to closely monitor the advancement of information technology and changes in the media industry. However, there was no progress afterwards. We consider that ISD should think out of the box and should not continue to reject all new media organisations.

Conclusion and Recommendations

9. In view of the above, The Ombudsman considered this complaint substantiated.

10. The Ombudsman recommended that ISD:

- (1) review quickly its policy of denying all online media organisations access for news reporting;
- (2) review and relax the requirements for registration as GNMIS users as far as possible and draw up relevant work guidelines for its staff and media organisations to follow; and
- (3) before completion of the above reviews, be more flexible in dealing with requests from individual media organisations to carry out news reporting, wherever the venue and security conditions permit.

**A case of faulty procedures
and lack of clear guidelines**



Leisure and Cultural Services Department ("LCSD")

**Case No. OMB 2016/2483 –
Abuse of telephone reservation service**

Allegations: (1) failing to restrict a Leisure Link user from abusing the telephone reservation service – substantiated; and (2) failing to impose a penalty on that user in accordance with the Conditions of Use – substantiated

Details of Complaint

From 20 to 30 June 2016, the complainant attempted time and again to enrol in a training course organised by LCSD, but in vain. Although there was still one available place in that course, he was informed by LCSD that it had been temporarily held by a Leisure Link user ("Mr A"), who had made the reservation by telephone, only to cancel it within three working days and then book it again immediately. By doing that repeatedly, Mr A managed to hold the place for 10 days without making any payment.

2. The complainant alleged that LCSD had failed to take proper remedial action to stop such abuse of the telephone reservation service. He also stated that LCSD should have invoked the penalty clause under the Conditions of Use of Leisure Link System ("the Conditions") and suspended Mr A's right to use the telephone reservation service.

Response from LCSD

3. Leisure Link users, after reserving a place in a sports programme by telephone, should confirm the enrolment by paying the fee within three working days or cancel the reservation before the payment deadline. There is no restriction on the number of cancellation by the same user. The Conditions impose a penalty under Clause 11 on those users who have made a reservation but then failed to confirm by payment on more than two occasions. However, Mr A had duly cancelled the reservation before the payment deadline and he was not regarded to be in breach of the Conditions.

4. LCSD stated that it was not a common practice for people to make use of the telephone reservation procedures to extend the payment deadlines. Nevertheless, LCSD admitted that this would indeed be unfair to other users.

5. In this case, after several rounds of reservation/cancellation by Mr A for the same training course, and after receiving the complainant's complaint, an LCSD officer contacted Mr A and advised him to either settle the payment as soon as possible or cancel his reservation. Eventually, Mr A paid the course fee on the same day. To prevent recurrence of similar incidents, LCSD would upgrade the Leisure Link System such that telephone reservation is only allowed within the first three working days after a sports programme is open for public enrolment. After that, interested parties can only enrol through other channels and immediate payment is necessary. LCSD expected that the new measure could be implemented in March 2017 at the earliest.

Our Comments

Allegation (1)

6. Telephone reservation, unlike other enrolment channels which require immediate payment, allows Leisure Link users to make payment within three working days. The purpose is to give them some flexibility to settle the payment within a reasonable time. Allowing them to cancel their reservations repeatedly could hardly be the purpose, and would instead create a loophole in the system. We found it unreasonable for LCSD to consider repeated cancellations to achieve extension of payment deadline not a breach of the Conditions and to do nothing to rectify the problem.

Allegation (2)

7. The Conditions clearly stipulate under Clause 11 that a user who has made a telephone reservation but failed to confirm the enrolment by payment on more than two occasions shall be penalised by suspension from using the telephone reservation service for 180 days. As no mention was made about the cancellation arrangement in the Conditions effective at that time, we saw no reason why the penalty clause was not applicable in this case.

Conclusion and Recommendation

8. The Ombudsman, therefore, considered both allegations substantiated.

9. LCSD undertook to further review its telephone reservation service to curb possible abuse. However, it remained of the view that users should be allowed to cancel a telephone reservation. The Conditions were thus amended to state clearly the cancellation arrangement in the latest version.

10. The Ombudsman recommended that LCSD promptly implement the new measure as described in paragraph 5.

**A case of ineffective control
and faulty procedures**





Radio Television Hong Kong ("RTHK")

Case No. OMB 2016/1709 – Digital broadcasting of live football commentaries

Allegations: (1) failing to resolve the problem of time lag in digital broadcasting of live football commentaries – unsubstantiated; and (2) failing to respond to the complainant's request for resumption of Frequency Modulation broadcast for live football commentaries – substantiated

Details of Complaint

The complainant pointed out that ever since RTHK's change of broadcasting mode for live commentaries on regular local football matches from analogue Frequency Modulation ("FM") to digital broadcast, there had been a time lag of some 10 seconds in the broadcasting of such commentaries. He had written to RTHK, requesting it to resolve the problem and resume FM broadcast for such football commentaries as soon as possible, but to no avail.

2. The complainant criticised RTHK for failing to resolve the problem of time lag, which had made watching football matches less enjoyable for him ("Allegation (1)"). He also complained that RTHK had failed to respond to his request for resumption of FM broadcast ("Allegation (2)").

Our Findings

RTHK's Response

Allegation (1)

3. RTHK explained to us that the time lag in digital broadcasting of live football commentaries was due to the digitisation process of encoding and decoding. That is a characteristic of digital broadcast and happens everywhere in the world.

Allegation (2)

4. RTHK indicated that one of its FM channels in fact also broadcast live football commentaries in respect of some matches. However, RTHK had not conducted any survey on whether FM or digital broadcast was more popular among football fans. Considering the positioning of different channels, the allocation of resources and the need to take into account the airtime available for other types of programmes, RTHK would only broadcast on FM Radio 1 those more important local and international football matches that attract wide attention.

5. RTHK stated that broadcasting of live football commentaries on local matches was meant to give people who could not go to the stadiums an alternative means of enjoying the matches through listening to the radio. Whether such broadcasts could help to stimulate football fans to watch football matches or promote local football was not RTHK's primary consideration.

Our Comments

6. Since the problem of time lag in live football commentaries is an inherent technical feature of digital audio broadcast and currently there is no way to resolve it, The Ombudsman considered Allegation (1) unsubstantiated.

7. At present, RTHK's FM broadcasting of live commentaries only covers those local and international matches that attract wide attention or are more important. Live football commentaries on regular local matches are provided via digital audio broadcast and inevitably there is time lag. What the complainant requested was to resume FM broadcasting of football commentaries on regular local matches, and RTHK's response was that it had all along been providing FM broadcasting of live commentaries. RTHK's reply had not answered the complainant's concern at all. The Ombudsman, therefore, considered Allegation (2) substantiated.

8. Overall, The Ombudsman considered this complaint partially substantiated.

Recommendations

9. The Ombudsman recommended that RTHK:

- (1) remind its staff to respond unequivocally to public requests; and
- (2) conduct an in-depth review on its current use of digital mode to broadcast live football commentaries on regular local matches, with a view to ensuring that the public can really benefit from the service provided and avoiding adverse comments.

A case of failure to respond properly to public request



Social Welfare Department ("SWD")

Case No. OMB 2016/0971 – Monitoring of residential care homes for the elderly

Allegations: (1) ineffective monitoring of the facilities and services of a residential care home for the elderly ("RCHE") – partially substantiated; and (2) failing to resolve the dispute when another RCHE refused to admit the complainant's father – partially substantiated

Details of Complaint

The complainant's father ("Mr A") had been staying in an RCHE ("RCHE 1") since 2011 and from August 2015, the complainant had lodged a number of complaints with SWD, alleging that RCHE 1 was negligent in taking care of Mr A. She also requested transfer of Mr A to another RCHE.

2. In October 2015, SWD informed the complainant that it had found an available place in another RCHE ("RCHE 2") for Mr A. However, RCHE 2 kept refusing to admit him on the grounds of "communication problem" with the complainant. The matter dragged on until Mr A died of illness in January 2016.



3. The complainant alleged that the heating facilities of RCHE 1 were inadequate, such that Mr A's health condition deteriorated significantly before his death due to low body temperature. She complained that SWD was ineffective in monitoring the care services provided by RCHE 1 and did nothing to resolve the dispute when it was aware that RCHE 2 had delayed the admission of Mr A.

Our Findings

SWD's Mechanism for Monitoring RCHEs

4. Both RCHE 1 and RCHE 2 are operated by subvented non-governmental organisations ("NGOs"). Under the current mechanism, SWD will refer complaints against those NGOs to the Lump Sum Grant Independent Complaints Handling Committee ("the Committee") for handling. In general, the Committee Secretariat, serviced by SWD staff, will ask the NGOs concerned to deal with the complaints first and issue a reply to the complainants directly. Should the complainants still feel dissatisfied, they can write to the Committee and request it to follow up and conduct further investigations.

5. Moreover, the Licensing Office of RCHEs ("the Licensing Office") under SWD is responsible for the licensing of RCHEs and monitoring their operations on an ongoing basis. The Licensing Office has set up four inspectorate teams for conducting regular inspections in different areas, namely building safety, fire safety, health care and hygiene, and social work. For subvented RCHEs whose licences are renewed every three years, the Licensing Office has stipulated a target of conducting totally eight regular inspections in those four areas every three years. On receipt of complaints, its inspectors will also conduct surprise inspections.

Response from SWD

6. Regarding the complainant's various complaints lodged against RCHE 1 since August 2015, SWD referred all those complaints under the aforesaid mechanism to the Committee, which then forwarded

the complaints to the NGO concerned for handling and issuing a direct reply to the complainant. Subsequently, the Committee conducted investigations into some of her complaint points. Although the Committee had found her complaints unsubstantiated, it suggested RCHE 1 to adopt improvement measures.

7. Meanwhile, the Licensing Office also conducted more than ten inspections regarding the matters under complaint. In particular, an inspector visited RCHE 1 in February 2016 to check its heating facilities and interview its elderly residents. Based on the investigation by the Licensing Office, SWD found no evidence that RCHE 1 did not provide adequate heating facilities or was negligent in taking care of Mr A.

8. As regards RCHE 2's refusal to admit Mr A, SWD indicated that NGOs are required to take up cases referred by SWD and report on their services rendered to the elderly applicants within three weeks. After examining Mr A's case, SWD indicated that RCHE 2 had insufficient grounds to reject his application. It then issued three reminders, urging RCHE 2 to make arrangements for Mr A's admission as soon as possible. Eventually, Mr A's case was closed upon his death.

Our Comments

Allegation (1)

9. While SWD has put in place an established inspection mechanism, the inspections of subvented RCHEs by the Licensing Office are infrequent. For example, in the health care and hygiene area, there is only one inspection every three years. As such, it is difficult for SWD to monitor the actual situations of RCHE 1. Even when there were complaints against RCHE 1, most complaints received were referred to the Committee. And the Committee then routinely forwarded the complaints to the NGO concerned for handling. SWD had not conducted site inspection in the first place. Its regulatory approach was obviously inadequate.

10. The complainant alleged that RCHE 1 was insufficiently heated and thus placed the well-being of elderly residents in peril. That was a very serious allegation. SWD should not have taken it lightly and delayed its follow-up action.

Allegation (2)

11. We understood that the current mechanism had not provided SWD with any specific or punitive measures to compel RCHE 2 to admit Mr A. However, although SWD was fully aware of the dispute between the complainant and RCHE 2, it did not make any proactive efforts to coordinate between the two parties other than repeatedly issuing an ineffective reminder in a routine manner.

Conclusion and Recommendations

12. The Ombudsman, therefore, considered both allegations partially substantiated. Overall, this complaint was partially substantiated.

13. The Ombudsman recommended that SWD:

- (1) review its mechanism for monitoring subvented RCHes and step up inspections, so as to ensure that their facilities and services are up to standards; and
- (2) review the mechanism for admission of elderly applicants to prevent recurrence of refusal or delay on the part of RCHes.

**A case calling for
enhanced monitoring**



Transport Department ("TD")

**Case No. OMB 2016/2794 –
Reducing residents' services**

Allegation: unreasonably reducing the residents' services of some housing estates in a district without considering the residents' transport needs – unsubstantiated but other inadequacies found

Details of Complaint

The complainants alleged that TD had reduced the afternoon session of residents' services for some housing estates in a certain district despite objections from the residents. They held that TD had neglected the residents' transport needs and acted in contrary to the original intent to improve traffic flow on the roads as reducing those services would lead to an increase in the use of other vehicles.

Our Findings

Current Transport Policy and Role of Residents' Services

2. Under the current transport policy, the Government gives priority to the development of mass transit carriers of high capacity such as railways and franchised buses. In the public transport system, residents' services perform a supporting role to provide feeder services between housing estates and nearby railway stations or public transport interchanges during peak hours, and when regular public transport services cannot meet the demand.



3. In processing new applications for operation of residents' services, TD will take into account such factors as the demand for services, levels of existing regular public transport services or services under planning, intended service coverage and traffic conditions. Operators of the existing residents' services are usually required to renew their licences each year, and they should not presume that their renewal applications would always be granted. In deciding whether to approve a renewal application, TD will consider factors such as utilisation of the services concerned, whether the existing public transport services can meet the passenger needs if the residents' service is cancelled or reduced, and the residents' reaction.

Response from TD

4. According to TD, no franchised bus service was available in the early development of the district in question. Residents' services, therefore, became the major feeder transport services. As construction of large-scale private housing estates completed in recent years, TD considered it necessary to introduce franchised bus services between the housing estates and nearby railway stations in the district. After consultation with the District Council, TD approved the operation of two franchised bus routes in 2013 and 2015 respectively.

5. Subsequently, the franchised bus services in the district have enhanced and improved, and the two aforesaid franchised bus routes can meet the traffic demand during non-peak hours in the district. As such, TD has granted approval to new applications for residents' services to operate during the peak hours only and at the same time reduced the operation in non-peak hours of some existing residents' services when approving their renewal applications. TD emphasised that in doing so, it had examined and confirmed that adequate alternative public transport services and concessionary fares were available.

6. In general, TD will consult all the District Councils concerned on changes in franchised bus services. As residents' services are meant to serve their respective housing estates, TD will only inform the operators and residents' representatives concerned of the amendment details and justification. In this case, TD admitted that there was room for improvement in its consultation on the reduction of residents' services and undertook to give the residents more time to get prepared for implementation of such proposals in future. TD would also strengthen its communication with various stakeholders.

Our Comments

7. In our view, allowing all housing estates to have their own residents' service is not feasible in the long run. To cope with the increasing traffic needs alongside the population growth in the district, TD should increase the regular public transport services, and adjust and rationalise the existing residents' services. That is in line with the Government's transport policy and the principles of increasing the efficiency of road usage and reducing air pollution.

8. Nevertheless, we considered that TD lacked a comprehensive plan for rationalising the residents' services in the district. Since residents can easily compare their residents' services with those of nearby housing estates, TD should devise a comprehensive plan, provide clear information to all residents, so as to avoid giving them an impression of handling applications inconsistently. Moreover, if TD consults the District Council on its overall plan for strengthening franchised bus services and rationalising residents' services, it will help in assessing the residents' response and explaining the situation to the affected residents.

9. Given the residents' long-time reliance on residents' services, TD should carry out due consultation and allow sufficient time for the residents to accept the change when cancelling or reducing the existing residents' services. In this case, TD had given the residents less than one-month notice, which was obviously inadequate.

Conclusion and Recommendations

10. In view of the above, The Ombudsman considered this complaint unsubstantiated but found other inadequacies on the part of TD.

11. The Ombudsman made a number of improvement recommendations to TD, which included:

- (1) formulating a comprehensive plan, with detailed timetable and route map, for rationalising the residents' services of the district, notifying and consulting the affected housing estates of such plan, and explaining to the residents the proposals for improving the public transport services and the specific measures;
- (2) consulting the District Council on the overall traffic planning for the district, and in case of reduction in residents' services, giving at least three months' prior notice to the affected residents; and
- (3) when processing new applications for operation of residents' services, taking into account also the existing approved residents' services for those housing estates nearby so that the reaction of residents can be assessed.

A case of insufficient consideration



Water Supplies Department ("WSD")

**Case No. OMB 2016/1979 –
Repairs of fresh water pipes**

Allegation: unreasonably entering private land to repair a fresh water pipe – unsubstantiated but other inadequacies found

Details of Complaint

The complainant requested WSD to repair the underground fresh water pipe ("the water pipe") in his garden upon finding seepage from the pipe. After a site inspection, WSD indicated that it would not arrange for repairs because that was a private water pipe. However, WSD later entered his garden forcibly and repaired the water pipe. The complainant alleged that WSD had no authority to make the repairs as the water pipe was on private land.

Our Findings

2. On receipt of a complaint about seepage from the water pipe, WSD conducted a site inspection and confirmed that there was seepage. Nevertheless, whether the water pipe was a government pipe or a private one could not be confirmed. If it was a private pipe on private land, the occupant should be responsible for its repairs.



3. WSD then received more complaints from nearby residents about the seepage problem and low fresh water pressure. With the information obtained from the land inventory database of the Lands Department (“Lands D”) and another site inspection conducted, WSD confirmed that the seepage from the water pipe was on Government land. WSD had requested several times to enter the complainant’s garden in order to repair the water pipe but each time the complainant refused on the grounds that the water pipe was on private land. However, the complainant had never provided any documentary proof to show that the site was private land.

4. As the seepage problem got worse, WSD eventually entered the complainant’s garden through arrangements by the Police and the village representative and carried out urgent repairs. Moreover, while the enclosure and occupation of land where the water pipe was located was pending Lands D’s follow-up action, WSD installed another water pipe near the complainant’s garden as a replacement to avoid delays in repairs in case of further seepage.

5. The information provided by Lands D revealed that the water pipe was located on Government land where the complainant had built an unauthorised stonewall for his garden. That was illegal occupation of Government land. In fact, Lands D had taken land enforcement action and removed the stonewall shortly after WSD’s urgent repairs of the water pipe.

Our Comments and Conclusion

6. Despite our repeated enquiries, the complainant had not provided any documentary proof to show that the water pipe was on private land. Therefore, we considered the complainant’s allegation that WSD had entered private land to repair the water pipe unsubstantiated.

7. Nevertheless, there were other inadequacies on the part of WSD in this case. Although WSD confirmed during its second site inspection that the complainant had indeed occupied Government land, it did not refer the case to Lands D. It was not until almost a year later when we intervened that WSD notified Lands D of the situation. Besides, since WSD had already confirmed that the water pipe was on Government land, it had sufficient grounds to carry out the repairs. Installation of another water pipe was quite unnecessary and a waste of Government resources.

8. In view of the above, The Ombudsman considered the complaint unsubstantiated but found other inadequacies on the part of WSD.

A case of wrong decision



Summaries of Selected Cases on Code on Access to Information

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)



Education Bureau (“EDB”)

Case No. OMB 2016/1964(I) – Handling of information requests

Main allegation: failing to properly answer the specific questions asked in information requests – substantiated

Details of Complaint

The complainant made two information requests to EDB: one for information on the Bureau’s database of student information (Request I) and the second for information on the Territory-wide System Assessment (“TSA”) 2016 Try-out Study (Primary 3) (“Try-out Study”) (Request II), respectively in February and May 2016.

2. In Request I, having found EDB’s first reply lacking in details, the complainant asked the Bureau some follow-up questions. EDB’s second reply still failed to address some of his questions. He then requested the Bureau to clarify a few points about its database of student information. Since EDB’s third reply still could not answer some major concerns of his, including whether and how the TSA scores of individual students are collected and kept by the Bureau or its agent (e.g. the Hong Kong Examinations and Assessment Authority (“HKEAA”)), he raised further follow-up questions with EDB.

3. In Request II, the complainant requested EDB to answer five questions about the Try-out Study. However, in its reply, EDB did not respond to three of the questions.

4. Dissatisfied with EDB’s handling of his two information requests, the complainant complained to us in late May 2016.

EDB’s Response and Our Comments

Request I

5. EDB indicated to us that, for each of the complainant’s specific questions and subsequent requests for clarification, the Bureau had provided him with the information as requested.

6. However, having examined all of the complainant’s requests/questions to EDB and its replies to him, we noted that EDB had indeed failed to provide clear and direct answers to some of his questions, thus begging further queries from him.

7. For example, in his first round of follow-up questions, the complainant had asked EDB:

Question 1

“Is it possible for EDB to search for the TSA scores of a given student?”; and

Question 2

“Which departments, bureaux, or bodies have access to, or can have access to, the data which EDB keeps on students’ or a given student’s performance?”



In its initial reply to the above questions:

Re. Question 1

Instead of directly answering whether or not it can search the TSA scores of a given student, EDB stated that “EDB does not maintain a database which contains individual students’ TSA score”. The question whether or not it is possible for EDB to search for the TSA scores of individual students remained unanswered.

Re. Question 2

Instead of clearly stating which organisations have access to the data related to students’ performance, EDB merely responded that “.....except for the purposes already specified in the course of collecting the personal data, secured under the Personal Data (Privacy) Ordinance, personal data of students including personal particulars or student performance will not be disclosed by EDB to other departments/bureaux/bodies.....”. Again, the complainant’s question was not quite answered.

8. In fact, it was not until after two more rounds of follow-up queries made by the complainant that EDB finally made it clear to him that:

Re. Question 1

“There is no overall TSA score of any of the subjects assessed for individual students” and therefore “it is not possible to search for the TSA score of any subject of a given student by information, such as student name, HKID, STRN, etc.”

Re. Question 2

“No TSA score of any subject of individual students is owned, possessed, maintained, stored, accessed through databases or records, or used by EDB or any other agency, individual (including HKEAA).”

9. On the whole, we considered EDB to have failed to handle Request I properly. It should have been more forthcoming in responding to the complainant’s questions by giving clear, direct and complete answers so as to save his time in making multiple rounds of queries. The Bureau’s drip-by-drip approach of releasing information was unwarranted and prone to suspicion of being evasive.

Request II

10. In response to our query why EDB had not responded to three of the questions in Request II, the Bureau contended that the answers to those three questions had been included in its reply to the complainant. Its explanation was as follows:

Question 1

How many Primary 3 students did EDB anticipate would participate in the Try-out Study?

EDB’s explanation

“It has all along been emphasised that TSA does not assess and report performance of individual students. The information and reports are at territory-wide or school level only, instead of at individual level. Hence, the participation of students in the Try-out Study is by school instead of by individual students. As set out in the reply (its reply to the complainant), ‘in inviting schools to join the Try-out Study.....’, it has been set out that the participation is on school basis.”

Question 2

How many schools refused EDB’s invitation to participate in the Try-out Study?

EDB’s explanation

“As set out in the reply (its reply to the complainant), ‘school’s participation in the Try-out Study is voluntary by nature’. Since participation is voluntary in nature, the concept of refusing the invitation does not apply. As part of the operation, notification has been issued to all primary schools on the Try-out Study. Interested schools will complete a reply slip to indicate its preference to join the Try-out Study.”

Question 3

What was EDB's policy regarding parents choosing for their children not to participate in the Try-out Study? Did parents have the right to opt-out of the Try-out Study?

EDB's explanation

"As set out in the reply (its reply to the complainant), 'in inviting schools to join the Try-out Study, we have encouraged schools to..... gauge the views of various stakeholders through different channels and mechanism. In this connection, relevant stakeholders are well aware of the schools' decision'. Parents are obvious and important stakeholders of school operation. Schools have been encouraged to gauge views of stakeholders, including parents, in choosing to participate in the Try-out Study."

11. We considered that EDB's responses had not really addressed the complainant's questions. The following queries remained unanswered:

Re. Question 1

How many Primary 3 students did EDB actually anticipate would participate in the Try-out Study? EDB refused to provide the answer. Is it because EDB did not have such estimation? If so, why?

Re. Question 2

How many schools actually replied to EDB that they would not participate or did not respond to EDB's notification of the Try-out Study?

Re. Question 3

EDB asserted that parents were well aware of the schools' decision on whether they would join the Try-out Study. The questions remained: could parents opt out if their children's schools had joined the Try-out Study? What is EDB's policy on such situation?

12. Based on the above analysis, we considered EDB to have failed to respond to the complainant's three questions raised in Request II.

Conclusion and Recommendation

13. In sum, The Ombudsman considered the allegation substantiated.

14. The Ombudsman urged EDB to remind staff to adopt a more forthcoming, direct and positive attitude towards information requests/enquiries from members of the public; in particular to respond to enquiries with clear, direct and complete answers.

**A case of not answering
questions properly**





Electrical and Mechanical Services Department (“E & MSD”)

**Case No. OMB 2016/1749(I) –
Investigation report on escalator incident**

Allegation: refusing to provide the complainant
with the investigation report on an escalator
incident – substantiated

Details of Complaint

The complainant’s father had sustained injuries in an escalator incident in July 2015. After receiving an investigation report from the maintenance contractor, the complainant asked E & MSD for further details on the incident.

2. In February 2016, E & MSD informed the complainant by email of its own investigation findings. Considering the email too vague, the complainant wrote to E & MSD again in April 2016 and requested a copy of its investigation report. In June 2016, E & MSD issued another email reiterating its findings without providing any report or other documents containing those findings.

Response from E & MSD

3. According to E & MSD, there are more than 1,000 escalator incidents every year and the Department will only prepare investigation reports on those incidents involving fatalities, severe injuries or critical safety issues. The investigation report requested by the complainant did not exist because no such report was prepared for the present case. Nevertheless, there were various file records containing the investigation findings and E & MSD had replied to the complainant with information compiled from those records.

Our Comments

Handling Requests for Information

4. The complainant did not make specific reference to the Code on Access to Information (“the Code”) when making her request for information. However, such non-Code requests should be considered on the same basis as that applicable to requests under the Code. In line with the spirit of the Code, E & MSD should make available information to the complainant as helpfully as possible unless there are valid reasons for not doing so, and in the form in which it existed so far as possible.

5. As evidenced by E & MSD’s compilation of information from the file records containing the findings in replying to the complainant, E & MSD clearly believed that, in the absence of an investigation report as requested by the complainant, those records were what she sought. However, E & MSD could have discussed with the complainant to clarify her request, if in doubt.

6. Yet, in its reply in June 2016, E & MSD merely reiterated the findings of its investigation into the escalator incident. By doing so, it had *de facto* refused the complainant’s request for information without citing any reasons under the Code. In our view, the preferred approach was for E & MSD to provide a copy of the file records containing its findings, or refuse to provide such records in part or in full with valid reasons.

Response Time

7. E & MSD took 50 days to respond to the complainant's request, without giving any interim reply during this period. It failed to meet the target response time of 21 days as stipulated in the Code.

Conclusion and Recommendations

8. When handling the complainant's request for information, E & MSD staff did not make any reference to the Code, which showed their unawareness of the Code's requirements. In the light of the above, The Ombudsman considered this complaint substantiated.

9. The Ombudsman recommended that E & MSD:

- (1) reconsider the complainant's request with reference to the Code; and
- (2) provide staff training to enhance their awareness of the Code.

**A case of unawareness of
the Code's requirements**



Housing Department ("HD")

**Case No. OMB 2016/0079(I) –
Refusal to release information relating to an
insurance claim**

Allegations: (1) failing to provide proper assistance to the complainant in respect of her claim for compensation – partially substantiated; and (2) reneging on its promise to release information relating to her claim – inconclusive

Details of Complaint

The complainant was a public housing tenant. In early September 2014, a communal flush water pipe burst on the floor where her unit was located. The complainant alleged that the contractor called to the scene by HD to repair and replace the pipe on that day had been negligent, resulting in water flooding into her unit and damage to her property. However, HD staff failed to render proper assistance in respect of her claim for compensation, and their attitude was poor and evasive.

2. While making her claim, the complainant made five requests to HD for information. Though HD had provided her with most of the information she requested, it refused to release the minutes of a meeting it held with representatives of the property management agency ("PMA"), loss adjuster and contractor in October 2015.



Response from HD

3. HD stated that the loss adjuster responsible for investigating the incident considered that the flush water pipe burst due to natural wear and tear. It was an unforeseen accident, with no negligence on the part of HD and the PMA. Nor was there evidence that the contractor's repair works had caused water flooding into the complainant's unit. Hence, HD rejected the complainant's claim for compensation.

4. Moreover, in late September 2014, HD's District Maintenance Office ("DMO") conducted a parallel investigation into the flooding incident. DMO then suggested putting drain holes at the base of the wall to prevent recurrence of similar incident, and the project was completed in May 2015. Nevertheless, DMO did not draft a report immediately after completing the investigation. It was not until our intervention in this case that HD instructed DMO to prepare the report in May 2016, in which no mention was made as to whether the repair works had any connection with the water damage to the complainant's unit.

5. As regards the meeting minutes requested by the complainant, HD denied that its staff had verbally agreed to release the document. Rather, they had told her that all parties at the meeting should be consulted first. Subsequently, HD issued a letter to the complainant, stating that it would not provide her with the document because the loss adjuster considered it inappropriate. Upon our enquiry, HD cited the Code on Access to Information ("the Code") to justify its refusal, arguing that the meeting minutes "relates to investigations which resulted in or may have resulted in proceedings" (paragraph 2.6(c)), and "would be privileged from production in legal proceedings on the ground of legal professional privilege" (paragraph 2.6(d)). Meanwhile, HD admitted that it had not quoted the relevant provisions under the Code in its reply to the complainant, nor had it advised her of the review and complaint channels.

Our Observations and Comments

Allegation (1)

6. HD and the PMA of the housing estate concerned had kept in touch with the complainant by telephone and in writing, and had also held a number of meetings with her. We did not find their attitude evasive. HD had also provided most information requested by her, including incident reports, photographs and correspondence.

7. However, we found deficiencies on the part of HD in handling the complainant's claim. In fact, in a direct investigation report published in 2009 by this Office on HD's handling of complaints involving claims, we already commented that it was inadequate and inappropriate of HD to just rely on the loss adjuster's investigation. HD should conduct its own parallel investigation, and accommodate claimants' requests for information and assistance as far as possible.

8. In this case, while HD's DMO had conducted a parallel investigation, its report was not written until May 2016. This cast doubts on whether HD had diligently scrutinised the loss adjuster's advice against its own findings. Besides, HD had failed to address the complainant's dispute about compensation liability in a timely manner. It was not until more than a year after the incident that it convened a meeting in October 2015 with the relevant parties to review her claim. It was understandable that she would feel aggrieved.

9. The Ombudsman, therefore, considered allegation (1) partially substantiated.

Allegation (2)

10. In the absence of corroborative evidence, we were unable to ascertain whether HD staff had verbally agreed to provide the complainant with the meeting minutes. Allegation (2), therefore, was inconclusive.

Other Inadequacies Found on HD

11. HD initially refused to disclose the meeting minutes solely on the basis of the loss adjuster's advice, but it was not a valid reason under the Code. We also queried whether HD could invoke paragraph 2.6(d) of the Code as the proper reason for refusal. According to the Guidelines on Interpretation and Application of the Code, this provision is applicable to communications between legal advisers and clients. However, none of the attendees at the October 2015 meeting were legal advisers. In the light of our preliminary comments, HD accepted that paragraph 2.6(d) was not applicable to this case. This indicated its staff's inadequate understanding of the Code.

12. As regards paragraph 2.6(c) of the Code, although the meeting minutes was related to an investigation which may have resulted in proceedings, its content and nature were not that different from the other information already provided by HD to the complainant. We considered that in line with the spirit of the Code, HD should respond positively to requests for information as far as possible, unless the disclosure would prejudice the course of justice. As a matter of fact, the spirit of the entire paragraph 2.6 of the Code is to protect law enforcement, the course of justice and public safety. Therefore, in deciding whether to release the requested information, HD should consider if such disclosure would prejudice the course of justice, instead of simply refusing the disclosure because the loss adjuster considered it inappropriate.

Conclusion and Recommendations

13. Overall, The Ombudsman considered the complaint partially substantiated.

14. The Ombudsman recommended that HD:

- (1) step up staff training to ensure that they strictly comply with the provisions of the Code and the Guidelines on Interpretation and Application;
- (2) remind its staff of the need for parallel investigation of incidents with diligence to identify the root causes of problems and make rectifications as appropriate, even after the relevant claims have been referred to the loss adjuster for processing; and
- (3) review and strengthen the procedures for monitoring claims handled by the loss adjuster, and avoid over-reliance on the loss adjuster's advice.

**A case of inadequate
understanding of the Code**





Housing Department (“HD”)

**Case No. OMB 2016/0117(I) –
Refusal to release rental information of a
factory estate**

Allegation: refusing to provide the complainant with the rental information of other tenants in his factory estate, on the grounds of “internal information” and “third party information” – substantiated

Details of Complaint

The complainant was a tenant in a factory estate of HD. In July 2015, he was notified by HD that the rent of his unit would be increased. Dissatisfied with the rate of increase, the complainant requested HD to explain how the rent was determined. He also asked for the percentages of rent increases applicable to other tenants in the same factory estate, and the actual amounts of rents that they paid during the period between January and November 2015.

2. HD replied to him that the rents of factory units were adjusted upon renewal of tenancy on the basis of open market rents. HD would look at the prevailing market rents for similar factory premises at that time, taking into account various factors affecting the rental value, such as location, age and quality of the property, and would also make proper adjustments following current trends in the rental market. As for the rental information of other tenants, it was HD’s “internal information” and hence could not be disclosed.

Our Findings

Response from HD

3. HD admitted that it was improper to cite “internal information” as the reason for rejecting the complainant’s request for information, without giving any explanation in compliance with the Code on Access to Information (“the Code”). Following our inquiry, HD invoked paragraph 2.14(a) of the Code as the reason for withholding the information. The paragraph states that departments may refuse to disclose information held for, or provided by, a third party under an explicit or implicit understanding that it would not be further disclosed. However, such information may be disclosed with the third party’s consent, or if the public interest in disclosure outweighs any harm or prejudice that would result.

4. HD argued that the rental information requested by the complainant was mutually held by the Hong Kong Housing Authority (“HKHA”) and the tenants. Besides, while the new rents of factory units were evaluated and determined by HD with reference to prevailing market rents at the time of tenancy renewal, the tenants concerned might make counter offers to HKHA regarding rental adjustments. The final rental adjustments might not be the same as what HD originally proposed. In such circumstances, HD considered that the rental information might involve information of other tenants and so constitute “third party information”.

5. Moreover, although the tenancy agreement of the factory estate had not stipulated that the rental information should not be disclosed to a third party, the tenants had not explicitly or implicitly agreed that HKHA or HD might disclose such information. Since HD invariably refused to provide any rental information of factory units whenever such enquiries were received in the past, it believed that its practice would lead tenants to expect that the rental information of their units would be kept confidential. After our intervention, HD consulted the relevant tenants but none of them consented to HD’s disclosure of the rental information of their units.

Our Comments

6. We consulted our Adviser on whether the rate of rental adjustment upon tenancy renewal was “third party information”. Taking into consideration the legal opinion, we concluded that HD, who determines the new rents upon tenancy renewal, is the owner and holder of the rental information. Such information is not provided by the tenants to HD, nor held by HD for the tenants. Even though the tenants may make counter offers on their rents, it is ultimately up to HD to determine whether to accept their offers. Tenants who refuse to accept the new rents will be required to vacate their units, which will then be put up for lease again. The information requested by the complainant did not involve any details about the other tenants’ counter offers, and so should not constitute “third party information”. It was improper for HD to invoke paragraph 2.14(a) to reject the complainant’s request for information.

7. While HD has all along refused to disclose its rental information, this practice, being improper in the first place, is not a valid reason for withholding information under the Code. Furthermore, HD failed to explain why it had the obligation and need to keep such information confidential. We did not find any terms or conditions about the confidentiality of rental information in the tenancy agreement of the factory estate, nor any explicit or implicit agreement between HD and the tenants that the rental information would not be disclosed. The factory estates of HD are public resources. Disclosing the rate of rental adjustment and the actual rents charged for factory units would better serve the public interest, as it would allow tenants and the public to monitor whether HD had fairly and justly determined the rents in accordance with an objective mechanism. We considered that HD should think about including a new term in the tenancy agreement which would allow HD to disclose details of rental adjustment, in order to avoid any misunderstanding by tenants.

Conclusion and Recommendations

8. Overall, HD’s understanding of the Code was inadequate, and its grounds for refusing to release information were unjustified. The Ombudsman, therefore, considered the complaint substantiated.

9. The Ombudsman recommended that HD:

- (1) review the complainant’s request for information in accordance with the provisions of the Code, and fully disclose the relevant information unless there is a valid reason under the Code to withhold it;
- (2) consider including a new term in the tenancy agreement of factory units which would allow HD to disclose details of rental adjustment upon tenancy renewal; and
- (3) step up staff training to ensure that they understand the provisions of the Code.

**A case of unreasonable
withholding of information**





Leisure and Cultural Services Department (“LCSD”)

**Case No. OMB 2015/4140(I) –
Refusal to disclose the full text of a
management deed**

Allegations: failing to provide the full text of the management deed signed with a private organisation concerning the management and maintenance of the Avenue of Stars – substantiated

Details of Complaint

In late September 2015, the complainant, citing the Code on Access to Information (“the Code”), requested LCSD to provide the full text of the management deed (“the Deed”) it had signed with a private organisation (“Company A”) concerning the management and maintenance of the Avenue of Stars (“the Avenue”). In reply, LCSD said that Company A did not agree to release the Deed to the complainant. It also cited various provisions of the Code to refuse her information request. The complainant was dissatisfied with LCSD’s decision.

Background

2. The Avenue is a tourism project designed and taken forward through a public-private partnership. In 2003, Company A agreed to make a donation and construct the Avenue. In the Deed it signed with LCSD, Company A agreed to manage and maintain the Avenue for 20 years at a nominal consideration of HK\$1.

Response from LCSD

3. In response to our inquiry, LCSD contacted Company A several times and sought advice from the Department of Justice (“D of J”), the Intellectual Property Department and the Constitutional and Mainland Affairs Bureau (“CMAB”). After collating their opinions, LCSD held that the following provisions in the Code and several other legislative provisions were applicable in refusing the complainant’s request for information.

Section 2.14(a) of the Code – Third Party Information

*Whether the Information was Held for or Provided
by a Third Party*

4. When asked which parts of the Deed were held for or provided by Company A, LCSD indicated that during the drafting process both Company A and the Department had proposed amendments to different parts of the Deed on the technical and legal aspects. Contributions by each party were equally important and not distinct, and the clauses of the Deed could not be interpreted separately. The Deed, therefore, should be a “work of joint authorship” under the Copyright Ordinance (“CO”) and its copyright shared between Company A and LCSD. Furthermore, the names of the Government and Company A appeared on the front cover of the Deed, indicating that they were the authors. Since a third party (Company A) was involved, LCSD had to seek its consent before disclosing its content or providing a copy to the complainant, lest it would violate the Code and the CO by infringing Company A’s copyright.

5. On whether LCSD may disclose the Deed without violating the CO by virtue of the provision concerning “public records” under the CO, LCSD took the view that the said provision would not apply to works that have previously been published. In addition, if LCSD was to disclose the Deed to the complainant invoking the said provision, then it had to ensure that Company A could have reasonably anticipated its disclosure and that the disclosure would not violate the CO. Nevertheless, Company A had objected strongly to the Deed’s disclosure, and asserted that the Government had to keep it confidential.

Whether Company A was under an Explicit or Implicit Understanding that the Deed would not be Further Disclosed

6. LCSD noted that, while the Deed contained no confidentiality clause, D of J advised that the absence of such a clause did not necessitate or warrant its disclosure by LCSD upon a request for information. It advised LCSD to look into Part 2 of the Code (i.e. “Information Which May Be Refused”) in deciding whether to accede to the complainant’s request.

7. The Deed was not a procurement contract resulting from a public tender. It contained no disclosure clause that allowed the Government to disclose its content or information about the service provider. Since there was no consensus between LCSD and Company A on unilateral disclosure of the Deed’s content by either party without the other’s consent, there might exist a common understanding about the Deed’s confidentiality. That Company A never anticipated disclosure of the Deed by the Government was thus a reasonable inference.

8. CMAB advised that, the Code and its Guidelines on Interpretation and Application (“the Guidelines”) do not require the third party to provide proof of any harm it may sustain from disclosure of information before the information in question can be regarded as confidential. Unless the information in question has already been made public, for the information to remain confidential, an explicit or implicit understanding between the Government and the third party should suffice.

Whether the Public Interest in Disclosing the Information Outweighed any Harm or Prejudice that could Result

9. LCSD cited CMAB’s opinion again and pointed out that harm or prejudice referred to in the Code included the harm or prejudice that would be caused to a third party, the Government or any other person. When there is consensus between the third party and the department that the information is confidential, and the information has not been made available to the public, such information could only be disclosed with the third party’s consent, or when the public interest in its disclosure would outweigh the harm or prejudice that could result.

10. LCSD disagreed with the complainant’s assertion that the Deed involved significant public interests, contending that the complainant provided no evidence that the public’s right to information about the management of the Avenue was in any way related to those aspects of public interests specified in section 2.2.5 of the Guidelines, i.e. the protection of public health, safety or the environment. Furthermore, Company A had been operating the Avenue with satisfactory results and the related space had all along been open for free public enjoyment. This was in accord with the public interest. In fact, management and operational information about the Avenue published by LCSD had time and again showed deficits over the years. Information that LCSD had submitted to the Legislative Council (“LegCo”) also showed that appointment of a management company was in line with the public interest. Transferral of benefits, as the complainant suspected, was mere speculation.

11. LCSD held that disclosing the Deed might cause harm to Company A, and would adversely impact on the Department. For instance, Company A might claim compensation from the Government or refuse further cooperation in the future.



Section 2.16 of the Code – Business Affairs

12. Section 2.16.1 of the Guidelines stipulates that the Government, in keeping its general commitment to greater openness, should not damage the legitimate rights and interests of the business sector so as not to undermine the trust they place in the Government. The Deed set out in detail the operational and financial arrangements for the Avenue. Company A made it clear that the related clauses were commercial secrets, disclosure of which would cause it obvious harm. It, therefore, repeatedly stressed that the Deed should be kept confidential. As such, LCSD had reservations about its disclosure without Company A's consent.

13. On our suggestion that in the absence of information as to the operating costs and profits in the Deed, details of financial arrangements were neutral in nature, LCSD explained that the Deed had financial arrangements as the main consideration. Disclosure of the arrangements might bring adverse effects to Company A. Besides, if the future operation of the Avenue was to be based on the current financial arrangements, disclosure of relevant information might harm the financial position of the Government and was, therefore, undesirable.

Section 2.18 of the Code – Legal Restrictions

14. The set of technical plans ("the Plans"), drawn by an architectural firm appointed by Company A and annexed to the Deed, was owned and provided by the Company. It had indicated clearly its objection to fully disclose the Deed (including the Plans). If LCSD unilaterally released the Deed to the complainant, it might constitute infringement of copyright "by copying" or "by issue of copies to the public", thus breaching the CO.

Our Observations and Comments

15. Government departments should handle information requests on the premise that information requested should be released. The Code should never be used as a device to obstruct release of information.

16. After compiling our findings and referring to the legal advice and overseas documents and cases, we have the following comments on LCSD's justifications for refusing to disclose the Deed.

Section 2.14(a) of the Code – Third Party Information

Whether the Information was Held for or Provided by a Third Party

17. Contracts signed between the Government and a third party should normally not be deemed information obtained from a third party. It was therefore not right for LCSD to regard the Deed as information held for or provided by a third party.

18. Taking the Deed as a "work of joint authorship" by LCSD and Company A and thereby applying the concept of copyright was also farfetched. The Deed was very similar to the other general management service agreements LCSD had signed and hardly original. If LCSD insisted that the copyright was shared by both parties and that the content could be reproduced or used only with the other party's consent, then numerous other public business contracts had to be treated this way. That would not only defy common sense but also violate the stance of the Government on other management service agreements. Besides, Company A never mentioned copyright as an argument but LCSD, contrary to the spirit of the Code, used it as a pretext to refuse disclosure of the information.

19. In fact, the provision about “public records” in the CO stipulates that “for material communicated to the Government in the course of public business, the Government may for the purpose for which the work was communicated to it, or any related purpose which could reasonably have been anticipated by the copyright owner, copy the work, or issue or make available copies of the work to the public without infringing any copyright in the work”. The Deed, drawn up specifically for the management of the Avenue, could not have been published before it was drawn up. Besides, the Deed, together with the Plans, met the definition of “public records”. We considered it highly unlikely that the architectural firm which drew the Plans would have been unaware that they were for some purpose (i.e. management of public facilities on the Avenue) communicated to the Government.

20. Given the rising public expectation of the Government’s accountability and transparency, disclosure of information by the Government in response to information requests should be a related purpose that a copyright owner would have reasonably anticipated. Making a copy of the Deed, therefore, would not constitute infringement of copyright. If LCSD was still unsure, it could really invite the complainant to its premises to inspect the document, or have the document read out to her by its staff. Such actions would not violate the CO.

Whether Company A was under an Explicit or Implicit Understanding that the Deed would not be Further Disclosed

21. The Deed contained no clause of confidentiality. Neither was there any record indicating that in the drafting process, Company A and LCSD had reached a consensus or tacit understanding that its content should be kept confidential. If they ever had, such an important piece of information should have been put on Government record. A unilateral claim of confidentiality by the information provider was not sufficient.

22. Just like other general management service contracts, the Deed set down the rights and responsibilities of the Government and the service provider (Company A), but it was not clear how the disclosure of certain information of the Deed would affect fair competition between Company A and its rivals. This Office could not understand why the Deed was above disclosure. Furthermore, with rising public expectation of Government transparency and accountability, any third party entering into a joint-venture with the Government should have anticipated that the project would be subject to public scrutiny.

23. We did not agree with CMAB’s opinion as mentioned in paragraph 8 above. Company A asserted that the Deed must be kept confidential. In such case, LCSD, as required by the Code, had a duty to assess whether the reasons for confidentiality were justifiable. An important basis for LCSD’s assessment would be Company A’s explanation on how disclosure of the Deed would cause it harm or benefit its competitors. All in all, as far as the Deed was concerned, there existed no explicit or implicit understanding that it should be treated as confidential, and LCSD did not have sufficient information or justifications that could support its treating the Deed as confidential.

Whether the Public Interest in Disclosure of the Information Outweighed any Harm or Prejudice that could Result

24. Section 2.14(a) of the Code aims to support the Government’s disclosure of third party information where disclosure could have been refused based on an understanding about its confidentiality. As regards this case, such an understanding did not even exist. As such, considerations about the public interest (or the harm that would result) could not be used to justify non-disclosure of the information.



25. Besides, LCSD adopted a very narrow interpretation of “public interests” (see para. 10). The Code does not define “public interests”. Section 2.2.6 of the Guidelines further points out that perception about “public interests” changes with time, social environment and government policies. The coverage of “public interests” can be very wide. A more transparent and accountable government, for instance, could also be of public interest. The Government had commissioned the management of the Avenue to Company A years ago without a public tender. The fairness of the arrangement and whether resources had been properly used were issues of wide public concern. The public interest in disclosing the Deed could not be more obvious.

26. LCSD’s argument on “transferral of benefits” (see para. 10) also neglected the fact that benefits could be intangible (e.g. the Avenue would bestow reputation on Company A and enhance its advantage in property development). The fact that LCSD had repeatedly provided information to the public and the LegCo to answer public queries reflected that the public’s worries about “transferral of benefits” were not completely groundless.

27. On the harm that could result to Company A if the requested information was disclosed, LCSD and Company A had never elaborated on how the disclosure of the Deed might cause it harm. As for LCSD’s concern about the adverse effect to the Department, such as that Company A might refuse to cooperate, leading to difficulties in managing the Avenue, we considered such concerns were mere conjectures. Even if this happened, LCSD could rely on relevant clauses of the Deed to resolve the problem. On the risk of claim for breach of consensus in maintaining confidentiality, we considered that there was never such consensus in the first place. Besides, the Government could have used overriding public interests to defend the disclosure, and the claims of possible harm resulting from disclosure were without solid basis. As for the allegation that the disclosure might breach the confidence of the commercial sector, we considered that such mutual trust should be built on clear contract terms and consensus.

28. In view of the above, we considered that, unless the Government had a better way to allay the public’s worries about “transferral of benefits”, the public interest in disclosing the Deed outweighed the harm or prejudice to Company A or the Government that might result.

Section 2.16 of the Code – Business Affairs

29. Company A declared that details of the financial arrangements for the Avenue contained in the Deed were commercial secrets, the disclosure of which would bring it obvious harm (see para. 12). However, information on the financial arrangements was neutral in nature (see para. 13) and Company A had publicly admitted to the long-term deficit incurred in managing the Avenue. We could not see how the disclosure of the relevant clauses could bring it actual harm. Notwithstanding, we agreed in principle that the financial arrangements were sensitive business information. If Company A insisted that those financial arrangements should be kept confidential, LCSD could disclose its content with the relevant details redacted, instead of refusing to disclose the Deed outright.

Section 2.18 of the Code – Legal Restrictions

30. Section 2.18.5 of the Guidelines states that legal advice should be sought if it is proposed to withhold disclosure of information on ground of legal restrictions, and the requestor be informed of the relevant legal provisions. However, LCSD refused the complainant’s information request without explaining to her how the disclosure would violate any laws applicable in Hong Kong. It only mentioned the CO upon our inquiry and pointed out that the copyright owner was the architectural firm that drew the Plans. LCSD later said that the Plan’s copyright owner was Company A instead.

31. As explained in paragraph 19 above, the Plans were “public records”. Regardless of who own the Plan’s copyright, making a copy should not infringe anyone’s copyright. If LCSD still considered this a problem, it could consider providing the content of the Deed without the Plans, or have the information it deemed “sensitive” or “confidential” obliterated, or to provide a clear and intelligible summary of the Deed if the extent of obliteration is such that the original documents becomes meaningless or misleading.

32. In the present case, we did not foresee this to happen when the sensitive details about the financial arrangements were redacted and the Plans omitted. So, although Company A had agreed to provide a summary of the Deed, we considered that LCSD should still furnish the complainant with the Deed after obliterating those information.

Conclusion and Recommendations

33. Overall, LCSD had not followed the requirements of the Code fully and properly in handling the complainant’s information request. The Ombudsman considered this complaint against LCSD substantiated.

34. The Ombudsman recommended that LCSD:

- (1) provide the information requested to the complainant as soon as possible, unless there were other justifiable reasons as stated in Part 2 of the Code that suggest otherwise. If LCSD was worried that copying the document would infringe copyright, it could invite the complainant to its premises to inspect the document or have the document read out to the complainant by its staff; and
- (2) step up staff training to ensure that they adhere to the Code and the Guidelines strictly when handling information requests from the public.

**A case of failure to follow the
Code properly when handling
information requests**



Leisure and Cultural Services
Department (“LCSD”),
Architectural Services
Department (“Arch SD”) and
Efficiency Unit (“EU”)

**Case No. OMB 2016/1771A(I);
OMB 2016/1771B; OMB 2016/1771C(I) –
Delay in releasing information**

Allegations:

LCSD – (1) refusing to admit its fault of installing three removable bollards on an emergency vehicular access (“EVA”) – partially substantiated; (2) failing to comply with the timeframe as set out in the Code on Access to Information (“the Code”) in replying to information access requests – substantiated; and (3) unreasonable delay in replying to requests for review of a complaint about allegation (2) – substantiated

Arch SD – wrongly installing three removable bollards on an EVA – substantiated

EU – failing to comply with the timeframe as set out in the Code in replying to information access requests – substantiated



Details of Complaint

The complainant was a user of an LCSD park (“the Park”) which comprised both cultural facilities (including a newly-constructed building (“the Building”)) managed by the Cultural Services Branch (“CS Branch”) of LCSD, and leisure facilities (such as a soccer pitch (“the Pitch”)) managed by the District Leisure Services Office (“DLSO”) of LCSD. Adjacent to the Building, there was a path (“the Path”) that led to the Pitch. The complainant noticed that three removable bollards had been installed on the Path and suspected that it was part of an EVA of the Park. Worried that the bollards would adversely affect the provision of emergency services to users of the Pitch, the complainant emailed to LCSD in February 2016 via the 1823 Call Centre (“1823”) under EU to express his concern and request LCSD to provide information about the approval procedures of installing the three bollards and the cost of the works (“first information request”). Subsequently, he also requested LCSD to provide the EVA layout plan of the Park (“second information request”) and lodged three requests for review of his complaints against LCSD’s non-compliance with the target response time as set out in the Code.

2. In mid-May 2016, the complainant lodged a complaint with this Office against LCSD for:

- (1) refusing to admit its fault of installing the bollards on the EVA;
- (2) failing to comply with the timeframe as set out in the Code when replying to his information access requests; and
- (3) unreasonable delay in replying to his requests for review of his complaint concerning allegation (2).

3. The complaint was subsequently extended to cover Arch SD and EU.

Our Findings

Installation of the Bollards and the EVA Layout Signage

4. LCSD explained that the three bollards were installed to prevent users of the underground car park of the Building from missing the car park entrance and accidentally driving straight down the Path to the Pitch, endangering the users there. DLSO had sought Arch SD’s assistance before installing them.

5. Arch SD was responsible for updating the EVA layout signage of the Park when alteration works to the Park affecting the existing EVAs were carried out. The EVA signage erected on site was installed during the construction of the Building, which was designed and supervised by the consultant employed by Arch SD. However, a small section of the EVA (i.e. the Path) had been missed out on the new signage. Arch SD staff relied on the incorrect signage erected on site and confirmed to LCSD that the Path was not part of the Park’s EVA. Unaware of the mistake, LCSD proceeded with the installation of the bollards. The works were completed in December 2015.

Allegation (1)

Response from LCSD

6. Under the existing arrangement, LCSD will seek technical support of Arch SD before carrying out any improvement or maintenance works in the Park. DLSO did not have a copy of the updated EVA layout plan of the Park and was unaware that the EVA signage erected on site was inaccurate. DLSO relied only on Arch SD’s advice to proceed with the works. However, as LCSD admitted, while CS Branch had the updated EVA layout plan of the Park, DLSO had not consulted the CS Branch before proceeding with the proposed works.

7. On the mistake of installing the bollards, LCSD agreed that it would be better if it had addressed the complainant’s queries more fully and apologised when replying to him in mid-April 2016.

Response from Arch SD

8. Arch SD admitted that its consultant had installed an EVA signage with incomplete information, and that its staff had just relied on the signage at the Park and failed to check proper records before installation of the bollards commenced. Arch SD considered that the incident was undesirable and had taken remedial measures to rectify the problem.

Our Comments

9. Arch SD had clearly failed to ensure the accuracy of the EVA signage in the Park and its staff failed to check proper records of the Park before proceeding with the installation works. As for LCSD, we consider that it was not unreasonable for DLSO to rely on Arch SD on the technical propriety of the proposed works. Nevertheless, since the need to install the bollards arose from the users of the Building, it would be desirable for DLSO to have first communicated with the CS Branch for solution.

10. Besides, while LCSD did admit the mistake of installing the three bollards at the Path, it did not explain to the complainant the reasons for the mistake. As LCSD conceded, this case could have been better handled if it had addressed the complainant's queries more fully and tendered an apology to the complainant in its reply of mid-April 2016 to him.

11. The Ombudsman, therefore, considered the allegation against LCSD partially substantiated and that against Arch SD substantiated.

Allegation (2)

Response from LCSD

12. LCSD took 27 and 30 days to reply to the complainant's two requests for information. This was beyond the target response time specified in the Code (normally within 21 calendar days after receipt). LCSD conceded that the subject officer was not aware of the subject heading of the complainant's first email as being "要求公開資料". Besides, 1823 had classified the requests for information as complaints when referring the case to LCSD. Its staff, therefore, followed the

timeframe for reply to complaints (i.e. 30 days from receipt) in handling the complainant's information requests.

Response from 1823

13. In accordance with the assignment rules provided by LCSD, 1823 will only refer requests for information where the complainant requests information by "quoting the Code" to the General Administration Section of LCSD for follow-up action. 1823 contended that the complainant did not "quote the Code" (despite the fact that the complainant quoted "要求公開資料") in his first request for information and the case was classified as a complaint rather than an information request when it was referred to LCSD for action. Nonetheless, subsequent emails from the complainant had been passed to LCSD with an alert to handle them in accordance with the Code. 1823 believed that its staff had followed the relevant guidelines and rules.

Our Comments

14. The complainant's first request for information came clearly with the subject heading "要求公開資料". 1823 did not consider the complainant to have quoted the Code and deemed it proper to have it referred to LCSD as a normal complaint. We do not agree to 1823's explanation. In fact, both Code and non-Code requests for information should be handled in accordance with the requirements of the Code.

15. In addition, 1823 forgot to attach the EVA layout plan of the Park when relaying LCSD's reply to the complainant's second information request, causing further delay in releasing the requested information.

16. As for LCSD, its staff failed to scrutinise the complainant's requests carefully and overlooked the heading of the complainant's first information request. Even worse, its staff ignored 1823's alerts on the complainant's requests that the case be reviewed in accordance with the Code. We consider such negligence unacceptable.

17. The Ombudsman considered the complaint against LCSD and 1823 substantiated.



Allegation (3)

Response from LCSD

18. The complainant made three requests for review to LCSD about the mishandling of his information requests. It took four days for LCSD to reply to the first review request. However, LCSD did not respond to the second review request despite 1823's alert. LCSD conceded that its staff had failed to pay attention to the complainant's review request and failed to check case records carefully, resulting in the mismanagement of the case. LCSD apologised to the complainant for the mismanagement.

19. As for the third review request lodged directly with LCSD's Access to Information Officer, LCSD used 28 days to issue a substantive reply, which was beyond the time frame specified in the Code (i.e. 21 days of receipt). Yet, it considered the time taken to handle the case not excessive, since it needed time to verify inputs from various offices (including 1823) for a fair and objective review.

Our Comments

20. LCSD admitted that it had failed to process the second request for review in accordance with the Code due to oversight of its staff. We noted from the records concerning the third review request that the other relevant parties (including 1823) had provided information promptly for the review and LCSD could have expedited the internal deliberation process and replied to the complainant earlier.

21. The Ombudsman, therefore, considered this complaint against LCSD substantiated.

Conclusion and Recommendations

22. Overall, The Ombudsman considered this complaint against all the three departments substantiated.

23. The Ombudsman recommended that:

LCSD

- (1) conduct staff training on understanding the requirements of the Code in handling information requests, particularly for complaints/enquiries which contain requests for information;
- (2) remind frontline staff of the importance of internal cross-divisional coordination and communication;
- (3) remind its staff to adopt a more positive attitude in tendering apologies for mistakes made;

Arch SD

- (4) implement measures to ensure proper checking of records before proceeding with works projects, including conducting staff training and issuing internal guidelines if necessary;
- (5) review and enhance the internal guidelines for monitoring the performance of its consultants to ensure that works projects are fully and correctly completed;

1823

- (6) conduct staff training on the requirements of the Code; and
- (7) review the referral arrangements with LCSD and other client departments relating to Code and non-Code requests for access to information.

**A case of delay in releasing
information and inadequate
understanding of the Code**



Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation¹

(1) Guidelines for clarity, consistency or efficiency in operation	
Organisation (Case reference)	Administrative Enhancement
Correctional Services Department (2015/3646)	Operational guidelines on the security classification of inmates and application of handcuff transport belt to male inmates reviewed and revised to prevent inappropriate application of handcuff transport belt when escorting inmates
Department of Justice (2015/5309A)	Internal guidelines revised to set out the timeframe and procedures for following up cases requiring search of the debtor's valid address
Department of Justice & Fire Services Department (2016/1198A&B)	Reminders issued to staff requiring that all follow up actions and verbal communications regarding recovery of claims be properly recorded
Food and Environmental Hygiene Department (2014/1827)	Guidelines reviewed to step up enforcement actions against illegal dumping of bagged waste and prolonged placing of refuse bins/dustbins containing waste in public places
Fire Services Department (2016/1198B)	Guideline and flowchart devised to set out the procedures for recovering claims for compensation from members of public
Home Affairs Department (2015/2327)	Staff reminded to keep proper record of views collected from local consultations to cater for future queries
Housing Department (2014/3303)	Guidelines drawn up to set out the procedures and timeframe for following up cases of unauthorised alterations
Housing Department (2015/2216)	Guidelines issued on handling applications for transferring to larger public rental housing unit on health grounds
Leisure and Cultural Services Department (2015/3502(I), 2016/2190(I))	Instruction issued reminding staff to adhere strictly to the "Guidelines for Tree Risk Assessment and Management Arrangement" when completing tree inspection reports
Water Supplies Department (2013/2296A)	Guidelines drawn up on taking over of waterworks and fire service installations built by developers

¹ Include measures introduced in the current reporting year in respect of cases concluded in previous years



(2) Better arrangements for inter-departmental co-ordination

Organisation (Case reference)	Administrative Enhancement
Development Bureau, Food and Health Bureau, Food and Environmental Hygiene Department, Planning Department & Lands Department (2014/2060C, B, G, D&E)	Internal guidelines revised to clarify the responsibility and procedure on searching suitable Government sites for departments and specifically for sites for refuse collection points
Department of Justice & Working Family and Student Financial Assistance Agency (2015/5309A&B)	New measures introduced to avoid delays in recovering outstanding student loans: <ul style="list-style-type: none"> • Issue progress reports to alert relevant department to follow up urgent cases; • Conduct regular inter-departmental meetings to discuss cases requiring follow-up actions; • Half-yearly progress reports circulated between the relevant departments; and • Wordings of standard inter-departmental memo revised to avoid confusion
Food and Environmental Hygiene Department (2016/1827)	Discussion held with Buildings Department to work out measures to motivate the installation of drainage pipes for air-conditioners
Lands Department (2013/2296B)	Guidelines on internal consultation prior to the issuance of Certificates of Compliance reviewed and updated to ensure that all parties concerned are fully aware of their responsibilities after issuance of the Certificate
Lands Department & Leisure and Cultural Services Department (2015/3144A&B)	To tackle the problem of illegal shelters erected on a site with unclear management responsibility but near a site managed by Leisure and Cultural Services Department ("LCSD"), Lands Department ("Lands D") delegated its statutory power to LCSD to demolish the illegal structures with the assistance of relevant departments (including Lands D)
Leisure and Cultural Services Department (2016/1771A(I))	Arrangement made for half-yearly meetings to be held to facilitate staff of different divisions to share information on matters affecting facilities located together but managed by different divisions, for better coordination in facility management
Transport Department (2015/2438B)	Measures taken to closely monitor the enforcement figures and liaise with the Police to combat illegal use of light goods vehicles to carry passengers for hire or reward

(3) Measures for better public enquiry/complaint handling

Organisation (Case reference)	Administrative Enhancement
Constitutional and Mainland Affairs Bureau (2015/2857(I))	Internal guidelines revised to remind staff to clarify any unclear aspect of the information being requested, provide reasons for refusal for each item of the request being refused, and direct the requestor to the source of information if such information is in the public domain
Leisure and Cultural Services Department (2016/2190(I))	Staff reminded and technical guidelines circulated to avoid delay in responding to public enquiries due to technical difficulties encountered by staff in handling emails

(4) Measures for better client services

Organisation (Case reference)	Administrative Enhancement
Housing Department (2016/0079(I))	Guidelines issued to remind staff to conduct independent investigations on claims cases being handled by loss adjusters in order to find out the root cause of the problem and take remedial measures as appropriate
Labour Department (2016/2746)	New procedure introduced to check whether an injured employee has reached settlement with the employer before the Prostheses and Surgical Appliances Board processes the case
Post Office (2015/1157, 2015/1245, 2015/1681, 2015/1708 and others)	Communication with overseas postal administrations strengthened to seek procedural improvements in handling mail enquiries and compensation claims
Post Office (2015/4796)	Timeframes set for the handling of mail tracing enquiries
Transport Department (2015/3989)	Guideline revised for handling Personalised Vehicle Registration Mark applications such that applicants would be informed if their applications require extra time during the vetting stage
Transport Department (2015/2982)	Enhanced promotion to encourage passengers to use mobile phone apps which provide bus stop announcement function



(5) Measures for more effective regulation or control

Organisation (Case reference)	Administrative Enhancement
Food and Environmental Hygiene Department (2015/1628)	Mechanism put in place for reporting and escalating doubtful and difficult food complaint cases to directorate level for instruction
Food and Environmental Hygiene Department (2016/0430)	Enforcement actions against obstructions by market stalls in a market strengthened
Food and Environmental Hygiene Department (2016/1827)	Staff reminded to conduct inspections during the reported time of occurrence when handling complaints about water dripping from air-conditioners
Housing Department (2014/3303)	In respect of cases of unauthorised alterations: <ul style="list-style-type: none"> Monitoring of outstanding cases enhanced to ensure timely completion; and A review system introduced to ensure efficiency in case handling
Housing Department (2014/3798)	Rules and regulations for use of venues in public housing estates improved and tightened up: <ul style="list-style-type: none"> Procedures of ballot arrangement improved; Guidelines on checking of application records and site inspections revised; and Penalty imposed for improper use of venue
Housing Department (2016/0079(I))	Guidelines issued to remind staff to monitor the work of the loss adjusters and report improprieties, if any, to relevant sections for action
Joint Office (Food and Environmental Hygiene Department/ Buildings Department) (2016/1578)	Instructions issued to staff requiring that: <ul style="list-style-type: none"> They should avoid leaving a flat after ponding it with colour water so as to prevent the JO's test from being tampered with; and If leaving the flat is inevitable, that records are clearly made to prepare for any challenge against the test result
Food and Environmental Hygiene Department (2015/3375B)	Food and Environmental Hygiene Department adopted new procedures (with more stringent requirements) in processing applications for provisional restaurant licences, which has relatively lax licensing requirements, with a view to preventing abuse by deliberately changing of ostensible restaurant owners/operators
Leisure and Cultural Services Department (2016/2483)	New measure introduced limiting the period of course enrolment through telephone reservation to three days of enrolment only in order to avoid abuse of the telephone reservation system
Marine Department (2013/3794)	<ul style="list-style-type: none"> A new engine marking system introduced to strengthen control and inspection of vessel engines; and Certificate of Survey revised to set out more clearly the area of inspection
Post Office (2015/1157, 2015/1245, 2015/1681, 2015/1708 and others)	<ul style="list-style-type: none"> Procedures for handling mail enquiries and compensation claims regularly reviewed to ensure effectiveness; and Internal reporting mechanism established and monitoring enhanced against suspected abuse cases on compensation claims
Transport Department (2015/2438B)	Monitoring tightened on the advertisement of operators and smartphone apps to combat illegal use of light goods vehicles to carry passengers for hire or reward
Transport Department (2015/2982)	<ul style="list-style-type: none"> Monitoring tightened on the progress of installing Bus Stop Announcement System and GPS system on all franchised buses; and New requirement introduced for bus companies to report incidents of Bus Stop Announcement System failure

(6) Clearer/more reasonable rules and charges

Organisation (Case reference)	Administrative Enhancement
Leisure and Cultural Services Department (2010/1675)	Improvement measures adopted for narrowing down the discrepancies between urban areas and the New Territories in rental incentives for hiring of leisure and cultural facilities

(7) Clearer and more timely information to the public

Organisation (Case reference)	Administrative Enhancement
Home Affairs Department (2015/2753)	Clearer wording adopted in website for introducing the declaration or oath/affirmation service to avoid misunderstanding
Labour Department (2016/2746)	<ul style="list-style-type: none"> • New procedure introduced to provide both employers and injured employees with information about their legal obligations under the Employee's Compensation Ordinance; and • Publicity campaign launched to enhance employers' awareness of their legal obligations under the Employee's Compensation Ordinance
Transport Department (2015/3391)	<ul style="list-style-type: none"> • "Guidance Notes for Application for Personalised Vehicle Registration Mark" revised to advise the public about the general concern on possible confusion cases; and • Staff advised that they may disclose details of the reason of rejection where a proposed Personalised Vehicle Registration Mark is rejected on the grounds that it could cause confusion with another mark
Transport Department (2015/2438B)	Providing clearer information about the law and increasing the public's awareness of the proper use of light goods vehicles through the media
Transport Department (2015/3918)	A notice issued to remind the public that electric mobility devices such as hoverboard are banned on roads, and shared with the Police to facilitate its enforcement work

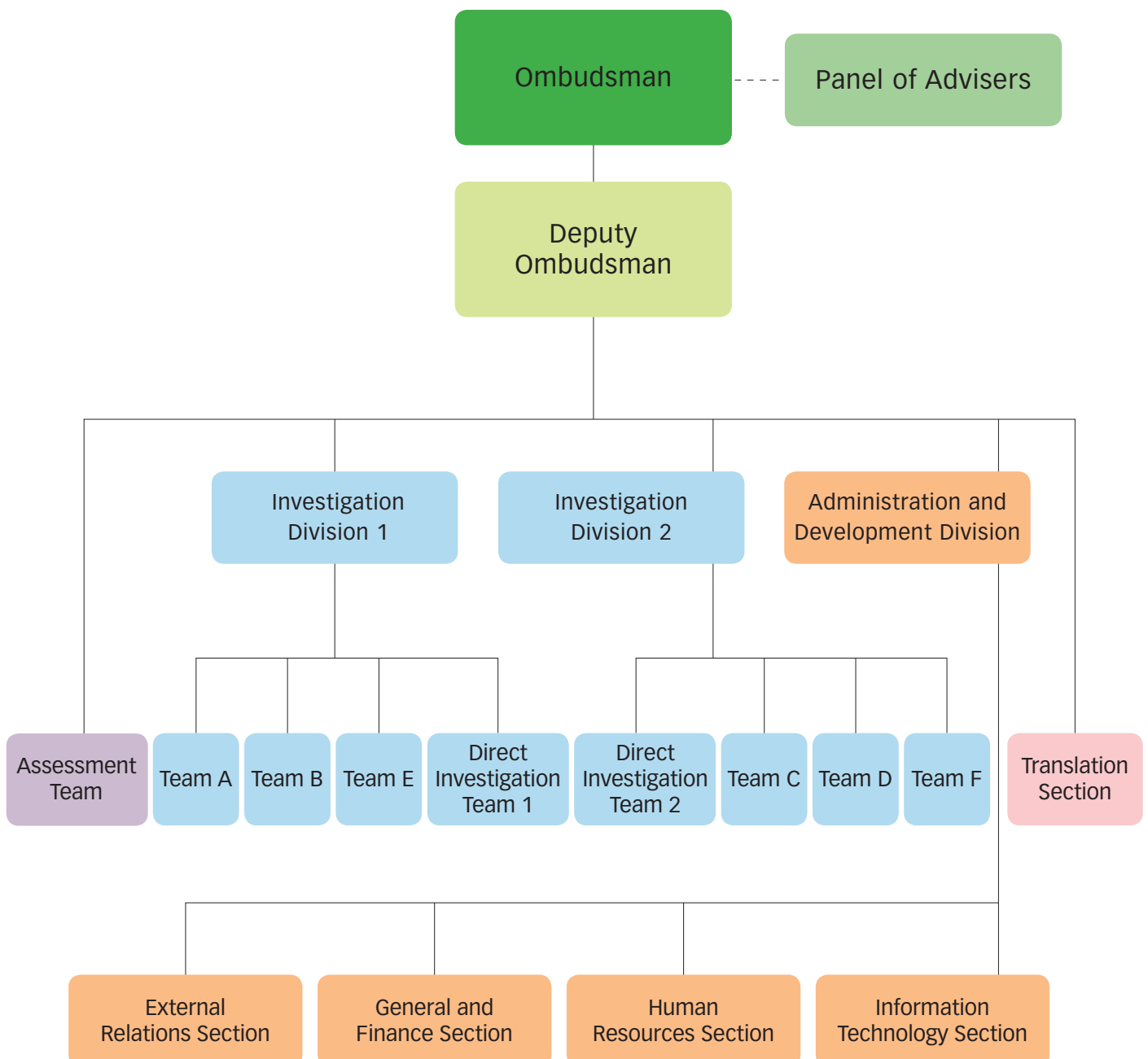


(8) Training for staff

Organisation (Case reference)	Administrative Enhancement
Architectural Services Department (2016/1771B)	Gist and experience learnt from a case of omission in checking indication signs on site uploaded to the intranet of the Department for sharing among all relevant staff
Electrical and Mechanical Services Department (2016/1749(I))	Seminars organised to enhance staff's knowledge of the Code on Access to Information
Housing Department (2014/3303)	Staff training provided to ensure compliance of guidelines in handling cases of unauthorised alterations
Housing Department (2016/0079(I))	Staff training/sharing sessions on Code on Access to Information conducted to enhance staff's awareness and understanding of the requirements of the Code
Hong Kong Monetary Authority (2016/2413)	Staff briefing conducted on proper handling of enquiries about telephone recordings
Leisure and Cultural Services Department (2015/3502(I), 2016/2190(I))	Staff training/sharing sessions on Code on Access to Information conducted to enhance staff's awareness and understanding of the requirements of the Code
Leisure and Cultural Services Department & Chief Secretary for Administration's Office – Efficiency Unit (2016/1771A(I) & C(I))	Staff training/sharing sessions on Code on Access to Information conducted to enhance staff's awareness and understanding of the requirements of the Code
Marine Department (2014/4504(I))	Staff training/sharing sessions on Code on Access to Information conducted to enhance staff's awareness and understanding of the requirements of the Code
Post Office (2015/1157, 2015/1245, 2015/1681, 2015/1708 and others)	Briefing sessions conducted regularly to enhance staff awareness of suspicious abuse cases on compensation claims
Transport Department (2016/0660(I))	Staff training/sharing sessions on Code on Access to Information conducted to enhance staff's awareness and understanding of the requirements of the Code

Organisation Chart

Office of The Ombudsman



Panel of Advisers



Accountancy

Mr Tsai Wing Chung, Philip, JP

Architecture, Engineering and Surveying

Ir Chan Chi Chiu, SBS, JP

Sr Chan Yuk Ming, Raymond

Ir Dr Ho Chung Tai, Raymond, SBS, MBE, SB St J, JP

Dr Hung Wing Tat, MH

Ir Leung Kwong Ho, Edmund, SBS, OBE, JP

Professor Lim Wan Fung, Bernard Vincent, JP

Legal

Professor Johannes M M Chan, SC

Mr Leung Wai Man, Raymond, SC

Professor Anne Scully-Hill

Dr Tai Yiu Ting, Benny, MH

Professor Stephen Thomson

Ms Wong Pui Sze, Priscilla, BBS, JP

Medical and Nursing

Professor Chien Wai Tong

Professor Lai Kam Yuk, Claudia

Professor Lo Chung Mau, BBS, JP

Dr Shum Ping Shiu, BBS, JP

Professor Grace Tang, SBS, JP

Dr Tsang Fan Kwong

Social Work and Rehabilitation Services

Professor Chan Lai Wan, Cecilia, JP

Professor Fang Meng Sang, Christine, BBS, JP

Professor Ma Lai Chong, Joyce, JP

Mr Ng Wang Tsang, Andy

* In alphabetical order

Visits to the Office of The Ombudsman

Date	Visitors
27 April 2016	Delegates from the Committee on the Promotion of Civic Education
14 June 2016	Participants of the “Training Scheme in Common Law 2015-2016”, arranged by the Department of Justice
16 June 2016	Participants of the “Training Course on Building the Capabilities of Civil Servants” for Xinjiang Production and Construction Corps, arranged by the Hong Kong Financial Services Institute
29 June 2016	Mr Wang Zhenmin, Director General of the Legal Department of the Central People’s Government Liaison Office in the Hong Kong Special Administrative Region
6 July 2016	Participants of the “Training Course on Budget Performance Supervision and Government Procurement Management” for officials from Qinghai Province, arranged by the Hong Kong Financial Services Institute
7 July 2016	Dr Mehdi Fakheri, Consul-General of Iran in Hong Kong
21 July 2016	Participants of the “Training Course on Public Service Construction and People’s Livelihood Security” for officials from Qinghai Province, arranged by the Hong Kong Financial Services Institute
26 July 2016	Mainland law students, arranged by the Legal Education Fund Limited
28 July 2016	Participants of the “Training Course on Building a Corruption-Free Society in Hong Kong and Singapore” for officials from Hengqin District, Zhuhai, arranged by the Hong Kong Financial Services Institute
29 July 2016	Ms Deborah Glass, OBE, the Victorian Ombudsman, Australia
4 August 2016	Delegates from the Shenzhen Municipal Government, arranged by the Vocational Training Council
17 October 2016	Participants of the “10th Advanced Programme for Chinese Senior Judges”, arranged by the City University of Hong Kong
20 October 2016	Participants of the “Training Course for Village and Township Leaders” from Xinjiang Uygur Autonomous Region, arranged by the Hong Kong Financial Services Institute
31 October 2016	Participants of the “Attachment Programme for Legal Officials under Cooperation Agreements with Mainland Justice Authorities”, arranged by the Department of Justice
7 November 2016	Participants of the “Training Programme on Community Governance and Construction” for officials from Yantian District, Shenzhen, arranged by the Chinese University of Hong Kong
23 November 2016	Participants of the “30th Training Course for Middle-aged and Young Cadres” from Inner Mongolia Autonomous Region, arranged by the Hong Kong Institute for Public Administration
1 December 2016	Delegates from the Commission for Discipline Inspection of the Shenzhen Party Committee, arranged by the Vocational Training Council
6 December 2016	Students from Singapore Management University
6 December 2016	Participants of the “14th Postgraduate Certificate Course in Corruption Studies”, arranged by the School of Professional and Continuing Education, the University of Hong Kong
9 January 2017	Mr Wang Xie, Deputy Director General of the Shanghai Municipal Bureau of Justice, arranged by the Information Services Department
18 January 2017	Delegates from the Benchmarking Visit by Kenyan Authorities to Hong Kong on Anti-Corruption and Ethics Enforcement, arranged by the Ethics and Anti-Corruption Commission of the Republic of Kenya
21 February 2017	Students from Singapore Management University



Annual Report of The Ombudsman, Hong Kong 2017

Financial Statements

for the year ended 31 March 2017

Independent auditor's report to The Ombudsman

(Established in Hong Kong pursuant to the Ombudsman Ordinance)



Opinion

We have audited the financial statements of The Ombudsman set out on pages 4 to 23, which comprise the statement of financial position as at 31 March 2017, the statement of income and expenditure and other comprehensive income, the statement of changes in funds and cash flow statement for the year then ended and notes to the financial statements, including a summary of significant accounting policies.

In our opinion, the financial statements give a true and fair view of the financial position of The Ombudsman as at 31 March 2017 and of its financial performance and its cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards ("HKFRSs") issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA").

Basis for opinion

We conducted our audit in accordance with Hong Kong Standards on Auditing ("HSAs") issued by the HKICPA. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the financial statements* section of our report. We are independent of The Ombudsman in accordance with the HKICPA's *Code of Ethics for Professional Accountants* ("the Code") and we have fulfilled our other ethical responsibilities in accordance with the Code. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Information other than the financial statements and auditor's report thereon

The Ombudsman is responsible for the other information. The other information comprises all the information included in the annual report, other than the financial statements and our auditor's report thereon.

Our opinion on the financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated.

If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Responsibilities of The Ombudsman for the financial statements

The Ombudsman is responsible for the preparation of the financial statements that give a true and fair view in accordance with HKFRSs issued by the HKICPA and for such internal control as The Ombudsman determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, The Ombudsman is responsible for assessing The Ombudsman's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless The Ombudsman either intend to liquidate The Ombudsman or to cease operations, or have no realistic alternative but to do so.

Auditor's responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. This report is made solely to you in accordance with our agreed terms of engagement, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with HKSAAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with HKSAAs, we exercise professional judgement and maintain professional scepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of The Ombudsman's internal control.



Auditor's responsibilities for the audit of the financial statements (continued)

- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by The Ombudsman.
- Conclude on the appropriateness of The Ombudsman's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on The Ombudsman's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause The Ombudsman to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with The Ombudsman regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

KPMG

Certified Public Accountants

8th Floor, Prince's Building
10 Chater Road
Central, Hong Kong

23 May 2017

Statement of income and expenditure for the year ended 31 March 2017

(Expressed in Hong Kong dollars)

	Note	2017	2016
Income			
Government subventions	4	\$ 115,095,000	\$ 111,221,000
Amortisation of deferred Government subventions	4	1,814,220	1,814,220
Interest income on bank deposits		4,382,224	3,795,897
Other income		125,696	39,340
		\$ 121,417,140	\$ 116,870,457
Expenditure			
Operating expenses	5	(121,637,354)	(112,723,202)
(Deficit)/surplus for the year		\$ (220,214)	\$ 4,147,255

Statement of comprehensive income for the year ended 31 March 2017

The Ombudsman had no components of comprehensive income other than “(deficit)/surplus for the year” in either of the years presented. Accordingly, no separate statement of comprehensive income is presented as The Ombudsman’s “total comprehensive income” was the same as the “(deficit)/surplus for the year” in both years.

The notes on pages 10 to 23 form part of these financial statements.

Statement of financial position at 31 March 2017

(Expressed in Hong Kong dollars)



	Note	2017	2016
ASSETS			
Non-current assets			
Property, plant and equipment	8	\$ 68,658,384	\$ 71,976,942
Deposits and prepayment – non-current		–	3,278,453
		\$ 68,658,384	\$ 75,255,395
Current assets			
Deposits and prepayments – current		\$ 4,225,701	\$ 7,763,547
Interest receivable		2,364,767	946,185
Time deposits with original maturity over three months		333,389,000	319,133,000
Cash and cash equivalents	9	20,009,430	29,205,273
		\$ 359,988,898	\$ 357,048,005
Total assets		\$ 428,647,282	\$ 432,303,400
LIABILITIES			
Non-current liabilities			
Contract gratuity payable – non-current	10	\$ 5,180,964	\$ 4,207,337
Deferred Government subventions – non-current	4	62,528,878	64,343,098
		\$ 67,709,842	\$ 68,550,435
Current liabilities			
Other payables and accruals		\$ 2,663,073	\$ 2,473,003
Contract gratuity payable – current	10	3,960,191	6,745,572
Deferred Government subventions – current	4	1,814,220	1,814,220
		\$ 8,437,484	\$ 11,032,795
Total liabilities		\$ 76,147,326	\$ 79,583,230

Statement of financial position at 31 March 2017 (continued)

(Expressed in Hong Kong dollars)

	Note	2017	2016
FUNDS			
Accumulated funds		\$ 352,499,956	\$ 352,720,170
Total funds		\$ 352,499,956	\$ 352,720,170
Total funds and liabilities		\$ 428,647,282	\$ 432,303,400

Approved and authorised for issue by The Ombudsman on 23 May 2017.

Ms Connie Lau
The Ombudsman

The notes on pages 10 to 23 form part of these financial statements.

Statement of changes in funds for the year ended 31 March 2017

(Expressed in Hong Kong dollars)



	Accumulated funds
Balance at 1 April 2015	\$ 348,572,915
Change in funds for 2015/2016:	
Surplus and total comprehensive income for the year	4,147,255
Balance at 31 March 2016 and 1 April 2016	\$ 352,720,170
Change in funds for 2016/2017:	
Deficit and total comprehensive income for the year	(220,214)
Balance at 31 March 2017	\$ 352,499,956

The notes on pages 10 to 23 form part of these financial statements.

Cash flow statement for the year ended 31 March 2017

(Expressed in Hong Kong dollars)

	Note	2017	2016
Operating activities			
(Deficit)/surplus for the year		\$ (220,214)	\$ 4,147,255
Adjustments for:			
Interest income		(4,382,224)	(3,795,897)
Depreciation	5	3,570,148	3,596,812
Amortisation of deferred Government subventions		(1,814,220)	(1,814,220)
Loss/(gain) on disposal of property, plant and equipment		4,836	(68,492)
Operating (deficit)/surplus before changes in working capital		\$ (2,841,674)	\$ 2,065,458
Decrease/(increase) in deposits and prepayments		6,816,299	(10,133,842)
Increase/(decrease) in other payables and accruals		190,070	(1,482,509)
Decrease in contract gratuity payable		(1,811,754)	(376,229)
Net cash generated from/(used in) operating activities		\$ 2,352,941	\$ (9,927,122)
Investing activities			
Interest received		\$ 2,963,642	\$ 5,631,994
Payments for purchase of property, plant and equipment		(256,426)	(1,152,685)
Proceeds from disposal of property, plant and equipment		–	597,000
Increase of time deposits with original maturity over three months		(333,389,000)	(319,133,000)
Proceeds from time deposits with original maturity over three months matured		319,133,000	342,661,000
Net cash (used in)/generated from investing activities		\$ (11,548,784)	\$ 28,604,309

Cash flow statement for the year ended 31 March 2017 (continued)
(Expressed in Hong Kong dollars)



	Note	2017	2016
Net (decrease)/increase in cash and cash equivalents		\$ (9,195,843)	\$ 18,677,187
Cash and cash equivalents at beginning of the year	9	29,205,273	10,528,086
Cash and cash equivalents at end of the year	9	\$ 20,009,430	\$ 29,205,273

The notes on pages 10 to 23 form part of these financial statements.

Notes to the financial statements

(Expressed in Hong Kong dollars)

1 Status of The Ombudsman

The Ombudsman was established as a corporation by statute on 19 December 2001. The functions of The Ombudsman are prescribed by the Ombudsman Ordinance.

The address of its registered office is 30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong.

2 Significant accounting policies

(a) Statement of compliance

These financial statements have been prepared in accordance with all applicable Hong Kong Financial Reporting Standards ("HKFRSs"), which collective term includes all applicable individual Hong Kong Financial Reporting Standards, Hong Kong Accounting Standards ("HKASs") and Interpretations issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA") and accounting principles generally accepted in Hong Kong. Significant accounting policies adopted by The Ombudsman are disclosed below.

The HKICPA has issued certain new and revised HKFRSs that are first effective or available for early adoption for the current accounting period of The Ombudsman. None of these developments have had a material effect on The Ombudsman's results and financial position for the current or prior periods have been prepared or presented. The Ombudsman has not applied any new standard or interpretation that is not yet effective for the current accounting period (see note 16).

(b) Basis of preparation of the financial statements

The measurement basis used in the preparation of the financial statements is the historical cost basis.

The preparation of financial statements in conformity with HKFRSs requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets, liabilities, income and expenses. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgements about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.



2 Significant accounting policies (continued)

(b) Basis of preparation of the financial statements (continued)

Judgement made by The Ombudsman in the application of HKFRSs that has significant effect on the financial statements and major source of estimation uncertainty is discussed in note 3.

(c) Property, plant and equipment

Property, plant and equipment are stated at cost less accumulated depreciation and impairment losses.

Depreciation is calculated to write off the cost of items of property, plant and equipment, less their estimated residual value, if any, using the straight line method over their estimated useful lives as follows:

– Interest in leasehold land held for own use under finance leases	Over unexpired term of lease
– Building	40 years
– Leasehold improvements	10 years
– Office furniture	5 years
– Office equipment	5 years
– Computer equipment	4 years
– Motor vehicles	5 years

Both the useful life of an asset and its residual value, if any, are reviewed annually.

The carrying amounts of property, plant and equipment are reviewed for indications of impairment at the end of each reporting period. An impairment loss is recognised in the statement of income and expenditure if the carrying amount of an asset, or the cash-generating unit to which it belongs, exceeds its recoverable amount. The recoverable amount of an asset, or of the cash-generating unit to which it belongs, is the greater of its fair value less costs of disposal and value in use. In assessing value in use, the estimated future cash flows are discounted to their present values using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the assets. An impairment loss is reversed if there has been a favourable change in the estimates used to determine the recoverable amount.

Gains or losses arising from the retirement or disposal of an item of property, plant and equipment are determined as the difference between the net disposal proceeds and the carrying amount of the item and are recognised in the statement of income and expenditure on the date of retirement or disposal.

2 Significant accounting policies (continued)

(d) Leased assets

An arrangement, comprising a transaction or a series of transactions, is or contains a lease if The Ombudsman determines that the arrangement conveys a right to use a specific asset or assets for an agreed period of time in return for a payment or a series of payments. Such a determination is made based on an evaluation of the substance of the arrangement and is regardless of whether the arrangement takes the legal form of a lease.

(i) *Classification of assets leased to The Ombudsman*

Assets that are held by The Ombudsman under leases which transfer to The Ombudsman substantially all the risks and rewards of ownership are classified as being held under finance leases. Leases which do not transfer substantially all the risks and rewards of ownership to The Ombudsman are classified as operating leases.

(ii) *Assets acquired under finance leases*

Where The Ombudsman acquires the use of assets under finance leases, the amounts representing the fair value of the leased asset, or, if lower, the present value of the minimum lease payments, of such assets are recognised as property, plant and equipment and the corresponding liabilities, net of finance charges, are recorded as obligations under finance leases. Depreciation is provided at rates which write off the cost of the assets over the term of the relevant lease or, where it is likely The Ombudsman will obtain ownership of the asset, the life of the asset, as set out in note 2(c). Impairment losses are accounted for in accordance with the accounting policy as set out in note 2(c).

(iii) *Operating lease charges*

Where The Ombudsman has the use of other assets under operating leases, payments made under the leases are charged to statement of income and expenditure in equal instalments over the accounting periods covered by the lease term, except where an alternative basis is more representative of the pattern of benefits to be derived from the leased asset. Lease incentives received are recognised in the statement of income and expenditure as an integral part of the aggregate net lease payments made.

(e) Receivables

Receivables are initially recognised at fair value and thereafter stated at amortised cost using the effective interest method, less allowance for impairment of doubtful debts, except where the receivables are interest-free loans made to related parties without any fixed repayment terms or the effect of discounting would be immaterial. In such cases, the receivables are stated at cost less allowance for impairment of doubtful debts.



2 Significant accounting policies (continued)

(e) Receivables (continued)

Impairment losses for bad and doubtful debts are recognised when there is objective evidence of impairment and are measured as the difference between the carrying amount of the financial asset and the estimated future cash flows, discounted at the asset's original effective interest rate where the effect of discounting is material. Objective evidence of impairment includes observable data that come to the attention of The Ombudsman about events that have an impact on the asset's estimated future cash flows such as significant financial difficulty of the debtor.

Impairment losses for receivables whose recovery is considered doubtful but not remote are recorded using an allowance account. When The Ombudsman is satisfied that recovery is remote, the amount considered irrecoverable is written off against the receivables directly and any amounts held in the allowance account relating to that debt are reversed. Subsequent recoveries of amounts previously charged to the allowance account are reversed against the allowance account. Other changes in the allowance account and subsequent recoveries of amounts previously written off directly are recognised in the statement of income and expenditure.

(f) Payables

Payables are initially recognised at fair value and subsequently stated at amortised cost unless the effect of discounting would be immaterial, in which case they are stated at cost.

(g) Cash and cash equivalents

Cash and cash equivalents comprise cash at bank and on hand, demand deposits with banks and other financial institutions, and short-term, highly liquid investments that are readily convertible into known amounts of cash and which are subject to an insignificant risk of changes in value, having been within three months of maturity at acquisition.

(h) Employee benefits

Salaries, gratuities, paid annual leave, leave passage and the cost to The Ombudsman of non-monetary employee benefits are accrued in the year in which the associated services are rendered by employees of The Ombudsman. Where payment or settlement is deferred and the effect would be material, these amounts are stated at their present values.

Contributions to Mandatory Provident Fund ("MPF") as required under the Hong Kong Mandatory Provident Fund Schemes Ordinance are recognised as an expenditure in the statement of income and expenditure as incurred.

2 Significant accounting policies (continued)

(i) Provisions and contingent liabilities

Provisions are recognised for liabilities of uncertain timing or amount when The Ombudsman has a legal or constructive obligation arising as a result of a past event, it is probable that an outflow of economic benefits will be required to settle the obligation and a reliable estimate can be made. Where the time value of money is material, provisions are stated at the present value of the expenditure expected to settle the obligation.

Where it is not probable that an outflow of economic benefits will be required, or the amount cannot be estimated reliably, the obligation is disclosed as a contingent liability, unless the probability of outflow of economic benefits is remote. Possible obligations, whose existence will only be confirmed by the occurrence or non-occurrence of one or more future events are also disclosed as contingent liabilities unless the probability of outflow of economic benefits is remote.

(j) Income recognition

Income is measured at the fair value of the consideration received or receivable. Provided it is probable that the economic benefits will flow to The Ombudsman and the income and expenditure, if applicable, can be measured reliably, income is recognised in the statement of income and expenditure as follows:

(i) Government subventions

An unconditional Government subvention is recognised as income in the statement of income and expenditure when the grant becomes receivable. Other Government subventions are recognised in the statement of financial position initially when there is reasonable assurance that they will be received and that The Ombudsman will comply with the conditions attaching to them. Subventions that compensate The Ombudsman for expenses incurred are recognised as income in the statement of income and expenditure on a systematic basis in the same periods in which the expenses are incurred. Subventions that compensate The Ombudsman for the cost of an asset are included in the statement of financial position as deferred Government subventions and recognised in the statement of income and expenditure over the period of the lease term or useful lives of the related assets on a basis consistent with the depreciation policy as set out in note 2(c).

(ii) Interest income

Interest income is recognised as it accrues using the effective interest method.

(iii) Other income

Income of wages in lieu of notice from contract staff, employee insurance compensation and other miscellaneous income are recognised on an accrual basis.



2 Significant accounting policies (continued)

(k) Related parties

- (a) A person, or a close member of that person's family, is related to The Ombudsman if that person:
 - (i) has control or joint control over The Ombudsman;
 - (ii) has significant influence over The Ombudsman; or
 - (iii) is a member of the key management personnel of The Ombudsman.
- (b) An entity is related to The Ombudsman if any of the following conditions applies:
 - (i) The entity and The Ombudsman are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).
 - (ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).
 - (iii) Both entities are joint ventures of the same third party.
 - (iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.
 - (v) The entity is a post-employment benefit plan for the benefit of employees of either The Ombudsman or an entity related to The Ombudsman.
 - (vi) The entity is controlled or jointly controlled by a person identified in note 2(k)(a).
 - (vii) A person identified in note 2(k)(a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).
 - (viii) The entity, or any member of a group of which it is a part, provides key management personnel services to The Ombudsman.

Close members of the family of a person are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity.

Notes to the financial statements (continued)

(Expressed in Hong Kong dollars)

3 Accounting judgement and estimate

In the process of apply The Ombudsman's accounting policies, The Ombudsman has made the following significant accounting judgement:

Depreciation

Property, plant and equipment is depreciated on a straight line basis over their estimated useful lives. The Ombudsman reviews annually the estimated useful life in order to determine the amount of depreciation expense to be recorded during any reporting period. The useful lives are based on The Ombudsman's historical experience with similar assets taking into account anticipated technological changes. The depreciation expense for future periods is adjusted if there are significant changes from previous estimations.

4 Government subventions and deferred Government subventions

Government subventions represent the funds granted by the Government for daily operations of The Ombudsman.

Deferred Government subventions represent the funds granted by the Government for prepaid lease payments and the purchase of building. Amortisation of deferred Government subventions is recognised on a straight line basis over the period of the lease term of 54 years of interest in leasehold land held for own use under finance leases for prepaid lease payments and the useful life of 40 years of building in accordance with the accounting policies set out in notes 2(c) and 2(j)(i).

At 31 March 2017, the deferred Government subventions are expected to be amortised as follows:

	2017	2016
Within one year and included in current liabilities	\$ 1,814,220	\$ 1,814,220
After one year and included in non-current liabilities	62,528,878	64,343,098
	\$ 64,343,098	\$ 66,157,318



5 Operating expenses

	2017	2016
Employee benefit expenses (note 6)	\$ 101,013,307	\$ 94,810,160
Depreciation of property, plant and equipment (note 8)	3,570,148	3,596,812
Rates and management fee	3,143,164	3,099,129
Operating lease rentals in respect of parking spaces	91,200	91,200
Auditor's remuneration	82,000	79,600
Announcement of public interest expense	5,923,500	6,250,000
Other expenses	7,814,035	4,796,301
	\$ 121,637,354	\$ 112,723,202

6 Employee benefit expenses

	2017	2016
Salaries and allowances	\$ 87,385,422	\$ 82,608,554
Contract gratuity	8,988,127	8,150,282
Pension costs – MPF scheme	2,446,021	2,365,033
Unutilised annual leave	166,492	165,035
Other employee benefit expenses	2,027,245	1,521,256
	\$ 101,013,307	\$ 94,810,160

7 Key management compensation

	2017	2016
Short-term employee benefits	\$ 15,597,428	\$ 15,002,925
Post-employment benefits	2,074,349	1,999,129
	\$ 17,671,777	\$ 17,002,054

Notes to the financial statements (continued)

(Expressed in Hong Kong dollars)

8 Property, plant and equipment

	Interest in leasehold land held for own use under finance leases	Building	Leasehold improvements	Office furniture	Office equipment	Computer equipment	Motor vehicles	Total
Cost:								
At 1 April 2015	\$74,900,000	\$16,800,000	\$15,525,370	\$809,390	\$1,551,497	\$6,034,110	\$1,064,771	\$116,685,138
Additions	–	–	200,360	14,509	80,680	162,135	695,001	1,152,685
Disposals	–	–	–	(5,022)	(20,630)	(38,032)	(884,971)	(948,655)
At 31 March 2016	\$74,900,000	\$16,800,000	\$15,725,730	\$818,877	\$1,611,547	\$6,158,213	\$874,801	\$116,889,168
Accumulated depreciation:								
At 1 April 2015	\$18,246,024	\$5,482,438	\$12,761,345	\$589,450	\$949,745	\$3,302,243	\$404,316	\$41,735,561
Charge for the year	1,394,220	420,000	406,979	66,090	195,951	969,244	144,328	3,596,812
Written back on disposals	–	–	–	(4,988)	(19,865)	(38,033)	(357,261)	(420,147)
At 31 March 2016	\$19,640,244	\$5,902,438	\$13,168,324	\$650,552	\$1,125,831	\$4,233,454	\$191,383	\$44,912,226
Net book value:								
At 31 March 2016	\$55,259,756	\$10,897,562	\$2,557,406	\$168,325	\$485,716	\$1,924,759	\$683,418	\$71,976,942



8 Property, plant and equipment (continued)

	Interest in leasehold land held for own use under finance leases	Building	Leasehold improvements	Office furniture	Office equipment	Computer equipment	Motor vehicles	Total
Cost:								
At 1 April 2016	\$74,900,000	\$16,800,000	\$15,725,730	\$818,877	\$1,611,547	\$6,158,213	\$874,801	\$116,889,168
Additions	–	–	128,820	9,709	84,022	33,875	–	256,426
Disposals	–	–	–	(3,134)	(51,088)	(47,704)	–	(101,926)
At 31 March 2017	\$74,900,000	\$16,800,000	\$15,854,550	\$825,452	\$1,644,481	\$6,144,384	\$874,801	\$117,043,668
Accumulated depreciation:								
At 1 April 2016	\$19,640,244	\$5,902,438	\$13,168,324	\$650,552	\$1,125,831	\$4,233,454	\$191,383	\$44,912,226
Charge for the year	1,394,220	420,000	423,488	57,073	189,570	946,797	139,000	3,570,148
Written back on disposals	–	–	–	(3,134)	(48,183)	(45,773)	–	(97,090)
At 31 March 2017	\$21,034,464	\$6,322,438	\$13,591,812	\$704,491	\$1,267,218	\$5,134,478	\$330,383	\$48,385,284
Net book value:								
At 31 March 2017	\$53,865,536	\$10,477,562	\$2,262,738	\$120,961	\$377,263	\$1,009,906	\$544,418	\$68,658,384

The Ombudsman's interest in leasehold land is held under long lease.

Notes to the financial statements (continued)

(Expressed in Hong Kong dollars)

9 Cash and cash equivalents

	2017	2016
Time deposit with original maturity within three months	\$ 9,000,000	\$ –
Cash at bank	11,004,430	29,202,568
Cash in hand	5,000	2,705
	\$ 20,009,430	\$ 29,205,273

10 Contract gratuity payable

The amount represents the gratuity payable to staff on expiry of their employment contracts. The amount of gratuity ranges from 10% to 25% (2016: 10% to 25%) of the basic salary less employer's contributions to MPF.

11 Taxation

The Ombudsman is exempt from taxation in respect of the Inland Revenue Ordinance in accordance with Schedule 1A Section 5(1) of the Ombudsman Ordinance.

12 Commitments

At 31 March 2017, the total future aggregate minimum lease payments under non-cancellable operating leases in respect of parking spaces are payable as follows:

	2017	2016
Within 1 year	\$ 7,600	\$ 7,600

The leases remain in force unless terminated by giving notice in writing of not less than one calendar month.

13 Management of accumulated funds

The Ombudsman's primary objective when managing its accumulated funds is to safeguard The Ombudsman's ability to continue as a going concern. The Ombudsman is not subject to externally imposed requirements relating to its accumulated funds.



14 Financial risk management and fair values of financial instruments

Risk management is carried out by the General and Finance Department under policies approved by The Ombudsman. The General and Finance Department identifies and evaluates financial risks in close co-operation with the operating units. The Ombudsman's exposure to credit, liquidity, interest rate and currency risks are described below:

(a) Credit risk

The Ombudsman's credit risk is primarily attributable to time deposits and cash and cash equivalents. The Ombudsman has a credit policy in place and the exposure to this credit risk is monitored on an ongoing basis.

Cash is deposited with financial institutions with sound credit ratings to minimise credit exposure.

The maximum exposure to credit risk is represented by the carrying amount of each financial asset in the statement of financial position. The Ombudsman does not provide any guarantees which would expose The Ombudsman to credit risk.

(b) Liquidity risk

The Ombudsman's policy is to regularly monitor its current and expected liquidity requirements and to ensure that it maintains sufficient reserves of cash to meet its liquidity requirements in the short and longer term.

The following table shows the remaining contractual maturities at the end of the reporting period of The Ombudsman's financial liabilities, which are based on contractual undiscounted cash flows and the earliest date The Ombudsman can be required to pay:

		2017					
		Contractual undiscounted cash outflow					
		Within 1 year or on demand	More than 1 year but less than 2 years	More than 2 years but less than 5 years		Total contractual undiscounted cash flows	Carrying amount
Contract gratuity payable	\$	3,960,191	\$ 3,769,426	\$ 1,411,538	\$	9,141,155	\$ 9,141,155
Other payables and accruals		2,663,073	—	—		2,663,073	2,663,073
	\$	6,623,264	\$ 3,769,426	\$ 1,411,538	\$	11,804,228	\$ 11,804,228
		2016					
		Contractual undiscounted cash outflow					
		Within 1 year or on demand	More than 1 year but less than 2 years	More than 2 years but less than 5 years		Total contractual undiscounted cash flows	Carrying amount
Contract gratuity payable	\$	6,745,572	\$ 2,069,235	\$ 2,138,102	\$	10,952,909	\$ 10,952,909
Other payables and accruals		2,473,003	—	—		2,473,003	2,473,003
	\$	9,218,575	\$ 2,069,235	\$ 2,138,102	\$	13,425,912	\$ 13,425,912

Notes to the financial statements (continued)

(Expressed in Hong Kong dollars)

14 Financial risk management and fair values of financial instruments (continued)

(c) Interest rate risk

Interest rate risk is the risk that the value of a financial instrument will fluctuate due to changes in market interest rates. The Ombudsman's only exposure to interest rate risk is via its bank balances which bear interest at market rates.

Sensitivity analysis

At 31 March 2017, it is estimated that a general increase/decrease of 100 (2016: 100) basis points in interest rates, with all other variables held constant, would have increased/decreased The Ombudsman's deficit/surplus and accumulated funds by approximately \$3,533,000 (2016: \$3,483,000).

The sensitivity analysis above has been determined assuming that the change in interest rates had occurred at the end of the reporting period and had been applied to the financial instruments which expose The Ombudsman to interest rate risk at that date. The 100 basis points increase or decrease represents The Ombudsman's assessment of a reasonably possible change in interest rates over the period until the next annual reporting period. The analysis is performed on the same basis for 2016.

(d) Currency risk

The Ombudsman has no exposure to currency risk as all of The Ombudsman's transactions are denominated in Hong Kong dollars.

(e) Fair value measurement

The carrying amounts of The Ombudsman's financial instruments carried at cost or amortised cost were not materially different from their fair values at 31 March 2017 and 2016.

15 Material related party transactions

Transactions with key management personnel

Remuneration of all members of key management personnel is disclosed in note 7.



16 Possible impact of amendments, new standards and interpretations issued but not yet effective for the year ended 31 March 2017

Up to the date of issue of these financial statements, the HKICPA has issued a number of amendments and new standards which are not yet effective for the year ended 31 March 2017 and which have not been adopted in these financial statements.

	Effective for accounting periods beginning on or after
Amendments to HKAS 7, <i>Statement of cash flows: Disclosure initiative</i>	1 January 2017
HKFRS 16, <i>Leases</i>	1 January 2019

The Ombudsman is in the process of making an assessment of what the impact of these amendments is expected to be in the period of initial application. So far it has concluded that the adoption of them is unlikely to have a significant impact on The Ombudsman's financial statements.



Glossary of Terms

Complaint

A complaint is a specific allegation of wrong doing, unreasonable action or defective decision or procedure which affects and aggrieves the complainant.

Consent from Complainant

To facilitate The Ombudsman's processing of a complaint, the complainant is required to give consent for: The Ombudsman to copy his/her complaint and any other information, including his/her personal data, to any party concerned; and any party concerned to provide the complainant's personal and other relevant information to The Ombudsman. The complainant may, by stating his/her wish clearly, withhold consent to the disclosure of his/her identity to the party under complaint. However, in this circumstance, The Ombudsman may not be able to process the complaint fully or at all.

Direct Investigation ("DI")

This is an investigation initiated in the public interest even in the absence of complaint and generally on matters of a systemic nature or issues of community concern.

Enquiry

An enquiry is a request for information or advice.

Full Investigation

This refers to an in-depth inquiry, usually into complex or serious complaints, with recommendations for improvement or remedy, where warranted, upon conclusion.

Inconclusive

We classify the outcome of our full investigation into a complaint or allegation as inconclusive where, on completion of the investigation, The Ombudsman is not prepared to determine whether the complaint or allegation is substantiated or not, because the evidence is conflicting, irreconcilable, incomplete or uncorroborated.

Inquiry

This is the procedure we use to handle general complaint cases, with the aim to resolve complaints more speedily. We ask the organisation under complaint to respond to us and, if we see fit, the complainant in parallel. We will examine such response, and the complainant's view on it where applicable, together with any other relevant information or evidence we have collected. We will, in conclusion, present our findings to the complainant and make suggestions to the organisation for remedy or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.

Investigation

This may be a full investigation into a complaint or a direct investigation without a complaint.

Maladministration

This is defined in The Ombudsman Ordinance. It basically means poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for a person.

Mediation

This is a voluntary process carried out where the complainant and the organisation under complaint agree to discuss the complaint at a meeting or through the telephone, and to explore mutually acceptable solutions. Investigation officers from this Office act as impartial facilitators.

Outside Jurisdiction

This refers to the situation where the action or organisation subject to complaint is not within The Ombudsman's jurisdiction under The Ombudsman Ordinance.

Restrictions on Investigation

These are the restrictions on investigation under The Ombudsman Ordinance.

Substantiated, Partially Substantiated and Unsubstantiated

These are classifications of the outcome of our full investigations reflecting the varying degrees of culpability of an organisation under complaint.

Topical Complaints

These are complaints on a particular social or topical issue. They are essentially against the same action or decision by the organisation under complaint.

Unsubstantiated but other Inadequacies Found

This is the classification of the outcome of our full investigation where a complainant's allegations are unsubstantiated but The Ombudsman discovers other aspects of significant maladministration.

Withdrawal of Complaint

This is a complainant's voluntary withdrawal of a complaint. However, depending on the nature or gravity of the allegations, The Ombudsman may still pursue the case.



Complainants Charter

We endeavour to provide a high standard of service to the public. In fully discharging our duties, this Office has drawn up the following Charter:

Our Commitment

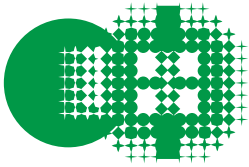
- Handle complaints in a professional, impartial and efficient manner
- Keep complainants informed of the progress and outcome of our inquiries
- Explain our decisions clearly
- Protect complainants' privacy
- Treat the public with courtesy and respect

Complainants not satisfied with our findings may write to this Office and state the grounds for a review of their cases. Any views on individual staff or our services may be directed to the Chief Manager of this Office. We will take follow-up action with professionalism and fairness.

Complainants' Responsibilities

- State clearly the issues of complaint
- Provide true and accurate information in a timely way
- Cooperate in our inquiries
- Lodge complaints in a reasonable manner
- Treat the staff with courtesy and respect

If complainants are not cooperative, the progress and/or outcome of our inquiries may be affected. In such circumstances, we will take proper actions as appropriate, such as making our decision on the basis of available evidence or terminating the inquiry.



Office of The Ombudsman, Hong Kong

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Website	http://www.ombudsman.hk
Enquiry email address	enquiry@ombudsman.hk
Complaint email address	complaints@ombudsman.hk



This annual report is printed on environmentally friendly paper