Introduction

The lead-in-water contamination was revealed on 5 July 2015 with a water sampling investigation in Kai Ching Estate, a public housing complex, confirming that the level of lead present in the water exceeded the World Health Organization standard. The government Report of the Task Force on Investigation of Excessive Lead Content in Drinking Water (the “Report”), which was issued in October 2015, concluded that the leaded solder joints used to connect the water pipes were the cause of excess lead in drinking water.

This article will explore the potential liability of different parties to victims of excessive lead intake. The victims of leaded water have to prove that it is more likely than not that the following parties have been negligent in ensuring the safety of drinking water.

Duty of care and breach of duty

The first issue to consider is do parties owe a duty of care to users of water to ensure that water does not contain excessive lead and is safe for drinking.

The Government

The government, in particular the Water Supplies Department (“WSD”) and the Housing Authority (“HA”), owes statutory duties to tenants in public housing.

The WSD has a statutory duty to “ensure the proper administration and management of the waterworks, and to make due provision for the security thereof” pursuant to section 4(1)(d) of the Waterworks Ordinance (Cap.102) (“WO”). The HA, as the landlord owner and manager of public housing estates, also owes a statutory duty to “manage any housing… having regard to the interests, welfare and comfort of the tenants, owners or occupiers thereof” pursuant to section 4 of the Housing Ordinance (Cap.283).

It is unlikely that the government can exonerate itself from its statutory duties by contracting out the construction or installation of water pipes to main contractors and licenced plumbers. Pursuant to regulations 5 and 6 of the Waterworks Regulations (Cap.102A) (“WR”), for instance, the WSD shall grant permission to contractors for constructing and installing inside services, as well as inspect and approve the same. In other words, even after contracting out the installation of inside services to contractors, the government still owes a duty of care of ensuring that the water is safe for drinking.
According to the Report, no checking had been conducted on whether solder joints contained lead; and usual tests of water by government hitherto had never included heavy metals (four types of metals in particular). Therefore, it would appear that the government has breached its duty of care.

**The main contractors and the licenced plumbers**

The main contractors who constructed public housing estates and their licenced plumbers who installed water pipes generally owe a duty of care to residents to ensure that the solder joints connecting the water pipes do not contain lead. A person must take reasonable care to avoid acts or omissions which one can reasonably foresee would be likely to injure persons who are so closely and directly affected by one’s act or omissions: *Donoghue v Stevenson* [1932] AC 562. The main contractors generally owe a duty of care to residents as it is reasonably foreseeable that their use of leaded solder joints for connecting water pipes may affect water quality and thus inflict harm on the residents’ health.

The standard of care of the main contractors/licenced plumbers is the standard that would be exercised by a reasonably prudent main contractor/licenced plumber. Regulation 20 of the WR states that every pipe shall be of the British Standard (“BS”). The Report’s findings show that the lead contents of the solder joints tested were 33%–41% which were well above the limit for lead-free solder stipulated in the BS of 0.07%. It is arguable that no reasonably prudent main contractors/licenced plumbers would have deviated from the WR and the BS, and therefore the main contractors/licenced plumbers responsible for constructing and installing the water pipes with leaded solder joints have breached their duties of care.

**Causation: are identified health problems caused by breach of duties?**

Excessive lead intake may lead to extensive health problems, such as neurological impairment, impaired renal function and adverse pregnancy outcomes. The victims have to prove that identified health problems have been caused by drinking contaminated lead water. That is to say, but for the different parties’ breach of their duties, one would not have had excessive lead intake thereby causing the health problems.

**What can you get as damages?**

If one succeeds in proving liability (establishing a duty of care, breaches, causation foreseeability) entitlement to damages shall follow. Common items of damages include pain suffering and loss of amenities, loss of earnings, medical expenses and expenses on rectifying water quality. Long term consequences such as shortened life span may also be taken into account in the assessment of the damages.