

Synopsis of Cases under Formal Investigation by The Ombudsman

I. Cases brought forward from the 4th quarter 1999

Mishandling the arrangements for issuing and collecting ballot papers; not recounting ballot papers despite the request of a candidate; and delay in responding to the complainants' enquiry letters

L/M (1549) in HD(CR) 1/125 - OMB 1999/2829-2836

The complainants are TPS owners of Heng On Estate. They complained against the Department for mishandling the balloting arrangements for the formation of the Heng On Estate Owners' Corporation (OC) at a meeting held on 23 August 1998. The complainants alleged that the Department had failed to check the identities of owners, and as a result, some participants who were not owners had been issued ballot papers and given the right to vote. Since no serial numbers were printed on the ballot papers, the complainants suspected that counterfeit ballot papers were counted.

The Housing Authority (HA) has treated those purchasers of property as owners as long as they have completed the relevant assignments. It is expected that more owners would come forward in the OC formation meeting to enhance a higher level of participation and representation. This has, unavoidably, represented a different interpretation with the Building Management Ordinance whereby 'owner' means a person needed to be registered in the Land Registry.

Different colour had been used for balloting papers to represent different % of undivided shares and to ease the counting procedures. In order to avoid identifying the identity of the voters, no serial numbers were printed on the ballot papers.

On completion of the counting procedures for the third stage of election, an unsuccessful candidate (who is one of the complainants) requested for recounting of ballot papers. However, the estate staff did not make the recounting arrangement on the same day as requested. In this connection, the complainants sent two enquiry letters to the Department on 19 and 25 September 1998 and was dissatisfied that the Department did not give them a reply until 14 October 1998.

When the unsuccessful candidate lodged his request, some of the

voters had already voted for the fourth stage of election and some of the owners had already left the venue. After discussing with the representative of Home Affairs Department and taking careful consideration of the environment, the Department decided that it was inappropriate to recount the ballot papers on the same day. The ballot papers were sealed on the spot and recounted on 3 September 1998.

Investigation Report issued by The Ombudsman in April 2000 concluded the case as partially substantiated. The Ombudsman recommended that the Department should consider:

- (1) standardizing the format of the voting papers in order to prevent unauthorized duplication; and
- (2) providing training to equip estate staff with adequate knowledge to tackle the problems arisen from OC formation.

The Ombudsman's recommendations have been accepted by the Department and the following improvement measures were adopted:

- (1) in order to avoid unauthorized duplication and forgery, the printing of voting papers has already been standardized. Each voting paper was also chopped for the sake of distinction.
- (2) sufficient training/seminars and experience sharing meetings on OC formation are being provided to estate staff concerned, so that they are able to tackle the problems encountered during OC formation meetings.

Mishandling of a request for maintenance services in Kam Fung Court, hence delaying the owner's claim for compensation from the Contractor L/M (1570) in HD(CR) 1/125 - OMB 1999/2691-2692

The complainant is a flat owner of Kam Fung Court. He took over the flat in May 1997. He reported defects to the management agency which took 41 days to complete the maintenance works. The complainant alleged that due to the unfair judgment made by the estate office, he was rendered to take more than two years to get compensation from the Contractor.

The complainant reported to the management agency about peeling of plaster in the living room ceiling and dirt on aluminium windows in June 1997. Though both items were not included in the defect report submitted after intake, they were made good by the Contractor. The complainant, however, alleged that the repair work had adversely delayed his intake and thus claimed for damages. After prolonged negotiation, the complainant finally reached an agreement with the Contractor on the sum of compensation.

The complainant also complained that the Department did not observe his request and referred his complaint letter to the management agency to reply.

The complainant further complained against the Department for the delay in handling his complaint about exposure of steel reinforcement in external walls of the window sill. The Contractor would arrange for the repair works upon confirmation of the complainant on the date available.

Investigation Report issued by The Ombudsman in March 2000 concluded the case as not substantiated.

Refusal of a request from Portland Street rooftop squatters for rehousing to interim housing in Kwai Chung/Tsuen Wan, but reserving those interim housing for Diamond Hill squatters
L/M (1607) in HD(CR) 1/125 - OMB 1999/3357-3360

The complainants are rooftop squatters in Portland Street. The Building Department issued the clearance order in October 1999. The Housing Department has arranged to rehouse the affected clearnees to Long Bin Interim Housing (IH) in Yuen Long.

The complainants were not satisfied with the environment and facilities in Long Bin IH, such as poor fire safety equipment, water seepage, lack of social facilities, etc. They requested to be rehoused to IH in Kwai Chung/Tsuen Wan. Their request was turned down by the Department because the IH in Kwai Chung/Tsuen Wan had been reserved for rehousing the squatters affected by the clearance of Diamond Hill Squatter. The complainants alleged that the arrangement was unfair.

The complainants sent a letter to CHA on 1 November 1999 and was dissatisfied that no substantive reply was received until 7 December 1999.

There were a total of six families affected by the clearance. Two families were eligible for Anticipatory Housing through the General Waiting List and had already accepted public rental housing (PRH) offers. The other two families' rehousing eligibility were upgraded to PRH on compassionate ground as recommended by Social Welfare Department and had accepted PRH offers already. As regards the remaining two families, they had accepted offers of IH units at Shek Lei (II) Estate.

The Draft Investigation Report prepared by The Ombudsman in May 2000 concluded the case as partly substantiated. The Ombudsman recommended that the Department should consider improving the procedures in handling complaints and issuing guidelines for officers to follow.

The Department has accepted the Ombudsman's recommendations and conducted an internal review on the procedures in handling complaints. Detailed guidelines had been drawn up for the receipt of complaints and the subsequent follow-up work including the establishment of a bring-up system for monitoring progress of the cases.

II. New cases in the quarter

Inadequate supervision of construction works in Charming Garden
L/M (1557) in HD(CR) 1/125 - OMB 1999/2936

The complainant is a flat owner of Charming Garden. He found many cracks on the walls and ceiling of his flat. He alleged inadequate supervision of the construction works on the part of the Department.

The complainant alleged that cracks on the walls were discovered in his flat one year after handover. He was not satisfied with the report of the Registered Structural Engineer of the Developer that those cracks were due to long term drying shrinkage of cement material which would

not affect structure safety, and that general crack repair should be adequate to solve the problem. The complainant refused the Developer's request to repair the wall cracks and asked to change for another flat. The complainant's flat was finally sold to HA on 17 December 1999 and all repair works were completed on 23 December 1999.

Investigation Report issued by The Ombudsman in April 2000 concluded the case as unsubstantiated.

Withholding information about building qualities when selling HOS flats in Tin Fu Court

L/M (1632) and (1645) in HD(CR) 1/125 - OMB 2000/0025-0030, 0061, 0066, 0081, 0088 & 0201, 1999/0289 & 2000/0456

The complainants are the prospective owners of Tin Fu Court. They complained that the Department did not disclose the settlement figures of Blocks J and K of Tin Fu Court when selling the flats under Phase 21A of Home Ownership Scheme (HOS). The complainants alleged that they had been lured to purchase their flats without all facts presented to them in full detail.

Before the Building Committee endorsed on 23 December 1999 to release the settlement figures of all public housing under construction, there was no policy requiring the Department to disclose the settlement figures. Moreover, the Department did not find the buildings in Tin Fu Court had any safety problems structurally before sale. The Department, therefore, did not disclose the settlement figures before or during the flat sale.

Purchasers of Blocks J and K of Tin Fu Court (sold under HOS Phase 21A) are not allowed to rescind the Agreement for Sale and Purchase as the buildings are safe and the enhancement work to foundation will be completed before the flats are handed over to purchasers. Notwithstanding this, the Department will take a sympathetic approach in addressing individual difficulties encountered. Requests for rescission without forfeiting the deposit will therefore be considered on individual merit.

Detailed case reports have been forwarded to The Ombudsman in February and March 2000. Findings of the investigation are awaited.

Annex D
Table 3 (P. 6)