

CASE SUMMARY

COMPLAINT AGAINST THE HOSPITAL AUTHORITY AND THE URBAN SERVICES DEPARTMENT FOR MALADMINISTRATION IN CONNECTION WITH THE DISPOSAL OF AN UNCLAIMED BODY

Mr A was living in Mainland China while his elderly mother, Madam B, lived alone in Hong Kong. She died in March 1993 of heart disease in a Hospital Authority (HA) hospital. Her body, which was unclaimed, was cremated by the Urban Services Department (USD). Mr A did not know her mother's death immediately. He came to Hong Kong eight months later and tried to claim back her remains and personal belongings. He was aggrieved as he could neither claim back her mother's personal belongings from the hospital despite production of the necessary identification documents, nor able to trace her ashes from the USD.

2. Regarding Mr A's complaint against the HA for failure to return his mother's personal belongings to him, investigation by this Office revealed the following -

(a) According to the Probate and Administration Ordinance, since Madam B died intestate, her personal belongings should be sent to the Official Administrator of the Probate Registry, Supreme Court after her death for safe custody until administration is granted.

(b) According to the HA, a person who wished to claim the personal belongings of an unclaimed body must produce a letter issued by the Probate Registry certifying his eligibility to claim such belongings. Mr A could not produce such a letter when he approached the hospital.

(c) However, due to an oversight of the hospital, her belongings were actually still held by the hospital when this complaint was being investigated in September 1995.

3. Although the actual scene of Mr A's visit to the hospital in November 1993 could not be re-constructed, this Office considers that it is reasonable to believe that Mr A had probably not been advised of the claim procedure when he asked for the return of the personal belongings of his mother. Given his intention of coming to Hong Kong, he would have approached the Probate Registry in the first instance if he had been properly advised by the hospital of the requirement.

4. This Office is of the view that the hospital had handled Mr A's request in a perfunctory manner. Mr A, being a new comer to Hong Kong and with a limited period of stay, could

not possibly be familiar with the legal requirement and the hospital's regulation with regard to the return of her mother's personal belongings. The hospital should have provided him with every possible assistance, including advising him of the claim procedure, the address of the Probate Registry and possibly the means of transport to get there. The non-customer-oriented approach adopted by the hospital staff who dealt with Mr A's request was the main cause of this complaint. As a matter of fact, the personal belongings of Madam B, instead of being deposited with the Probate Registry of the Supreme Court in accordance with the normal procedure as claimed by the HA, were still with the hospital at the time of our investigation, i.e. 2½ years after the death of Madam B. In the circumstance, the complaint against the HA is **substantiated** despite HA's comment that there is no evidence to prove that the hospital staff had adopted a non-customer-oriented approach in handling Mr A's request.

5. On the complaint against the USD, this Office has the following findings and conclusions -

- (a) According to the Public Health and Municipal Services Ordinance, the USD may take possession of any human remains and arrange for their disposal in any manner it may think fit, if it is satisfied that no person who has the right to dispose of the human remains is in Hong Kong or can be readily ascertained or found. No human remains can be cremated without a valid cremation permit or a cremation order issued by the Department of Health (DH). The cremation permit would be issued upon the production of a Certificate of Registration of Death and a Medical Certificate (Cremation) signed by a doctor.
- (b) After Madam B died, both the hospital and the Police had endeavoured to trace her next-of-kin but their efforts proved futile. As Madam B was a recipient of the Comprehensive Social Security Allowance, the Police had also sought assistance of the Social Welfare Department but no useful information could be obtained. Madam B's body was therefore classified as an unclaimed body.
- (c) The hospital had, for more than 13 years, adopted a standing practice to dispose of unclaimed bodies of deceased patients by cremation. The same practice applied to Madam B's case.
- (d) It was not the responsibility of the USD to make a decision on how to dispose of an unclaimed body (i.e. whether by cremation or burial) and it merely acted in accordance with the instructions given by the hospital

or the public mortuary concerned. In this case, the hospital had produced the necessary documents to the USD to instruct disposal by cremation. The USD then followed up accordingly. The ashes were thereafter delivered to the Sandy Ridge Cemetery for final disposal by the Regional Services Department (RSD) as in all other cases of disposal of unclaimed bodies.

6. This Office is satisfied that the USD had closely adhered to its departmental guidelines and procedures in the disposal of Madam B's body according to the instructions given by the hospital and also considers that it is not unreasonable for the hospital to follow the standing practice in this case, having regard to the fact that Madam B's body had remained unclaimed for quite some time. Hence, Mr A's complaint against the USD is **unsubstantiated**.

7. In connection with this complaint, this Office had recommended the USD to consider keeping the individually cremated ashes of unclaimed bodies for a longer period of time before final disposal. The Director of Urban Services had accepted the recommendation and implemented it with effect from 1 December 1995. He had also refined certain minor elements of the procedures and record keeping system in respect of unclaimed bodies and had brought the relevant aspects and recommendations of this case to the RSD for consideration of adopting possible parallel measures. Despite HA's comments quoted earlier, this Office had also recommended that the HA should consider offering a more customer-oriented service to the relatives of deceased persons under similar circumstances.

Office of the Commissioner for Administrative Complaints
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