

BUILDINGS DEPARTMENT (“BD”)

Case No. OMB/DI/125

Enforcement of Demolition Orders

Background

Some statutory demolition orders issued by BD had not been complied with for decades. This defeated the purpose of serving the orders, bred disregard for the Department and put the law in disrepute. The Ombudsman, therefore, conducted this direct investigation assessment.

Unauthorised Building Works

2. Under section 14 of the Buildings Ordinance, Cap. 123, certain types of building works carried out without approval were unauthorised building works (“UBW”) subject to enforcement.

Demolition Orders

3. Demolition orders were issued to owners who refused to heed BD advice to remove their UBW voluntarily. Where an order was not complied with, BD would either initiate prosecution or engage a contractor to remove the UBW at the owner’s expense to clear the “outstanding” order.

Outstanding Orders

4. As at 31 December 2003, there were 56,972 outstanding orders, 671 of which had been issued in 1990 or before.

Clearance of Backlog

5. In July 2000, the then Director of BD set up a dedicated team to clear long outstanding orders. In mid-2002, a comprehensive electronic database was established, which facilitated effective monitoring of outstanding orders. In mid-2003, the Director set up a Progress Monitoring Committee to oversee progress of all outstanding cases and give directions on difficult ones. With additional resources for 2004/05, BD set new targets to speed up the clearance of outstanding orders. The targets and actual progress were updated monthly on BD’s webpage.

Observations and Opinions

6. BD had hitherto been grossly dilatory in clearing some outstanding orders. However, in 2000, it was determined to rectify the situation with a revised policy and new measures. The number of outstanding orders has reduced significantly since the beginning of 2004. BD has undertaken to continue its positive efforts. Accordingly, The Ombudsman did not initiate a direct investigation on the matter.

CIVIL SERVICE BUREAU (“CSB”), ELECTRICAL AND MECHANICAL SERVICES DEPARTMENT (“E&MSD”), HOME AFFAIRS DEPARTMENT (“HAD”) AND OFFICE OF THE TELECOMMUNICATIONS AUTHORITY (“OFTA”)

Case No. OMB/DI/124

The Use of Bilingual Information Materials

Official Languages Policy

It is Government policy that materials meant for the general public should be bilingual and that only under exceptional circumstances, with strong operational or financial considerations, should monolingual materials be issued.

2. CSB regularly reminded departments and public organisations of the need to ensure that all written materials meant for public consumption were in both English and Chinese.

Implementation

3. It came to our notice that certain materials issued by E&MSD, HAD and OFTA were in Chinese only. The departments explained that such monolingual materials were of a supplementary nature, or there was a time gap in printing the two versions, or the target readers were mainly Chinese.

Observations and Opinions

4. We considered none of the excuses to be within the exceptions of strong operational or financial considerations, particularly when the materials carried no indication whatsoever in English even on the subject or some reference to a source where information in English could be obtained. Furthermore, we must not assume that all target readers in a multi-racial society like Hong Kong could understand the local language.

5. We suggested that, even in the exceptional circumstances, monolingual materials should provide in the other language:

- (a) the subject or a bilingual caption; and
- (b) a brief message directing the recipient to a source where further information in that language could be obtained.

6. The departments agreed that there was room for improvement in their arrangements and that in future they would adhere more closely to the bilingual requirements in issuing materials. They had accepted and implemented our suggestion.

7. In addition, CSB with responsibility for Official Languages would meet regularly with departmental secretaries and monitor implementation of the Government policy on languages.

HOUSING DEPARTMENT (“HD”)

Case No. OMB/DI/113

Repair of External Wall Cladding at Housing Estate

Background

Glass mosaic tiles had been found falling off the external walls of a Home Ownership Scheme estate completed in 1995. In July 1999, HD appointed a building surveyor to conduct a comprehensive survey of the external walls. This revealed in May 2000 that about 5% of the total area of the external walls had debonded tiles and the remaining 95% of the tiles were in potential danger of debonding. The surveyor recommended that all existing tiles and cement render backing be replaced.

2. HD acknowledged its obligation to replace the debonded 5% of the tiles but questioned the surveyor’s assessment on the remaining 95%. The Department proposed to the owners of the estate three options for remedy:

- (a) “patch repairs” of the debonded tiles;
- (b) complete removal of all tiles and replacement by acrylic paint; and
- (c) “systematic repairs” to the external walls, i.e. “patch repairs” of the debonded tiles and “mechanical pinning” of the entire tiled surface.

3. The Mutual Aid Committees of the estate rejected option (b) outright and instead asked for complete replacement of all tiles. HD indicated in May 2001 that due to the lack of support from the owners for option (c), it could only adopt option (a). Nevertheless, it continued to try seeking their support for option (c) through demonstration of “mechanical pinning” work and an opinion survey. HD believed that “mechanical pinning” of the entire tiled surface constituted “improvement works”, which required unanimous consent from the owners under the Deed of Mutual Covenant of the estate.

4. In October 2003, HD appointed another building surveyor to survey the walls to determine the extent of debonding. This indicated in early 2004 that about 5% of the tiles had debonded and had to be replaced. In June 2004, HD commenced tendering for option (a) above - a lapse of three years since the options were mooted.

Observations and Opinions

5. The disagreement between HD and the building surveyor over the need to replace all the tiles and the question of whether “mechanical pinning” constituted “improvement works”, thus requiring unanimous consent from the owners, were issues of professional judgement, rather than administrative matters subject to investigation by this Office. Our focus was, therefore, whether HD could have repaired the wall cladding much earlier.

6. We noted that HD preferred option (c) as it would improve the stability of the entire tiled surface. It had tried its best to sell that option to the owners, but it should have known that its chance of success in securing unanimous consent from the owners to any of the options was very low. By making an early decision to pursue option (a), which would discharge its obligation, HD could have avoided a delay of two to three years.
7. We also noted that HD had appointed as its representative to respond to our inquiry an officer deeply involved in the repair project. This raised questions of conflict of interest.

Conclusion and Recommendations

8. HD should remind staff to take great care in analysing the Department's position before commencing any negotiation with stakeholders. In the event of a stalemate, they should be prepared to come to firm decisions instead of continuing futile attempts.
9. HD should also be more judicious in selecting independent and impartial officers capable of representing the Department's views to reply to our inquiries.
10. Nevertheless, there was no systemic fault in this case. The Ombudsman, therefore, considered further investigation unnecessary.

HOUSING, PLANNING AND LANDS BUREAU (“HPLB”), HOUSING DEPARTMENT (“HD”) AND LANDS DEPARTMENT (“Lands D”)

Case No. OMB/DI/120

Administration of Squatter Control

Background

HD has been responsible for squatter control, whereas Lands D is the authority for overall land control. Demarcation of responsibility for control of unauthorised structures had become a matter of interpreting technical terms. Complaints indicated a lack of coordination between the two departments.

2. In 2000, the Administration decided that Lands D should take over squatter control. The two departments agreed to effect the transfer in two phases. The squatter control offices of Kowloon, Hong Kong and Islands were transferred in Phase I on 1 April 2002. However, Phase II involving the transfer of the New Territories offices had yet to take place by February 2004. The Ombudsman, therefore, initiated this direct investigation assessment.

Phase II Transfer

3. The problem of surplus staff was the stumbling block. Through redeployment, HD had reduced the number from 643 to just over 300. However, that was still too many. Conflicting views of the staff unions exacerbated the situation. HPLB started to intervene and coordinate in April 2003.

Observations and Opinions

4. The transfer was a sensible scheme for more cost-effective use of resources and efficient coordination in land and squatter control. This Office considered that Phase II should proceed as planned. As HPLB had intervened, The Ombudsman decided not to take further action.

5. The surplus staff problem called for a flexible approach. In our direct investigation on unauthorised building works (“UBW”) in New Territories Exempted Houses published in August 2004 (Ref: OMB/DI/112), we noted that Lands D’s staff shortage had handicapped its enforcement against UBWs. Deployment of HD’s surplus staff to Lands D should help towards containing the UBW problem, particularly as HD squatter control staff should be well conversant with demolition work.

6. We recommend that HPLB consider expediting the Phase II transfer with staff redeployment. This Office would monitor progress.

INLAND REVENUE DEPARTMENT (“IRD”)

Case No. OMB/DI/121

Information Provided in Tax Assessments for Individuals

Background

Individual taxpayers declare their income together with claims for deductions and allowances in *Tax Return – Individuals* (“tax return”) for the relevant tax year. Each tax return is accompanied by a *Guide to Tax Return – Individuals* and an Appendix. The former explains how to complete the tax return and the latter shows the types and rates of allowances and deductions that may be claimed, along with the rate of tax on each band of net chargeable income.

2. After determining the amount of salaries tax, property tax and/or profits tax payable, IRD issues a separate *Assessment and Demand for Tax* (“tax demand notice”). The design of the tax demand notices for salaries tax is complicated, featuring a combination of boxes and blank spaces for IRD to print the relevant amounts of income, deductions/allowances and tax payable. On the reverse page of the tax demand notice is a box for the Assessor’s Notes to explain any adjustments made to the declared income, allowances and/or deductions.

3. Whilst many taxpayers may accept the amount of tax demanded without attempting to understand how it is calculated, some taxpayers have complained that not enough information was provided to show how their tax had been calculated.

Observations and Opinions

4. Although tax returns and tax demand notices are generally comprehensible and provide individual taxpayers with adequate information, this Office considers that there is room for improvement:

- (a) some of the Assessor’s Notes contain jargon, ambiguity or unexplained statutory references not easily understood by individual taxpayers; and
- (b) tax rates change from year to year and vary for different types of tax. To assist understanding, tax demand notices should contain a breakdown of how the amount of tax has been computed.

Recommendations

5. To ensure the adequacy and comprehensibility of information provided to individual taxpayers, IRD has accepted all our recommendations as follows:

Content of Assessor’s Notes

- (a) To ask a panel of lay members to study and explain what they understand from each of the Notes. If their interpretation is at variance with the meaning intended by IRD, this would indicate that the Note is not clear and should be recast.

Explanation of Tax Computation

- (b) Tax demand notices for salaries tax and personal assessment should be redesigned to an “accounting-type” format to show clearly how the deductions are made and the net taxable income is calculated.
 - (c) All the figures are to be printed in boxes and unused boxes struck out, instead of a combination of boxes and blank spaces.
 - (d) A tabular form should be used to show how the total amount of tax payable has been computed.
6. IRD has set up a working committee to review the Assessor’s Notes, design of tax demand notices and other commonly used forms. The new tax demand notices are expected to be put to use in July 2005.

LEISURE AND CULTURAL SERVICES DEPARTMENT (“LCSD”)

Case No. OMB/DI/122

Action against Burning of Candle Wax at Mid-Autumn Festival

The Mid-Autumn Festival (“the Festival”) is a major festival when large crowds gather in public places to celebrate, often with candles. However, from time to time there were media reports of injuries caused by the melting or burning of candle wax for fun.

2. LCSD was responsible for public safety and cleanliness in public pleasure grounds. Prior to and during the Festival, LCSD would publicise extensively to advise the public to keep the environment clean and not to melt or burn wax. During the festive period, its staff would patrol to monitor leisure venues. LCSD had issued operational guidelines to staff.

3. LCSD deployed about 1,000 staff members each day during the Festival to patrol various leisure venues. They were responsible for maintaining order, giving verbal warning to visitors not to burn wax or to litter and taking action against wax burning, illegal hawking, littering or defacing Government property.

4. Members of the public had become more conscious of the danger of wax burning and the need to keep the environment clean. There had been visible improvement in the cleanliness of the leisure venues after the festive period and decline in the number of injuries caused by wax burning.

5. As administrative arrangements had been put in place against wax burning activities, The Ombudsman did not initiate a direct investigation.