# THE GOVERNMENT MINUTE

# IN RESPONSE TO

THE ANNUAL REPORT OF
THE OMBUDSMAN 2022

**Government Secretariat**
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# THE GOVERNMENT MINUTE IN RESPONSE TO THE ANNUAL REPORT OF THE OMBUDSMAN 2022

## Introduction

The Chief Secretary for Administration presented the Annual Report of The Ombudsman 2022 (the Annual Report) to the Legislative Council at its sitting on 13 July 2022. This Government Minute sets out the Government's response to the Annual Report. It comprises three parts – Part I responds generally to issues presented in the section *The Ombudsman's Review* of the Annual Report; Parts II and III respond specifically to the recommendations made by The Ombudsman in respect of the full investigation and direct investigation cases in the Annual Report.

## Part I
## – Responses to Issues presented in the section *The Ombudsman's Review* of the Annual Report

The Government notes that The Ombudsman summarised eight direct investigation and 92 full investigation cases in the Annual Report. This Minute responds to the eight direct investigation and 41 full investigation cases for which recommendations were made by The Ombudsman. The vast majority of the 139 recommendations made by The Ombudsman were accepted and have been or are being implemented by the government departments and public bodies concerned.

2. The Government understands that the public expectations towards public services has always been rising. Despite the challenges brought by the epidemic and others, departments and public officers will continue to stay committed and remain steadfast in performing their duties, endeavoring to maintain the quality of public services.

## Part II
## – Responses to recommendations in full investigation cases

## Buildings Department and Food and Environmental Hygiene Department

**Case No. 2020/0049A (Buildings Department) – (1) Improper handling of the restaurant licence application of a restaurant; and (2) Failing to take proper follow-up action against the allegedly unauthorised construction works of the restaurant**

**Case No. 2020/0049B (Food and Environmental Hygiene Department) – (1) Improper handling of the restaurant licence application of a restaurant; (2) Failing to take proper follow-up action against the allegedly unauthorised construction works of the restaurant; and (3) Failing to take proper follow-up action against the allegedly unauthorised extension of the restaurant and its hygiene problem**

### Background

The complainant was the owner of a ground-level shop on a certain street in a certain district. The adjoining shop was a restaurant (Restaurant A). Since November 2017, the complainant and her daughter had repeatedly lodged complaints with the Food and Environmental Hygiene Department (FEHD) and the Buildings Department (BD) against Restaurant A for carrying out the following unauthorised building works (UBWs) in the yard of the restaurant that opened to the rear lane (the Yard) –

(a) alteration/removal of a wall in the Yard (the Partition Wall);

(b) installation of a Ventilation Duct whose size did not tally with that stated on the plan; and

(c) connection of a Plastic Pipe to the bottom of the abovementioned Ventilation Duct.

2. In November 2018, FEHD replied to the complainant that no irregularities of Restaurant A had been found and Restaurant A had already been issued with a licence under the existing restaurant licensing mechanism. Subsequently in June 2019, FEHD pointed out in its written reply to the complainant that an inspection in 2019 found the Partition Wall altered (an opening was made on it) and the Plastic Pipe was connected to the Ventilation Duct. In January 2020, however, FEHD approved Restaurant A's application for transfer of licence.

3. In June 2018, BD replied to the complainant that the alteration of the Partition Wall which involved reinstatement of the opening with bricks was exempted works, while the Ventilation Duct and the Plastic Pipe concerned were amenity features, therefore no action would be taken by BD. In its reply in September 2019, however, BD stated that enforcement action(s) would be taken against the supporting frame of the Ventilation Duct (the Supporting Frame) as it projected more than 600 mm from the external wall, which was not in compliance with the specifications of minor amenity features.

4. The complainant was of the view that FEHD and BD failed to follow up on the complaint effectively and were inconsistent in their replies. As such, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against the aforesaid two departments. The allegations made is set out in the following paragraphs.

5. The complainant considered that although the aforementioned unauthorised construction works had already existed when Restaurant A submitted an application for a restaurant licence in 2015, the departments still granted the restaurant licence to Restaurant A in November 2016 and renewed the licence for several times subsequently. In January 2020, the application for transfer of licence of Restaurant A was also approved. The complainant viewed with suspicion that FEHD and BD approved the

licence applications of Restaurant A without properly taking into consideration the unauthorised construction works (Allegation (a)).

6. As pointed out by the complainant, the plan submitted by Restaurant A for the licence application did not reflect the actual conditions of the premises. Specifically, the size of the Yard indicated in the plan was obviously smaller than that of the actual area. The complainant opined that FEHD and BD had not followed up on the inconsistency between the plan submitted by Restaurant A and the actual conditions of the Yard before issuing the licence. This amounted to maladministration (Allegation (b)).

7. FEHD failed to take proper follow-up actions against various unauthorised construction works of Restaurant A. It had not taken any appropriate actions even irregularities were found. The complainant pointed out that during the inspection on 11 July 2018, two FEHD officers were informed of the issues about the Partition Wall and the Plastic Pipe on the spot. In addition, the complainant noted that the Fire Services Department had notified FEHD of the relevant situation before the inspection. However, FEHD replied that it only knew that there were such works after the inspection conducted in 2019 (Allegation (c)).

8. BD had failed to take proper follow-up action against the UBWs of Restaurant A and had delayed in taking follow-up action against the Supporting Frame; and BD also instigated prosecution action against the owner of Restaurant A even after knowing that the owner had deceased (Allegation (d)).

9. The complainant was of the view that Restaurant A had illegally extended the area of the restaurant premises because the Ventilation Duct and the Supporting Frame were installed outside the licensed area approved by FEHD. Such works also led to rodent infestation and adverse hygiene conditions. However, no follow-up action had been taken by FEHD (Allegation (e)).

**The Ombudsman's observations**

*Allegation (a)*

10. FEHD explained that, Restaurant A's application for restaurant license was processed in accordance with the procedures. FEHD also pointed out that no irregularities were found in its final inspection at Restaurant A. BD had explained that the ventilation duct of Restaurant A was found exceeding the requirement for existing UBWs that need not be included in the certification system, and had requested Restaurant A to rectify the situation according to the established procedures. The applicant of Restaurant A subsequently confirmed FEHD that the relevant requirement had been complied with.

11. Upon detailed consideration of all the relevant information including the relevant work records, the Office considered that FEHD and BD had vetted the restaurant licence application of Restaurant A in accordance with the existing restaurant licensing mechanism and procedures. Thus, Allegation (a) was unsubstantiated.

*Allegation (b)*

12. Though outside the area under the licence application, the Yard was directly related to the premises under application and contained installations of Restaurant A. Therefore, it was understandable for the complainant to perceive that the plan submitted by Restaurant A should reflect the actual size of the Yard. However, in processing restaurant licence applications, the primary consideration of the departments was whether the design and installations of the restaurant were compliant with the health, building and fire safety requirements. As explained by the departments, the staff had confirmed during the inspection that the design of Restaurant A and its ventilating system tallied with the plan, and the size of the Yard would have no bearing on the safety assessment of the building. Therefore, they did not follow up further on the plan. The Office was of the view that it would be optimal for a plan to reflect the

actual conditions. However, it was also unnecessary for the departments to require the applicants to re-submit application documents over something that will not sway the licensing decision because this may lengthen the approval time. In this case, it was not unreasonable for the departments to, based on the actual circumstances, accept the plan for the application of Restaurant A without prejudice to health, building and fire safety. Therefore, the Office opined that Allegation (b) was unsubstantiated.

*Allegation (c)*

13. In following up on the complaint against the suspected unauthorised alteration of the licensed restaurant, the lack of rigour of FEHD staff in checking the Plastic Pipe during the inspection in July 2018 resulted in the misjudgement that the Plastic Pipe was compliant with the plan. In its reply signed by the District Environmental Hygiene Superintendent in November 2018, FEHD still gave a response to the complaint on the basis of the staff's misjudgement. This suggested that there were inadequacies in the internal monitoring mechanism. Although FEHD did rectify its judgement later and took enforcement action against Restaurant A, the situation was far from satisfactory. The Office opined that Allegation (c) was partially substantiated.

*Allegation (d)*

14. As regards the concerned partition wall, BD did not take further action against the relevant alteration works as it was considered exempted works, and hence no maladministration of BD was found. However, when handling the ventilation ducts, according to the inspection records in June 2018, BD's staff did not carry out the assessment on the Supporting Frame, which could only be confirmed not meeting the criteria for amenity features after the case review in March 2019, and hence considered an actionable item. Notwithstanding that it was difficult to ascertain whether the UBW of the Supporting Frame had been built since June 2018, the Office considered that BD fell short of

conducting a comprehensive assessment of the ventilation ducts (including the Supporting Frame) during the inspection.

15. For the follow-up action on the removal order, BD clarified that BD had revoked prosecution action against the owner of Restaurant A upon knowing that the owner had deceased, rather than knowingly instigating the prosecution against the deceased. The Office considered that BD had taken appropriate follow-up actions with the executor with regard to the removal works despite the revocation of prosecution against the deceased owner according to the law.

16. Based on the above, the Office considered Allegation (d) partially substantiated.

*Allegation (e)*

17. FEHD clarified that it had granted approval to the Ventilation Pipe and Supporting Frame, so it would not constitute unauthorised extension of the restaurant premises. FEHD also gave an account of the follow-up actions against the issues on rodent infestation and hygiene problem raised by the complainant. The Office found no evidence of maladministration by FEHD in following up on such matters. Therefore, Allegation (e) was unsubstantiated.

*Other observations*

18. The Office also observed that, under the existing restaurant licensing mechanism, FEHD would refer the submitted layout plans and the ventilation system plans to BD and the Fire Services Department for advice when processing a restaurant licence application. However, when processing applications for restaurant licence renewal, FEHD did not require licensees to submit any certification on building safety and did not seek advice from BD. Upon issuance of restaurant licence, FEHD would only seek BD's advice under the circumstances of processing changes to layout plans and applications for licence transfer. That said, if

FEHD suspected that a licensed restaurant was in contravention of the Buildings Ordinance, the case would be referred to BD for follow-up. Both FEHD and BD considered that the existing restaurant licensing mechanism had struck an appropriate balance between building safety and business-friendliness. The Office considered their explanations reasonable.

19. The Office considered that the current practice of providing information to BD unilaterally by FEHD was not entirely ineffective. However, in order to combat UBWs of licensed restaurants more effectively and to ensure the building safety of licensed restaurants as well as public safety, the Office was of the view that FEHD and BD should study the feasibility of developing an information sharing mechanism, i.e. apart from consulting or referring to BD for follow-up action on unauthorised alteration of licensed restaurants by FEHD, BD may notify FEHD to take necessary action under the licensing mechanism with regard to BD's enforcement action against UBWs of restaurants under the Buildings Ordinance.

20. In light of the above, The Ombudsman considered that the complaint against FEHD and BD partially substantiated.

21. The Ombudsman recommended BD to –

(a) enhance staff training on inspection of UBWs, and remind staff to fully inspect every component of the concerned building work.

The Ombudsman recommended FEHD to –

(b) study the feasibility of setting up a monitoring mechanism regarding the inspection of licensed restaurants. Frontline officers who were responsible for handling complaints against restaurants with irregularities should record specifically the issues of complaint during inspection and take photos whenever

possible for filing as well as follow-up actions and cross-referencing in the future to avoid possible controversy; and

(c) enhance training for the staff on monitoring licensed restaurant premises and provide clear guidelines to clarify under what circumstances an alteration to the licensed catering premises would be considered deviated from the approved plan.

The Ombudsman recommended BD and FEHD to –

(d) jointly review the prevailing regulatory policies on unauthorised alterations of licensed restaurants. The two departments should study the feasibility of establishing a mechanism for exchange of information based on the severity and risk level of the irregularities, with a view to stepping up enforcement against unauthorised building works of restaurants.

**Government's response**

22. BD and FEHD accepted The Ombudsman's recommendations and have taken the following follow-up actions.

*Recommendation (a)*

23. BD has briefed its staff on the case details and the relevant recommendations from The Ombudsman through internal meetings. BD's staff were also reminded to fully inspect every component of the UBWs according to BD's internal guidelines.

*Recommendation (b)*

24. FEHD had issued guidelines to remind frontline officers that when handling complaints against non-compliant food premises, findings of the follow-up investigations should be specifically recorded and

photos should be taken and filed whenever possible for future follow-up actions or reference.

*Recommendation (c)*

25. FEHD had requested district offices to arrange relevant training for frontline officers with actual operational needs. FEHD would also enhance such training.

*Recommendation (d)*

26. As an established practice, when FEHD officers find deviations from the approved plan in the food business licence issued to a food business premises during inspection, they would, in addition to taking their enforcement actions, refer the case to the BD to investigate whether UBWs are involved. The two departments are now working together to enhance the referral mechanism in such a way that BD would also refer cases of food business premises with UBWs to FEHD to investigate and take appropriate enforcement actions against deviations from approved plans under the food business licence.

## Buildings Department, Food and Environmental Hygiene Department and Lands Department

**Case No. 2021/1516A, 2021/1516B and 2021/1516C – Failing to take effective enforcement action against prolonged occupation of the Government land outside a shop at a village house and the operation of a wet market thereon**

### Background

27. According to the complainant, the Government land (the Land) outside a shop at a village house had been occupied for a prolonged period of time for the operation of a wet market. Apart from causing obstruction to pedestrians and environmental hygiene problem (the problem), the unlawful occupation had rendered the complainant unable to install an electricity meter for her newspaper stand. Despite the complaint lodged by the complainant with the Food and Environmental Hygiene Department (FEHD) and the Lands Department (LandsD) in mid-2020, the problem persisted. Considering that FEHD and LandsD had failed to take effective enforcement action against the problem, the complainant lodged a complaint with the Office of The Ombudsman (the Office).

28. Having examined the replies from LandsD and FEHD and the case details, the Office found that the Buildings Department (BD) was also involved, and subsequently decided to conduct a full investigation into the complaint against FEHD, LandsD and BD.

### The Ombudsman's observations

29. The Office understood that the complainant was aggrieved by the unsuccessful application for power supply for her newspaper stall, but it was not a matter that can be investigated by the Office under The Ombudsman Ordinance. In the current case, the focus of the Office's

investigation was whether there was maladministration by the departments concerned in following up the problem.

*BD*

30. Regarding the complaint itself, BD was neither the department directly handling it, nor the one the complainant was dissatisfied with.

31. The complaint was about the prolonged unlawful occupation of the Land for the operation of a wet market, which caused obstruction to pedestrians and environmental hygiene problem. When conducting a joint operation with other departments, the District Lands Office (DLO) found the subject unauthorised building works (UBWs). DLO thus referred the case to BD for follow-up action. The Office's investigation revealed a serious delay in BD's reply to DLO. BD admitted the deficiency and had reminded its staff to make improvement.

32. Based on the above findings, The Ombudsman opined that BD had deficiency in matters concerning the complaint.

*FEHD*

33. The core function of FEHD was to maintain environmental hygiene. Hence, it accorded priority to handling cases of illegal hawking or obstruction to scavenging operations. In the event of more complicated ones or those that involve several government departments, the local District Office would co-ordinate inter-departmental joint operations to curb the irregularities.

34. The Office conducted a site inspection at about 3:00 p.m. on 25 June 2021 and found that the canopy in question covered the open space (i.e. the Land) in front of several shops selling fruits and vegetables/groceries at a village house. Goods were placed over half of the ground area, but there were few patrons and no obstruction to

pedestrians was found. The environmental hygiene condition of the site was fair.

35. FEHD explained that the District Environmental Hygiene Office had repeatedly deployed staff to conduct inspections on the Land, but no obstructions to passageways, illegal hawking activities or obstruction to scavenging operations were found most of the time. In addition, FEHD did participate in the joint operation on 9 December 2020 and enforcement action was taken based on ground situation.

36. From the administrative perspective, FEHD had followed up on the problem under its purview. With the above, The Ombudsman considered this complaint against FEHD unsubstantiated.

37. Nevertheless, the Office's site inspection on 25 June 2021 found that the Land was still used for placing/selling goods and the problem had yet been thoroughly resolved. Thus, it was necessary for FEHD to continue to follow up on the problem under its purview, or in collaboration with other departments.

*LandsD*

38. Regarding the complaint, the DLO concerned had conducted on-site inspections; requested the District Office to co-ordinate a joint operation; taken part in the joint operation on 9 December 2020 and posted statutory notices requiring the persons concerned to cease occupation of the government land by 9 December; and referred the case of unauthorised structures detected during the joint operation to BD for follow-up. In the Office's opinion, DLO had followed up on the problems as appropriate under its purview.

39. Regarding the lack of reply from BD after DLO's referral concerning unauthorised structures (including the canopy) detected during the joint operation on 2 September 2020, LandsD provided explanations for why DLO had neither pursued the case nor escalated it

to higher authorities for action after 18 December 2020. While noting LandsD's explanations, the Office considered that the issue actually arose from the joint operation on 9 December 2020 that DLO had participated in. The operation was clear in its purpose, which was to take land control action against occupation of government land by unauthorised structures. On the day the joint operation ended, DLO requested BD to follow up on the pillar-linked canopy and indicated its willingness to assist in any joint clearance operation to be led by BD. Nevertheless, DLO subsequently did not take proactive action to complete the follow-up work of the joint operation. The Office considered that the removal of structures unlawfully occupying government land was the purpose of the joint operation even though the pillars fell outside DLO's enforcement priorities. Having indicated to BD its willingness to collaborate, DLO should have followed up with BD in a timely manner to arrive at an early decision on ways for pillar removal, instead of waiting passively for a reply. It was not until the Office had stepped in that BD gave a reply to DLO on 2 December 2021. With a lapse of almost one year, DLO thus missed the early opportunity of devising a proposal for pillar removal.

40. In view of the undesirable circumstances arising from DLO's inactive follow-up mentioned above, The Ombudsman considered that although the complaint against LandsD by the complainant was unsubstantiated, there were other inadequacies found.

41. The Ombudsman recommended that –

(a) BD should offer LandsD the required support for devising a proposal to remove the pillars as soon as possible for implementation. If necessary, LandsD should approach relevant departments for co-ordinating another joint operation;

(b) LandsD and BD should learn their lesson from the incident and review how to prevent a recurrence of the above situation; and

(c) FEHD should explore long-term solutions to the obstruction or/and environmental hygiene problem arising from the illegal use of the Land for placing/selling goods.

**Government's response**

42. BD, FEHD and LandsD accepted The Ombudsman's recommendations and have taken the following follow-up actions.

*Recommendation (a)*

43. BD, FEHD, the Hong Kong Police Force and the Home Affairs Department participated in a joint operation organised by LandsD. In late August 2022, BD and LandsD respectively issued removal orders under the Buildings Ordinance and statutory notices under the Land (Miscellaneous Provisions) Ordinance, requiring the owners concerned to remove the UBWs and the occupiers concerned to cease occupation of the Land within 60 days. With the coordinated efforts of the relevant departments, the owners and occupiers voluntarily removed the UBWs and ceased the illegal occupation of the Land in early November 2022.

44. LandsD has liaised with BD which agreed to jointly handle the clearance of the subject canopy and pillars. Since the complaint was also associated with street management problems such as illegal extension of business and illegal hawking, the Home Affairs Department coordinated a joint departmental operation including BD, FEHD and LandsD which was conducted on 31 August 2022.

*Recommendation (b)*

45. Apart from reminding its staff to follow up the progress of cases closely and reply in a timely manner, BD has also strengthened its communication with LandsD. Where necessary, LandsD officers may contact the supervisors of BD case officers in following up cases.

46. LandsD has issued an email to remind staff of the importance of timely follow-up of cases referred to other departments, including issuing reminder memos to the relevant departments to ensure the referred case could be handled by the relevant departments in a timely manner.

*Recommendation (c)*

47. The alleged obstruction to passageways caused by illegal use of the Land for placing/selling goods by a shop was a street management problem which cut across the purview of a number of government departments. Relevant departments would take law enforcement actions in accordance with their respective powers and responsibilities, and resolve the problem together. The local District Office had, at the request of FEHD, assisted in co-ordinating inter-departmental joint operations. At the same time, FEHD had conducted surprise enforcement actions to combat illegal placing/selling of goods by shops in the vicinity of the Land.

48. With regard to the environmental hygiene and obstruction problems in the vicinity of the Land, FEHD would, apart from arranging daily sweeping and weekly washing of the pedestrian walkways by cleansing contractor, enhance cleansing services based on actual needs, arrange pest control contractors to perform regular pest control, and deploy staff to educate shops and residents in the vicinity of the Land on environmental hygiene and pest control.

## Companies Registry

**Case No. 2020/2705(I) – (1) Perfunctory handling of a company's submission of a Notice of Change of Company Secretary and Director; and (2) Unreasonably refusing to provide the complainant with a copy of the minutes of directors' meetings of the company concerned**

**Background**

49. The complainant is a director of a company (the Company). On 27 September 2019, four sets of "Notice of Change of Company Secretary and Director (Appointment/Cessation)" (the Forms) reporting the appointment of 11 directors for the Company with effect from 11 September were delivered to the Companies Registry (CR) for registration. The Forms were registered by CR on 2 October.

50. On 10 December 2019, the complainant lodged a complaint with CR alleging that two directors of the Company signed the Forms without the consent of the meetings of shareholders or the board of directors. The complainant suspected that the two directors had violated the Company's Articles of Association and made a false document. Upon receiving the complaint, CR requested the Company to provide information or document relating to the appointment of directors. Subsequently, the Company provided a copy of the relevant minutes of directors' meetings (the Board Minutes) to CR.

51. On 22 May 2020, the complainant wrote to CR requesting for the Board Minutes. CR replied to the complainant that as no consent could be obtained from the Company, CR was not able to provide the Board Minutes to the complainant.

52. In light of the above, the complainant lodged a complaint with the Office of The Ombudsman (the Office) on 14 August 2020 against CR alleging that –

(a) CR handled the Forms perfunctorily by registering the Forms without having received the official board minutes signed and confirmed by all directors of the Company (Allegation (a)); and

(b) CR unreasonably refused to provide the complainant with a copy of the Board Minutes and continued to do so even after the complainant had raised dissatisfaction to CR (Allegation (b)).

**The Ombudsman's observations**

*Allegation (a)*

53. The Office noted that CR had not received the relevant complaint before registering the Forms in October 2019. In addition, according to the Companies Ordinance, CR was not responsible for verifying the truth of the information contained in a document delivered for registration. As such, the Office considered it neither improper nor hasty for CR to register the Forms as they were registered in accordance with CR's established procedures on handling registration of documents. Thus, the Office found Allegation (a) not substantiated.

*Allegation (b)*

54. The Office considered it unreasonable for CR to refuse to provide the Board Minutes to the complainant simply based on the Company's objection without taking into account the capacity of the complainant (i.e. director cum shareholder of the Company) and the complainant's right to inspect the Board Minutes. CR explained that it was not suitable for CR to intervene in the Company's internal disputes. In response to this explanation, the Office also pointed out that as the complainant requested for information held by CR, regardless of whether there were any internal disputes in the Company, CR should provide the information as requested unless there were sufficient reasons to refuse the request for information according to Part 2 of the Code on Access to Information (the Code). The Office commented that CR had not

considered the refusal thoroughly and there were insufficient reasons for refusing to disclose the requested information to the complainant. Therefore, Allegation (b) was substantiated.

*Other observations*

55. Although the complainant did not make specific reference to the Code in requesting CR to provide the Board Minutes, paragraph (v) of the Guidelines on Interpretation and Application of the Code (the Guidelines) clearly provides that, in deciding the release or otherwise of a request for information (regardless of whether specific reference was made under the Code), consideration should be given in accordance with the provisions of the Code. That is, a refusal to disclose information under a non-Code request should be based on the reasons for refusal in accordance with the provisions in Part 2 of the Code. In addition, paragraph (vi) of the Guidelines also provides that departments should also advise the requestor of the review and complaint channels if a non-Code request is to be refused. Nevertheless, CR only replied the complainant on 15 July 2020 that it was unable to provide the Board Minutes as no consent could be obtained from the Company, and did not advise the review and complaint channels.

56. To conclude, The Ombudsman considered this complaint partially substantiated and recommended CR to –

(a) review the complainant's request for information pursuant to the relevant provisions of the Code and provide the Board Minutes to the complainant if the Company could not provide sufficient justifications for not consenting to CR's provision of the Board Minutes to the complainant; and

(b) enhance staff training to ensure compliance with the requirements of the Code when handling information requests from the public.

**Government's response**

57. CR accepted The Ombudsman's recommendations and has taken the following measures –

(a) CR has reviewed the complainant's request for information pursuant to the relevant provisions of the Code. Having considered all the information available to CR and the circumstances of the case, CR decided to accept the complainant's request. A copy of the Board Minutes was provided to the complainant in May 2021; and

(b) CR has taken measures to enhance staff awareness of the Code. Apart from holding internal meetings with staff to share the Office's comments and recommendations on the case, CR has also introduced a new thematic training session on the Code in the regular training courses organised for new recruits. Besides, CR has arranged refresher courses on the Code for all staff members. CR will continue to regularly organise the above-mentioned courses, and remind staff to comply with the requirements of the Code when handling information requests from the public.

## Food and Environmental Hygiene Department

### Case No. 2020/2865 – Ineffective control against the illegal dumping of refuse outside a refuse collection point

### Background

58. The complainant had complained to the Food and Environmental Hygiene Department (FEHD) since August 2019 about the refuse or waste illegally discarded outside a Refuse Collection Point (RCP), which caused hygiene and health problems. In response to the complaints, FEHD replied that it had deployed its street cleansing contractor to clear the refuse and upkeep the cleansing condition of the area outside the RCP. However, the problems persisted. The complainant considered FEHD's follow-up actions ineffective and complained to the Office of The Ombudsman (the Office) that FEHD had not taken any enforcement action against the illegal dumping offenders.

### The Ombudsman's observations

59. The Office examined the information related to FEHD's inspections and follow-up actions. FEHD had taken follow-up actions on each of the complaints, including conducting inspections at irregular hours and giving warnings to the waste collection service contractor for the unsatisfactory service quality spotted during its inspections. The Office considered FEHD to have by and large followed up the complaints appropriately. However, the Office noted with concern FEHD's tacit assent given to the public's unregulated deposit of junk/bulky household items (which might be blended with other waste or refuse causing hygiene concerns) outside the RCP beneath the warning banner which was self-contradictory. Given the circumstantial constraint of the RCP which was consistent with the Office's observation on the internal space of the RCP, and to cater to the need for temporary storage of discarded junk/bulky household items, FEHD should have designated an area

outside the RCP appropriately to ensure proper and orderly storage of junk/bulky household items before daily clearance.

60. Overall, The Ombudsman considered this complaint unsubstantiated but there were other inadequacies found. The Ombudsman recommended FEHD to –

(a) designate an area outside the RCP appropriately for temporary storage of junk/bulky household items only before they are transferred for further processing or disposal; and

(b) implement measures to remind the public of proper disposal of other waste/refuse in the containers within the RCP.

**Government's response**

61. FEHD accepted The Ombudsman's recommendations and has taken the following follow-up actions.

*Recommendation (a)*

62. Given that the concerned site is situated in a carpark surrounded by parking spaces, FEHD submitted a proposal to the Transport Department (TD) in May 2021 for the modification of the carpark layout so as to create a designated space for the temporary storage of junk/bulky household items. The proposal is currently under review by TD.

*Recommendation (b)*

63. In order to improve the management of the RCP, FEHD had been adopting a multi-pronged approach to improve the environmental hygiene condition of the RCP and its vicinity by conducting surprise inspections to monitor the performance of contractors; educating the public on how to properly dispose of waste; and stepping up enforcement actions against illegal dumping activities. FEHD staff had conducted

surprise inspections to the RCP concerned to monitor the performance of the contractor.

64. A series of educational and promotional activities were conducted to remind the public that waste should be properly put into the refuse containers in the RCP. These activities included delivering health messages to the public by staff during peak usage hours of the RCP, displaying in the vicinity educational banners on proper waste disposal and distributing relevant anti-littering publicity materials.

65. FEHD had deployed Dedicated Enforcement Teams (DETs) to the RCP concerned for several times so as to step up anti-littering enforcement actions. Although littering activities were not found around the RCP, DETs issued Fixed Penalty Notices to littering offenders in the nearby areas during the operations.

## Food and Environmental Hygiene Department

### Case No. 2020/3780 – Failing to take enforcement action against the goods placed in front of a shop and a large number of polyfoam boxes left on a pavement

### Background

66. Allegedly, for months, a shop in an estate selling vegetables had placed not only goods on a pavement during business hours causing serious obstruction but also polyfoam boxes on a section of pavement outside a soccer pitch in a street (the Site) after 7:00 p.m. every day without moving them indoors until the next morning when the shop opened again, which had forced pedestrians to walk on the carriageway and thus endangering their safety. Considering that the Food and Environmental Hygiene Department (FEHD) had ignored the aforesaid problems, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against FEHD.

### The Ombudsman's observations

67. The Office conducted field inspections of the Site in the mornings of 4 June and 9 June 2021 and found that –

(a) there were neither polyfoam boxes placed at the Site nor articles causing obstruction to street sweeping or washing; and

(b) two shops selling fruits and vegetables (Shops A and B) in a street had illegally extended their business areas. The case of Shop A was particularly severe since goods, junk, paper cartons, polyfoam boxes, waste, etc. were placed in nearby public places occupying an extensive public area. As the pavement was broad enough, the articles concerned had not caused obstruction to pedestrians. However, those articles should have caused obstruction to the scavenging operations of FEHD's contractor.

68. During the inspection on 9 June, the Office found that at least three uniformed officers of FEHD (one of them in white top uniform) were present. However, they failed to take actions against Shops A and B. On the other hand, on-site cleansing workers of the outsourced contractor did not conduct scavenging operations for the Site but just cleared the section of street where no articles were placed.

69. According to FEHD, the empty polyfoam boxes originated from Shop A were handed to recyclers after the shop had put goods on shelves for sale. The recyclers temporarily placed the polyfoam boxes on the pavement at the Site pending conveyance by trucks after around 11:00 p.m. every day. In other words, it was true that those polyfoam boxes were placed on the pavement from daytime to midnight when pedestrian flows were heavier.

70. FEHD quoted the contractor as saying that at least six rounds of street sweeping were conducted for the Site daily. But the contractor's verbal reports showed that the daily cleansing work was completed smoothly without any obstruction caused by the prolonged placement of the polyfoam boxes. The Office was sceptical about this. Since a large area was occupied due to the prolonged placement of polyfoam boxes on the pavement and the contractor had to conduct at least six rounds of street sweeping for the Site daily, it was unjustifiable that those polyfoam boxes had not affected its scavenging operations. As such, it was hardly convincing for FEHD not to further follow up the problem by reason that "it did not affect its scavenging operations".

71. As shown in the information provided to the Office by FEHD, FEHD did follow up the placement of polyfoam boxes and the situation had improved as observed by the staff of the Office during site inspections. Nevertheless, Shops A and B had illegally extended their business areas and placed articles causing street obstruction, and the problem posed by one of the shops was particularly severe. The issue should be squarely addressed, but the deterrent effect of FEHD's enforcement actions against such irregularities seemed insufficient.

72. The Office recognised that FEHD strived to adopt a pragmatic and sympathetic approach that took into account various needs in its enforcement actions. However, if the irregularities had persisted and caused nuisance and/or obstruction to the public, FEHD should not only step up enforcement but also review its existing enforcement strategies (especially on how to tackle street obstruction caused by extension of business areas and placement of articles).

73. Overall, The Ombudsman considered this complaint partially substantiated and recommended FEHD to –

(a) step up enforcement against the shops concerned for illegal extension of business and placement of articles causing obstruction to scavenging operations;

(b) review existing enforcement strategies and take effective measures to curb irregularities; and

(c) liaise with other government departments (e.g. local District Office (DO), the Hong Kong Police Force (HKPF) and local District Lands Office) to formulate an effective management plan.

**Government's response**

74. FEHD accepted The Ombudsman's recommendations and has taken the following follow-up actions

*Recommendations (a) and (b)*

75. Since November 2021, FEHD had accorded higher enforcement priority to the vicinity of the Site in the morning and afternoon when pedestrian flows were heavier, and increased the frequency of surprise operations at peak hours. It had also adjusted its enforcement strategies and action plan, in particular against recalcitrant shops. For street

obstruction offences that are straightforward, clear-cut and easily established (i.e. the irregularities or behaviours involved are indisputably illegal), FEHD's staff would immediately institute prosecutions and other enforcement actions against the irregularities without warning.

76. From November 2021 to January 2022, FEHD issued 56 fixed penalty notices (FPNs), instituted/made 52 prosecutions or arrests, and seized over 572 kilograms of hawker goods and abandoned articles in the vicinity of the Site against illegal shop extension causing obstruction to pavement and illegal hawking. It also issued 48 FPNs against cleansing offences, and issued 167 Notices to Remove Obstruction and instituted six prosecutions against obstruction to scavenging operations in the vicinity of the Site. FEHD would continue to take enforcement actions against illegal extension of business by shops and other environmental hygiene problems in the vicinity of the Site.

*Recommendation (c)*

77. FEHD had liaised with relevant departments, including DO and HKPF, with a view to effectively addressing shopfront extension and illegal hawking in the vicinity of the Site. The following actions had been taken –

(a) under the coordination of FEHD, the frequency of relevant inter-departmental operations had increased from once to twice per month since September 2021, and to three times in January 2022 as the Chinese New Year approached. A total of 11 major joint operations were conducted in the vicinity of the Site from September 2021 to January 2022, more than doubling the five operations performed from January to August 2021. The operations were successful in forging closer cooperation between the departments in tackling various situations concerning street obstruction and taking appropriate enforcement actions under their purview and the powers conferred by the relevant ordinances;

(b) FEHD also collaborated with HKPF to conduct 13 minor joint operations in the vicinity of the Site every month, thereby combating more frequently illegal shop extension which caused obstruction to pavements; and

(c) as some shops at the Site were found to have erected illegal buildings and fixed/mobile structures in public places, blocked means of escape for buildings, added numerous external lighting installations, etc., FEHD had referred the cases to the relevant departments (including the Lands Department, Buildings Department, Fire Services Department, and Electrical and Mechanical Services Department) for follow up.

78. In order to further strengthen the effectiveness of law enforcement against shopfront extension, FEHD had launched a new mode of joint operations in cooperation with HKPF since September 2021, which had been implemented first in Kwun Tong, Kowloon City and Tsuen Wan. The new enforcement mode is that FEHD would take the lead, while the Police would exercise its statutory powers on the removal of obstruction under section 32(1) of the Summary Offences Ordinance (Cap. 228) to require the person concerned to remove the obstructions within a certain time. If the obstructions are not removed within the time given by the Police, FEHD would then remove the obstructions. In addition to summonses or FPNs, shop owners have to face the price of the confiscation of their goods. This has, therefore, increased the deterrent effect substantially and made the joint operations effective. The operations have received positive reviews from the public and relevant District Councils. In light of the effectiveness of the joint operations, FEHD and HKPF had extended the new enforcement mode since early June 2022 to the other three districts covering the location concerned, and in all 18 districts of Hong Kong since October 2022.

## Food and Environmental Hygiene Department

**Case No. 2020/4144 – Failing to take effective enforcement action against the polyfoam boxes placed in public places and street obstruction caused by the shops and the fixed hawker pitches in a street**

### Background

79. Allegedly, for years, many shops in a street (the Location) had habitually placed a large quantity of goods on their front pavements and under a nearby footbridge (the Footbridge), causing obstruction to pedestrians and poor environmental hygiene. The complainant considered that the above problem was due to the Food and Environmental Hygiene Department's (FEHD) failure to take effective enforcement measures. Thus, he lodged a complaint with the Office of The Ombudsman (the Office) against FEHD.

### The Ombudsman's observations

80. The Office conducted site inspections in the vicinity of the street concerned and under the Footbridge on 6 April and 6 July 2021 respectively with observations as follows –

(a) most of the greengrocers and meat shops on both sides of the street at the Location placed goods and miscellaneous articles on their front pavements, or even on the carriageway;

(b) the carriageway concerned had three traffic lanes, with the middle one for trams or other vehicles. Fixed hawker pitches were located on one of the traffic lanes. The goods of many pitches nearly occupied the entire lane. When trams or other vehicles travelled along the middle lane, passers-by or shoppers who stopped to browse the pitches had to dodge out of their way;

(c) during the inspection on 6 April 2021, the Office found that –

i. ten-odd shops occupied the entire pavement with goods and miscellaneous articles, pedestrians had to walk on the carriageway; and

ii. a large quantity of polyfoam boxes were accumulated under the Footbridge;

(d) during the inspection on 6 July 2021, the Office found that –

i. at least five shops occupied the entire pavement with goods and miscellaneous articles, while around ten shops occupied more than half of the pavement with goods and miscellaneous articles; and

ii. no polyfoam box was found accumulated under the Footbridge.

*(I) Shop Front Extensions (SFEs)*

81. According to FEHD, the Location was a blackspot of SFEs. Over the past year, more than 330 complaints were lodged with FEHD about SFEs in the vicinity, indicating the gravity of the problem. However, FEHD had only issued 159 fixed penalty notices (FPNs) and 95 summonses against SFEs, meaning that less than one prosecution was instigated each day.

82. The Office's inspections revealed that the problem of SFEs at the Location remained serious. Many shops even occupied the entire pavement with goods, forcing pedestrians to walk on the carriageway and thus jeopardising public safety. Obviously, FEHD's enforcement was ineffective and did not have sufficient deterrent effect. The Office considered that the problem must be addressed and urged FEHD to take follow-up actions seriously.

*(II) Illegal Extension of Fixed Hawker Pitches*

83. According to FEHD, between May 2020 and April 2021, it received 32 complaints about obstruction by fixed hawker pitches at the Location, and instigated 22 prosecutions against the persons in charge of the pitches for obstruction. In other words, less than two prosecutions were instigated each month.

84. The Office understood that as long as no obstruction was caused to the fire escape or emergency vehicular access, FEHD would allow on a discretionary basis the extension of fixed hawker pitches beyond the approved area within certain limits during the business hours. Nevertheless, the Office's inspections revealed that many fixed hawker pitches at the Location extended their business area to the extent of nearly occupying an entire traffic lane. When trams or other vehicles travelled along the adjacent lane, it might cause danger to passers-by or shoppers stopping to browse the pitches. The Office considered that FEHD should be reasonable in exercising its discretion. The above situation reflected that FEHD's control over the extension of fixed hawker pitches might be too lenient. Hence, FEHD needed to review whether its enforcement standards was commensurate with the gravity of the problem.

*(III) Accumulation of Polyfoam Boxes*

85. According to FEHD, the polyfoam boxes in the area under the Footbridge mostly came from the greengrocers at the Location. As those polyfoam boxes were temporarily placed in the public road pending conveyance by trucks after around 11:00 p.m. every day, they were placed there in a prolonged manner from daytime to midnight and would inevitably cause certain nuisance and/or obstruction to the public.

86. FEHD quoted the contractor that at least six rounds of street sweeping and one round of street washing were conducted in the vicinity daily. The contractor's verbal reports also showed that the daily

cleansing work was completed smoothly without any obstruction by the prolonged placement of polyfoam boxes. The Office was sceptical about this. Since a large area was occupied by the polyfoam boxes placed on the pavements in prolonged hours, and the contractor had to conduct at least six rounds of street sweeping and one round of street washing in the vicinity daily, its street sweeping and washing operations were unlikely unaffected by the polyfoam boxes.

87. The Office noticed that FEHD had taken enforcement actions against the placement of polyfoam boxes. The Office's site inspections on 6 April and 6 July 2021 revealed that the problem had alleviated upon the time of its second inspection.

88. The Office did not mean to play down the efforts of FEHD in combating the problems in this case. It recognised that FEHD aspired to adopt a pragmatic and sympathetic approach in its enforcement actions, taking into account recycling in the community. However, the irregularities at the Location had persisted and exceeded the reasonable scope, causing nuisance and/or obstruction to the public and even endangering road safety and pedestrians. FEHD should review its existing enforcement strategies and strength to prevent the situation from worsening. It should also liaise with other government departments and stakeholders for a solution to tackle the source of obstruction and environmental hygiene problem associated with recycling in the community.

89. Overall, The Ombudsman considered this complaint substantiated and recommended FEHD should –

(a) take enforcement actions resolutely against obstruction caused by SFEs to keep the pavements unobstructed;

(b) review the enforcement standards against the fixed hawker pitches concerned, draw up an implementation schedule and

inform the pitch operators, so as to curb the obstruction caused by illegal extension and ensure the safety of road users;

(c) continue to monitor the placement of polyfoam boxes in the area under the Footbridge, and enhance control measures where necessary to keep the road unobstructed and the environment clean; and

(d) liaise with other policy bureaux/departments and stakeholders to formulate an effective solution for managing the placement of polyfoam boxes.

**Government's response**

90. FEHD accepted The Ombudsman's recommendations and has taken the following follow-up actions.

*SFEs*

91. SFEs at the Location is a complex issue involving enforcement actions by different departments as empowered by relevant laws. FEHD would continue to work with the Hong Kong Police Force (HKPF), and would request the local District Office (DO) to coordinate and take the lead to plan for inter-departmental operations.

92. In order to more effectively tackle SFEs at the Location, FEHD had, since 2021, stepped up its enforcement actions and adjusted the enforcement strategies against non-compliant greengrocers. Targeted and flexible surprise enforcement actions at irregular hours had been taken to prosecute and arrest offenders and to seize their goods. Between January 2021 and August 2022, FEHD instigated 148 prosecutions by summons, issued 426 FPNs and made 17 arrests against obstruction of pavements caused by SFEs at the Location. It also instigated 69 prosecutions by summons, made 17 arrests and seized over 830 kilograms of goods against unlicensed hawking.

93. In parallel, FEHD had adjusted the enforcement strategies against the fresh provision shops in the vicinity of the Location and taken more stringent control measures. In March 2021, FEHD issued warning letters to nine licensed fresh provision shops suspected of illegally extending business area under the Demerit Points System for food premises or the Warning Letters System for violation of licensing conditions. Since June 2021, FEHD invoked the Food Business Regulation to instigate prosecutions and to register demerit points against licensees for operating food business outside the licensed area. Between June 2021 and August 2022, FEHD instigated 23 prosecutions by summons and to register demerit points against licensees for operating food business outside the licensed area at the Location.

94. In order to further strengthen the effectiveness of law enforcement against SFE, FEHD had launched a new mode of joint operations in cooperation with HKPF since September 2021, which had been implemented first in Kwun Tong, Kowloon City and Tsuen Wan. The new enforcement mode is that FEHD would take the lead, while the Police would exercise its statutory powers on the removal of obstruction under section 32(1) of the Summary Offences Ordinance (Cap. 228) to require the person concerned to remove the obstructions within a certain time. If the obstructions are not removed within the time given by the Police, FEHD would then remove the obstructions. In addition to summonses or FPNs, shop owners have to face the price of the confiscation of their goods. This has, therefore, increased the deterrent effect substantially and made the joint operations effective. The operations have received positive reviews from the public and relevant District Councils. In light of the effectiveness of the joint operations, FEHD and HKPF had extended the new enforcement mode since early June 2022 to the other three districts covering the Location concerned, and in all 18 districts of Hong Kong since October 2022.

*Illegal Extension of Fixed Hawker Pitches*

95. FEHD allows at its discretion fixed hawker pitches to exceed the approved area to a limited extent during operation, but the basis is that the passageways and the emergency vehicular accesses cannot be blocked. FEHD agreed that there was room for strengthening enforcement against irregularities of fixed hawker pitches during their business hours, and would continue to follow up.

*Accumulation of Polyfoam Boxes*

96. As to the placement of polyfoam boxes in the area under the Footbridge, between January 2021 and August 2022, FEHD issued 375 Notices to Remove Obstruction and removed 38 unattended items. FEHD would continue to explore improvement measures with HKPF and DO. Meanwhile, FEHD had been working with the Environmental Protection Department (EPD) on the recycling arrangements for polyfoam boxes. Since 12 July 2021, the polyfoam boxes removed by FEHD had been delivered to an EPD contractor for recycling and proper treatment.

## Food and Environmental Hygiene Department

**Case No. 2020/4210 – Failing to properly follow up a complaint about the obstruction of public passageways in a market by the commodities placed by a stall**

### Background

97. Allegedly, the complainant telephoned the Food and Environmental Hygiene Department (FEHD) in October 2020 and complained that a stall selling seafood (the Stall) in a market (the market) had frequently placed goods beyond the Stall's boundaries marked by "yellow lines", causing serious obstruction to the passageways. As the irregularity persisted, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against FEHD for failing to properly handle his complaint.

### The Ombudsman's observations

98. The Office conducted site visits to the market concerned on 11 February (9:15 a.m.), 19 February (3:45 p.m.), 27 February (9:50 a.m.) and 30 April 2021 (4:30 p.m.) and found the following –

(a) on the date of the first visit, the Stall was not operating; and

(b) during the other three visits, one of the Stall's display counters was placed obviously beyond the "yellow lines", causing obstruction when the market was crowded. Moreover, a number of styrofoam boxes for displaying and offering seafood for sale were placed in an adjacent passageway, occupying at least eight feet of the passageway, but no obstruction was caused to passers-by.

99. According to the information provided by FEHD, the Stall had breached the tenancy agreement by placing goods beyond its boundaries.

In this regard, FEHD had given verbal warnings and prosecuted the Stall's proprietor for breaching the Public Markets Regulation by causing obstruction.

100. During the above-mentioned three site visits, a display counter of the Stall was found obviously beyond the "yellow lines", and the Stall occupied at least eight feet of a common passageway. Both acts were in breach of the tenancy agreement.

101. The Office noted that on 27 February 2021, FEHD patrolled the market at around the same time of their site visit. However, FEHD's records did not show that the Stall was found occupying the adjacent passageway, or enforcement action was taken by FEHD staff about it. Therefore, the Office had reviewed the market's CCTV footage recorded on that day. Unfortunately, as the CCTV system was mainly for monitoring the entrances/exits of the market, the Stall and occupation of its adjacent passageway could not be captured. As such, the Office was unable to ascertain the Stall's situation during FEHD's patrol that day. Yet, the Office reckoned that if FEHD's market management staff had inspected the Stall at that time, they should have found the same as observed during the Office's visit. The Office found it inexplicable that FEHD's patrol records did not show the breach committed by the Stall.

102. Moreover, the Office noted that 15 out of the 21 verbal warnings issued by FEHD to the Stall were given after 6 March 2021, that was after the commencement of the Office's full investigation into the case. After issuing verbal warnings, FEHD staff found time and again that the goods of the Stall still occupied the passageways, but they only repeatedly gave verbal warnings without issuing any warning letter according to the FEHD's Warning Letters System. Owing to the lax enforcement action, the Stall remained recalcitrant in continuing with its breach. Such flawed enforcement was a cause of disturbance.

103. As for the complainant's allegation that he did complain to FEHD in October 2020, FEHD had no such records. In the absence of

any corroborative evidence, the Office was unable to ascertain the actual situation and thus would not comment on this point. However, it was indisputable that FEHD had failed to take stringent enforcement action against the Stall's unauthorised occupation of market passageways.

104. Overall, The Ombudsman considered this complaint substantiated and recommended that FEHD to –

(a) continue to closely monitor the Stall and other stalls in the market concerned, and take enforcement actions rigorously according to the existing mechanism against unauthorised obstruction of the passageways by stalls with their goods; and

(b) step up supervision and training of frontline market staff to ensure their strict adherence to the established enforcement mechanism when carrying out their duties.

**Government's response**

105. FEHD accepted The Ombudsman's recommendations and has taken the following follow-up actions.

*Recommendation (a)*

106. In response to The Ombudsman's recommendation, FEHD had kept a closer eye on the placing of goods by the Stall and other stalls during routine patrols. If a stall was found causing obstruction with goods placed on market passageways, FEHD would take enforcement actions rigorously. FEHD had also increased the frequency of surprise operations. Apart from issuing verbal warnings, FEHD had issued warning letters under the Warning Letters System, and had instituted a number of prosecutions against non-compliant tenants. In 2021 and the first half of 2022, FEHD had issued 46 warning letters and instituted 21 prosecutions against non-compliant tenants of this market. FEHD would continue to arrange routine patrols and surprise operations, and would

take stringent enforcement actions against stalls that cause obstruction by placing goods in market passageways.

*Recommendation (b)*

107. FEHD had stepped up training of the market frontline staff, and reminded them to proactively combat and follow up irregularities of market stalls causing obstruction by placing goods in passageways. FEHD had also stepped up supervision of these staff, including setting the frequency of patrol, requiring them to keep proper records and conducting surprise patrols. Appropriate instructions had also been given to individual frontline staff to ensure their strict adherence to the established enforcement mechanism when carrying out their duties. Such training would be conducted on a continuous and regular basis in accordance with actual needs.

## Food and Environmental Hygiene Department

### Case No. 2021/1498 – Failing to provide oath-taking services for hawker licensing matters

### Background

108. In December 2019, the complainant enquired of the Food and Environmental Hygiene Department (FEHD) via 1823 which district offices of FEHD offered oath-taking services for the Assistance Scheme for Hawkers in Fixed-pitch Hawker Areas (Assistance Scheme). In its reply via 1823 in January 2020, FEHD indicated that it would not provide oath-taking services regarding the Assistance Scheme and suggested the complainant carry out the relevant formalities at a Home Affairs Enquiry Centre (Enquiry Centre) of the Home Affairs Department (HAD). That same month, the complainant suggested FEHD appoint those staff responsible for the Assistance Scheme as Commissioner for Oaths so as to provide oath-taking services. FEHD replied in February and October 2020 respectively that it would proactively consider the complainant's suggestion and that it was examining from the perspectives of the relevant legislation and policies. As of June 2021, FEHD still did not provide oath-taking services for the Assistance Scheme.

109. The complainant alleged that though the HAD's information showed that FEHD also provided oath-taking services, FEHD still required members of the public to take oath at the Enquiry Centres for the Assistance Scheme. Being dissatisfied with the lack of provision of oath-taking services for the Assistance Scheme by FEHD, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against the department.

### The Ombudsman's observations

110. Pursuant to HAD's explanation of the prevailing arrangements, "official declarations or oaths" refer to declarations or oaths required of

by Government departments and should be administered by the relevant departments, whereas HAD's Enquiry Centres handle "declarations or oaths for private use" requested by non-governmental bodies. FEHD did not dispute HAD's division of responsibilities among Government departments in providing declaration or oath-taking services.

111. According to FEHD, the main reason for not providing declaration or oath-taking services for hawker licensing matters was that hawker pitch allocation and issuance of new fixed hawker pitch licences were not its routine duties. Besides, FEHD did not "require" applicants to make an oath in case they could not provide general documentary proof.

112. The Office found FEHD's interpretation of "official declarations or oaths" not literally incorrect but rather narrow, and might be different from the understanding of an ordinary person. "Official declarations or oaths" were different from "declarations or oaths for private use", the former were required of by Government departments while the latter by non-governmental bodies. It was more reasonable to distinguish these two categories by the type of organisations for which the declarations or oaths were made. If the applicant was making a declaration or oath because he cannot produce documentary proof to FEHD regarding hawker licensing matters, the Office shared HAD's view that the relevant declaration or oath should fall into the category of "official declarations or oaths" and therefore should be administered by FEHD.

113. FEHD indicated that allocation of vacant hawker pitches and issuance of new licences for fixed hawker pitches were not its routine duties. While acknowledging the nature of the duties involved, the Office pointed out that under the current arrangements, it should not be a consideration when a Government department determined whether it should provide declaration or oath-taking services. Hence, the "additional" consideration given by FEHD reflected its misinterpretation of and confusion about the current arrangements.

114. In fact, FEHD had admitted that years ago it had issued internal memoranda reminding staff that they could provide declaration services when handling hawker licensing matters and not to ask the applicants to go to HAD's Enquiry Centres for doing so. This showed that FEHD had acknowledged back then its role and obligation on the provision of such services when handling hawker licensing matters. The Office found it not ideal that declaration or oath-taking services were unavailable because FEHD had not formulated work guideline for staff throughout the years. Nevertheless, the Office noticed that prior to its intervention, FEHD had started to consider introducing such services (including seeking legal advice), reflecting the Department's receptiveness to comments and initiative to enhance its services.

115. While this complaint concerned only hawker licensing matters, the Office recommended that FEHD should review other areas of work to assess the need for providing declaration or oath-taking services and make appropriate arrangements.

116. Overall, The Ombudsman considered this complaint partially substantiated and recommended that FEHD should review different areas of work under its purview to assess the need for providing declaration or oath-taking services and make appropriate arrangements.

**Government's response**

117. FEHD accepted The Ombudsman's recommendations and has taken follow-up actions.

118. Situations under FEHD's purview which would require members of the public to make a declaration or an oath mainly involve public markets, hawker management, cemeteries and crematoria, as well as various licensing matters. FEHD currently reviews the need for its various sections to provide oath-taking or declaration services every six months, and would disseminate information on declaration or oath-taking services through HAD's relevant webpage for public information.

119. In this case, members of the public were required to make declaration regarding their hawker licence applications. FEHD had accordingly introduced the declaration service regarding hawker licence application in early September 2021. Currently, 19 District Environmental Hygiene Offices and the Hawker Pitch Allocation Office of FEHD provide declaration services to the public for hawker licensing matters. HAD's webpage on oath-taking or declaration services had also been updated accordingly.

## Government Secretariat – Development Bureau

## Case No. 2021/0598(I) – Refusing to provide information about the Antiquities and Monuments Office's grading of a structure

### Background

120. On 7 January 2021, the complainant made a request under the Code on Access to Information (the Code) to the Antiquities and Monuments Office (AMO) of the Development Bureau (DEVB) for the following information –

(a) minutes of any meetings of the Antiquities Advisory Board (AAB) where AMO specified that "the Sham Shui Po fresh water break pressure tank at Bishop Hill was listed as an item not to be graded" and "no further action was considered necessary" (Information (1)); and

(b) any AMO documents specifying that "the Sham Shui Po fresh water break pressure tank at Bishop Hill was listed as an item not to be graded" and "no further action was considered necessary" (Information (2)).

121. On 18 February 2021, AMO refused the complainant's request for information by email. Citing paragraphs 2.9(c) (i.e. Information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of a department) and 2.10(b) (i.e. Information the disclosure of which would inhibit the frankness and candour of discussion within the Government, and advice given to the Government.) of the Code, AMO explained that it was considered inappropriate to disclose the internal documents and information concerned.

122. The complainant contended that the Sham Shui Po fresh water break pressure tank at Bishop Hill (i.e. the Ex-Sham Shui Po Service Reservoir) was damaged (the Incident) due to ineffective communication

among government departments, which resulted in the damage of the heritage concerned. As the Incident raised wide public concerns, she considered it essential to find out more details about how the Government made the above decision. The complainant, therefore, lodged a complaint with the Office of The Ombudsman (the Office) against AMO for unreasonably refusing her request for information on 3 March 2021.

**The Ombudsman's observations**

*Regarding Information (1)*

123. Pursuant to paragraph 1.14 of the Code, departments are not obliged to provide information not in their possession. DEVB confirmed that AMO did not have the information requested by the complainant, i.e. minutes of any meetings of AAB where AMO specified that "the Sham Shui Po fresh water break pressure tank at Bishop Hill was listed as an item not to be graded" and "no further action was considered necessary". As such, DEVB should have explained the situation to the complainant in its reply of 18 February 2021 to the request for information.

124. While AMO did not have Information (1), DEVB refused to disclose to the complainant whether the information existed. Departments are allowed, under paragraph 2.1 of the Code and paragraph 2.1.1 of Guidelines on Interpretation and Application of the Code (the Guidelines), to refuse to confirm or deny the existence of information in the listed categories. However, the use of this provision will not be common, and will probably be confined to sensitive information in such areas as defence, security, external affairs or law enforcement. The Office considered DEVB to have no valid justification for asserting that paragraph 2.1 of the Code was applicable to Information (1).

125. In fact, all minutes and discussion papers of AAB meetings are available on its website and thus are in the public domain. It is not difficult to find out from these public information sources whether AMO had consulted AAB on such issues as the "listing of Ex-Sham Shui Po

Service Reservoir as an item not too be graded" and "no further action was considered necessary". In this context, the Office was of the view that it should not be a relevant consideration whether disclosure of Information (1) (if existed) would draw the public's focus to certain details before their coming to grips with all the underlying facts, resulting in misjudgement or misunderstanding of the Incident, and seriously undermining the objective of setting up the Working Group as led by the Permanent Secretary for Development (Works) in January 2021 (the Working Group) as well as the effectiveness of its work.

126. In light of the above, the Office considered DEVB to have wrongly invoked paragraphs 2.9(c) and 2.10(b) of the Code to refuse the complainant's request for Information (1).

*Regarding Information (2)*

127. The Government has set up the Working Group to handle and review the Incident, and its work is still in progress. In such circumstances, the Office agreed that disclosure of Information (2) would indeed likely affect the Working Group's performance of its duties, inhibit the frankness and candour of discussion as well as advice given by officers of AMO and Water Services Department, and eventually prejudice operations of the departments. Hence, the Office accepted DEVB's explanation on invoking paragraphs 2.9(c) and 2.10(b) of the Code to refuse the complainant's request for Information (2).

128. Nevertheless, the Office took the view that DEVB, in its reply dated 18 February, could have given more details to the complainant in explaining why it refused to disclose this information. By doing so, this complaint might have been avoided.

129. Based on the above, The Ombudsman considered DEVB to have wrongly cited the relevant paragraphs of the Code in handling the complainant's request for Information (1). This complaint, therefore, was partially substantiated.

130. The Ombudsman recommended DEVB to learn the lesson from this case and step up staff training, so as to ensure strict adherence to the Code and the Guidelines in handling future requests for information from members of the public.

**Government's response**

131. DEVB accepted The Ombudsman's recommendations and has taken the following follow-up actions.

132. DEVB has stepped up staff training, so as to ensure strict adherence to the Code and the Guidelines in handling future requests for information from members of the public, including –

(a) circulation of the Code and the Guidelines to all staff of the Commissioner for Heritage's Office (CHO) and AMO in September 2021, and reminding them to strictly observe the relevant internal circulars of the Works Branch of DEVB which are re-circulated every six months, as well as matters to note when handling requests for information from members of the public under the Code, such as the deadline for response, the need to adopt a positive and cooperative attitude in handling the release of information, etc.;

(b) eight staff members of CHO and AMO, who are responsible for handling public enquiries in their daily routine, were arranged to attend seminars on the Code organised by the Constitutional and Mainland Affairs Bureau in October and November 2021 respectively. Participants included Executive Officers, Management Services Officers and Curators of the two offices. After attending the seminars, the staff concerned understand the Code better. By studying past cases, they are aware of the inadequacies on the part of individual government departments in handling public requests for information. Staff members will

be better equipped to fulfil the requirements of the Code when handling similar cases in the future; and

(c) two participants of the above seminars shared the salient points of the Code at an internal meeting of CHO and AMO held in November 2021. After the meeting, teaching materials used at the seminars were distributed to all section heads for their reference.

## Government Secretariat – Education Bureau

### Case No. 2020/4290 – Unreasonably allowing a school to impose religious education on a student

### Background

133. The complainant's daughter (the student) was a Muslim. Considering her a Band l student, the complainant had selected for her a secondary school with matching academic performance regardless of its Christian background, to which she was later admitted (the School). After the commencement of the school term, the complainant requested the School to excuse her from Christian Ethics classes due to religious difference but was refused. The complainant then complained to the Education Bureau (EDB), but subsequently considered it to have failed to properly handle his complaint by allowing the School to impose religious education on her. Against this background, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against EDB on 26 December 2020.

134. Upon receipt of the complaint in late September 2020, EDB first referred the complaint to the School for handling under the established protocol of school-based management and parent-school cooperation as EDB considered the complaint concerned about the daily operation and internal affairs of the School. EDB also contacted the School in early October 2020 and advised the School to grant exemption. As the matter remained unresolved in mid-October 2020, EDB met with and wrote to the Incorporated Management Committee of the School, strongly advising them to consider the student's well-being and religious needs, with reference to practices of similar schools and relevant legislation, conventions, guidelines and publications, and asking for its cooperation to accede to the parent's request. EDB also stated that it would be unacceptable to the Government if the student had to transfer to another school only because no exemption was granted by the school. EDB continued its communication with the School and the complainant. In

late March 2021, the School and the complainant agreed that for the best interest of the student, a school-based pull-out programme would be arranged for her during the Christian Ethics lessons over the course of her academic years.

**The Ombudsman's observations**

135. EDB explained that, in order to help parents make an informed choice of schools, it had reminded parents through various channels to fully consider all aspects of schools including educational philosophy, culture, admission criteria, class structure, development and operation along with the abilities, inclinations and interests of their child and seek advice from teachers or schools when necessary. Also, EDB respects schools' autonomy to provide religious education and at the same time considers itself responsible to ensure the best interests of individual groups of students and their right to freedom of religious belief. Circulars and guidelines have been issued to advise schools to give due respect to special needs of ethnic or religious minority.

136. Under the principle of school-based management, the Office considered it understandable that the complaint was first referred to the School for handling. EDB had been assisting the complainant and the School to reach a consensus from late September 2020 to late March 2021. As an agreement could not be reached, EDB intervened and explained to the School the rationale for accommodating the student's and her family's wish. A settlement was subsequently reached. Through its participation in the process, the Office considered that EDB had fulfilled its responsibility of ensuring the best interests of individual groups of students and their right to freedom of religious belief.

137. In addition, the Office noted that it took about six months for both sides to reach the settlement and this may fall short of the complainant's expectation. While an early settlement could have smoothened class arrangement, in view of the discrepancies of views between both sides and the disruption of services caused by COVID-19

epidemic, the Office considered the time taken for EDB to negotiate between the School and the complainant acceptable and that it had taken reasonable steps to ensure the best interest of the student and to minimise the impact of the issue on her.

138. In the light of the above, The Ombudsman considered this complaint unsubstantiated and recommended EDB to –

(a) review its guidelines as soon as possible to provide clearer guidance to schools in respect of the morals in excusing students from religious education;

(b) include in the guidelines examples of practices adopted by similar schools for reference; and

(c) more expressly spell out the need to pay attention to the school's religious background when applying for a school.

**Government's response**

139. EDB accepted The Ombudsman's recommendations and has taken the following follow-up actions.

*Recommendations (a) and (b)*

140. Relevant section in the School Administration Guide has been updated and uploaded onto EDB's webpage to include guidelines on granting exemption to students from religious education in schools and reference examples on alternative arrangements of learning activities for these students.

*Recommendation (c)*

141. Starting from the 2022 cycle (i.e. for student admission to Primary 1/Secondary 1 in the 2022/23 school year), EDB has enriched

contents of relevant documents for both Primary One Admission System (POA) and Secondary School Places Allocation System (SSPA). These documents spell out the need to pay attention to, amongst others, a school's religious background when making school choices, and they have been uploaded onto EDB's webpage and/or distributed to parents before commencement of the discretionary places and central allocation stages of POA and SSPA respectively.

## Government Secretariat – Then Home Affairs Bureau

### Case No. 2020/3518 – Failing to act on the Policy Statement on Community Development and hold forums

### Background

142. The complainant claimed that the then Home Affairs Bureau's (now the Home and Youth Affairs Bureau (HYAB)) Policy Statement on Community Development (the Policy Statement) stipulated that the Non-governmental Organisation (NGO) Forum on Community Development (the Forum) would be convened on a quarterly basis. As a platform for representatives of the social service sector (the Sector) and the Bureau to discuss issues relating to community development, the Forum facilitates regular communication and consultations on matters relating to the overall planning and management of resources, development and direction of new services, rationalisation of existing services, community concerns and service needs. However, only three Forums were held over the past five years. The complainant considered the Bureau to have failed to adhere to the Policy Statement to convene the Forum on a quarterly basis and honour its promise to the Sector. Thus, the complainant lodged a complaint with the Office of The Ombudsman (the Office).

143. While the Bureau contended that it had been convening the Forum on a need basis, it had never disclosed the specific criteria for doing so, sought views from the Forum members on the "need" or invited them to discuss it. The complainant argued that the Bureau's decision to convene the Forum on a need basis was only unilateral. The complainant and the others in the Sector had never agreed.

144. The Bureau stated that it always treasures communication with different stakeholders and keeps in contact with NGOs via different channels including but not limited to the Forum. Whether the Forum was convened or not would in no way restrain or affect NGOs' expression of

views to the Government by other means. NGOs could write to the Bureau any time to express their views or request an interview should they see a need to do so, and the Bureau would issue replies having regard to the content of the letters.

145. The Bureau continued to explain that the Policy Statement was a general policy document outlining the overall direction of community development policy. Convening the Forum is an administrative arrangement. That the Forum was convened on a need basis would not result in significant changes in the community development policy. Furthermore, the Bureau had stated time and again on different occasions over the past ten years or so that the Forum would be held as and when necessary. The NGOs, therefore, should not be unfamiliar with the arrangement. While the Bureau could understand the complainant's grievances, it did not see adjustments to the administrative arrangement as contradictory to the principle of the policy direction laid down in the Policy Statement. In the light of the above, the Bureau saw no apparent need to revise the Policy Statement or amend the criteria for convening the Forum. In addition, the Government invited views from NGOs on reviewing the Policy Statement at two Forums held in 2010. The practice at that time had already been altered to convene the Forum on a need basis, and none of the NGOs submitted views or indicated a need to conduct a review.

**The Ombudsman's observations**

146. First of all, with respect to communication with the Sector, paragraph 7.2 of the Policy Statement stipulates that the Forum is a platform for discussing issues relating to community development among service operators, Social Welfare Department, the Bureau and concern groups/interested individuals. It facilitates regular communication and consultations on matters relating to the overall planning and management of resources, development and direction of new services, rationalisation of existing services, community concerns and service needs. Obviously, the Forum is where the Sector and the relevant Government departments

meet to discuss issues across a broad spectrum, rather than matters of a certain aspect or individual services. Being a platform for the parties to draw on collective wisdom, the Forum is obviously different from other modes of communication by which individual groups/persons express their opinions to individual Government departments on the day-to-day operations of certain services.

147. The Bureau claimed that the Policy Statement only outlined the overall direction of the community development policy. Convening the Forum is an administrative arrangement. That the Forum was convened on a need basis would not lead to significant changes in the community development policy. While the Office did not disagree that convening the Forum is an administrative arrangement, it considered it reasonable for the Sector to expect the Government's adherence to the Policy Statement in making related arrangements (including administrative arrangements stated therein). In considering the administrative arrangements, the Bureau should not have ignored the promise it had made in the Policy Statement and the Sector's legitimate expectation.

148. Finally, the Bureau indicated that amendments to the Policy Statement were unnecessary. The Office's view was that the NGOs' silence on reviewing the Policy Statement or on the need to conduct a review should only be construed as their indication that the contents of the Policy Statement needed no amendments, rather than their consent to any alterations to the arrangements for convening the Forum by the Government. Even though the Policy Statement was just an outline of the policy for and the overall direction of community development services, it was a document promulgated by the Bureau. If it was stated therein that the Forum would be convened on a quarterly basis, the Bureau should make arrangements accordingly. If the Bureau considered that the Forum should be convened on a need basis instead, then it should either amend the Policy Statement or add relevant remarks to it. Nevertheless, the Bureau on one hand considered it unnecessary to adhere to the Policy Statement to convene the Forum on a quarterly basis, and on the other hand deemed amendments to the document superfluous.

This had resulted in significant deviation from the principle stated in the Policy Statement in respect of the actual operation of the Forum, and a discrepancy between the two. While the Sector might not be unfamiliar with the arrangement, a legitimate public expectation was frustrated.

149. In light of the above, The Ombudsman considered the complaint against the Bureau substantiated. The Ombudsman recommended that the Bureau either revisit the current arrangements for convening the Forum in order to comply with the Policy Statement, or re-examine the contents of the Policy Statement relating to convening the Forum and make appropriate amendments or additional remarks.

**Government's response**

150. HYAB accepted in principle The Ombudsman's recommendations. It is currently reviewing the case and will adopt measures having regard to the recommendations.

## Government Secretariat – Then Transport and Housing Bureau and Department of Health

**Case No. 2021/0007A (Department of Health) – Wrongly requiring the complainant to undergo compulsory quarantine and failing to provide clear information about quarantine arrangement for cross-border tow truck drivers prior to the complainant's compulsory quarantine**

**Case No. 2021/0007C (then Transport and Housing Bureau) – Failing to reply to complaints**

### Background

151. The complainant lodged a complaint with the Office of The Ombudsman (the Office) against the Department of Health in January 2021, and further complained against the then Transport and Housing Bureau (THB) and 1823 of the Efficiency Office in early March 2021.

152. The complainant, the person in charge of a towing company, claimed that he made several calls to 1823 in November 2020 to enquire about the quarantine requirements for drivers providing cross-boundary towing service but received no precise and clear replies/guidelines. The complainant also alleged that the hotline even offloaded its responsibilities onto the Hong Kong Police Force. Furthermore, the information obtained from other cross-boundary goods vehicle drivers afterwards was found different from that provided by 1823. On 18 December 2020, 1823 replied that the case had been referred to both THB and the Department of Health (DH) for follow-up, and that it had been liaising with relevant bureaux/departments (B/Ds) and would inform the complainant of further details once available.

153. Acting in accordance with the latest guidelines regarding COVID-19 to his knowledge, the complainant underwent a nucleic acid test at Shenzhen Bay Port at 8:45 pm on 2 January 2021 with a negative

test result which had a validity of one day. Next morning, he drove a tow truck to tow a client's private car out of Hong Kong in a private car lane at Shenzhen Bay Port. After unloading the vehicle, he drove back to Hong Kong, but was intercepted by a staff member of DH on entering the territory in the same private car lane on the ground that he was not in possession of a nucleic acid test report issued by one of the 39 hospitals or clinics designated by the Government. The complainant explained repeatedly and presented his negative test report obtained the night before as well as a document in support of an exemption from compulsory quarantine under the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Regulation). Even though an officer from the Immigration Department told the DH staff member at scene that the complainant could be exempted from compulsory quarantine, the DH staff member, after consulting his/her supervisor, stated that as the first person undergoing immigration clearance in a private car lane with a commercial vehicle amid the epidemic with no precedent for reference, the complainant (even though he was driving a goods vehicle) had to comply with the same requirements for persons entering Hong Kong in a private car lane, that is, to undergo compulsory quarantine at home for 14 days if a negative test report issued by a designated clinic was not available.

154. The complainant took issue with DH's decision of compulsory quarantine at home, and with the fact that instead of a detailed reply and clear guidelines in response to his initial enquiry, he received a reply from DH informing him of all relevant regulations and guidelines only after the Office intervened. In addition, regarding his enquiry about the quarantine arrangements for cross-boundary tow truck drivers, up to 2 March 2021, he had not received a response from 1823 or THB. He was dissatisfied that the two B/Ds did not give a timely reply. The complainant added that, as the tow truck trade had no membership in trade associations of the goods vehicle sector, the complainant had never received letters issued by THB via these trade associations.

155. The complainant further pointed out that while tow trucks fall within the category of commercial vehicles, they were all along not allowed to use the goods vehicle lanes when crossing the border at Shenzhen Bay Port and had to use the private car lanes instead. In an earlier telephone conversation with the complainant, THB indicated its awareness of the defect of the system.

**The Ombudsman's observations**

*Efficiency Office*

156. The Efficiency Office advised that, given that the original information in the 1823's knowledge base was insufficient for answering the complaint's enquiry, 1823 had to refer the case to the relevant departments. When all B/Ds refused to handle the enquiry as they considered it falling outside their purview, 1823 repeatedly urged the responsible officers to review the case and reply as soon as possible. 1823 also had kept the complainant posted of the latest development of his case. In addition, 1823 updated its knowledge base after this case so as to facilitate its staff to handle relevant enquiries. The Office considered that 1823 spared no efforts in handling the complaint's case and there was no maladministration involved.

*DH*

157. DH had given the Office an account of the handling of the complainant's case on the day of the incident. Since the complainant did not undergo a nucleic acid test at a medical or testing institution recognised by the Government before arriving at Hong Kong on 3 January 2021, he did not fulfill the criteria under the Return2hk Scheme. As the complainant entered Hong Kong in a private car lane, he did not meet the exemption condition for "cross-boundary goods vehicle drivers and necessary accompanying personnel" at that point in time. In terms of the purpose of going to the Mainland and his place of stay, the complainant did not satisfy the exemption condition in relation to "the

owner of a Hong Kong enterprise with a valid business registration certificate issued under the Business Registration Ordinance and with manufacturing operations in the Mainland and persons employed and so authorised by the enterprise". The Office considered the issuance of a compulsory quarantine order by the DH staff member to the complainant on the day of the incident justified as it was in compliance with the established law and procedure.

158. DH apologised to the complainant for its possible failure to make sense of his enquiry on 23 November 2020 through 1823 regarding online booking for entry into Hong Kong, hence its failure to provide him with information about the Return2hk Scheme in a timely manner. In view of this, DH had reminded its frontline staff that all enquiries must be thoroughly understood and handled with prudence. It is understandable that anti-epidemic measures (including those related to inbound and outbound journeys) be amended from time to time in light of the epidemic development. It follows that members of the public who cannot keep abreast of the most updated information may not be able to come up with specific measures or accurate wording when making their enquiries. While the Office understood that B/Ds were heavily engaged in anti-epidemic tasks and was aware of DH's frontline role in the control and prevention of the epidemic disease, it was hoped that when handling enquiries, B/Ds could appreciate them from the enquirers' perspective and be more proactive in seeking clarification of the content.

*THB*

159. THB had explained to the Office the reason for the Government's requirement that only drivers driving goods vehicles through the goods vehicle lanes would be granted quarantine exemption. The Office reckoned that the cross-boundary goods vehicle drivers screening mechanism put in place by the Government had taken into consideration the actual operation situation of cross-boundary goods vehicles and that the related arrangements to help border control personnel to identify those drivers who meet the criteria for exemption

from compulsory quarantine were basically understandable. Moreover, back in February 2020, the Transport Department (TD) had sent a letter and an SMS message to various associations of the goods vehicle trade to explain the policy and arrangements for the relevant exemption, requesting them to relay the same to their members (including the complainant). In addition, with TD maintaining contact with the freight transport sector through the established channels, members in the goods vehicle trade should have adequate access to the relevant information. In fact, from the complainant's enquiry with 1823 on 23 October 2020, it could be seen that the complainant himself was aware that cross-boundary goods vehicle drivers were exempted from compulsory quarantine only if they entered Hong Kong through the goods vehicle lanes. That said, since the complainant made his enquiry on 23 October 2020 about cross-boundary tow truck drivers entering Hong Kong via Shenzhen Bay Port, THB repeatedly responded to 1823 by saying that the enquiry was outside its purview. When THB eventually gave a detailed reply on 13 January 2021, it was still reiterating the entry arrangements already known to the complainant (i.e. cross-boundary tow truck drivers were granted quarantine exemption only if they entered Hong Kong through the goods vehicle lanes), without addressing at all the complainant's concern about the unique design of Shenzhen Bay Port resulting in cross-boundary tow truck drivers being unable to meet the criteria for exemption from compulsory quarantine.

160. The Office understood that anti-epidemic measures were generally required to be launched within a very short timeframe and that in devising the status screening mechanism for the relevant exemption arrangements, the authorities might not be able to envisage all scenarios (e.g. tow truck drivers crossing the border via Shenzhen Bay can only use the private car lanes to enter Hong Kong). Yet, when the complainant brought up a situation that had not been contemplated by the authorities, THB should have taken the initiative to further understand it from the complainant and work with DH to do their best to provide the complainant with useful information. This could have to a certain extent avoided what happened to the complainant on 3 January 2021 upon his

entry to Hong Kong. Meanwhile, THB should have considered at an earlier stage the need and the way to handle such an issue so as to resolve the actual difficulties faced by cross-boundary tow truck drivers when entering Hong Kong via Shenzhen Bay Port.

161. The Office was pleased to learn that, upon its intervention, THB had convened an inter-departmental meeting to resolve the issue of exempting eligible cross-boundary tow truck drivers from compulsory quarantine in circumstances where they could only enter Hong Kong via the private car lanes. TD had issued confirmation letters to relevant cross-boundary tow truck drivers (including the complainant) for effective identification by DH, such that these drivers would still be exempted from compulsory quarantine even if they could not use the goods vehicle lanes when entering Hong Kong.

162. Overall, The Ombudsman considered this complaint against the Efficiency Office unsubstantiated but that against DH and THB partially substantiated. The Ombudsman recommended that DH and THB should learn from the experience of this case to remind and urge staff members responsible for handling enquiries to thoroughly understand and proactively handle public enquiries, as well as to provide accurate and comprehensive information to enquirers in a timely manner.

163. The Ombudsman also recommended that THB should remind staff members to report to supervisors promptly and liaise with other relevant departments as soon as possible to work out solutions when enquirers bring up special cases which may be beyond the scope of the existing system and arrangements.

**Government's response**

164. DH accepted The Ombudsman's recommendation. It would, from time to time, remind and urge frontline staff to actively understand the content of enquiries in depth from the enquirers' perspective,

providing them with accurate and comprehensive information in a timely manner.

165. THB (i.e. now the Transport and Logistics Bureau) accepted The Ombudsman's recommendations and has taken the following follow-up actions –

(a) the bureau has reminded and urged staff members responsible for handling enquiries to carefully understand the details of individual cases and requests from members of the public when processing enquiries and complaints;

(b) as regards cross-boundary tow trucks matters, TD and DH have established a channel for immediate communication. When an enquiry is received from a cross-boundary tow truck driver, the two departments will liaise directly on the case for prompt handling; and

(c) TD staff who are responsible for handling enquiries will discuss regularly with supervisors the special enquiries relating to the operation of cross-boundary goods vehicles, with a view to further enhancing staff's efficiency in handling such enquiries.

## Housing Department

**Case No. 2021/1231A – (1) Failing to confirm with the complainant his intention to join his mother in making an application for the "Priority Scheme for Families with Elderly Members" of the "Sale of Green Form Subsidised Home Ownership Scheme Flats 2019"; and (2) Unreasonably disallowing him to withdraw from the above application unless he made a report to the police or the preliminary deposit paid by his mother be forfeited**

### Background

166. The complainant's mother was the tenant of a rental housing flat of the Hong Kong Housing Society, and the complainant was a family member listed in the tenancy. The complainant moved out years ago due to poor relationship with his mother. In June 2019, an estate office of the Hong Kong Housing Society received a Green Form (the Application Form) applying for "Sale of Home Ownership Scheme Flats 2019" (HOS 2019) and joining the "Priority Scheme for Families with Elderly Members" (FEP) as signed by the complainant and his mother. They also agreed that their Green Form application under HOS 2019 would be carried over to the next "Sale of Green Form Subsidised Home Ownership Scheme (GSH) Flats 2019" (GSH 2019) of the Housing Authority. As the complainant and his mother did not successfully purchase a HOS flat under the HOS 2019, their application was carried over to GSH 2019. In May 2020, the complainant applied to the Housing Department (HD) for a public rental housing (PRH) flat. In August 2020, HD informed the complainant in writing that his PRH application was cancelled because his mother had purchased a flat (the Flat) in their joint names in July 2020 under FEP of the GSH 2019.

167. The complainant explained to HD that he had no intention to purchase the Flat and he was not aware of the purchase. HD staff told him that HD would neither allow him to withdraw from the GSH

application nor reinstate his eligibility for PRH unless he made a report to the Police or his mother agreed to the forfeiture of preliminary deposit.

168. In April 2021, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against HD as follows –

(a) HD had failed to confirm with him his intention to purchase the Flat when it processed the GSH 2019 application (Allegation (a)); and

(b) HD unreasonably disallowed him to withdraw from the GSH 2019 application unless he made a report to the Police or the preliminary deposit paid by his mother be forfeited, putting him in a difficult situation (Allegation (b)).

**The Ombudsman's observations**

*Allegation (a)*

169. The complainant insisted that he had never applied for HOS 2019 and GSH 2019. However, the copy of the Application Form provided to the Office by HD was signed by the complainant's mother as applicant and the complainant as family member.

170. According to HD, when the estate office concerned received the Application Form, it followed the standard procedures to verify only the tenant's signature (i.e. the signature of the complainant's mother) to check if it tallied with that in the tenancy agreement. In processing the application, HD had not interviewed the complainant or invited him to attend the flat selection on 14 July 2020.

171. While the Office understood HD had its reasons to make such arrangements, the Office noticed the following –

(a) the Application Form showed that the complainant and his mother agreed to join FEP;

(b) FEP aims to encourage families to live with their elderly family members. Eligible families choosing to join FEP will be accorded higher priority in flat selection under HOS and GSH;

(c) Upon successful purchase of a GSH flat on 14 July 2020, the complainant's mother signed a declaration, in the presence of a Housing Officer of HD, regarding the participation in FEP (the FEP declaration) as follows –

"I/We _____ and _____ (Name of the elderly member) fully understand that we shall live together in the GSH flat …… under FEP of GSH upon purchase of the flat"; and

(d) On the day of flat selection, the complainant's mother also signed a declaration that the complainant's PRH application was foregone after the successful purchase of the GSH flat.

172. The FEP declaration shows that family households joining FEP are required to declare that they understand they must live in the GSH flat purchased with the elderly member joining the scheme. Nevertheless, in this case, HD only asked the complainant's mother to sign the declaration as the elderly member of the household without requiring the complainant to sign it as family member. Such arrangement obviously failed to achieve the purpose of the declaration. It also reflected HD's slipshod processing of the application for the Flat.

173. Given that families joining FEP will be accorded higher priority in flat selection, the shortcoming in HD's processing of applications may cause unfairness to other GSH applicants who do not join FEP. Take this case as an example, the complainant's mother successfully purchased the Flat as she was accorded higher priority in flat selection. However, the complainant had indicated that he would not be living in the Flat with his

mother, which went against the objective of FEP. Had HD arranged the complainant to sign a declaration to confirm that he understood the requirements of FEP when processing the Application, this complaint could have been avoided and the aforementioned unfairness would not occur.

174. Moreover, the declaration which indicated that the complainant would give up his PRH application included the relevant application number. That means HD was aware of the complainant's PRH application before his mother attended the flat selection. Hence, it is difficult to understand why HD did not arrange the complainant to sign the declaration but asked his mother to sign it on his behalf. Given that the complainant submitted his PRH application individually, his mother had no right to forego his application on his behalf even if she was the applicant of the GSH 2019 application. The Office opined that HD needs to review the arrangement regarding the signing of the aforesaid declaration so as to improve the administrative procedures and ensure the legitimacy and validity of the declaration.

*Allegation (b)*

175. HD has clarified that the complainant had told its staff that he had no knowledge of the GSH application and requested to have his name deleted from the household record of the Flat. HD staff, therefore, suggested that the complainant consider making a report to the Police if he suspected that somebody had broken the law, or his mother could cancel the Agreement for Sale and Purchase (ASP) to let him regain eligibility for PRH application. The Office considered that HD's suggestion should not be regarded as maladministration because the Department had made such suggestion according to the actual situation and the prevailing public housing policy.

176. Nevertheless, the Office's concern is that while HD was the executive authority of GSH 2019, any signs of untrue statements made in the application and during the signing of the ASP would cast doubts on

the legality of both the approving process and the ASP. Moreover, apart from the complainant's interest, the interest of other applicants and HD, the executive department guarding public housing welfare, might also be affected or harmed. The fact that the HD staff simply asked the complainant to make a report to the Police without trying to look into the problems mentioned in this paragraph indicated HD's failure to handle the situation meticulously, and to duly perform its duty.

177. Overall, The Ombudsman considered this complaint substantiated and recommended HD to –

(a) seek legal advice on the legitimacy and validity of the declaration and the ASP with regard to the problems revealed in this case; and

(b) review the issues mentioned in the Office's comments and consider improving the administrative procedures to ensure that FEP declarations and declarations to cancel the relevant PRH application carry their true meanings.

**Government's response**

178. HD accepted The Ombudsman's recommendations and has taken the following follow-up actions.

*Recommendation (a)*

179. It was clearly stated in both the Application Form and the Application Guide that family applicants must make a declaration undertaking that should the applicant (i.e. the complainant's mother) listed in Part I of the Application Form successfully purchase a flat under the sale exercise, the application(s) for PRH from other family member(s) (i.e. the complainant) listed in the Application Form would be cancelled. The Application Form received by HD contained the complainant's signature under the declaration section, indicating that he understood the

requirements. HD obtained legal advice on this matter, which opined that even if the complainant had not signed any declaration (i.e. the declaration signed by the complainant's mother) at the time of signing the ASP, the requirements would still be valid because the complainant and his mother had both signed the Application Form. As a matter of fact, HD required the applicant to sign a declaration when signing the ASP was simply to re-affirm the relevant requirements.

*Recommendation (b)*

180. HD considers that it has struck a balance between protecting the rights of the elderly and optimising the use of public housing resources in handling the flat selection for GSH 2019. Nevertheless, HD will, after seeking legal advice, enhance the arrangements with a view to improving the administrative procedures. Details are as follows –

(a) cancel the signing of a declaration on application for other subsidised housing schemes (including application for PRH) during the flat selection stage:

It has been stipulated in the original application form and application guide that, after signing an ASP of an HOS/GSH flat, any application for PRH (including Interim Housing) by the applicant/any member(s) listed in the application form will be cancelled and no PRH flat (including Interim Housing) will be allocated. Besides, an applicant and his/her family member(s) should be aware of the requirements and have signed the application form to confirm their understanding before submitting the application. In light of the above, the applicant and/or his/her family member(s) will not be required to sign the above declaration again at the time of signing the ASP;

(b) cancel the signing of a declaration for joining FEP during the flat selection stage:

HD has included a provision in the application form and application guide, requiring the applicant and his/her family member(s) to undertake that they are willing to live together with the elderly member in the purchased flat, and the applicant and his/her family member(s) are required to sign the application form to confirm their understanding before submitting the application. Hence, the applicant and/or his/her family member(s) will not be required to sign the above declaration again at the time of signing the ASP; and

(c) the above revised arrangements will not involve the signing of the relevant declarations by the applicant on behalf of other family member(s). The revisions will be updated in the application form and application guide starting from HOS 2022.

181. Follow-up actions and results of the case are as follows –

(a) HD interviewed the complainant and his mother separately for further investigation of the case. The complainant told the HD staff he had not said that he did not sign on the Application Form and that he only forgot he had signed it. The complainant's mother also indicated that the Application Form was signed by the complainant. HD considered that there was no information or evidence suggesting false declaration was involved in this case;

(b) the HD staff explained to the complainant's mother that if the complainant would not live with her in the purchased GSH flat, they would fail to fulfil the requirement of FEP that at least one adult member must live in the purchased flat with the elderly member. As a result, they would not be eligible for purchasing GSH flats under FEP. The complainant's mother said that she understood and agreed to apply for cancellation of the ASP of the purchased GSH flat; and

(c) in March 2022, the complainant's mother signed and cancelled the ASP of the GSH flat purchased under GSH 2019. The PRH application of the complainant was reinstated in April 2022.

## Hong Kong Police Force

### Case No. 2021/0335 (I) – Refusing to provide a copy of the donation register of the Police Welfare Fund

### Background

182. On 14 December 2020, the complainant submitted an application for access to information to the Hong Kong Police Force (HKPF) and specifically asked for the donation information of the Police Welfare Fund (PWF) for the years 2014/15, 2016/17 and 2019/20, including the dates of donations, names of the donors/donating organisations and donation amounts. HKPF subsequently arranged the complainant to inspect the requested information at the Police Headquarters at a designated time on 12 January 2021. Nevertheless, HKPF only allowed on-site inspection. It had not provided the complainant with a copy of the information, neither had it allowed the latter to make records of any form (including jotting notes with a pen or cross-checking against his own notes) during the inspection.

183. On 4 February 2021, the complainant complained against HKPF for failing to comply with the Code on Access to Information (the Code) to provide him with a copy of the information he had requested.

### The Ombudsman's observations

184. HKPF explained to the Office of The Ombudsman (the Office) that, according to the Civil Service Bureau Circular No. 11/2003 – Donations to the Staff Welfare Fund (the Circular), HKPF maintains a register recording the details of each donation made to the PWF (the Register), and makes available for public inspection on request the main information about the donations, including the names of donors/donating organisations, donation amounts, as well as the natures, purposes and dates of donations. This is to comply with the Circular's requirements on transparency and accountability of the departments.

185. As per the Circular's instruction, HKPF informs each and every donor of the PWF of the above arrangement in writing, and asks for their consent to show their names on the Register. Donors can choose to remain anonymous if they prefer. This would be so recorded in the Register.

186. Regarding the arrangement of allowing the complainant to inspect the Register without making records of any form or cross-checking against any information, HKPF reiterated that it had acted in accordance with the requirement of the Circular and allowed the public to inspect the Register at its Headquarters. In HKPF's understanding, inspection does not include making records of any form or cross-checking information. In addition, the donors had not authorised the public to make records of any form or cross-check information while inspecting the donation information. Consequently, HKPF did not allow the complainant to make record, take pictures or videos, or cross-check against other information during inspection. In fact, HKPF has all along been arranging public inspections of the Register at the Police Headquarters, and the practice is in no way unique to HKPF. The Registration and Electoral Office, for example, has been adopting similar arrangements for public inspection of the electoral registers.

187. Hence, HKPF considered that since it had handled the application for access to donation information of the PWF by way of affording a reasonable opportunity to inspect or view and explained the reasons to the complainant, the practice was in line with the Code.

188. The Office agreed that HKPF must carefully protect the privacy and safety of the donors. The names of donors are personal data, disclosure of which is subject to the donors' consent. Actually, HKPF would only show the names of donors in the Register who were willing to do so. Donors who have concern about disclosing their information could indicate clearly to the Department their wish to remain anonymous. As to whether donors' consent to disclosing their names could be read as authorising HKPF to make copies of such information or permitting the

public to make records of the information during inspection, the Office's view is that to allow mere examination of the information on the spot, but refuse to provide a copy of the information and even prohibit recording of the information in any form would be a very narrow interpretation of the word "inspect", and may not be in line with the popular perception. Furthermore, the Civil Service Bureau, while requiring government departments to follow the Circular's instructions to arrange members of the public to inspect information relating to staff welfare funds, has not precluded the provision of information with a copy, or prohibited a requestor of information from making notes during inspection.

189. Some donors might have changed their mind with respect to disclosure of their names. If so, the consents previously obtained by the Department would then become uncertain. Nevertheless, the Department should have followed the requirements of the Code and its Guidelines on Interpretation and Application (the Guidelines) to provide the donation information of the PWF to the complainant after obliterating the personal data contained in the Register.

190. The Office is of the view that while HKPF's current practice of allowing public inspection of the donation information of the PWF without making any record does not exactly constitute a refusal to requests for access to the information, the way the Department has adopted to provide the information does not fully comply with the requirements of the Code and the Guidelines.

191. Overall, The Ombudsman considered this complaint partially substantiated and recommended reviews of HKPF's arrangements for public inspection of the donation information of the PWF, including the feasibility of providing a copy of the information to requestors and allowing them to make records during the inspection, so that the arrangements could comply with the Code. If donors do not consent to disclosure of their names or if HKPF is not sure whether donors who have agreed to disclosure in the past would agree to the same under the new arrangement, the Department can obliterate their names when

disclosing the content of the Register. In the future, HKPF should also consider notifying donors of the latest arrangement when it accepts donations and seeks donors' consent to disclosing their names.

**Government's response**

192. HKPF accepted The Ombudsman's recommendation and has reviewed its arrangements for public inspection of the donation information of the PWF, including the feasibility of providing a copy of the information to requestors and allowing them to make records during the inspection, as well as informing donors that their personal data may be accessed by others for recording or other purposes, but considers the recommendation not viable.

193. Since the riots in 2019, there had been a surge in requests for inspecting information of the PWF. Media were playing up the donation amounts and identities of the donors of the PWF, including various speculations and doxxing of identities of the donors, which misled readers and made them suspect that the police work would be affected by donations. They also ignored the clarification that in deciding whether not to accept donations, the police must conduct reviews following stringent procedures and comply with the government's internal criteria and requirements and that of the police. Such inaccurate news reports had undermined the professional image of the police. Besides, the ways of reporting had caused donors to worry that they would be doxxed and under the threats to personal safety. In fact, HKPF had received complaints from donors (including those who had agreed to showing their names in the Register as well as those who disagreed to doing so) expressing deep worries about possible extensive disclosure of their personal data. Such worries had weakened their confidence in and inclination to support HKPF.

194. The information of the donors is personal privacy, and the donors did not consent to their personal data being used for purposes other than those for public inspection on request. HKPF does not

consider the public interest in disclosure would, as mentioned in paragraph 2.15(d) of the Code, outweigh the harm or prejudice caused to the donors, and it has clear and sufficient justifications to carefully protect the donation information of the PWF. HKPF has always been committed to balancing the public's right to inspect information and its obligation to protect the donors' privacy and safety, and it is the Department's responsibility to ensure smooth operation of the PWF. It is therefore necessary for HKPF to handle applications for access to information of the PWF for public inspection in a prudent manner. In this regard, HKPF considers that it may, on its own, decide in which of the four forms listed in paragraph 1.13 of the Code the information may be given. HKPF has been handling the applications for access to donation information of the PWF by way of affording a reasonable opportunity to inspect or view and has explained it to the complainant.

195. Furthermore, the donors' wishes to record their personal data in the internal register may change over time, social conditions and other different factors. In this case, the complainant requested donation information spanning three financial years, which involved considerable number of donors. If HKPF should reconsult each donor on his/her wish to disclose his/her name as recommended, it would be an unreasonable diversion of the Department's resources and hinder the normal operation of HKPF. In this light, HKPF could refuse the complainant's information request pursuant to paragraph 2.9(d) of the Code.

196. In view of the above, HKPF reckons that the current practice of affording a reasonable opportunity to inspect or view for processing applications for access to donation information of the PWF could balance the public's right to inspect information, protect the donors' privacy and safety and ensure smooth management of the PWF. HKPF therefore has decided to maintain the existing arrangement.

## Immigration Department

**Case No. 2021/0040(I) – Failing to provide the statistics relating to individuals detained by the Department as requested by the complainant**

**Background**

197. A non-governmental organisation (NGO) lodged a complaint with the Office of The Ombudsman (the Office) against the Immigration Department (ImmD) for failing to disclose information under the Code on Access to Information (the Code).

198. Allegedly, on 14 June 2019, a representative of NGO (Mr X) requested ImmD to provide the following information for each 12-month period from April 2014 to April 2018 (collectively referred to as Information I) –

(a) the number of individuals detained under immigration powers, and the below breakdown of those detainees –

i. gender(s);

ii. countr(ies) of origin; and

iii. proportion of detainees who have been charged/prosecuted with prior or ongoing criminal offences;

(b) the number of incidents of self-harm or suicide;

(c) the number of incidents or provision of emergency medical treatment/hospitalisation;

(d) the average duration of periods in which individuals were held within immigration detention (i.e. in days);

(e) the longest single period of continuous immigration detention;

(f) the number of those individuals at Information I (a) who, prior to their detention, had made claims [for non-refoulement protection] under the unified screening mechanism (USM), and of those, the number of those individuals whose claims were ongoing; and

(g) the number of those individuals at Information I (a) who, during their detention, lodged claims [for non-refoulement protection] under USM.

199. On 26 June 2019, ImmD replied to Mr X. Regarding Information I (a), ImmD provided him with the total number of detainees, on a yearly basis, from 2014 to 2017, but said that the relevant statistics for 2018 was not available. Furthermore, ImmD claimed that it did not maintain the breakdown information of detainees (i.e. Information I (a)(i) to (iii)) and neither did it maintain the statistics on Information I (b) to (g).

200. On 10 August 2019, Mr X requested ImmD to review his case. He considered that ImmD had unreasonably delayed in disclosing the detention statistics for 2018. He also considered that all items of Information I were of public importance and should be reasonably obtainable from relevant records. After conducting a review, ImmD replied to him on 19 August 2019. While ImmD provided the relevant statistics for 2018 for Information I (a), the Department maintained its reply of 26 June 2019 on Information I (a)(i) to (iii) and Information I (b) to (g).

201. On 6 March 2020, Mr X made another information request to ImmD for the following items for each 12-month period from 2017 to 2019 (collectively referred to as Information II) –

(a) the number of individuals detained under immigration powers;

(b) the average duration of periods in which individuals were held within immigration detention (i.e. in days);

(c) the longest single period of continuous immigration detention;

(d) the number of those individuals at Information II (a) who, prior to their detention, had made claims under USM, and of those, the number of those individuals whose claims were ongoing; and

(e) the number of those individuals at Information II (a) who, during their detention, lodged claims under USM.

202. ImmD replied to Mr X on 14 March 2020. Again, ImmD provided the yearly total number of detainees from 2017 to 2019 regarding Information II (a), and claimed that it did not maintain statistics on Information II (b) to (e).

203. On 7 April 2020, Mr X requested ImmD to review his case. ImmD replied to him on 27 April 2020 that its previous reply to him was maintained after a review. ImmD stated that, under paragraph 1.14 of the Code, departments are not obliged to create a record which does not exist. ImmD also claimed that in order to create the requested statistics that it did not maintain, substantial resources would be required.

204. Mr X considered ImmD's failure in providing him with majority of the items of Information I and Information II unreasonable.

**The Ombudsman's observations**

205. In response to Mr X's information requests, ImmD had provided to him the yearly total number of detainees from 2014 to 2019 (i.e. Information I (a) and Information II (a)). For the rest of the items of the information requests, in summary, ImmD claimed that it had not maintained the requested statistics; relevant information about individual detainees was kept in their individual case file in different sections of

ImmD, and compilation of the statistics would involve huge resources of the Department.

206. The Office had examined the paper forms that ImmD used to record detainees' information in its daily operation of the detention centres/facilities. Moreover, staff of the Office had visited the Castle Peak Bay Immigration Centre (CIC) and looked into the computer system for keeping detainees' personal particulars and occurrences during custody. The Office confirmed that those paper forms did not have entry about a detainee's non-refoulement claim status, and the computer system only provided statistics about detainees at CIC on a daily basis and did not carry the function of generating the requested statistics for a specific period of time. On the other hand, ImmD had explained the general operation of the detention centres/facilities and why the requested statistics had not been required and maintained by the Department.

207. In view of the large number of cases of detention and non-refoulement claims ImmD handled between 2014 and 2019, the Office, after taking reference to paragraphs 1.14 and 2.9(d) of the Code, considered that ImmD's refusal to provide the requested statistic under Information I (a)(i) to (iii), Information I (b) to (g), and Information II (b) to (e) was not unreasonable.

208. On the other hand, the Office noted that when ImmD refused to provide majority of the requested statistics in Information I and Information II, it had failed to inform him of the internal review or complaint channels as stipulated in paragraphs 1.25 and 1.26 of the Code and paragraph 2.1.2 of the Guidelines on Interpretation and Application (the Guidelines) of the Code.

209. ImmD had explained that it did not maintain the statistics requested by NGO as it considered that they were not necessary in the daily operation and management of the Department's detention centres/facilities or for its processing of the non-refoulement claims. Nevertheless, the Office pointed out that the number of non-refoulement

claims ImmD received had increased substantially over the decade and there was rising concern about the rights of those claimants on one hand, and possible abuse of non-refoulement claims on the other, as well as the operation and management of ImmD's detention centres/facilities. Moreover, while the data and information might not be absolutely necessary for the day-to-day operation and management of the detention facilities, the Office believed that they might be useful for long-term planning, e.g., resources and manpower allocation and management of the detention centres, as well as evaluation and formulation of relevant measures and policies.

210. This case revealed the fact that ImmD's practice in keeping records of detainees did not facilitate the generation of relevant statistics. The Office looked at information disclosed by other departments. For example, the Correctional Services Department (CSD) maintained the yearly number of self-harm incidents and suicide death cases of person in custody from 2016 to 2020 and published these figures in its 2020 Annual Review. Also, the Fire Services Department (FSD) was able to provide the numbers of incidents involving emergency ambulance service for CIC and Ma Tau Kok Detention Centre (MTKDC) from 2014 to 2020 in its reply to a Legislative Council Member during the examination of Estimates of Expenditure 2021-22.

211. To maintain a fair, open and accountable public administration and facilitate its internal long-term planning, ImmD should consider maintaining and publishing more information on the detainees so as to facilitate better understanding by the public. In this connection, the Office believed it is worthwhile for ImmD to explore the feasibility and merits of maintaining more comprehensive statistics, taking reference from the practices of CSD and FSD.

212. In view of the above, The Ombudsman considered this complaint unsubstantiated, but there were other inadequacies found.

213. The Ombudsman recommended ImmD to –

(a) remind relevant staff to follow the requirements stipulated in the Code and the Guidelines when handling information requests in future; and

(b) review the practice of maintaining statistics on the information relating to detainees at its detention centres/facilities with a view to compiling and disclosing more information to the public.

**Government's response**

214. ImmD accepted The Ombudsman's recommendations and has taken the following follow-up actions.

*Recommendation (a)*

215. The relevant staff concerned have been reminded to follow the requirements stipulated in the Code and the Guidelines when handling information requests in future. Training workshops on handling Data Access Request (DAR) and the Code which included case discussion as well as experience sharing were held regularly for staff who were responsible for handling DAR/the Code applications. Also, experience in handling this complaint case was shared among sub-division heads of ImmD at the 14th Privacy Compliance Group Meeting on 6 October 2021.

216. A departmental circular which sets out and highlights the salient features of the Code are re-circulated among staff half-yearly. CIC and Prosecution and Removal Sub-divisional Instructions were issued which served to remind staff the spirit of the Code as well as the importance to inform the applicant of the channels of the internal review or complaint.

*Recommendation (b)*

217. CIC and MTKDC has published relevant statistics of detainees maintaining from 1 September 2021 for the public's general information while the Control Sub-division has started to maintain relevant statistics

of detainees at the detention facilities of control points starting from 1 September 2021.

218. For the sake of effective use of resources, other information or statistics bearing no additional value in enhancing the management and work of ImmD will not be maintained.

## Immigration Department

### Case No. 2021/0170(I) – Failing to provide the statistics relating to detainees of the Department with non-refoulement claims

### Background

219. A non-governmental organisation (NGO) lodged a complaint with the Office of The Ombudsman (the Office) against the Immigration Department (ImmD) for failing to disclose information under the Code on Access to Information (the Code).

220. Allegedly, on 5 June 2020, a representative of the NGO (Ms Y) requested ImmD to provide the following information for each year from 2014 to 2019 –

(a) the number of non-refoulement claimants detained under immigration powers;

(b) the number of detained individuals who, prior to their detention, had ongoing claims under the unified screening mechanism (USM); and

(c) the number of detained individuals who, during their detention, lodged claims under USM.

221. Also, Ms Y pointed out that, from Legislative Council Paper No. CB(2)592/18-19(01) (the LC Paper), she was aware that ImmD did maintain statistics on the number of non-refoulement claimants detained under immigration powers.

222. In the reply of 24 June 2020 to Ms Y, ImmD replied that the information stated in the LC Paper was the number of persons detained at the Castle Peak Bay Immigration Centre (CIC) as at end of November 2019. As at 31 May 2020, 399 persons (including 79 non-refoulement

claimants pending determination of their claims) were being detained at CIC. ImmD further explained that the available statistics did not contain information about whether the individuals had lodged their non-refoulement claims during or prior to their detention as sought by another information request that she mentioned.

223. Ms Y considered ImmD's failure in providing her with the requested information unreasonable.

**The Ombudsman's observations**

224. The Office had examined the paper forms that ImmD used to record detainees' information in its daily operation of the detention centres/facilities. Moreover, the Office had looked into the standalone computer system for keeping detainees' personal particulars and occurrences during custody at CIC. The Office confirmed that those paper forms did not have entry about a detainee's non-refoulement claim status, and the computer system only provided statistics about detainees at CIC on a daily basis and did not carry the function of generating the requested statistics for a specified period of time. On the other hand, ImmD had explained the general operation of the detention centres/facilities and why the requested statistics had not been required and maintained by the Department.

225. In view of the large number of cases of detention and non-refoulement claims ImmD handled between 2014 and 2019, the Office, after taking reference to paragraphs 1.14 and 2.9(d) of the Code, considered that ImmD's refusal to provide the requested statistics was not unreasonable. In any event, the Office noted that ImmD, in its reply of 24 June 2020, had taken a positive step to offer the readily available number of non-refoulement claimants detained at CIC as at 31 May 2020 to Ms Y.

226. On the other hand, the Office noted that when ImmD refused Ms Y's information request, it had failed to inform her of the internal review

or complaint channels as stipulated in paragraphs 1.25 and 1.26 of the Code and paragraph 2.1.2 of the Guidelines on Interpretation and Application (the Guidelines) of the Code.

227. In view of the above analysis, The Ombudsman considered this complaint unsubstantiated, but there were other inadequacies found. The Ombudsman recommended ImmD to remind the relevant staff to follow the requirements stipulated in the Code and the Guidelines when handling information requests in future.

**Government's response**

228. ImmD accepted The Ombudsman's recommendation and has taken the following follow-up actions.

229. The relevant staff concerned have been reminded to follow the requirements stipulated in the Code and the Guidelines when handling information requests in future. Training workshops on handling Data Access Request (DAR) and the Code which included case discussion as well as experience sharing were held regularly for staff who were responsible for handling DAR/the Code applications. Also, experience in handling this complaint case was shared among sub-division heads of ImmD at the 14th Privacy Compliance Group Meeting on 6 October 2021.

230. A departmental circular which sets out and highlights the salient features of the Code are re-circulated among staff half-yearly. Removal Assessment and Litigation Divisional Instruction, which highlights the salient points on refusal of requests for information made under the Code as well as the importance to inform the applicants of the channels of the internal review or complaint, was issued on 30 September 2021.

## Immigration Department and Judiciary Administration

**Case No. 2020/2286A and 2020/2286C – (1) Perfunctory handling by Immigration Department (ImmD) of an identity card application in that the applicant was not required to produce address proof for using the complainant's address; (2) ImmD having failed to take adequate follow-up action on the complainant's complaint about receiving a letter wrongly sent to her premises by the Judiciary Administrator, such that she received another letter wrongly sent to her by the Inland Revenue Department (IRD); and (3) ImmD having failed to provide further assistance to the complainant and simply asking her to liaise with IRD herself regarding the letter wrongly sent to her premises by IRD**

### Background

231. On 8 July 2020, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against ImmD, stating that in December 2019, she received at her premises (the address concerned) a notice addressed to a non-resident of the address concerned (X) about the adding of the latter's name to the list of jurors (the notice to jurors). The complainant raised the matter with ImmD. ImmD's Registration of Persons (Support) Section (ROP(S)) indicated that they would follow up the case accordingly. In June 2020, the complainant further received at the address concerned a letter to X from IRD (the IRD letter). She raised the matter with ROP(S). A staff member replied that she should contact IRD herself for follow-up. The complainant criticised ROP(S) for the following deficiencies –

(a) being perfunctory in that any person (including X) was allowed to declare the complainant's address to be one's own address without having to submit any address proof (Allegation (a));

(b) being slipshod in their work and failing to discharge the duties of an information disseminator properly, as seen from the fact that

the complainant still received an IRD letter after being told that the case would be followed up accordingly (Allegation (b)); and

(c) simply asking the complainant to liaise with IRD herself for follow-up without providing further assistance (Allegation (c)).

232. Having examined the response of ImmD, the Office probed deeper into the process of transfer from ImmD to the Judiciary of the data provided by certain individuals (including X) at the time of identity card applications as well as the liaison between ImmD and the Judiciary. After preliminary examination of the information provided by the Judiciary Administration (the Jud Adm), the Office decided that a full investigation would be carried out and that the Jud Adm would be included as an additional organisation under complaint.

**The Ombudsman's observations**

*Allegation (a)*

233. At present, every person must declare that the registration of persons (ROP) information, including addresses, furnished in such form as required (i.e. Form ROP1, known as ROP1 for short) is accurate, otherwise he/she shall bear criminal liability. ImmD considered that the penalty acted as a deterrent, and that a mechanism was in place to facilitate and ensure that the public has filled in correct and complete addresses. However, according to the cases provided by the Jud Adm to the Office and the submissions from ImmD and the Jud Adm, there were indeed instances of incomplete addresses in potential jurors' files sent from ImmD to the Jud Adm. As for the gravity of the issue, there was a dispute between the two departments, over which the Office found it difficult to decide.

234. ImmD pointed out that applicants registering for identity cards or applying for the amendments of registered particulars were not required to submit address proof under the Registration of Persons

Ordinance or the Registration of Persons Regulations. Nevertheless, the Office considered that requesting address proof from applicants was merely an administrative measure, which was not necessarily a requirement that could only be imposed by ImmD in circumstances where relevant laws expressly stipulated that the Director of Immigration was required or allowed to make such requests. The Office noted that the requirement for the submission of address proof varied among different government services. For some services, it was a legal requirement (e.g. the application for a driving licence), while for others, it was an administrative arrangement (e.g. the application for public housing).

235. The Office was of the view that the responsibility for furnishing correct information certainly rested with the persons filling in an ROP1, but this did not mean that the Director of Immigration, being the Commissioner of Registration, was totally spared from his gatekeeping duty. ImmD should review the existing administrative process, and check the accuracy and completeness of the ROP information received to see if consideration should be given to the need to step up verification efforts by, for example, requesting address proof from applicants when collecting application forms.

*Allegation (b)*

236. Upon investigation, the Office was of the view that there was no evidence suggesting that X's information was provided to IRD by ImmD. The Office was unable to know why IRD sent an IRD letter addressed to X to the address concerned. However, as deduced from the information available to the Office, it seemed that there was no correlation between the notice to jurors and the IRD letter. The Office recommended that the complainant should make enquiries to IRD about this matter directly.

*Allegation (c)*

237. The Office considered that the staff member of ROP(S) only advised the complainant to call IRD first in the first phone call, during

which the information provided by the complainant was limited. Upon learning from the Registration of Persons Records Section about the situation, the staff member proactively contacted the complainant. When the complainant indicated that she could not reach IRD, the staff member did suggest other feasible alternatives to the complainant, but they were not accepted by the complainant at that time. The Office disagreed that the staff member did not provide further assistance.

*Other observations*

238. ImmD admitted that a system procedural error had resulted in the faulty transmission from ImmD to the Jud Adm through system interface on 25 October 2019 (the 25 October data) regarding the data of multiple individuals (including X) provided at the time of identity card applications. While ImmD did monitor the operation of the system, detect the system's problem and take remedial action within a short period of time, it was inadequate for ImmD to have chosen to notify the Jud Adm of such an error involving the data of multiple individuals only by way of phone call. Staff member of ImmD insisted that he had given an account of the incident whereas staff member of the Jud Adm denied that he had been given clear notification. As there were no audio recording of the most crucial exchange between staff members of the two organisations, the Office was unable to ascertain the actual circumstances. The Office did not intend to query the statements by the staff members. After all, the communication process depended ultimately on what staff members said and understood. The Office urged ImmD to gain experience from this case, improve the handling of incidents related to data transmission, and that in the future, follow-up work should not be conducted by way of telephone communication only. Given personal data of the public were involved, a more prudent approach should be employed.

239. The Jud Adm spent more than 1.5 months to finish processing the 25 October data. The Office considered that the time spent was rather long and believed that it was not a single incident. The Office was of the

view that, while the Jud Adm had been conscientious in the verification of data in respect of issuing the notice to jurors, as far as the processing time was concerned, the Jud Adm should conduct an early review on the situation and strive to improve efficiency. Besides, in this particular case, the situation was unsatisfactory in that the Jud Adm did not check the data on the notices to be issued to see if such data had been updated. The Office was delighted to learn that the Jud Adm had taken the initiative to carry out enhancements to the computer system. At the same time, if ImmD could solve the problem related to incomplete residential addresses at its root, it was believed that it would also help the Jud Adm to expedite the process in question.

240. Concerning individuals who actually did not have a residential address (e.g. street sleepers), since it was simply impossible for the Jud Adm to serve the notice to jurors on them, the Jud Adm should consider how best to revise the mechanism to handle such cases more effectively and discuss the matter with ImmD.

241. In view of the above, the Office considered the complaint unsubstantiated but that there were other inadequacies found on the respective part of ImmD and the Jud Adm.

242. The Ombudsman recommended –

(a) ImmD to learn from this case and improve the handling of incidents involving incorrect transmission of data;

(b) ImmD to draw up measures to step up efforts in verifying the particulars on application forms, including considering requesting address proof from applicants; and

(c) the Jud Adm to review its manpower deployment and workflow in order to expedite the data processing time.

**Government's response**

243. ImmD and the Jud Adm accepted the recommendations of The Ombudsman and have taken the following follow-up actions.

244. Although ImmD considered that incomplete addresses were not common, it agreed to the need to enhance its verification work. ImmD has already reminded its frontline staff to check the addresses provided by applicants and ask the applicants to rectify them if the addresses are obviously incomplete or incorrect. It will also step up its verification efforts through spot checks to ensure the completeness of the reported information. Furthermore, ImmD planned to enhance the address lookup function of its computer system within the third quarter of 2022 to further minimise instances of incomplete addresses. As to whether to request address proof from identity card applicants by administrative measures, considering the address reported by the applicants may change after identity card applications, ImmD will step up publicity to remind the general public of their obligation to accurately furnish and timely report of any amendments to their registered particulars, including their residential address, to the Registration of Persons Office.

245. ImmD has reviewed the handling procedures for relevant contingencies and strengthened liaison with the Jud Adm. The two organisations have put in place a more effective and clear notification mechanism, including the setting up of respective direct communication channels at senior and middle management levels as well as at general day-to-day operational level, for the purpose of strengthening both organisations' cooperation and communications (in matters such as the handling of emergency incidents and day-to-day data transmissions), with a view to avoiding similar occurrences in the future. In dealing with matters relating to day-to-day data transmissions, the two organisations have generally switched to written communication to ensure accuracy. For the relevant contingencies, in addition to immediate follow-up by phone, staff of ImmD should give notice through email or memorandum as soon as possible to further ensure that messages would be conveyed

accurately. In addition, the Jud Adm has requested ImmD to improve as far as possible the quality of the data sources, so as to reduce the time needed for the Jud Adm to manually check each and every data item, increase the overall efficiency and reduce the possibility of erroneously issuing notices to jurors.

246. In parallel, the Jud Adm has immediately reviewed the workflow of the Jury Clerks' Office relating to the processing of jury's data and issuance of notices to jurors. The IT system has also been enhanced to compare the list of notices to jurors pending issuance against the data provided by ImmD pending processing with the aid of a computer programme. Where data requiring further updating are identified, the system will promptly alert the Jury Clerk's Office for follow-up actions to ensure that the addresses stated on the notices issued reflect the latest information kept by the Jud Adm. This will help prevent recurrence of similar incidents.

247. As the Territory-wide Identity Card Replacement Exercise is still underway, a huge amount of information on potential jurors is transmitted from ImmD to the Jud Adm every week. Based on the Jud Adm's observation, there has been marked improvement in the quality of the data on potential jurors provided to it by ImmD, and the time needed for it to verify the data has therefore significantly reduced. Meanwhile, to further facilitate manual verifications, the Jud Adm has further enhanced its IT system, using computer programmes to screen out incomplete information relating to prospective jurors.

248. With the implementation of the various enhancement measures stated above, the time required for verification of information on prospective jurors by the Jud Adm has been shortened from over 1.5 months to about 1 to 2 weeks. It can also be ensured that the addresses on the notices to jurors are the most updated information kept by the Jud Adm.

## Joint Office for Investigation of Water Seepage Complaints

## Case No. 2021/2468A and 2021/2468B – Failing to properly follow up on a Nuisance Order issued to the owner of the flat above the complainant's flat

### Background

249. On 26 July 2020, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against the Joint Office for Investigation of Water Seepage Complaints (JO) set up by the Food and Environmental Hygiene Department (FEHD) and the Buildings Department (BD). The complainant alleged that defective waterproofing of the bathroom floor slab of the flat upstairs (the Flat) had caused water seepage to the bathroom ceiling of his/her flat. On 9 August 2020, FEHD received a telephone complaint record form signed by the complainant.

250. JO issued a Nuisance Notice (the Notice) in June 2019. As the owner of the Flat (the Owner) did not comply with the Notice, the court issued an Order on 15 September 2020, ordering the Owner to complete the necessary repair by 15 January 2021.

251. In January 2021, the Owner informed JO that repair had been completed. On 8 March, JO inspected the Flat and noticed that repair had been carried out in the bathroom. On 20 March, staff of JO and the consultancy made a check on the complainant's flat using infra-red thermography and microwave tomography technologies (New Technology) and confirmed that the moisture content (MC) of the seepage area was still over 35%.

252. In mid-April 2021, JO stated that it was analysing the investigation report submitted by the consultancy. On 26 July, a staff member of JO(BD) (Staff A) stated in the reply to the complainant that although the investigation report submitted by the consultancy showed that there was still an accumulation of water in the complainant's

bathroom ceiling, the situation had improved significantly, and other sources of water seepage could not be ruled out. Subsequently, a staff member of JO(FEHD) (Staff B) explained to the complainant that as the Owner had provided JO(BD) with a pipe repair receipt dated 5 October 2020, JO(BD) staff decided to stop following up on the case. Staff B also explained that since the Order issued on 15 September 2019 had expired on 15 July 2021, if the complainant required JO to follow up on the water seepage problem, it would need to start the investigation afresh from Stage I.

253. The complainant made the following six allegations against JO -

(a) when reviewing whether the Order had been complied, JO conducted tests using only New Technology. Staff A found an unusual accumulation of water during the check and could not identify its source, however, no further test (such as ponding test for floor) was conducted to track down the source of water seepage. In addition, Staff A and Staff B were passing the buck as regards the responsibilities for following up on the case (Allegation (a));

(b) it took eight weeks for Staff A to finish reviewing the information obtained from the compliance check. The progress was slowed down, leaving not enough time for JO to find out whether the Owner had complied with the Order before its expiry (Allegation (b));

(c) JO staff told the complainant on 20 March 2021 that they would continue to follow up on the Owner's compliance of the Order, including visiting the complainant's flat to measure MC of the ceiling again. However, JO staff subsequently stopped following up on the case without informing the complainant (Allegation (c));

(d) when following up on the compliance of the Order, JO did not take the initiative to inform the complainant of the progress (Allegation (d));

(e) even though the water seepage problem remained unresolved and there was not enough evidence showing that the Owner had satisfactorily carried out repairs and mitigated the nuisance to the complainant's flat under the Order, JO closed the case in a hasty manner (Allegation (e)); and

(f) between April and early August 2021, the complainant repeatedly left phone messages to JO staff. However, the complainant received just one or two replies from JO staff. Most of the messages were unanswered (Allegation (f)).

**The Ombudsman's observations**

*Allegations (a) and (e)*

254. One of the key questions in this case was whether JO had properly followed up on the Owner's compliance of the Order. As noticed by the Office, JO considered that the Owner had complied with the Order based on the two points below –

(a) although the MC of the seepage area on the bathroom ceiling in the complainant's flat measured on 2 February and 20 March 2021 was still over 35%, monitoring found a significant improvement in the seepage area and the MC. Therefore, it could not be ruled out that the presence of water remaining in the concrete slab after the completion of repair works in the Flat had contributed to the signs of seepage still found on the complainant's bathroom ceiling; and

(b) upon on-site investigation on 8 March 2021, JO staff opined that there were signs of repair in the bathroom floor slab. The Owner also provided a copy of receipt for the repair and testing works.

255. However, the Office noticed the following –

(a) the Order issued on 15 September 2020 required the Owner to repair satisfactorily the bathroom floor slab (Area A) and the floor slab underneath the bathtub (i.e. the shower compartment) in the bathroom (Area B) of the Flat;

(b) comparing the bathroom photographs taken by JO staff on 28 August 2019 before the issue of the Order and those taken during the on-site inspection of the Flat on 8 March 2021, the only discernible difference was a pipe running from the right side of the wash basin to the back of the toilet bowl. The area where the outlet of the pipe was connected to the bathroom floor slab was enclosed by white sealant. As for Area B (i.e. the floor slab of the shower compartment), the photographs did not show any signs of repair;

(c) the receipt provided by the Owner stated that the repair item was pipe replacement, and the test item was pipe testing; and

(d) on 12 August 2021, JO wrote to the complainant and the Owner, informing them of the investigation results and confirming that the Owner had completed the repair works for Area A and Area B by the deadline in accordance with the requirements of the Order.

256. The Office pointed out that the Order clearly required the Owner to repair Area A and Area B. Regardless of whether the addition of the new pipe and the sealant at the outlet means that Area A had been repaired, the photographs and the receipt for the repair works failed to prove that the Owner had carried out repairs for Area B. Having

examined all the information provided by JO, the Office could not be satisfied that the Owner had completed the repair works for Area A and Area B in accordance with the Order, as claimed by JO's letter dated 12 August 2021.

257. What happened next, in fact, was that after JO had stopped following up on the case, since water seepage in the complainant's flat continued, JO had to follow up on the case afresh. A subsequent spray test also confirmed that the floor slab of the shower compartment and the enclosing walls (i.e. Area B) in the Flat were the sources of water seepage. Hence, another Notice was issued to the Owner.

258. The Office was of the view that, had FEHD staff of JO been prudent in reviewing the repair receipt and the Order's requirements, they would not have been satisfied by the mere signs of repair in the bathroom that the Order had been complied with. JO should have simply asked for further evidence from the Owner to prove that he had indeed carried out repairs for Area A and Area B. Has the Owner failed to satisfy JO that he had carried out repairs in accordance with the Order, JO should had instituted prosecution in a prompt manner, and the subsequent referral of the case to BD staff of JO for a confirmatory test would not had been necessary. Hence, the methods used for the confirmatory test were not of primary importance in this case.

259. JO explained the reasons why only New Technology was applied in the compliance check of the Order in this case. Based on their experience, New Technology was generally more effective in investigating the source of water seepage. Moreover, the testing procedures might be related to the legal proceedings which might be initiated subsequently. Taking into account the effectiveness of law enforcement, JO adopted the same testing method for the check. From the administrative point of view, the Office considered JO's explanation reasonable. In fact, it is up to JO's expert judgment to decide which testing method to use when carrying out the compliance check. Unless there was evidence showing that the decision-making process is improper

or JO's decision is against common sense, the Office would not interfere with JO's decision.

260. To sum up, the Office opined that there were indeed inadequacies in JO's compliance check of the Order. As a result, JO staff decided to stop following up on the case without realising promptly that Area B was still the source of water seepage. The procedures in which the case was handled were not prudent enough.

261. Regarding the complainant's claim that Staff A and Staff B were passing the buck, after reviewing the case, the Office believed that both FEHD staff and BD staff of JO had followed up on the complainant's case according to their established duties and division of work. When Staff B told the complainant that JO(BD) had decided to stop following up on the case, the Office believed that his/her intention was to explain to the complainant that the decision to stop following up on the case was made by BD staff with expertise in building surveying.

*Allegations (b) and (d)*

262. JO clarified that it finished reviewing the revised report of the consultancy (submitted on 20 May) on 11 June 2021, i.e. before the deadline for initiating prosecution set out in the Order (15 July 2021). Nevertheless, JO also admitted that its staff did not inform the complainant of the results as soon as possible after reviewing the report. In this regard, JO gave an apology to the complainant. It had also reminded the relevant staff members that the complainant should be informed of the investigation progress in a timely manner.

263. The Office opined that by waiting until 12 August 2021 to inform the complainant of the investigation results in writing, JO easily gave the false impression that it needed almost three months to finish reviewing the report and had missed the deadline for initiating prosecution set out in the Order. To cater for the expectation of the complainant who was being troubled by water seepage, JO should have

informed the complainant of the result as soon as possible after reviewing the report and obtaining the result to avoid misunderstanding.

*Allegation (c)*

264. As regards whether staff from JO and the consultancy had promised to visit the complainant's flat to measure MC of the ceiling again, in the absence of independent and corroborative evidence, the Office was unable to ascertain the facts and thus was not in a position to comment on it.

*Allegation (f)*

265. As for the claim that JO staff had failed to reply messages properly, JO explained in detail how it followed up on the relevant phone enquiries and messages. The Office considered that JO had replied the complainant's messages in a timely manner. It was not the case as claimed by the complainant that just one or two replies were received from JO staff and most of messages were unanswered.

266. Overall, The Ombudsman considered this complaint partially substantiated and recommended that JO should –

(a) review the handling of the case and remind its staff to take reference of the case and ensure the compliance checks are conducted according to the requirements of the Notices or Orders;

(b) remind its staff to timely inform complainants of the investigation progress and, after reviewing the reports, notify the complainant the relevant results as soon as possible to avoid misunderstandings; and

(c) continue to closely follow up on the case and take appropriate actions in accordance with the confirmatory test results and

established guidelines in order to solve the seepage problem sooner.

**Government's response**

267. JO accepted the conclusions of the Office's investigation report and agreed that there was room for improvement in conducting compliance check of the Order. JO had reminded its staff to handle the relevant procedures in a prudent manner, including paying attention to whether the repair items shown on the receipts match with those specified in the Notice or Order, as well as inspecting carefully the maintenance condition and signs of recent repair of the areas concerned during on-site checks, so as to determine whether the Notice or Order had been satisfactorily complied with. In addition, JO also reminded its staff to inform complainants of the investigation progress in a timely manner and to notify them of the relevant results as soon as possible after reviewing the reports.

268. In this particular case, JO deployed staff to visit the complainant's flat on 17 January 2022 to follow up on the compliance of the Notice. It was found that after the completion of repair works in the Flat, there was still water seepage in the bathroom ceiling of the complainant's flat. Further tests conducted by JO and consultancy's staff revealed no evidence showing that the Flat was the source of water seepage in the bathroom of the complainant's flat. There was no evidence that the Notice had not been properly complied with either.

269. On 18 July 2022, JO wrote to the complainant and the Owner informing them of the relevant findings, and stopped following up the case in accordance with the established procedures.

## Lands Department

## Case No. 2020/3421 – Unreasonably granting approval to a tenant for continual renewal of the short-term tenancy for a piece of Government land for dangerous goods storage

### Background

270. The complainant had been waiting many years for a site (the Site) to be put up for open tender so that he could bid the Site for his use. However, Lands Department (LandsD) had allowed the existing tenant to continuously renew the short term tenancy (the said STT) for the Site for 38 years for operating a dangerous goods godown.

271. On 18 October 2020, the dissatisfied complainant complained to the Office of The Ombudsman (the Office) against LandsD for giving unreasonable favour to the existing tenant, thereby restricting normal competition for use of the Site.

### The Ombudsman's observations

*(I) The Requirements of LandsD's Relevant Guidelines*

272. LandsD's guidelines before 1991 stated clearly that a site should be re-tendered if it would be available for a further term of three years or more. However, the District Lands Office (the DLO) concerned had all along permitted the existing tenant to continue to occupy the Site after expiry of the initial term of the said STT. This obviously contravened the guidelines.

273. In November 1991, the guidelines were revised adding that special circumstances may exist such that it would be beneficial to permit an existing tenant to remain in occupation and such cases should be referred to Land Administration Meeting (LAM) for prior approval. Nevertheless, the DLO continued to renew the said STT without referring

the case to LAM for prior approval, hence contravening the guidelines at that time. Approval from the Chairman of District Lands Conference for not re-tendering the Site was only sought after the further revision of the guidelines in May 2003. The grounds included anticipated strong opposition from the public, the identified long-term use of the Site, requirement of a planning permission, the long time required for demolishing the existing godown, etc.

*(II) LandsD's Decision of Not Re-tendering the Site*

274. According to LandsD's relevant guidelines, a site should be re-tendered if it will be available for a further term of three years or more unless special circumstances exist. Though the long-term use of the Site has been identified, the Site has not yet been required for permanent development. Given that the availability of the Site for short-term use has not been affected by the identification of the long-term use of the Site, the latter is not a reason for not re-tendering the Site. Besides, the Office had reservation on LandsD's view that no record of complaints against the existing tenant could be regarded as a "special circumstance" justifying not re-tendering the Site.

275. The anticipated difficulties that would come with re-tendering the Site were associated with the nature of the use of the Site, i.e. dangerous goods storage. While such difficulties might indeed exist, the Office considered it necessary for LandsD to review the use of the Site before coming to a decision of not re-tendering it as this was not in line with its own guidelines. In this connection, the Office had found no records of LandsD's consultation with relevant bureaux and departments (B/Ds) for a review of the use of the Site before renewing the said STT over the years.

276. According to its guidelines, even if LandsD considered that the Site should continue to be used for storage of dangerous goods, the Site should still be re-tendered unless special circumstances existed. Regarding LandsD's emphasis on the technical and planning issues of re-

tendering the Site and the best interest of renewing it in the prevailing manner, the Office appreciated its underlying reasoning but LandsD should have taken into account fairness to other interested parties in its decision process of whether or not the Site should be re-tendered. By whatever measure, allowing the same tenant to occupy the Site through continual STT renewals for over 38 years is an act in favour of the existing tenant and unfair to other potential tenants.

277. Furthermore, the Office noted that the Planning Department had advised LandsD that if the structures/buildings of the existing dangerous goods godown remained at the Site and there was no material change in the structures/buildings, resumption of "Dangerous Goods Godown" use at the Site would not require permission from the Town Planning Board. It means that demolition of the existing godown giving rise to the Site being not immediately available and the need to obtain planning permission are only potential but not definite issues. LandsD, in a bid to overcome these issues, may explore the possibility of keeping the structures/buildings at the Site when it is re-tendered.

278. LandsD emphasised that keeping the Site to be used as a dangerous goods godown could address the problem of shortage of land for dangerous goods godown facility in the district concerned, and in the meantime ensured that the government would have a steady rental income. Hence, its continual renewal of the said STT was in the government's best interest. In this connection, the Office noted that LandsD explained that it was not the authority to review and identify whether there were needs for other uses of the Site, and it had not consulted relevant B/Ds for reviewing the use of the Site. Such explanations invited question as to how LandsD came to the conclusion that continual renewal of the said STT was in the government's best interest as it has not consulted relevant B/Ds and ascertained the need for using the Site for dangerous goods storage purposes on a temporary basis.

279. Based on the observations and analysis above, The Ombudsman considered that LandsD failed to consistently follow its guidelines and its decisions on renewing the said STT over the past years not thoroughly made. The Ombudsman, therefore, considered this complaint substantiated.

280. The Ombudsman recommended LandsD to adhere to its relevant guidelines and give thorough consideration to its future disposal of the Site.

**Government's response**

281. LandsD accepted The Ombudsman's recommendation and has taken follow-up actions.

282. The DLO consulted relevant B/Ds in April 2021. In view that no B/Ds had expressed any need to use the Site either temporarily or permanently and that the Fire Services Department (FSD) supported the continuous use of the Site for storage of dangerous goods, the DLO sought approval according to applicable procedures to re-tender the Site by STT by way of Abbreviated Tender System tentatively in November 2021 for the purpose of storage of dangerous goods.

283. Subsequently, FSD requested in September 2021 for using a portion of the Site to store its dangerous goods. In response to FSD's request and after discussion, the DLO agreed to allocate that portion of the Site to FSD for its use by way of temporary government land allocation. As for the remaining part of the Site, the DLO's invitation for tenders was launched on 20 July 2022 and the tender was closed on 26 August 2022. The tender result was announced in September 2022.

## Lands Department

**Case No. 2020/3514 – (1) Perfunctory investigation into whether or not the use of a piece of land under a short-term tenancy was in compliance with tenancy terms; and (2) Failing to reply to the complainant's enquiry properly**

### Background

284. A piece of land (the site) was let by way of short-term tenancy, and one of its permitted uses was "repair workshop". However, the complainant observed that the site was being used for carparking which was not a permitted use. In other words, he alleged that the tenant concerned had contravened the tenancy conditions.

285. On 18 July 2020, the complainant filed a complaint with the Lands Department (LandsD) about some service vehicles parking on the site, which was suspected of being used as a carpark. In reply to the complainant, the District Lands Office (DLO) concerned advised on 18 September that the staff on the site had explained that they were unable to inspect and repair all the vehicles forthwith due to shortage of "spare parts and manpower". On 19 and 22 September, the complainant requested DLO again to investigate the use of the site, and asked if DLO had, during the inspection, required the maintenance workers on the site to provide repair documents for checking, and whether the number of maintenance workers was sufficient to handle the service vehicles parking there. However, DLO did not answer his questions in its subsequent reply.

286. The complainant was dissatisfied with DLO's perfunctory investigation regarding the use of the site, which had resulted in the site being persistently used as a carpark (Allegation (a)). He was also discontented with DLO's failure to properly answer his questions raised on 19 and 22 September 2020 (Allegation (b)). As such, he lodged a

complaint with the Office of The Ombudsman (the Office) against LandsD on 23 October 2020.

**The Ombudsman's observations**

*Allegation (a)*

287. LandsD provided the Office with information related to the case, including a Co-operation Document between the tenant and a company (Company A) where the tenant's obligation to provide daily maintenance and annual inspection to the customer's vehicle fleet (the vehicle fleet) was specified. Having examined the said information, the Office considered that while DLO had looked into the complaint, the tenant obviously had provided unconvincing explanations and evidence to allege that the vehicles parking on the site were awaiting inspection and repairs. Hence, the credulity of DLO to have readily accepted the explanations and information given by the tenant was inappropriate. The Office's comments were based on the following grounds.

(I) Spare parts and manpower

288. It was a rather convenient excuse to claim that the vehicles were awaiting repairs instead of parking, on the pretext of having problems in acquiring "spare parts and manpower". But DLO should not have been easily satisfied with those explanations without any solid evidence. On the contrary, it should have made further checking instead. For example, what was exactly the issue of "spare parts"? Did the company order any spare parts? Could it produce any order records? How could the company provide repairs service if no spare parts had been ordered? If the tenant failed to give reasonable explanations and supporting evidence, then DLO had reason to believe that the service vehicles parking on the site were not simply awaiting inspection and repairs as claimed by the tenant. In short, DLO should not have readily accepted the unsubstantiated explanation in respect of the "spare parts" without further verification.

289. Likewise, DLO did not delve into the issue of "manpower" at the start. It was not until the complainant had made persistent complaints to DLO and DLO took follow-up actions that the tenant alleged in late October that half of the workers did not go to work due to their concern about infection. However, in the Office's opinion, this explanation was equally implausible because the unemployment rate was increasing as Hong Kong had been plagued by the epidemic. Many workers were facing long-term underemployment or even unemployment, and their livelihoods were hard hit. What concern them most in general were unemployment and underemployment. In addition, it was hard to believe that half of the workers refused to work due to the alleged concern about getting infected since the repair workshop was not a confined space but occupying a large area with low flow of people. That DLO had no doubt about the tenant's unreasonable and belated explanation did not make any sense at all. Regarding the tenant's excuse of its inability to recruit workers, DLO should have demanded the production of recruitment records. But DLO did not do so.

(II) No payment vouchers were issued because fees were not charged every time service was provided

290. LandsD once asked the tenant whether they could provide the payment vouchers but the tenant advised that they could not do so because repairs and maintenance were not charged per service. The Office considered such an explanation defied common sense because ultimately payment would have to be made even though it was not charged every time service had been provided. No issue of vouchers upon payment is not a conventional commercial practice. Nor does the practice cater for the normal operation needs of a company, such as for calculating profits and losses, filling in a tax return, etc. Therefore, it was unreasonable for DLO to have accepted such an explanation.

(III) Doubts about the Co-operation Document

291. The Office examined the Co-operation Document in which some points were called into doubt -

(a) it was specified in the Co-operation Document that the tenant and Company A established a "joint venture" but the name of the joint venture was not given. It might be that the name had yet to be decided when the agreement was entered into in 2016, but this was at least a point of doubt. When DLO received this document in 2020, the Office believed that the registration certificate of the joint venture should have been attached by the tenant if the joint venture really existed; and DLO should have followed up by asking for it when the tenant did not attach any certificates as proof;

(b) the role of the tenant in the joint venture was to provide a venue, whereas Company A was responsible for the provision of maintenance service. The tenant would receive a "prescribed proportional share of venue service commission". As both parties deemed it necessary to specify details of co-operation in writing, there should not be any ambiguities in the details. But the reality was just the contrary. For example, what proportion was the "prescribed proportional share"? Who was charged the payment of "commission"? Was the joint venture or only Company A charged the payment? All these essential details were missing in the Co-operation Document. Queries should have been raised by DLO; and

(c) the Co-operation Document prescribed that the tenant would "charge a certain proportion of venue service commission", but did not specify whether the tenant, who was also a shareholder of the joint venture, was only entitled to venue service commission, or entitled to both venue service commission and his/her share of profit or loss from the repair business. In view

of the above, the Office considered that the Co-operation Document was more like a sublet document. Whether the Co-operation Document was executed and how was it executed were indeed questionable.

(IV) Vehicles parked on the site awaiting repair had the same company name on their bodies

292. DLO advised the Office that its staff had conducted multiple on-site inspections and seen that the vehicles being repaired and those pending repair had the same company's name printed on their bodies. As such, DLO considered that their observation was consistent with the tenant's explanation that the site was used as a repair workshop for inspecting the vehicle fleet. The Office believed that, although DLO staff had found the same company name on the vehicles' bodies during inspections, it was of no help in proving that the site was being used as a repair workshop.

293. Apart from the doubt over the tenant's explanations as mentioned above, the Office opined that DLO seemed to have overlooked the possibility that the tenant might have sublet the site to other people, which was in fact prohibited by the short-term tenancy concerned. Although LandsD had explained that DLO, after perusing the Co-operation Document, reckoned that the site was not sublet by the tenant and therefore the case was not investigated further, the Office considered that DLO's decision on accepting the Co-operation Document and pursuing no further investigation, was not carefully thought out in view of the aforementioned doubts over the Co-operation Document.

294. According to DLO, the tenancy conditions did not require the tenant to disclose any details of his/her business. Though not contesting that point, the Office considered it the responsibility of DLO to investigate whether the complaint lodged by the complainant was valid, and verifying if there was any unauthorised use of the site did not necessarily rely on the availability of business operation details. The

Office also held the view that the tenant had the responsibility to prove to DLO that the large number of vehicles were indeed pending "repair" instead of purely parking there. If the tenant could not provide any evidence, it would not be unreasonable for DLO to take tenancy enforcement actions.

295. Based on the aforesaid, the Office considered the tenant's explanations that vehicles parking on the site were awaiting repair unreasonable and unconvincing. DLO, however, had accepted the explanations without conducting any in-depth investigations. Therefore, Allegation (a) was considered substantiated.

*Allegation (b)*

296. The Office deemed that the two questions raised by the complainant, namely "whether DLO had asked maintenance workers on the site to provide repair documents" and "did DLO take a headcount to see if the number of staff was sufficient to handle service vehicles parking there", were straightforward and could be directly answered. Since DLO had clear-cut replies to these two questions (i.e. since the questions in the complainant's emails involved details of the business operation which needed not to be reported to the DLO, DLO did not possess the relevant information for replying to the complainant), it should have been able to answer them directly. DLO replied that maintenance workers were seen repairing the vehicles but some of those vehicles could not be repaired shortly due to shortage of spare parts and manpower. Such a reply had only prompted the complainant to continue raising even more questions with a view to finding out whether DLO had fulfilled its responsibilities.

297. The Office therefore considered Allegation (b) substantiated.

298. Overall, The Ombudsman considered this complaint substantiated and recommended LandsD to –

(a) draw reference from this case to guide and train staff concerned on how to conduct investigations and make reasonable analyses based on information obtained from investigations, so that they can learn to identify issues that are suspicious and warrant follow-up actions, thereby enhancing their investigation skills; and

(b) remind its staff to respond to public enquiries as appropriate in the future.

**Government's response**

299. LandsD accepted The Ombudsman's recommendations and has taken the following follow-up actions.

*Recommendation (a)*

300. LandsD held a case-handling experience sharing session with the staff responsible for land enforcement in June 2021. The staff were reminded of ways to investigate suspected breaches of short term tenancy conditions, and to analyse information gathered as well as take appropriate tenancy enforcement actions so as to ensure that the uses of short term tenancies comply with the requirements of the tenancy agreements. LandsD will organise relevant sessions again in due course.

*Recommendation (b)*

301. In May 2021, DLO issued a reminder to the staff to reiterate that when performing their official duties, they shall respond appropriately to questions from members of the public in order to address the public concerns.

## Lands Department

**Case No. 2020/3781 – (1) Delay in handling the complainant's application for change of name on Government land licence; and (2) Failing to reply to the complainant's enquiry about the progress of the application in a timely manner**

### Background

302. According to the two complainants, their grandmother was a holder of the Government Land Licence. After she had passed away, one of the complainants (Complainant A) applied, with the consent of the other complainant, to the Lands Department in 2013 for transferring the licence to himself. Complainant A claimed that he had taken an oath at the request of LandsD to testify his relationship with his grandmother. However, LandsD had not notified him of the application results over the years. He was therefore discontented with LandsD's delay in handling his application (Allegation (a)).

303. On 5 May 2020, the two complainants enquired to LandsD about the application progress and apply for a replacement licence, and reported that the licenced house concerned had been occupied by other persons. However, LandsD had yet to reply to them (Allegation (b)).

304. In view of the above, the two complainants lodged a complaint with the Office of The Ombudsman (the Office) against LandsD on 17 November 2020.

### The Ombudsman's observations

*Allegation (a)*

305. The District Lands Office (DLO) concerned refuted the allegation that its staff had asked Complainant A to take an oath in 2013. Due to the lack of corroborative evidence, the Office was not able to

verify the facts of the case. Nevertheless, neither side disputed the fact that Complainant A had applied for transfer of licence in 2013.

306. As the allegation concerned the delay in handling the said application which LandsD admitted the inadequacies in the process, Allegation (a) was therefore substantiated.

*Allegation (b)*

307. The Office noted that, as at the day which the Office received the complaint (i.e. 17 November 2020), DLO was still investigating the report made by the two complainants via email on 5 May 2020 that the licenced house concerned was occupied by other persons, and that DLO acknowledged receipt of the two complainants' email only until 1 December 2020. DLO admitted its failure to reply to the aforementioned email in a timely manner.

308. The Office understood that DLO needed time to follow up on the issues raised in the said email, but a lapse of some seven months before acknowledging receipt on 1 December 2022 was indeed undesirable. Therefore, Allegation (b) was substantiated.

309. Overall, The Ombudsman considered this complaint substantiated and recommended LandsD to –

(a) put in place measures to closely monitor the progress in handling backlog applications for transfer of Government Land Licences; and

(b) remind staff to respond to public enquiries in a timely manner.

**Government's response**

310. LandsD accepted The Ombudsman's recommendations and has taken the following follow-up actions.

*Recommendation (a)*

311. To expedite the processing of backlog cases, DLO has deployed more staff and stepped up the monitoring of the processing of applications for transfer of Government Land Licence. 174 backlog cases were completed by November 2022, and DLO will continue to handle 195 remaining cases.

*Recommendation (b)*

312. DLO has reminded its staff to respond to public enquiries in a timely manner.

## Lands Department

### Case No. 2021/3318 – Delay in restoring a piece of damaged government land

### Background

313. There was a suspected case of unauthorised road construction on government land in a district (the Location). The Lands Department (LandsD) took enforcement actions in October 2020. Nevertheless, LandsD did not set up a guard kiosk at the Location until 5 March 2021. Relevant sections of the road were still paved with concrete and pending reinstatement. Being discontented with the slow progress of LandsD's handling of the unauthorised road construction, the complainant lodged a complaint with the Office of The Ombudsman (the Office) on 13 September 2021.

### The Ombudsman's observations

314. According to LandsD, the top priority for the District Lands Office (DLO) concerned at the time was to stop any further unauthorised occupation of and damage to the government land as soon as possible, to which the Office had no objection. For the Location which is within the Green Belt, DLO advised that it had been monitoring the reinstatement progress of an adjacent private land for considering the timing of commencing the reinstatement work for the government land. However, the Office considered that DLO should have reinstated the government land in the Green Belt within a reasonable timeframe, instead of waiting for the owner(s) of the private land to commence the land reinstatement. As the department responsible for the management of government land, LandsD should play an exemplary role in taking prompt actions to reinstate government land involved in unauthorised developments.

315. According to the explanation provided by LandsD, after considering the Office's comments made in an investigation report of a

related case, DLO initiated land reinstatement at the Location according to procedures. However, the Office had completed the relevant investigation report and furnished LandsD with the said report on 27 May 2021, yet DLO did not instruct its contractor to reinstate the government land on the Location until 27 October 2021. The Office considered it inefficient for DLO to issue the instruction only five months after noting the Office's comments.

316. As regards the complainant's allegation that DLO did not set up a guard kiosk at the Location until March 2021, LandsD clarified that the guard kiosk was set up for patrolling suspected use of government land at another location. DLO has already made arrangements to have guard(s) patrolling the Location at regular intervals starting from November 2020.

317. Overall speaking, although DLO confirmed as early as in 2020 that the government land at the Location had been used for road construction and was subject to illegal occupation and took enforcement action in October 2020, LandsD did not commence reinstatement of the government land in time. As a result, the land reinstatement was not completed until mid-November 2021, i.e. a lapse of more than one year. The Ombudsman therefore considered this complaint substantiated.

318. The Ombudsman recommended LandsD that steps should be taken, for example by reviewing and improving the relevant guidelines, to ensure as far as possible that staff tasked with following up on cases of occupation of government land involved in unauthorised developments and other similar work could complete their tasks within a reasonable timeframe.

**Government's response**

319. LandsD accepted The Ombudsman's recommendation and has taken the following follow-up actions.

320. LandsD has set out the timeframes for completing land control cases in two internal guidelines of LandsD. In gist, land control cases listed as high priority category should normally be completed within four months upon receipt. For non-priority cases, they should be completed within 12 months on average after commencement of processing. The responsible officers should consult their supervisors as soon as possible if they encounter difficulties in handling a case, and the District Review Board of the district concerned should regularly review the progress of the case so that enforcement action can be taken and the case be completed as soon as possible.

321. As the background and complexity of each land control case varies, the processing time for some cases may be beyond the time limit set out in the guidelines. Staff of the concerned rank are required to critically review the progress of each case and, where justified, submit the case to their supervisors for consideration of whether the processing time limit could be extended with appropriate approval. If further extensions are required, the staff concerned must submit the case to the District Review Board for consideration. The guidelines also set out the usual factors for considering extension of time limits of cases for colleagues' reference.

322. LandsD has reminded staff to strictly follow the above guidelines to ensure that cases can be completed within a reasonable period of time.

## Lands Department

### Case No. 2021/3321 – Delay in replying to the enquiry about a small house

### Background

323. The Lands Department (LandsD) gave a reply to the complainant on 27 January 2021 regarding the processing of an application for a Certificate of Compliance in respect of a small house on a certain lot. The complainant put forward follow-up questions to LandsD via email on the same day. Being dissatisfied with LandsD for not replying to her email enquiry, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against LandsD.

### The Ombudsman's observations

324. The Office reviewed the records of the relevant District Lands Office (DLO). The information showed that DLO had followed up and conducted investigations on the complainant's allegations made on 27 January 2021. However, not only until 20 December 2021 (i.e. eleven months later) did DLO inform the complainant of the investigation progress. The delayed reply was indeed not ideal and thus The Ombudsman considered this complaint substantiated.

325. The Ombudsman recommended LandsD that staff should be reminded to reply to enquiries as soon as practicable in the future. If a substantive reply cannot be given within a short period, an interim reply should be provided to the enquirer as appropriate.

### Government's response

326. LandsD accepted The Ombudsman's recommendation. DLO has reminded all staff that they should reply to complainants as soon as practicable when handling complaint cases. If a substantive reply cannot

be provided shortly, an interim reply (including the progress of investigation and latest status of the case) should be issued first for better communication and to avoid any unnecessary misunderstanding.

## Lands Department and Planning Department

**Case No. 2020/3488A (Planning Department) – (1) Delay in taking enforcement action and instituting prosecution against unauthorised road construction within a Green Belt; (2) Failing to reinstate and fence off the land illegally entered and used within a Green Belt; and (3) Refusing to disclose the identity of the person being prosecuted and the lot number of the site concerned**

**Case No. 2020/3488B (Lands Department) – Failing to reinstate and fence off the Government land that had been illegally entered and used**

### Background

327. There was a suspected case of unauthorised road construction within a site zoned Green Belt (GB). In August 2019, PlanD detected an unauthorised development involving land filling in the aforesaid location. However, not until October 2020 did PlanD initiate prosecution against the land owner concerned. On 23 and 28 October 2020, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against the Planning Department (PlanD) and the Lands Department (LandsD) as follows –

(a) there was a delay for PlanD to take enforcement action and institute prosecution (Allegation (a));

(b) PlanD and LandsD failed to reinstate and fence off the aforesaid site to prevent further road extension work (Allegation (b)); and

(c) PlanD refused to reveal the identity of the person being prosecuted and the lot number of the site concerned on grounds of privacy (Allegation (c)).

## The Ombudsman's observations

*Allegation (a)*

328. After examining PlanD's internal guidelines, the Office ascertained that PlanD, on discovering the unauthorised development concerned, had issued relevant notices to the private land owner(s) and conducted site inspections upon expiry of the "Reinstatement Notice" (RN). Both the procedure of the follow-up actions and the time taken were indeed in compliance with PlanD's internal guidelines.

329. As for why it took several months to initiate prosecution, PlanD explained that there were various reasons including the necessary procedure that the Prosecution Team must examine the information and evidence of the case independently. After examining the relevant work processes of the Prosecution Team of PlanD, the Office accepted PlanD's explanation. Besides, PlanD had initiated the prosecution within the six-month period as stipulated in the Magistrates Ordinance.

330. As such, the Office considered the complaint under Allegation (a) unsubstantiated. Nevertheless, the land involved in the RN had not been reinstated long after the expiry of the RN, resulting in a prolonged restoration of natural environment. The Office considered that PlanD should initiate prosecution against unauthorised development cases as soon as practicable in future should there be sufficient evidence, especially for those sites having ecological and environmental concern like the GB zone. The expedited prosecution action would achieve a deterrent effect, urging the parties concerned to carry out early reinstatement.

*Allegation (b)*

Complaint against PlanD

331. While PlanD was not empowered to fence off the land for the purpose of preventing continued unauthorised development under the ordinance concerned, PlanD had conducted repeated site visits and inspections to monitor the conditions of the subject site. Nevertheless, this unauthorised development case involved both private and government land. Although PlanD was not empowered to fence off the relevant area, LandsD could fence off the portion of the government land concerned to prevent aggravation of the unauthorised development. Instead of following the current practice of referring the case to each other, it would have been more desirable if PlanD and LandsD had handled the subject case through cross-departmental collaboration and coordinated the follow-up actions, and LandsD could fence off the relevant government land early to avoid further damage to the GB zone.

332. As for reinstatement of land, the Office accepted PlanD's explanation. That said, PlanD should monitor the conditions of the subject site continuously, and consider taking prosecution action against the person concerned in case the reinstatement still has not been taken place after a long time.

333. Based on the above, the Office considered the complaint against PlanD under Allegation (b) unsubstantiated.

Complaint against LandsD

334. LandsD pointed out that as the case posed no imminent danger to the public, the relevant District Lands Office (DLO) would take enforcement actions according to priority with regard to the merits of each case. However, DLO did not actually deploy any staff to conduct a site inspection after receipt of PlanD's referral in September 2019. It was indeed doubtful how DLO assessed the ground situation of the case to

determine its priority. Records showed that it was not until July 2020, when LandsD received an enquiry from the media organisation of which the complainant was a member, that DLO deployed staff to conduct a site inspection and take records for the case for the first time. Government land notice boards, concrete bollards and metal poles were only erected on the site on 5 November. For both rounds of enforcement actions, approximately 10 months and 14 months had lapsed respectively since PlanD's referral of the case.

335. As LandsD is responsible for the administration of government land, the Office considered it incumbent upon the department to ensure that such land is not subject to illegal use. As the site fell within a GB, LandsD should have taken timely measures to protect government land therein against further unauthorised road construction or unauthorised developments, and to reinstate the land to minimise environmental impacts. The Office took the view that the classification of the case by LandsD as "non-priority" according to the prevailing guidelines failed to address public concerns about unauthorised developments within Conservation Areas. As unauthorised developments can cause significant and profound damage to the natural environment, full restoration of the natural environment to its original undisturbed state may not be possible afterwards. It is therefore imperative to avert any unauthorised developments in time. As far as the case is concerned, while PlanD had taken enforcement actions against the unauthorised developments on the adjacent private land, DLO failed to take actions in parallel or earlier against the unauthorised developments on government land under its purview. What's more, as PlanD had already notified DLO of its notice issued to the private land owner to require completion of land reinstatement by 12 February 2020, DLO should have reinstated the government land where unauthorised developments were also detected earlier than the specified time so as to set an example. However, it was only in November 2020 that DLO ultimately proceeded to reinstate the land, which lagged far behind the time and fell short of public expectation.

336. In view of the above, the Office considered Allegation (b) against PlanD in unsubstantiated but Allegation (b) against LandsD substantiated.

*Allegation (c)*

337. On the day following PlanD applied to the court for summons to the owner(s) of the private land concerned, the complainant made an enquiry to PlanD about the identity of the person(s) being prosecuted and the lot number involved. Although the aforesaid information would be disclosed when the hearing commenced, the Office agreed that premature disclosure of the above information might prejudice a fair trial in future as legal proceedings of the case had already commenced at that time, and there might be a risk for the person(s) concerned to take actions with the intent to interfere with PlanD's prosecution work. Under paragraph 2.6(b) of the Code on Access to Information (the Code), a department may refuse to disclose information if it would prejudice the conduct or impartial adjudication of legal proceedings. Nonetheless, the Office considered that even though the complainant did not ask for information in accordance with the Code, PlanD should cite the relevant justifications specified in the Code and provide detailed explanations substantiating its decision in order to help the complainant understand PlanD's reasons for not releasing the information concerned, given that reference was made to the Code.

338. Based on the above, The Office considered Allegation (c) unsubstantiated.

339. Overall, The Ombudsman considered the complaint against PlanD unsubstantiated and the complaint against LandsD substantiated.

340. The Ombudsman recommended PlanD to –

(a) strengthen the understanding of PlanD's staff on the Code to ensure that enquiries from the public and the media would be properly responded to.

The Ombudsman recommended LandsD –

(b) with respect to the problems identified in the case, the prevailing guidelines should be reviewed and improved to ensure that significance is attached to cases involving both illegal occupation of government land and unauthorised developments (especially cases in which enforcement actions are being taken by relevant departments against unauthorised developments on adjacent private land), whereas frontline staff should be well informed of the case priority. These would facilitate timely land control actions and reinstatement of land.

The Ombudsman recommended LandsD and PlanD –

(c) when cases of unauthorised developments are identified as falling within the ambits of several departments, the departments involved may consider taking an inter-departmental case management approach for follow-up. This could help avoid the situation where departments might have taken individual actions according to their own established procedures, but leaving the problems yet to be resolved or unresolved for a prolonged period.

**Government's response**

341. LandsD and PlanD accepted The Ombudsman's recommendations and have taken the following follow-up actions.

*Recommendation (a)*

342. To step up staff training to enhance their understanding of the Code, thereby ensuring that enquiries from the public and the media would be properly responded to, PlanD has organised several seminars on the Code, and has reminded colleagues by emails on a regular basis requesting them to bear in mind relevant provisions in the Code and relevant internal guidelines.

*Recommendation (b)*

343. To raise the sensitivity of frontline staff towards unauthorised developments within area zoned as Conservation Area, Coastal Protection Area and GB, etc. and to appropriately respond to public expectation for government departments to take prompt actions against irregularities that damage the natural environment, LandsD issued an internal memo on 15 June 2021 urging all DLOs to re-examine their land enforcement priorities in the light of the experience gained in this case. Frontline staff were also reminded to respond to related referrals from other departments in a timely manner and to actively collaborate with other departments in their enforcement actions. LandsD has also upgraded the categorisation of cases involving areas zoned as Conservation Area, Coastal Protection Area and GB, etc. as high priority cases in the Lands Administration Office Instructions.

*Recommendation (c)*

344. For cases involving the jurisdiction of different departments, upon receipt of the referrals, DLO will send staff to inspect the site as soon as possible to ascertain whether there are irregularities and take enforcement actions. DLO will also follow up on the case through inter-departmental meetings if needed and collaborate with the departments concerned on the progress of their enforcement work in a timely manner. For instance, since August 2021, DLO has received a number of complaints about, among others, unauthorised structures, illegal occupation of government land, waste disposal and the erection of new concrete ramps on government land in the Coastal Protection Area arising

from the operation of water sports activities. At an inter-departmental meeting held in October 2021, the relevant departments reported on the follow-up work under their respective purview. DLO also briefed the relevant departments on the enforcement actions taken by DLO in response to the complaints and the progress made to facilitate coordination among the departments.

345. In order to step up cross-departmental collaboration in following up unauthorised developments, PlanD has maintained close communication with relevant departments, including informing the departments concerned of the enforcement actions taken by PlanD, keeping track of enforcement progress made by other departments, and informing DLO of the position and progress of enforcement and prosecution actions taken near a site zoned GB by PlanD on a routine basis. To cope with the problems near a site zoned GB, District Office also held an inter-departmental meeting to co-ordinate and follow up the enforcement work with relevant departments.

## Lands Department and Planning Department

**Case No. 2020/3632A (Planning Department) – Taking no enforcement action against illegal entrance to a piece of land in a Conservation Area and dumping on it of construction waste**

**Case No. 2020/3632B (Lands Department) – (1) Taking no enforcement action against illegal entrance to a piece of Government land and the dumping on it of construction waste; and (2) Failing to discover that the Government land was being used illegally due to improper routine inspections**

### Background

346. There was a suspected case of illegal road construction and fly-tipping of construction waste in the Conservation Area (CA), and the location concerned was government land. Thus, the complainant lodged the following complaints with the Office of The Ombudsman (the Office) –

(a) no enforcement action had been taken by relevant departments (including the Planning Department (PlanD), the Lands Department (LandsD) and the Environmental Protection Department (EPD) (Allegation (a)); and

(b) LandsD's improper routine inspections failed to detect the illegally constructed road (Allegation (b)).

## The Ombudsman's observations

*Allegation (a)*

Complaint against PlanD

347. This case involved an unauthorised development on government land. According to the internal guidelines of PlanD, this type of cases would be referred to District Lands Offices (DLOs) for taking appropriate enforcement actions under the Land (Miscellaneous Provisions) Ordinance. For this case, given that the subject unauthorised development falls on government land, PlanD referred the case to the concerned DLO for follow-up actions in accordance with its internal guidelines. Besides, after the discovery of the subject unauthorised development, PlanD had continuously carried out on-site inspections. Nevertheless, no suspect related to this case was found, so no further enforcement action could be taken. In view of the above, the Office considered Allegation (a) against PlanD unsubstantiated.

Complaint against LandsD

348. The DLO concerned had taken enforcement action against the occupation of the said government land, which included posting statutory notices and clearing the government land. It also looked into the case and traced the persons involved. Hence, it was not that DLO did not take any enforcement actions.

349. In view of the above, the Office considered Allegation (a) against LandsD unsubstantiated. Nevertheless, LandsD should continue to investigate the case, and consider prosecuting the persons involved when there is sufficient evidence.

Complaint against EPD

350. Upon receipt of complaint, EPD had deployed its staff to carry out multiple investigations at the location concerned but no suspect involving illegal fly-tipping of construction waste or illegal works was detected. Thus, no further enforcement action could be taken by EPD. As such, the Office considered Allegation (a) against EPD unsubstantiated.

*Allegation (b)*

351. The Office understood that it was difficult for LandsD to inspect all government land on a regular basis. However, given that PlanD had referred to DLO another case of unauthorised development on government land within the Green Belt near the location concerned on 9 September 2019 for follow-up, the Office considered that, if DLO had deployed staff to conduct on-site inspections after receiving PlanD's referral, it should have reasonably noticed that the location concerned was illegally occupied as well. However, DLO did not deploy any staff to carry out inspections at that time. It was not until July 2020 when DLO received enquiries from the complainant's media organisation, that DLO deployed staff to inspect the location and its vicinity for the first time.

352. The Office noted that the location concerned was in a CA. As shown from photos taken on site, the location concerned was not small in size and was stacked up with containers, large amounts of construction materials and construction waste, thus undermining the natural environment of the CA. As LandsD is responsible for the administration of government land, it is incumbent upon the department to follow up on the illegal use of government land. Although LandsD claimed that DLO would commence investigation upon the receipt of complaints or referrals, the fact was that DLO had not taken any concrete actions after noting the unauthorised development near the location concerned. It conducted the first on-site inspection only after having been pressed for

action. The way of handling the case by DLO not only fell short of public expectation, but also reflected its insensitivity to the public concerns about unauthorised developments in CA. Moreover, as unauthorised developments can cause significant and profound damage to the natural environment, full restoration of the natural environment to its original undisturbed state may not be possible afterwards. It is therefore imperative to avert any unauthorised developments in time.

353. The Office hence considered Allegation (b) against LandsD substantiated.

354. Overall, The Ombudsman considered the complaint against PlanD and EPD unsubstantiated and the complaint against LandsD partially substantiated.

355. The Ombudsman recommended LandsD –

(a) the prevailing guidelines should be reviewed and improved to ensure that significance is attached to cases involving both illegal occupation of government land and unauthorised developments, whereas frontline staff should be well informed of the case priority. These would facilitate timely land control actions and reinstatement of land.

The Ombudsman recommended LandsD and PlanD –

(b) in tackling cases of occupation of government land involving unauthorised developments, the adoption of inter-departmental case management approach may be considered for follow-up. This could help avoid the situation where departments might have taken individual actions according to their own established procedures, but leaving the problems yet to be resolved or unresolved for a prolonged period.

**Government's response**

356. LandsD and PlanD accepted The Ombudsman's recommendations and have taken the following follow-up actions.

*Recommendation (a)*

357. To raise the sensitivity of frontline staff towards unauthorised developments within area zoned as CA, Coastal Protection Area and Green Belt, etc. and to appropriately respond to public expectation for government departments to take prompt actions against irregularities that damage the natural environment, LandsD issued an internal memo on 15 June 2021 urging all DLOs to re-examine their land enforcement priorities in the light of the experience gained in this case. Frontline staff were also reminded to respond to related referrals from other departments in a timely manner and to actively collaborate with other departments in their enforcement actions. LandsD has also upgraded the categorisation of cases involving areas zoned as CA, Coastal Protection Area and Green Belt, etc. as high priority cases in the Lands Administration Office Instructions.

*Recommendation (b)*

358. For cases involving the jurisdiction of different departments, upon receipt of the referrals, DLO will send staff to inspect the site as soon as possible to ascertain whether there are irregularities and take enforcement actions. DLO will also follow up on the case through inter-departmental meetings if needed and collaborate with the departments concerned on the progress of their enforcement work in a timely manner. For instance, since August 2021, DLO has received a number of complaints about, among others, unauthorised structures, illegal occupation of government land, waste disposal and the erection of new concrete ramps on government land in the Coastal Protection Area arising from the operation of water sports activities. At an inter-departmental meeting held in October 2021, the relevant departments reported on the

follow-up work under their respective purview. DLO also briefed the relevant departments on the enforcement actions taken by DLO in response to the complaints and the progress made to facilitate coordination among the departments.

359. In order to step up cross-departmental collaboration in following up unauthorised developments, PlanD has maintained close communication with relevant government departments, including informing the departments concerned of the enforcement actions taken by PlanD, keeping track of enforcement progress made by other departments, and informing DLO of the position and progress of enforcement and prosecution actions taken near CA by PlanD on a routine basis. To cope with the problems near CA, District Office also held an inter-departmental meeting to co-ordinate and follow up the enforcement work with relevant departments.

## Lands Department and Planning Department

**Case No. 2020/3633A (Planning Department) – Taking no enforcement action against unauthorised construction of a ramp in a Coastal Protection Area**

**Case No. 2020/3633B (Lands Department) – Taking no enforcement action against unauthorised construction of a ramp on a piece of Government land**

### Background

360. A suspected unauthorised concrete ramp (the subject ramp) was found on government land zoned as Coastal Protection Area (CPA). Being dissatisfied that Planning Department (PlanD) and Lands Department (LandsD) had not taken any follow-up and enforcement action, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against the two aforesaid departments.

### The Ombudsman's observations

*Complaint against PlanD*

361. The information revealed that PlanD had taken follow-up actions after receiving the complaint, including conducting site inspections. As PlanD could not obtain any information on the person(s) engaged in the unauthorised development, no enforcement action could be initiated. Given that the subject ramp fell entirely within government land, PlanD referred the case to District Lands Office (DLO) in accordance with the internal guidelines so that DLO could take appropriate enforcement actions under the Land (Miscellaneous Provisions) Ordinance.

362. As such, the Office considered the complaint against PlanD unsubstantiated. Nevertheless, the subject ramp, involving land filling

work along the coastline, was located within the CPA zone. If the coastal area had not been reinstated for a prolonged period and if continuous use of the subject ramp was allowed, the ramp would affect the natural coastal area, and impacted on the natural environment and ecology. In addition, although the case had been referred to LandsD for follow-up action in accordance with the internal guidelines, the matter involved unauthorised development, which is also under the purview of PlanD. With hindsight, PlanD would have been kept updated on the follow-up progress of DLO after the referral if PlanD and DLO had continuous communication. The case might have been dealt with in a better way if there were continued communication and coordination between PlanD and DLO.

*Complaint against LandsD*

363. The erection of the subject ramp on government land constituted a case of unlawful occupation of government land. Records revealed that PlanD had referred the case to the DLO concerned as early as in January 2019 but no action was taken. It was not until October 2019 that DLO deployed staff to conduct a site inspection upon receipt of a public complaint referred by 1823.

364. Nevertheless, DLO classified the case as a "non-priority" case on the grounds that the unauthorised ramp did not pose any imminent danger to the public. In October 2020, the complainant's media organisation made an enquiry with DLO. It was not until then that DLO took a series of enforcement actions, which included fencing off the subject ramp and erecting a notice board. However, there was already a lapse of one year after DLO's first site inspection.

365. The Office understood that DLO had to handle cases according to their priorities. However, given that part of the subject ramp was within the CPA and the ramp was anticipated to be in frequent use, as the responsible department for administration of government land, LandsD would be duty bound to follow up on the illegal use of government land.

In addition, it should be noted that the planning intention of a CPA is to protect the natural coastlines and the sensitive coastal natural environment. As the case involved filling at the shore and had caused obvious damage to the coast, LandsD should have taken proactive and prompt action to reinstate the affected land so as to minimise the impact on the environment. In the Office's view, classifying the case as "non-priority" case reflected DLO's lack of sensitivity to the public concerns about unauthorised developments in CPA. Furthermore, as unauthorised developments can cause significant and profound damage to the natural environment, full restoration of the natural environment to its original undisturbed state may not be subsequently possible. It is therefore imperative to avert any unauthorised developments in time. In fact, PlanD's inspections revealed that the subject ramp had been widened at least twice from January 2019 to September 2020. The problem would not have aggravated if DLO had taken actions earlier, including fencing off the subject ramp.

366. Records also revealed that PlanD had requested DLO to remove the concrete on the affected government land in November 2020. In January 2021, PlanD further requested DLO to reinstate the affected government land in the CPA. However, DLO did nothing to demolish the subject ramp or reinstate the land. It was only until March 2021 that DLO finally demolished the subject ramp when the owner of an adjacent private land commenced reinstatement works. The Office considered that there was no need for DLO to stall the ramp demolition until the commencement of reinstatement works by other land owner(s). On the contrary, LandsD, serving as the administrator of government land, should take prompt action to follow up and reinstate the land so that damage to the coastal environment can be minimised.

367. To sum up, the Office considered it undesirable for LandsD to classify a known case of unauthorised development on government land in a CPA as a non-priority case. In making such classification, LandsD has failed to take prompt action to stop the unauthorised development in time or to reinstate the land earlier so that the coast can be restored to its

original undisturbed state. All these reflect LandsD's failure to address public concerns about the damage to CPAs. Therefore, The Ombudsman considered this complaint against LandsD substantiated.

368. The Ombudsman recommended LandsD –

(a) the prevailing guidelines should be reviewed and improved to ensure that significance is attached to cases involving both illegal occupation of government land and unauthorised developments, whereas frontline staff should be well informed of the case priority. These would facilitate timely land control actions and reinstatement of land.

The Ombudsman recommended LandsD and PlanD –

(b) in tackling cases of occupation of government land involving unauthorised developments, the adoption of inter-departmental case management approach may be considered for follow-up. This could help avoid the situation where departments might have taken individual actions according to their own established procedures, but leaving the problems yet to be resolved or unresolved for a prolonged period.

**Government's response**

369. LandsD and PlanD accepted The Ombudsman's recommendations and have taken the following follow-up actions.

*Recommendation (a)*

370. To raise the sensitivity of frontline staff towards unauthorised developments within area zoned as Conservation Area, CPA and Green Belt, etc. and to appropriately respond to public expectation for government departments to take prompt actions against irregularities that damage the natural environment, LandsD issued an internal memo on 15

June 2021 urging all DLOs to re-examine their land enforcement priorities in the light of the experience gained in this case. Frontline staff were also reminded to respond to related referrals from other departments in a timely manner and to actively collaborate with other departments in their enforcement actions. LandsD has also upgraded categorisation of cases involving areas zoned as Conservation Area, CPA and Green Belt, etc. as high priority cases in the Lands Administration Office Instructions.

*Recommendation (b)*

371. For cases involving the jurisdiction of different departments, upon receipt of the referrals, DLO will send staff to inspect the site as soon as possible to ascertain whether there are irregularities and take enforcement actions. DLO will also follow up on the case through inter-departmental meetings if needed and collaborate with the departments concerned on the progress of their enforcement work in a timely manner. For instance, since August 2021, DLO has received a number of complaints about, among others, unauthorised structures, illegal occupation of government land, waste disposal and the erection of new concrete ramps on government land in the CPA arising from the operation of water sports activities. At an inter-departmental meeting held in October 2021, the relevant departments reported on the follow-up work under their respective purview. DLO also briefed the relevant departments on the enforcement actions taken by DLO in response to the complaints and the progress made to facilitate coordination among the departments. DLO completed the clearance of the above-mentioned new concrete ramps on the government land in the CPA in mid-October 2021. DLO will continue to actively follow up on inter-departmental cases.

372. In order to step up cross-departmental collaboration in following up unauthorised developments, PlanD has maintained close communication with relevant departments, including informing the departments concerned of the enforcement actions taken by PlanD, keeping track of enforcement progress made by other departments, and informing DLO of the position and progress of enforcement and

prosecution actions taken near CPA on a routine basis. To cope with the problems near CPA, District Office also held an inter-departmental meeting to co-ordinate and follow up the enforcement work with relevant departments.

## Leisure and Cultural Services Department

### Case No. 2021/2498 – Unreasonably accusing the complainant of abusing the concessionary rates and inconsistent handling of the complainant's case among different district offices

### Background

373. At present, persons with disabilities, persons aged 60 and full-time students can use most of the land-based recreation and sports facilities of the Leisure and Cultural Services Department (LCSD) at concessionary rates during a specified period (generally non-peak hours). The complainant is an elderly person. He recalled having booked the table-tennis facility at a sports centre (the Sports Centre) for 1 July at a concessionary rate for persons with disabilities through the Leisure Link Internet Booking System on 25 June 2021 by mistake without noticing that it was a public holiday. On the next day (i.e. 26 June), he visited another sports centre where he asked the staff at the booking counter (Staff A) to top up the shortfall between the concessionary rate and normal rate for him. Staff A then issued two full-priced booking tickets to the complainant after completing the procedures.

374. The complainant took up the booked session on 1 July. The Amenities Assistant I on duty (Staff B) said Staff A had mishandled the case, indicating that the complainant's case already amounted to an abuse of concessionary rates, and that he could not use the venue simply by topping up the shortfall. Hence, the hire charges paid would be forfeited and his booking right for use of recreation and sports facilities would be suspended for 180 days. Given the mishandling of the case by staff, Staff B exercised discretion to impose the penalty for "failure to take up the booked session without cancelling the booking before using the facility" ("failure to take up the booked session") as an alternative (i.e. suspension of booking right for use of recreation and sports facilities for 90 days for failure to take up the booked session on another occasion in a

month). Under this arrangement, the complainant could also apply for refund of the top-up payment for the shortfall.

375. On 7 July, the manager of the Sports Centre (Staff C) called the complainant, saying that having examined the case, it was considered that Staff B was not entitled to impose the penalty for "failure to take up the booked session" as an alternative. It was therefore decided that the booking right of the complainant would be suspended for 180 days as a penalty for abuse of concessionary rates. As a result, his top-up payment for the shortfall would not be refunded. Being dissatisfied, the complainant went to the Sports Centre to reason with the staff. At that time, he called another sports centre (i.e. the third one) to enquire about the case and was given a reply from Staff D that those who selected the wrong concessionary rates could make up for the shortfall at the booking counter before taking up the booked session.

376. Dissatisfied with the alleged abuse of concessionary rate and confusion over the inconsistent manners and procedures in handling the case by the District Leisure Services Offices (DLSOs) of LCSD, the complainant lodged a complaint to the Office of The Ombudsman (the Office) on 28 July 2021.

**The Ombudsman's observations**

377. The Office considered that as the provision of public sports facilities in Hong Kong falls short of demand, LCSD must strictly comply with the relevant procedures and guidelines when following up on cases of breaches to ensure members of the public could have a fair chance to book recreation and sports facilities. It is the LCSD's responsibility to strictly enforce the rates concession arrangements and relevant guidelines so as to prevent abuse of concessionary rates.

378. In this case, the complainant who was not a person with disabilities booked the venue at a concessionary rate for persons with disabilities, which did amount to a case of abuse. Hence, it was not

unreasonable for LCSD to impose corresponding penalty in the first instance. In response to the complainant's objection, LCSD, having reviewed the case, was satisfied that it was an unintentional incident. Therefore, the penalty was cancelled.

379. The complainant alleged that different staff of the DLSOs of LCSD handled the case inconsistently. While the Office understood that the frontline staff of LCSD's venues had to handle a variety of matters and respond immediately having regard to both the procedural guidelines of the department and the actual circumstances, the complainant in this case received inconsistent and contradictory responses from four members of venue staff he approached. This inevitably led to dissatisfaction over the confusing manner in which the case was handled. In spite of this, LCSD already admitted that the way the relevant staff handled the case was inappropriate. In this connection, LCSD has reprimanded the staff concerned and implemented improvement measures to avoid similar incidents in future. The Office believed that the enhanced appeal system could help alleviate the pressure of frontline staff.

380. Overall, The Ombudsman considered this complaint partially substantiated and recommended LCSD to –

(a) regularly review the effectiveness of the improvement measures implemented to ensure that staff members act and answer enquiries in accordance with the established procedural guidelines; and

(b) complete the optimisation of the appeal system and set out details of the appeal procedure as soon as possible, such as setting an appropriate period for appeal and asking the appellants to provide justifications and relevant proof for handling their appeal cases.

**Government's response**

381. LCSD accepted The Ombudsman's recommendations and has taken the following follow-up actions.

*Recommendation (a)*

382. LCSD has re-circulated the relevant guidelines to the DLSOs, requiring the management to ensure strict compliance by frontline staff. LCSD has also prepared and distributed additional questions and answers on how to handle cases involving abuse of concessionary rates to the DLSOs so as to assist frontline staff in answering public enquiries. In addition, LCSD will circulate the above information on a regular basis.

*Recommendation (b)*

383. LCSD has revised the relevant guidelines, specifying that staff members, when handling suspected cases involving abuse of concessionary rates, should issue a Notice of Intended Suspension of Booking Right of leisure facilities to suspected offender, under which the person concerned can lodge an appeal in writing within 14 calendar days from the date of issue of the notice.

## Social Welfare Department

**Case No. 2020/3394 – (1) Failing to remind an elderly home in a timely manner to submit an incident report on a suspected elder abuse case; (2) Failing to take follow-up action on a report of suspected violation of the Residential Care Homes (Elderly Persons) Regulation; and (3) Failing to reply to an enquiry about the report**

### Background

384. On 15 October 2020, the Office of The Ombudsman (the Office) received a complaint form recording a telephone complaint signed by the complainant to confirm her complaint against the Social Welfare Department (SWD).

385. According to the complainant, her mother-in-law was temporarily admitted to a residential care home for the elderly (the subject RCHE) in 2018. On 28 January 2019, the complainant called SWD to report a suspected elder abuse incident where a resident of the subject RCHE was hit by the person-in-charge and fell to the ground. On 31 January, the complainant called a staff member of SWD and said that a report had been made to the Police on 30 January regarding the suspected elder abuse incident in the subject RCHE. On 18 March 2019, the complainant made another call to that staff member of SWD, pointing out that the subject RCHE should submit a Special Incident Report to SWD within three days after the suspected elder abuse incident. According to the complainant, it was only after being reminded by her that the staff member realised that the subject RCHE had not been asked to submit a Special Incident Report. The subject RCHE was then asked to submit a Special Incident Report and eventually submitted the report on 25 March.

386. The complainant also claimed that she and the subject RCHE were engaged in proceedings in the Small Claims Tribunal over home fees dispute. During a hearing, the person-in-charge of the subject RCHE

admitted that she had not required all staff members (including a female staff member Ms A) to provide personal particulars.

387. On 15 October 2019, the complainant reported to SWD via e-mail on the above. The complainant alleged that the subject RCHE had failed to keep a record of the personal particulars of all staff members (including Ms A) in accordance with SWD's guidelines, which might constitute a violation of the Residential Care Homes (Elderly Persons) Regulation (the subject report), and that SWD should prosecute the subject RCHE immediately. She also enquired whether SWD would prosecute the subject RCHE if she could provide the court recording (the subject enquiry). On 16 December 2019, SWD replied to the complainant in writing that based on SWD's inspection results, the subject RCHE had kept records of staff members under its employment at the time in accordance with the requirements.

388. The complainant alleged that SWD –

(a) knew that she had made a report to the Police on 30 January 2019 regarding the suspected elder abuse incident in the subject RCHE, but failed to remind the subject RCHE in a timely manner to submit a Special Incident Report within three days after the incident (Allegation (a));

(b) failed to follow up on the subject report (Allegation (b)); and

(c) failed to respond to the subject enquiry (Allegation (c)).

**The Ombudsman's observations**

*Allegation (a)*

389. SWD provided the Office with the statement of the inspector concerned and the inspection report of the Licensing Office of Residential Care Homes for the Elderly (LORCHE) dated

2 February 2019. The inspector concerned mentioned in her statement that she reminded the subject RCHE to submit the Special Incident Report on 30 January and 2 February 2019 respectively. As recorded in LORCHE's inspection report dated 2 February 2019, the subject RCHE had not fully complied with the relevant requirements of the Code of Practice for Residential Care Homes (Elderly Persons) (the CoP). However, there were no records of the inspector concerned reminding the subject RCHE to submit the incident report during the aforementioned inspection.

390. The complainant and the inspector concerned gave divergent accounts regarding whether the inspector concerned was made aware that she had not asked the subject RCHE to submit the Special Incident Report only until being reminded by the complainant. In the absence of any independent corroborative evidence, the Office was unable to ascertain the actual situation and thus would not make comments.

391. Considering that the complainant and the inspector concerned gave divergent accounts, and in the absence of any other corroborative evidence, The Ombudsman found Allegation (a) inconclusive.

*Allegations (b) and (c)*

392. The Office noted that paragraphs 1 and 3 of the complainant's letter to SWD dated 15 October 2019 alleged that the subject RCHE had not kept a record of Ms A's personal particulars. Obviously, the crux of the subject report was whether the subject RCHE had a record of Ms A's personal particulars. The Office took the view that to properly follow up on the subject report, SWD should have investigated whether the subject RCHE had, in accordance with the requirements, properly recorded Ms A's personal particulars when she was hired.

393. Nevertheless, upon receipt of the subject report, SWD replied to the complainant solely based on the inspection results between 2 February 2019 and 4 October 2019. In fact, Ms A had ceased working

there before 2 February 2019. LORCHE also confirmed that there were no inspection records of random checks on the staff employment record of the subject RCHE during Ms A's term of service. In other words, the inspections conducted by SWD did not cover the period when Ms A was working there.

394. As the CoP does not require RCHEs to keep records of departed staff members, the subject RCHE did not contravene the CoP even though it had not kept Ms A's record at the time when LORCHE conducted inspections in 2019 (when Ms A had left). However, it does not mean that the subject RCHE had kept a record of Ms A's personal particulars when she was working there.

395. Based on the above analysis, SWD could not conclude from the inspection records at the time that the subject RCHE had kept a record of Ms A's personal particulars. It was inadequate and not quite to the point for SWD to reply to the complainant based on its past inspection records.

396. The Office considered that in replying to the complainant on the non-compliance report, SWD should not leave Ms A's term of service at the subject RCHE out of consideration. Instead, SWD should have investigated the subject RCHE in respect of the report before a conclusion was drawn.

397. While SWD indicated that the person-in-charge of the subject RCHE denied to LORCHE that she had ever mentioned not requiring all the staff members to provide their personal particulars during the court hearing, SWD should have further investigated to verify her words. Although SWD had given the complainant a reply on 16 December 2019, it failed to review the relevant records of the subject RCHE until 10 November 2020 after the Office had stepped in. The way SWD handled this case was considered passive and slow in response.

398. Moreover, after reviewing SWD's reply to the complainant dated 16 December 2019, the Office considered that SWD's assertion that "the

inspection conducted by the LORCHE inspector showed that the subject RCHE had kept records of staff members currently under its employment in accordance with the requirements" was merely a response to the subject report and could not be construed as a response to the subject enquiry as well (i.e. whether SWD would prosecute the subject RCHE if the court recording could be provided).

399. The Office agreed that SWD should exercise additional caution and remain neutral if the subject enquiry involved legal proceedings. If SWD considered it inappropriate to respond to the subject enquiry, it should have explained to the complainant the reasons for not responding.

400. In the light of the above, The Ombudsman considered Allegation (b) partially substantiated and Allegation (c) substantiated.

401. Overall, The Ombudsman considered this complaint partially substantiated. The Ombudsman recommended SWD to remind its staff members to learn from this case, follow up on reports from members of the public regarding suspected irregularities of RCHEs cautiously, and respond to their enquiries properly.

**Government's response**

402. SWD accepted The Ombudsman's recommendation and has taken follow-up actions. LORCHE has held sharing sessions to remind staff to exercise caution when handling reports regarding suspected irregularities of RCHEs, and to respond to public enquiries properly. SWD has also encouraged staff to participate in relevant training courses to continuously enhance their skills in handling enquiries and complaints.

## Transport Department

### Case No. 2020/4129 – Failing to properly handle an application for a Certificate of Particulars of Vehicle for news reporting purpose

### Background

403. On 10 December 2020, a complainant (a media organisation) complained to the Office of The Ombudsman (the Office) against the Transport Department (TD).

404. According to the complainant, two of its journalists applied for a Certificate of Particulars of Vehicle (the Certificate) at a TD's Licensing Office (LO) on 1 December 2020. When completing the application form for the Certificate (Form TD318), the two journalists found that news reporting purpose was not among the three options of application purpose listed in Part B of the form. They then asked LO staff how to complete the form if an application was made for news reporting purpose, and to clarify whether news reporting purpose was covered by the option of "Other traffic and transport related matters" listed in the form. The staff replied that applicants must choose one of the three purposes listed in Part B of Form TD318; TD would not explain the coverage of those three options (including whether news reporting purpose was covered), nor would it advise applicants how to complete the form.

405. The journalists told LO staff that they understood that information on the Certificates was protected by the Personal Data (Privacy) Ordinance, with which they were willing to comply. Nevertheless, under the existing Road Traffic (Registration and Licensing of Vehicles) Regulations (the Regulations), the Commissioner for Transport (C for T) was not empowered to require applicants to declare the purpose for obtaining Certificates. Nor were applicants restricted to apply for Certificates only for the purposes prescribed by TD or to use information on Certificates only for the prescribed purposes.

Consequently, they disagreed with the relevant terms of the application form, and crossed out certain words in the declaration. LO staff told the two journalists that Form TD318 was the only administrative procedures accepted by TD for Certificate applications. Applicants must choose one of the three options of application purpose listed in the form and were not allowed to delete any parts of the form, otherwise their application would not be accepted. Since the two journalists had not chosen any of the application purposes listed in Form TD318 and had deleted some of its content, LO staff refused to accept the application form.

406. Subsequently, the journalists completed another copy of Form TD318. In Part B, they added a fourth option "news reporting" themselves and ticked this box. LO staff told them that even though they added an extra option themselves, they were still required to choose one of the three available application purposes. LO staff eventually refused to accept the second application form submitted by them.

407. On 3 December 2020, one of the journalists sent an email to TD, requesting TD to explain the grounds for LO staff's rejection of the application form on the day concerned, and to elaborate on the proper method and procedures for the media to apply for the Certificates for news reporting purpose. On 7 December, the Information and Public Relations Unit (IPRU) issued a reply by email, which only stated that TD could not accept the application because the journalists had not properly completed Part B of the form, but failed to answer substantively the other questions raised by the journalist. On the same day, the journalist made follow-up enquiries, saying that public interest was at stake in the media's Certificate applications, and urging TD to elaborate on the legitimate and proper method for the media to apply for Certificates. On 9 December, IPRU issued a reply but still failed to provide a clear answer to the journalist's questions.

408. The complainant pointed out that as per the Office's investigation report "Inadequacy in Transport Department's Procedures for Vehicle Particulars Certificate Applications" published in May 2020

(2020 IR), C for T was not empowered under the Regulations to refuse to issue Certificates to applicants on any grounds (including applicants' failure to provide proof of the purpose of using personal particulars on Certificates), nor was TD empowered to require applicants to provide proof to substantiate such purpose. The complainant also cited section 61 of the Personal Data (Privacy) Ordinance, which stipulates that personal data is exempt from certain provisions in specific circumstances, including news activity. However, the complainant considered that TD's practice of rejecting the media's applications made on the grounds of news activity not only reeked of being ultra vires, but also infringed on press freedom and public interest.

409. Moreover, the complainant was dissatisfied that TD, on the one hand, required the journalists to complete its prescribed Form TD318 and choose one of the three options listed in Part B as application purpose, and not to delete any content of the form; but on the other hand, it refused to explain the coverage of the option "Other traffic and transport related matters" and whether this option covered news reporting purpose, and refused to elaborate on the proper method for the media to apply for Certificates. Furthermore, TD specified that applicants would be in breach of the law if they failed to make a truthful declaration, thereby imposing undue legal risks on the media.

410. The complainant was also dissatisfied with the unclear reply from the IPRU and its failure to facilitate the media's Certificate applications.

**The Ombudsman's observations**

411. A Certificate contains important personal data such as the full name, address and identity card number of the registered vehicle owner. The Office understands that TD should review the Certificate application form and procedures for stepping up protection of registered vehicle owners' personal data, and require Certificate applicants to use the new version of Form TD318 since 30 October 2019. In response to the Office

on this case, TD said that C for T has the duty to ensure that particulars kept in the register are not misused. Given the legislative objectives of the Regulations, it is necessary to limit the applications for vehicle particulars to purposes related to traffic and transport, and to require applicants to state their purposes for obtaining the vehicle particulars. Such a stance is obviously different from that held by TD in the 2020 IR. As cited in the 2020 IR, at that time TD held that under regulation 4(2) of the Regulations, C for T is not empowered to refuse to issue Certificates to applicants on any grounds (including applicants' failure to provide proof of the purpose of using personal particulars on Certificates). Nor is TD empowered to require applicants to provide proof to substantiate such purpose."

412. About the change of stance mentioned above, TD explained that as TD and the Office of the Privacy Commissioner for Personal Data (PCPD) received a number of complaints regarding disclosure of personal data or intrusion into privacy caused by Certificates in 2019, TD scrutinised jointly with the Department of Justice (DoJ), PCPD, etc. the Certificate application procedures and protection of privacy for the register of vehicles to plug the loopholes. A new version of Form TD318 has been used since 30 October 2019. Subsequently, TD reviewed the interpretation of regulation 4(2) of the Regulations in light of a court judgment, and made proper interpretation based on the legislative intent and objectives of the Regulations for handling Certificate applications. Legal interpretation is not an administrative issue subject to the Office's purview. The Office's focus was whether TD effectively communicated with the public in this regard. TD's current interpretation of regulation 4(2) of the Regulations is different from its public stance in the past. The Office was also aware of comments that people in certain professions (such as accountants, auditors and journalists) had applied for Certificates for verifying personal/corporate assets and news reporting over the years. Those applications, although not made by the registered vehicle owners or attached with their written authorisation, were usually approved by TD. TD's amendments to Form TD318 would inevitably cause concerns of the related sectors whether the practice deemed legal in the past has

become illegal or infeasible. TD should have known well the views of the public and related sectors in this regard.

413. From an administrative perspective, the Office considered that even though TD introduced the new version of Form TD318 on 30 October 2019 with the intention of better protecting personal privacy, and insisted that no substantive change was made to the requirements of Certificate applications by the amendments, it has deviated from its public stance in the past and the community's perception of Certificate applications (including that C for T actually has the power to impose restrictions on applications for vehicle particulars and refuse applications unrelated to the purposes of maintaining the register). Nevertheless, TD only posted a notice on its website reminding Certificate applicants to use the new form from October 2019, without explaining in detail the reasons for the amendments and ramifications. The situation was unsatisfactory.

414. TD opined that the complainant had been clearly provided with a legitimate method for access to vehicle particulars for news reporting purpose. The Office noticed that the complainant had asked LO staff and IPRU how to properly complete the new version of Form TD318 if a Certificate was applied for news reporting purpose. But both LO and IPRU staff merely repeated that applicants were required to complete all items in Form TD318, and TD would not process Form TD318 unless it was properly completed. The Office believed that what TD actually meant was that it would only approve applications where the information was to be used for traffic and transport related matters. Any news reporting purpose should also be related to traffic and transport matters as a prerequisite for lawfully applying for access to information. In other words, an application for access to vehicle particulars solely for news reporting purpose but unrelated to traffic and transport matters would not be approved, irrespective of being made with Form TD318, under the Code on Access to Information (the Code) or by other means. TD, however, did not point that out directly in its reply. In this connection, the Office reckoned that TD should have given the complainant a straightforward reply to facilitate its understanding.

415. In addition, the Office noted that TD informed the complainant in April 2021 that enquiries for access to the particulars of vehicles or their owners would be handled according to the Code and relevant legislation/guidelines. Nevertheless, in June 2021, TD replied that the complainant should complete Form TD318 to apply for the information. TD's inconsistent and vague replies certainly confused the complainant. As a result, the complainant made an application under the Code, which had no chance of approval, and had reasons to query whether TD was conversant with the Code. The Office considered that TD should have replied to public enquiries more carefully and informed the enquirers of its consideration factors if permitted by circumstances.

416. The Office understood that TD could hardly compile a comprehensive and exhaustive list with all matters related to traffic and transport. However, to give applicants some guidance, TD should proactively provide more information as far as practicable. The Office was of the view that, it would be advisable for TD to explain in detail, with specific guidelines and examples, what matters are related to traffic and transport for reference by applicants, such that they have a clearer basis for deciding whether their purposes for obtaining Certificates (such as reporting news of traffic accidents) are related to traffic and transport. Given that applicants wrongly ticking a box in Form TD318 are liable for prosecution for making a misrepresentation or false statement, TD should provide sufficient information for the public to avoid breaking the law inadvertently.

417. Overall, from an administrative perspective, the Office considered there was no impropriety on the part of TD in reviewing the Certificate application procedures in response to public views on protection of vehicle owners' personal data, and deciding, after consulting DoJ, PCPD, etc., to introduce relevant administrative measures requiring applicants to declare in Form TD318 that Certificates are obtained only for purposes related to traffic and transport matters. Nevertheless, TD fell short of good administrative standards in failing to explain clearly the reasons for introducing the new arrangement, its

details and approving criteria (including specific examples of "traffic and transport related matters" for reference) upon implementation.

418. The Ombudsman, therefore, considered the complaint unsubstantiated but other inadequacies found.

419. The Ombudsman recommended that TD –

(a) provide more and clearer points to note for Certificate applicants on its website and in Form TD318 to facilitate their understanding of TD's approving criteria; and

(b) provide specific examples of the three options listed in Form TD318 for reference to applicants on its website and in Form TD318.

**Government's response**

420. TD accepted The Ombudsman's recommendations and has provided clearer Guidance Notes, with examples for illustration, on its website and on the cover page of Form TD318, for applicants' reference.

## Transport Department

### Case No. 2021/0383(I) – Refusing to provide information on service endorsements of licensed non-franchised buses and light buses

### Background

421. On 27 October 2020, the complainant requested the Transport Department (TD) under the Code on Access to Information (the Code) to provide the names of owners, vehicle registration marks, Passenger Service Licence (PSL) numbers and types of service endorsements of registered non-franchised public buses (NFBs), private buses, public light buses and private light buses.

422. TD replied to the complainant on 11 December 2020 with the relevant information other than the types of service endorsements, but refused to disclose the types of service endorsements of NFBs and light buses on the ground of paragraph 2.16 of the Code. TD stated that the types of service endorsements involved commercially sensitive information. If such information was disclosed, it might prejudice or harm the competitive or financial position of the concerned parties.

423. On 12 December 2020, the complainant requested TD to review his request. TD replied to the complainant on 29 January 2021 that the disclosure of such information might disadvantage the person to whom it related in the conduct of his lawful business (including but not limited to the tender exercise of NFB service; sale and purchase of vehicles; and other lawful commercial activities, etc.). As such, TD maintained its original decision and refused to accede to his request for information on the ground of paragraph 2.16 of the Code.

424. The complainant opined that, since every NFB operated under a PSL is required by law to display the PSL number and the types of service endorsement on the vehicle's windscreen, the information of the

types of service endorsements of NFBs and light buses is publicly accessible information and TD should disclose such information.

425. In view of the above, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against TD for failing to provide requested information to him under the Code.

**The Ombudsman's observations**

*(I) The question of whether the information falls into the category of commercial confidences*

426. The service endorsements of vehicles are approved and issued by TD. Such information is not originally owned by the operators but is provided or entrusted to TD subsequently. It is hard to deem the information as the commercial confidence of the operators.

427. Every NFB operated under a PSL is required by law to display the PSL certificate on the left of the vehicle's windscreen, showing the PSL number and type of service endorsed to enable the public to identify the name of the PSL holder and type of service endorsement of the NFB. In other words, the information of the types of service endorsements is already in the public domain.

428. All vehicles issued with service endorsements have service demand. Thus, the majority of NFBs with service endorsements will operate on the roads to provide services and it will not be difficult for industry players or interested parties to get to know the overall situation of service endorsements being held by different vehicle owners/fleets.

429. Besides, if the public would like to know whether an individual vehicle has a particular type of service endorsement, they can make enquiries with TD. In fact, TD has released the information of PSL numbers, PSL holders and types of service endorsements on its website.

430. To conclude, the Office considered that the types of service endorsements of NFBs are not business confidence.

*(II) The question of whether disclosure of such information will harm the competitive or financial position of any person*

431. Taking sale and purchase of public vehicles as an example, TD considers that a seller has the duty to demonstrate its operational capability (e.g. providing the relevant PSL certificates) at buyer's request. In other words, the information requested by the complainant was the information that, in TD's opinion, PSL holders as sellers had the duty to provide. Thus, it would not put sellers in a disadvantaged position even if TD disclosed the information.

*(III) The question of whether TD has the duty of confidentiality*

432. Even if the information possessed by TD may have commercial value, the information is not confidential and is not provided by the operators. And TD has never made explicit or implicit commitment to hold the information in confidence. There is no reasonable ground for the operators to believe or expect that TD will hold the information in confidence. It is the Office's view that TD has no obligation to keep the information of the types of service endorsements confidential.

*(IV) Public interest*

433. As service endorsements of vehicles are not commercially sensitive information that a department can refuse to disclose, TD does not need to consider whether the public interest in disclosure will outweigh the harm or prejudice that could result.

434. In light of the above, the Office considered that it was inappropriate for TD to decline the complainant's request for information by citing paragraph 2.16 of the Code. Hence, the complaint against TD was considered substantiated.

435. The Ombudsman recommended TD to review the complainant's information request and assess whether there are concrete justifications and needs to refuse his request for the information of the types of service endorsements of NFBs by citing other provisions in Part 2 of the Code.

**Government's response**

436. TD accepted The Ombudsman's recommendation. Having reviewed the complainant's information request, TD has provided the information of the types of service endorsements of NFBs to the complainant as needed. In addition, TD has enhanced its internal computer system and will liaise with those making regular information requests on the dates for providing information so that their requests can be followed up more efficiently.

## Transport Department

**Case No. 2021/0987(I) – Refusing to disclose information in relation to the vehicle registration and Passenger Service Licences for public light buses**

**Background**

437. Since July 2018, the complainant had made requests to the Transport Department (TD) regularly under the Code on Access to Information (the Code) for access to the following information – (1) vehicle registration marks and Passenger Service Licence (PSL) numbers of newly registered public light buses (PLBs) in a specified period; (2) vehicle registration marks and PSL numbers of PLBs with vehicle registration cancelled in a specified period; (3) vehicle registration marks of PLBs with changes to PSL in a specified period and their PSL numbers before and after the changes; and (4) the information of the registered vehicle owners as at the latest practicable date (collectively referred to as "the information"). TD had all along provided the information to the complainant.

438. On 24 February 2021, TD refused to accede to the requests for information made by the complainant from 23 January to 20 February 2021 by citing paragraph 2.9(d) of the Code.

439. Subsequently, the complainant submitted requests for information to TD again on 13 and 17 March 2021. However, TD refused to provide the information again on 17 March and 1 April 2021 with the same reason.

440. The complainant opined that, since TD had all along acceded to his requests and kept providing the information to him from July 2018 to February 2021, it was unreasonable for TD to claim from 24 February 2021 onwards that the compilation of the information required the

deployment of substantial manpower and resources and use it as a reason to refuse to provide the information.

441. In view of the above, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against TD for not providing him with the requested information in accordance with the Code.

**The Ombudsman's observations**

442. Upon the Office's investigation, it was noted that the requests by the complainant had indeed become more frequent (from a single request in July 2018, to once every two weeks from August of the same year, and to every several days from January to February 2021), especially during the period of the present case (i.e. from January to February 2021), and the amount of information involved was substantial (involving about 4 350 scheduled and non-scheduled PLBs). TD had also explained the procedures for handling information requests and other daily duties of the staff concerned. The Office considered that the explanation provided by TD (i.e. the manpower and resources required to compile the information had exceeded what the department could cope with) was reasonable. Hence, the Office accepted that TD had reason to refuse to provide the information by citing paragraph 2.9(d) of the Code.

443. Given that TD had proactively offered to provide the complainant with the vehicle registration marks of all scheduled and non-scheduled PLBs on a specified day every month, the Office considered that this was a reasonable response to the complainant's requests. If the complainant considered that this was inadequate, he could discuss with TD on ways to allow him to obtain the information while avoiding excessive use of departmental manpower and resources.

444. The Office noted that since July 2018 TD had acceded to the complainant's repeated requests and provided information to him for a consecutive period of two and a half years, during which TD had never mentioned that such information could only be made available by

unreasonable diversion of departmental resources. Nonetheless, the Office considered that it was normal for government departments to review issues from time to time including allocation of internal resources and priorities of tasks for different reasons and change their views on what was reasonable use of resources. However, TD's abrupt rejection in February 2021 of the complainant's requests made in January and February 2021 had inevitably made the complainant feel baffled and dissatisfied. Had TD provided an explanation to the complainant when refusing his requests, his dissatisfaction might have been avoided.

445. The fact that TD still agreed to provide the complainant with certain information on a monthly basis after considering the use of resources reflected that TD, in principle, had no objection to the disclosure of such information, and such information might have the potential value to be turned into open data. The Office was of the view that, instead of using resources to provide such information to the complainant alone, TD could consider, in the long term, exploring the feasibility of using its homepage to disseminate the information regularly and turning it into information that would be released on an ongoing basis. This would bring its practice more in line with paragraph 1.4.4 of the "Guidelines on Interpretation and Application" of the Code, which states that departments should make full use of departmental homepages to disseminate information and bring their homepages in line with the requirements set out in paragraph 1.4 of the Code.

446. It was also noted that, after receiving the complainant's requests on 23 January and 2 February 2021, TD did not reply to the complainant to decline the requests until 24 February 2021. This had exceeded the target response time of twenty-one days from receipt of request stipulated in the Code. TD also failed to give an interim reply within ten days of receipt of request before issuing a substantive reply.

447. The Ombudsman considered the complaint lodged by the complainant against TD unsubstantiated. Regarding the situation where the handling of the complainant's requests exceeded the target response

time stipulated in the Code, The Ombudsman recommended TD to give advice to the staff concerned to avoid recurrence of similar incidents.

**Government's response**

448. TD accepted The Ombudsman's recommendation and has given advice to the staff concerned, advising them to respond within the target response time stipulated in the Code and avoid delay in handling information requests.

## Transport Department

**Case No. 2021/1999(I) – (1) Improper handling of an enquiry about applications for a Certificate of Particulars of Vehicle for news reporting purpose, giving false expectation to the complainant that making a request under the Code on Access to Information is a viable means; and (2) Delay in processing the case, final reply given to the complainant did not accede to nor refuse the request**

### Background

449. On 24 June 2021, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against the Transport Department (TD).

450. Allegedly, on 22 April 2021, the complainant sent an email enquiry to TD about the application procedures for a Certificate of Particulars of Vehicle (Certificate). On 23 April, TD's Information and Public Relations Unit replied that enquiries about/requests for the particulars of a vehicle or its owner through means other than the prescribed form would be handled in accordance with the Code on Access to Information (the Code) and relevant ordinances/guidelines. On the same day, the complainant made a request under the Code for the particulars of a bus involved in a traffic accident (including the bus's first registration date, name of manufacturer, place of origin, engine size, model and year of manufacture).

451. On 15 June, TD replied to the complainant, stating that the Code does not affect the public's statutory rights of access to information or the legal restrictions on access to information. The Code also provides that it does not oblige departments to provide information available through a charged service. Since the information requested by the complainant are recorded in TD's vehicle register (Register), the content of which can be obtained under the Road Traffic (Registration and Licensing of Vehicles) Regulations (the Regulations). As such, his application would be handled

pursuant to the Regulations. If the vehicle particulars thus obtained were to be used for traffic and transport matters, the complainant could complete the application form (i.e. TD318 Form) and apply for this charged service.

452. The complainant was dissatisfied that TD did not state explicitly at the very start that the Code is not applicable to vehicle particulars applications. If only applications using the prescribed form would be accepted, TD should not have suggested other channels of application. The complainant was of the view that TD staff was not conversant with the Code and gave him a wrong reply on 23 April 2021 (Allegation (a)), thus causing delay in handling his case (Allegation (b)).

**The Ombudsman's observations**

*Allegation (a)*

453. In its 23 April reply to the complainant, TD emphasised that no restrictions on Certificate applications had been imposed on applicants of any occupation (including media practitioners), and enquiries about/requests for the particulars of a vehicle or its owner through means other than the prescribed form would be handled pursuant to the Code and relevant ordinances/guidelines. The Office accepted TD's explanation that it actually meant that public information requests by ways other than the TD318 Form would be handled in accordance with the Code and other relevant ordinances/guidelines. The reply by itself was actually in order. TD did not say that requests for vehicle particulars should be made under the Code, nor did it advise members of the public to do so. However, in the complainant's email dated 22 April 2021, he had clearly pointed out that in view of a court case on that same day relating to Certificate application and the Reasons for Verdict, he asked TD how to make a written request for the Certificate through other means for news reporting purpose. Given the circumstance, the Office opined that TD's reply would possibly give the complainant a false hope that he could apply for, and then obtain, the Certificate or the information

thereon by making an information request under the Code. The Office thought that TD should be more prudent in answering public enquiries. In view of the elaborations above, The Ombudsman considered Allegation (a) unsubstantiated.

*Allegation (b)*

454. Paragraph 1.16 of the Code provides that "where possible, information will be made available within ten days of receipt of a written request. If that is not possible, the applicant will be so advised by an interim reply within ten days of receipt of the request. The target response time will then be twenty-one days from receipt of the request." Paragraph 1.18 reads, "response may be deferred beyond twenty-one days only in exceptional circumstances, which should be explained to the applicant. Any deferral should not normally exceed a further thirty days." The Office agreed that this case was exceptional and believed that TD had tried its best to provide a final response within 51 days. TD did send out a preliminary reply to the complainant within the specified time frame and indicate in the interim reply on 13 May that it was seeking legal advice on his request. The Office opined that purely from the perspective of compliance to the Code's time frame in providing a response to the complainant, TD had not violated the relevant requirement.

455. However, the Code requires that a response made within the specified time frame would include provision of the information requested; if a department intends to decline an information request, it should inform the applicant of the reason(s) for refusal and cite the relevant paragraph(s) in Part 2 of the Code. In this case, TD did not confirm in its final reply whether the complainant's request had been accepted. It neither provided the information requested, nor rejected the complainant's application for the information. Instead, it just cited paragraphs 1.7 and 1.14 in Part 1 of the Code and reiterated that "if the information you requested would be used for traffic and transport related matters, you could obtain the information through our charged service

(i.e. apply for the Certificate)." Such an ambiguous reply to the complainant's information request was very undesirable.

456. The Office understood that TD could not, and should not, indicate whether to accept or reject the application before receiving the TD318 Form submitted by the complainant. Nevertheless, the complainant in this case had cited the judgement of a new court case in his email dated 22 April 2021. He was obviously worried about breaking the law inadvertently by misinterpreting "traffic and transport related matters" in completing the TD318 Form. So, he followed the Principal Magistrate's advice to seek TD's clarification on written application for the Certificate by ways other than completing the TD318 Form. Actually, the complainant had already explained in the email dated 23 April 2021 the intended use of the vehicle particulars requested. The Office was of the opinion that TD, as the department responsible for traffic and transport related matters and executing the Road Traffic Ordinance (RTO), should be conversant with the aims, legislative intent and purpose of the RTO, as well as the meaning and scope of traffic and transport related matters. Besides, it should have an accurate interpretation of its powers and restrictions under the RTO. In other words, when an applicant of an information request specifies the intended use of the information, TD should have both the responsibility and capability to determine whether such use is a traffic and transport related matter within its purview. In exercising its powers under the RTO, TD has a duty to provide clear and precise guidance for public reference so that people would have a proper understanding of the law, avoid ill-informed mistakes and breaching the law unintentionally. While the court can make final interpretation of the law in each case, individual departments should have a clear stance on the prevailing application of the legislative provisions pertinent to its jurisdiction and explain its stance to enquirers in detail. In this case, TD, having sought legal advice and after a 51-day assessment, should have been able to give the complainant a definite reply on whether using the vehicle's particulars in a news report about a traffic accident was "other traffic and transport related matter" as

specified in the TD318 Form. Its failure to do so was not in line with good administrative standards.

457. As TD pointed out, it has to handle Certificate applications in accordance with the powers vested with the Commissioner for Transport (C for T) under the current legislation. As such, while processing applications, it must act as a gatekeeper and consider both the use of the requested information and protection of privacy. TD's practice in handling applications relies on the applicants' own judgement to tick and choose one of the three purposes given in the application form and their declaration of understanding the warning. Yet, members of the public may still have a lot of unanswered queries, especially so when a new court case causes worries about unintentional offences. For instance, what kind of legal proceedings would be considered traffic and transport related matters; is reporting news about traffic accidents a traffic and transport related matter; whether performing due diligence by certain sectors is related to traffic and transport (the complainant raised this query as well); and whether using Certificate information for news reporting would be exempted from the Personal Data (Privacy) Ordinance, etc. Besides, people may not know the procedures for requesting partial information of the Certificate, how to request fee exemption under regulation 4(2) of the Regulations, and whether the public interest would be accepted as a reason for application.

458. While cases vary in circumstance, the Office considered that good public administration should conform to the principle of equity, openness and transparency. The Office agreed that TD should take into account the use of information in processing applications and duly consider the protection of personal data of vehicle owners. The Office also agreed that TD should review from time to time the application of legislative provisions and Certificate-related matters. To facilitate applicants' submission of accurate and sufficient information and justification to TD, the Office recommended TD to take reference from real cases and provide more and clearer notes on Certificate applications to non-owner applicants so as to enhance their understanding of TD's

assessment criteria, and use real examples to illustrate the acceptable uses or applicable scope under each of the three purposes given. Besides, TD should allow applicants to provide supplementary information to support that the purpose of their application is a traffic and transport related matter under the purpose they have chosen on the TD318 Form.

459. Although TD had replied to the complainant after 51 days of receiving his request, it had not furnished him with the information requested, nor rejected his information request explicitly or provided any useful information for his reference. The Office considered Allegation (b) partially substantiated.

*Other Observations on Privacy and Fee Exemption*

460. The Office noticed that the TD318 Form can only be used for applications for the Certificate, which contains all the particulars of a vehicle as entered in the Register. As personal data of the vehicle owner (including his/her name and address) are also included, protection of personal data privacy, therefore, becomes a consideration factor and the owner's authorisation may be needed. However, in his email dated 23 April, the complainant only requested information items on the Certificate that did not involve personal data, rather than all the information thereon. Protection of data privacy, therefore, should not have been a consideration factor. In fact, regulation 4(2) of the Regulations provides that C for T shall supply to any person making application for any particulars a certificate stating such particulars. Yet, TD did not provide the relevant application procedures to applicants who requested only partial information of the Certificate. On the other hand, the Office opined when an applicant only requests partial information of the Certificate that does not involve personal data, it does not mean TD could lawfully demand the applicant to make an unrelated declaration when completing the TD318 Form.

461. Regulation 4(3) of the Regulations allows C for T to waive the fee payable in respect of any application where the applicant has good

reason for requiring the particulars and it is in the public interest that the particulars be disclosed. TD, however, seemed not to have formulated appropriate procedures for this purpose.

462. In sum, TD did not indicate to the complainant that his information request would be handled only pursuant to the Code. Nevertheless, given the complainant's clear indication of the purpose of his request, TD, after a 51-day assessment, only asked him to judge by himself whether requesting the Certificate information for news reporting about a traffic accident was a purpose related to traffic and transport matters. Such handling method failed to meet good administrative standards. In this light, regarding the complainant's complaint against TD, Allegation (a) was unsubstantiated; and Allegation (b), partially substantiated.

463. The Ombudsman recommended TD to -

(a) provide more and clearer points to note for Certificate applications on its website and the TD318 Form so that applicants would better understand TD's assessment criteria;

(b) take reference from real cases and provide examples to illustrate to non-owner applicants the acceptable scope under each of the three purposes given in the TD318 Form;

(c) consider to further amend the TD318 Form so that applicants can choose to provide supplementary information to support the purpose they have chosen to facilitate TD's assessment of whether the intended use is a traffic and transport related matter specified in the Form; and

(d) draw up procedures and guidelines for handling Certificate applications involving request for partial information and fee exemption. If an applicant only requests partial information of

the Certificate, TD should consider providing a Certificate with all other un-requested information obliterated.

**Government's response**

464. TD accepted The Ombudsman's recommendations (a), (b) and part of recommendation (d) and has taken the following follow-up actions.

*Recommendations (a) and (b)*

465. With regard to The Ombudsman's recommendations (a) and (b), TD has provided clearer Guidance Notes, with examples for illustration, on its website and on the cover page of TD318 Form for applicants' reference.

*Part of Recommendation (d)*

466. In relation to recommendation (d) for TD to draw up procedures and guidelines for handling Certificate applications involving requests for fee exemption, TD has formulated internal procedures and guidelines and will, upon receipt of such request, consider all relevant information in order to assess whether the fee payable for the application made under sub-regulation (2) can be waived in accordance with regulation 4(3) of the Regulations.

467. TD did not accept recommendation (c) and the other part of recommendation (d) as justified below.

*Recommendation (c)*

468. The Ombudsman recommended TD to consider to further amend the TD318 Form, so that applicants could choose to provide

supplementary information to support the purpose they have chosen for the application. TD did not accept this recommendation. TD appreciated that the recommendation was made with the aim of preventing unintentional breaches of the law by the applicants due to a misunderstanding of the meaning of traffic and transport related matters or making the wrong choice on the TD318 Form, and providing members of the public a channel for enquiries. TD also accepted that it is of utmost importance for government departments to act in accordance with their statutory powers and restrictions. Accordingly, TD considered that the existing arrangement could be enhanced by implementing The Ombudsman's recommendations (a) and (b), and providing a hotline for those in need to inquire on matters related to Certificate application in order to reduce the chance of misunderstanding, thereby ensuring TD to issue Certificates to applicants pursuant to the statutory powers and restrictions in a relatively more efficient manner.

*The Other Part of Recommendation (d)*

469. The Ombudsman recommended TD to formulate relevant procedures and guidelines for handling requests for partial information, and consider providing a Certificate with un-requested information obliterated. Also, the Office opined that when an applicant only requests partial information of the Certificate that does not involve personal data, TD should not demand the applicant to make an unrelated declaration when completing the TD318 Form. TD did not accept the aforesaid recommendation.

470. TD would like to point out that even if an applicant only requests partial information of the Certificate, it is difficult for TD to ascertain whether the partial information sought would directly or indirectly amount to personal data (especially when read in conjunction with other information). Moreover, as reiterated by TD, the C for T maintains the Register and supplies vehicle particulars in the Register pursuant to regulations 4(1) and 4(2) of the Regulations. Since maintenance of the Register is empowered by the Regulations, which is a

subsidiary legislation under the RTO, and the RTO is intended to provide for the regulation of road traffic and the use of vehicles and roads and for other purposes connected therewith, the use of the particulars in the Register under the Regulations should be related to traffic and transport matters. Given the legislative purpose of maintaining the Register, in order to duly discharge the duties the Regulations have conferred on the C for T, TD will maintain the existing arrangement, i.e. regardless of whether the applicant requests all or part of the particulars in the Certificate, given the relevant particulars are managed by the Register, applicants must apply in accordance with regulation 4(2) of the Regulations, including duly completing the TD318 Form or the online application form, paying the prescribed fee, using the particulars for traffic and transport related matters and making a declaration accordingly. The above requirements do not involve taking irrelevant factors into consideration or setting unnecessary conditions. In view that under the existing legislative framework and actual operation, TD cannot exempt applicants who only request partial information of the Certificate from making the required declaration according to The Ombudsman's recommendation, TD would continue with the current arrangement.

471. The above stance was conveyed to The Ombudsman via TD's letter on 29 July 2022.

## Part III
## – Responses to recommendations in direct investigation cases

### Agriculture, Fisheries and Conservation Department

### Case No. DI/445 – Regulatory Work on Dog Keeper's Obligations by Agriculture, Fisheries and Conservation Department

### Background

472. In Hong Kong, the number of pet-keepers is growing and the awareness about care for animals is getting stronger in the community. The Rabies Ordinance was initially enacted to protect public health and safety. Licensing, microchipping and vaccination of dogs, however, are no longer just necessary preventive measures against a rabies outbreak, but also legal obligations for strict compliance imposed on dog keepers in order to protect dog welfare (under the law, dog keepers does not simply refer to persons who own dogs or apply for dog licences. Unless where interpretation of the law is involved, people who own or keep dogs are collectively referred to as dog keepers in general hereafter).

473. As the Government department responsible for safeguarding animal welfare, the Agriculture, Fisheries and Conservation Department (AFCD) should on the one hand advise and educate animal keepers to properly take care of and manage their animals, and on the other exercise its statutory powers to take appropriate enforcement action against offenders, so that they would know the consequences of breaking the law.

### The Ombudsman's observations

474. The Office of The Ombudsman's (the Office) direct investigation has identified the following aspects for improvement with respect to AFCD's regulatory work on dog keepers' obligations.

*(I) Should Initiate More Proactive Follow-Up Action on Suspected Violations of Law by Dog Keepers*

475. AFCD pointed out the need to strike a balance between protection of dog welfare and stringent enforcement. For instance, the Department would not rashly prosecute dog keepers who failed to license their dogs, with a view to preventing rabies and encouraging those dog keepers to apply for dog licences. The Office considered that in handling issues relating to the keeping of and caring for pets, relying merely on draconian punishment is not advisable. Nevertheless, sole reliance on self-discipline of dog keepers is not sufficient either. AFCD should take sterner follow-up action on suspected violations of law by dog keepers to bring home to irresponsible dog keepers the consequences of offences.

476. With respect to cases involving violations of law by dog keepers, AFCD can consider collating and taking reference from experience in handling past cases with a view to reviewing related work arrangements for more rigorous investigation and evidence collection, thereby raising the chance of successful prosecution and achieving deterrent effect on offenders. Besides, AFCD should strive to handle similar cases in a consistent manner to obviate doubts about unfair treatment. In cases where it decides not to prosecute, other administrative measures can be considered in light of the nature and circumstances of individual cases. Such measures include issuance of an advice or a warning letter to the dog keeper concerned, and making a record of the incident to facilitate future follow-up action as necessary.

*(II) Should Strictly Require Dog Keepers to Observe Legislative Requirements*

<u>(1) Strengthen follow-up work on cases involving failure to license, vaccinate and microchip a dog in a timely manner</u>

477. At present, AFCD would take actions against dog keepers who have failed to license their dogs or renew the dog licence only when their

dogs have not been properly controlled or have bitten people. The Office considered such enforcement action too passive to deter offenders. AFCD should be more proactive and strictly require dog keepers to observe the legislative requirement and discharge their statutory duty to license their dogs. In addition, AFCD should conduct random dog licence inspections at public places where dogs gather (instead of running licence checks only in response to complaints), and require dog keepers to license their dogs or renew the licence by a specified deadline. Enforcement action should be taken against dog keepers who flout the requirement.

(2) Improve licence renewal reminders to dog keepers

478. Under the prevailing arrangement, AFCD would send licence renewal reminders to dog keepers who apply for a dog licence at an Animal Management Centre (AMC) under the Department. Dog keepers who apply for a licence via private veterinary clinics would receive licence renewal reminders only if they have provided their email address to AFCD at the time of application. The Office considered that AFCD should make proactive use of the information in the Enhanced Animal Licensing and Enforcement System (EALES) to send notifications to all dog keepers whose dog licence is about to expire to remind them to renew the licence and re-vaccinate their dogs by a specified date.

(3) Raise dog licensees' awareness of notifying AFCD promptly of change in contact information and identity of dog keeper

479. The Office's investigation found a number of instances in which the dog keepers' information in the EALES was inaccurate or outdated. As a result, AFCD could not trace the dog keepers and ascertain their identities, let alone taking further enforcement action against offenders. The Office considered that AFCD should strictly enforce the requirement that dog licensees should notify the Department of change in address as soon as possible. When processing licence renewal applications, AFCD should also ask the applicants to make a written declaration on the

veracity of their contact information, and state clearly the possible legal liability for making false declaration. The electronic platform to be developed by AFCD, in addition to allowing veterinary clinics to directly input licence application information, can also include a function to process changes of licensees and updates on contact information of dog keepers.

*(III) Need to Review Current Administrative Arrangements*

(1) Set time frame for veterinary clinics to submit licence applications

480. In addition to microchipping and vaccination services, veterinary clinics also submit dog licence applications to AFCD on behalf of dog keepers. Nevertheless, processing time for such applications varies among clinics. The Office considered that AFCD should formulate relevant guidelines requiring veterinary clinics to submit dog licence applications to AFCD within a specific time frame after microchipping and vaccinating the dogs concerned. Moreover, to ensure the accuracy of applicants' contact information, AFCD should also consider strengthening its liaison with dog keepers. For instance, after completing the processing of a licence application that is submitted via veterinary clinic, AFCD can notify the dog keeper directly of licence issuance by electronic means (such as short message services (SMS) message to mobile phones or email).

(2) Enhance arrangements with animal welfare organisations for handling lost dogs

481. Animal welfare organisations (AWOs) do not have information of registered dog keepers. Thus, upon catching or receiving a microchipped dog, they can only call AFCD for follow-up action. The Office opined that there might be omissions in verbal information. To minimise the risk of mistakes, AFCD should strengthen its current communication mechanism with AWOs. For instance, AFCD can allow AWOs to provide information about the dogs they have caught to the

Department by electronic communication. Clear records can speed up case processing and facilitate the Department's examination of evidence and follow-up actions in the future.

(3) Refine arrangements for reclaiming lost dogs by dog keepers

482. The Office's investigation found that persons other than the registered dog keepers could take away dogs from the AMCs under AFCD. As such, with respect to the arrangements for reclaiming un-microchipped dogs, AFCD should consider requiring the person who comes forward to reclaim a dog to provide more information to confirm his/her keeper status so that dogs would not be mistakenly taken away.

(4) Handle properly cases of change of licensee

483. There were inadequacies in the handling and confirmation of change of dog licensees by AFCD staff. AFCD should handle such applications prudently, step up staff training and remind staff to verify carefully the information provided by both the new and original dog keepers and obtain the written confirmation of both parties in order to protect their interests.

*(IV) Need to Improve Efforts in Reducing Dogs Surrendered by Dog Keepers*

484. AFCD has been educating the public and advising them against abandoning their pets. Yet, its practice of accepting dogs surrendered by their keepers may provide opportunities for some dog keepers to evade their legal obligations. The Department previously indicated its consideration of not receiving dogs surrendered by keepers without good reasons. The Office was of the opinion that before implementing such an arrangement, AFCD must first strengthen the regulation of dog keepers' obligations under the law, strictly require dog keepers to license their dogs and provide accurate contact information to the Department, and take follow-up actions against dog keepers in breach of the law (such as

abandoning their dogs). In addition to stepping up publicity, AFCD should consider other measures to prompt those dog keepers intending to give up their dogs to think twice and consider thoroughly whether it is their only option. For instance, AFCD can require that dog keepers must make an appointment in advance for going through the formalities of surrendering a dog.

*(V) Should Step Up Publicity on Dog Licence Renewal and Updating of Licensee Information*

485. The Office's investigation found that some dog keepers did not have sufficient understanding of their legal obligations, such as their duty to renew the dog licence or to notify AFCD of change in contact information and change of licensee in a timely manner. The Office considered that AFCD should step up public education in this aspect.

486. In light of the above, The Ombudsman recommended AFCD to –

(a) take appropriate and effective measures to follow up more strictly on suspected violations of law by dog owners and strengthen investigation and evidence collection; in cases where AFCD decides not to prosecute, to consider other administrative measures (such as issuing advices or warning letters to remind dog keepers to observe the statutory requirements) and make relevant records of the cases;

(b) conduct random dog licence inspections at public places where dogs gather, require dog keepers to license their dogs or renew the licence by a specified deadline, and take enforcement action against non-compliant dog keepers;

(c) make use of the information in the EALES to send notifications to dog keepers whose dog licence has expired or is about to expire, requiring them to renew the dog licence by the specified

deadline. The notification should state outright the legal consequences of noncompliance. AFCD can also consider revising the dog licence application form to clearly inform applicants that their contact information would be used for the purpose of sending licence renewal notifications;

(d) require dog licence applicants to make a written declaration at the time of licence renewal applications (including applications submitted via private veterinary clinics) on the veracity of their contact information, and let them understand the legal consequences of making false declaration;

(e) formulate guidelines to require organisations and veterinary clinics that assist in dog licence applications to submit the applications to AFCD within a specific time frame after microchipping and vaccinating a dog; start as soon as possible the development of an electronic platform that allows veterinary clinics to submit dog licence applications; and for licence applications submitted via private veterinary clinics, consider notifying the dog keepers directly of licence issuance by electronic means;

(f) in the long run consider permitting members of the public to submit electronic applications for changing dog keeper contact information and change of licensee;

(g) strengthen its current communication and liaison mechanism with AWOs, consider allowing AWOs to provide information about the dogs they have caught to AFCD by electronic communication so as to facilitate immediate follow-up by the Department;

(h) with respect to the arrangements for reclaiming un-microchipped dogs, consider requiring the person who comes forward to

reclaim a dog to provide more information to confirm his/her keeper status;

(i) handle prudently applications relating to change of licensee, step up staff training and remind staff to verify carefully the information of both the new and original dog keepers and obtain the written confirmation of both parties;

(j) explore more measures to prompt dog keepers intending to give up their dogs to think twice and consider thoroughly whether it is their only option; and

(k) step up publicity and public education on dog keepers' responsibility to renew dog licence and notify AFCD of change in contact information and change of licensee in a timely manner.

**Government's response**

487. AFCD accepted all recommendations made by The Ombudsman and has taken the following follow-up actions.

*Recommendation (a)*

488. AFCD will continue to conduct thorough investigations and collect admissible evidence for prosecution. In addition, AFCD has liaised with the Civil Service College to arrange training courses on case investigation and evidence collection skill for staff of the AMCs.

489. Starting from June 2022, for cases not to pursue prosecution, for example due to lack of evidence, AFCD will issue advisory letters (for first-time violations) or warning letters (for repeated violations) to dog keepers, reminding them of the need to observe relevant legal requirements. AFCD will record all advisory or warning letters issued in the EALES for necessary follow-up in future.

*Recommendation (b)*

490. Starting from April 2022, AFCD officers will conduct random dog licence inspections at public places such as pet gardens and waterfront promenades. Between April and July 2022, six dog licence inspection operations were conducted, during which 86 dogs were inspected. Among them, 73 were issued with valid licences, one was under the age of five months and no licence was required, 11 had their licences renewed within seven days after inspection and one has not had its licence renewed within seven days as directed and the case is still under investigation. AFCD will continue to conduct inspections on a regular basis. For non-compliance with directions on licence renewal, AFCD will consider initiating prosecution against dog keepers.

*Recommendation (c)*

491. AFCD has revised the application form for dog licences to inform applicants that their contact information will be used for notifications on licence renewal. AFCD issues letters to dog keepers whose dog licences are about to expire to remind them of the need for renewals and also the legal consequences of non-compliance. In view of The Ombudsman's recommendations, AFCD has reviewed records on expired dog licences and has issued in the third quarter of 2022, letters to dog keepers with dog licence that has expired for less than one year, requiring them to renew the dog licence by a specified deadline and reminding them of the legal consequences of non-compliance. Whilst AFCD will continue to remind dog keepers to renew their licences under the prevailing mechanism, to enhance communication with dog keepers, AFCD will start reminding dog licensees of renewals through SMS in addition to issuing letters. Preparations for this new measure are underway.

*Recommendation (d)*

492. AFCD has revised the application form for dog licences to require all dog keepers (including those applying for a dog licence via veterinary clinics) to confirm the veracity of their contact information by signing a declaration, reminding applicants of the legal consequences of making false declaration. The revised form has been in use since September 2022.

*Recommendation (e)*

493. Starting from April 2022, veterinary clinics can submit applications for dog licence on behalf of clients through the electronic platform. AFCD has issued letters to veterinary clinics, requiring them to submit the completed and duly signed "Anti-rabies Immunization Certificate" within 14 days after the completion of rabies vaccination and/or microchipping, for their clients' dogs for the purpose of dog licence applications. AFCD will work with a system contractor to set up arrangements for notifying dog keepers directly of licence issuance by electronic means.

*Recommendation (f)*

494. AFCD will work with a system contractor to establish an electronic platform for submitting applications for changes in dog keeper contact information and change of licensee.

*Recommendation (g)*

495. AFCD will issue letters to AWOs, encouraging them to contact AFCD about dogs caught by them by email, in addition to telephone calls for AFCD's follow-up action.

*Recommendation (h)*

496. Starting from March 2022, any person who attempts to reclaim un-microchipped dogs from AFCD will be required to report loss of the dog first and provide additional information when necessary, such as photos and decorations worn by the dog, for verification of their dog keeper status.

*Recommendation (i)*

497. Under the prevailing arrangement, written confirmations from new and original dog licensees are required when processing applications for change of dog licensees. AFCD has conducted training for staff on the handling of such applications, reminding the staff to ensure that the required written confirmations are obtained before approving the applications. Relevant staff operational guidelines have been updated accordingly.

*Recommendation (j)*

498. AFCD is exploring more measures to dissuade dog keepers from giving up their dogs or to consider thoroughly before doing so. The measures include the cessation of on-site collection of animals surrendered by animal keepers, putting in place an appointment mechanism for receiving animals to be surrendered with reasonable grounds and requirement for those who wish to surrender animals, to complete a questionnaire for AFCD's assessment. Furthermore, AFCD will continue to conduct publicity and education on dog keeper's responsibility for taking care of their dogs, by placing advertisements on television and public transport.

*Recommendation (k)*

499. Starting from May 2022, AFCD has stepped up publicity and education efforts on dog keepers' responsibility through school seminars,

messages on AFCD's webpage and advertisements on in-train television of MTR. AFCD will also further enhance its publicity and education efforts by placing advertisements on mini-buses and other public transportations by end of 2022. AFCD will continue with publicity and education work.

## Electrical and Mechanical Services Department

## Case No. DI/438 – Regulatory Regime for Lifts and Escalators

### Background

500. There had been a number of serious lift and escalator accidents in Hong Kong in 2017 and 2018, which cast doubt on the adequacy of the Government's safety regulation of lifts and escalators. Some of those accidents involved aged lifts which did not fully meet the latest safety standards established by the Electrical and Mechanical Services Department (EMSD). This revealed the problem of ageing and antiquated lifts and escalators in Hong Kong.

### The Ombudsman's observations

*(I) Effectiveness of Inspection Mechanism Being Questionable*

501. The Lifts and Escalators Ordinance (LEO) requires that lifts and escalators shall undergo periodic maintenance at least once a month. Nevertheless, the varied quality of maintenance work for lifts and escalators has been shown in a number of previous incidents. The Office of The Ombudsman's (the Office) findings show that EMSD had not targeted monitoring of the quality of routine maintenance of lifts and escalators in its inspection strategy. Prior to an inspection, EMSD usually contacts the relevant registered contractor to confirm its schedule for maintenance work as it considers such confirmation necessary. The Office opined that this arrangement would undermine the deterrent effect of inspections and EMSD should increase the ratio of surprise inspections. In addition, while registered contractors are required to submit their schedules for maintenance via EMSD's e-Platform, it is necessary for EMSD to introduce specific measures to ensure that registered contractors will submit or update their schedules for periodic maintenance in a timely manner to enable effective arrangement for inspections. Currently, EMSD monitors the maintenance work by

workers of registered contractors by means of on-site observation. The Office considered that under this arrangement, it would be difficult for EMSD staff to assess any fault in the components of lifts and escalators or the actual performance of workers.

*(II) More Stringent Monitoring of Lift and Escalator Examinations Is Necessary*

502. According to the Office's findings, there were few site inspections conducted by EMSD on periodic examinations of aged lifts and escalators maintained by contractors with low performance rating. Besides, the ratio of EMSD's random checks on lift and escalator examination reports and joint inspections on components with the registered contractors was rather low, and EMSD's review on periodic examinations did not cover all the examination items. Also, although registered engineers are required to keep copies of photographs of lift suspension system or escalator drive system upon completion of periodic examinations, EMSD had not proactively conducted random checks on such photographs or made good use of this arrangement to strengthen reviews on routine examinations by registered engineers.

*(III) Follow-up Action on Non-compliance Cases Should Be Strengthened*

503. Pursuant to LEO, the Director of Electrical and Mechanical Services may refer any suspected cases of non-compliance (including professional misconduct or negligence and conviction of any offence under LEO) involving registered contractors, engineers or workers to the Development Bureau for establishing a disciplinary board (the Board) to consider taking disciplinary action. In this regard, EMSD has set up the Disciplinary Action Review Panel (DAR Panel) to examine suspected cases and decide whether they should be referred to the Board. The Office noticed that some of the previous cases, regardless of whether the registered contractors or persons involved had been prosecuted or convicted by the court after trial or not, were not referred to the Board for disciplinary hearings.

*(IV) Insufficient Monitoring of "Maintenance Work beyond the Maximum Number"*

504. Currently, if registered workers carry out maintenance work for more than six lifts or escalators in one day, the registered contractors concerned are required to report to EMSD afterwards the number of such cases with explanation. EMSD will follow up on the cases according to the reasons given by the contractors. The Office considered this practice of allowing registered contractors to carry out "maintenance work beyond the maximum number" and report relevant cases afterwards has rendered EMSD, the monitoring authority, very passive. Moreover, EMSD has not specified what criteria are justifiable for "maintenance work beyond the maximum number" and the circumstances in which such arrangement will be acceptable.

*(V) Inadequate Information Dissemination on Lift and Escalator Incidents*

505. EMSD will publish on its website information on lift and escalator incidents involving mechanical faults, but those records contain only very brief facts of the incidents, which may not be useful in helping the public and the industry to understand the actual events and how serious those incidents were. On the other hand, the Board will publish in the Gazette the disciplinary orders made against registered engineers or workers, listing only the allegations and the Board's decision while further details of the cases will not be disclosed. EMSD does not provide details of cases involving disciplinary hearings on its website or via other channels either.

*(VI) Effectiveness of Modernisation of Lifts and Escalators less than Satisfactory*

506. EMSD has issued guidelines for modernising lifts and escalators, in which responsible persons are advised to retrofit safety devices to their aged lifts and escalators. However, the Office found that

as at the end of 2020, only about 18% of aged lifts and 7.5% of aged escalators had undergone modernisation works. The effect of the guidelines seems rather insignificant. Meanwhile, the Lift Modernisation Subsidy Scheme launched by the Government and Urban Renewal Authority for retrofitting of safety devices to aged lifts could cover only 18% of the total number of aged lifts (which is more than 45,000) in Hong Kong. EMSD should proactively explore other feasible options, such as introducing more measures to encourage owners to consider and plan for modernising their aged lifts and escalators in a timely manner, hence enhancing the safety of lifts and escalators in Hong Kong.

507. In view of the above, The Ombudsman recommended EMSD to –

(a) increase the ratio of surprise inspections for stronger deterrent effect;

(b) introduce measures to ensure timely submission of maintenance schedules by registered contractors in order to facilitate EMSD's inspections;

(c) explore feasible inspection modes and strategies to achieve more effective monitoring of day-to-day performance of registered contractors and workers;

(d) review and improve the existing checklist for site inspections to set out the items and tests to be covered in various inspections, and establish specific and clear guidelines for inspection procedures;

(e) step up monitoring of periodic examinations of lifts and escalators including conducting more random checks on examination reports and examining more items during inspections;

(f) consider requiring registered contractors or engineers to submit photographs of lift suspension system or escalator drive system regarding periodic examinations and conducting more random checks on those photographs; and consider requiring also photographs of other major components and safety devices;

(g) review the prevailing internal guidelines of DAR Panel to ensure that it will examine and refer non-compliance cases of serious nature for disciplinary hearings;

(h) require registered contractors to submit beforehand the maintenance work arrangements of their workers to strengthen regulation of cases involving "maintenance work beyond the maximum number";

(i) establish clear and specific criteria and guidelines for determining what grounds and number of maintained lifts/escalators in excess for cases involving "maintenance work beyond the maximum number" are acceptable, and explain how unreasonable cases can be followed up;

(j) take the initiative to release more details about incidents involving lifts and escalators and explore together with the Board the possibility of publishing more information about cases subject to disciplinary hearings; and

(k) proactively explore feasible ways to further promote modernisation of aged lifts and escalators so as to enhance the safety of lifts and escalators in Hong Kong.

**Government's response**

508. EMSD accepted all of The Ombudsman's recommendations, and has already implemented all the follow-up actions as detailed below.

*Recommendation (a)*

509. EMSD has increased the number of surprise inspections by 3 folds from about 50 per month in 2020 to about 150 per month since August 2021.

*Recommendation (b)*

510. EMSD launched an online electronic platform in September 2020, enabling contractors to submit and update periodic maintenance schedules via electronic means every month. EMSD also formulated guidelines in October 2021 for handling cases where the contractors failed to carry out periodic maintenance works according to the maintenance schedule or when unsatisfactory conditions are identified, including follow-up actions and sanctions for ensuring effectiveness and deterrence of the measures.

*Recommendation (c)*

511. Starting from November 2021, EMSD has required registered workers to, after completion of maintenance works, keep photos of major components of the lift or escalator involved so that EMSD can check whether the maintenance has been properly carried out as scheduled. EMSD has also set the criteria and sampling frequency for reviewing the photos.

*Recommendation (d)*

512. EMSD issued a new version of inspection guideline and checklists for frontline staff in September 2021 which clearly set out the inspection items and tests that need to be covered in various types of inspections as well as the follow-up and reporting requirements under various situations.

*Recommendation (e)*

513. On the examination reports submitted by the registered engineers, EMSD has increased the number of sampling checks since October 2021 to no less than 100 per month. On the items to be examined by EMSD's frontline staff during on-site inspections, EMSD has also formulated guidelines to cover more than 30 key items and functions of lifts and escalators, including traction machines, brakes, suspension ropes of lifts, and drive chains of escalators.

*Recommendation (f)*

514. Since November 2021, EMSD has strengthened the requirements of submission of photos of periodic examinations of lifts and escalators done by registered engineers. Under the new arrangement, registered engineers must submit to EMSD via the online electronic platform, for filing and sampling checks, 5 to 6 photos of key parts and safety components of the installation after each examination. EMSD has also set the frequency and criteria of sampling checks of photos to strengthen the monitoring of examination work by registered engineers.

*Recommendation (g)*

515. EMSD reviewed and amended a new internal guideline of the DAR Panel in September 2021, detailing various factors that the DAR Panel should consider when recommending the initiation of disciplinary proceedings. The amended guideline stipulates that the DAR Panel should examine every warning letter and case involving professional misconduct or negligence, and assess the severity of the case for deciding whether disciplinary proceedings should be recommended.

*Recommendations (h) and (i)*

516. EMSD implemented measures in October 2021, requiring all registered contractors to notify EMSD 7 to 30 days before

commencement of periodic maintenance works if the team of workers is deployed to perform periodic maintenance for more than six lifts/escalators within one day. Registered contractors must specify in the notification the actual date and time that the periodic maintenance of the individual lifts/escalators are to be carried out. EMSD has also drawn up a guideline defining "excessive" maintenance for reference by industry practitioners.

*Recommendation (j)*

517. Since April 2021, EMSD has published in its website more information on lift and escalator incidents, and more background information of disciplinary charges in disciplinary orders. Press releases on the verdicts were also issued for public information.

*Recommendation (k)*

518. To further promote modernisation of aged lifts and escalators, EMSD organised a large-scale briefing session for responsible persons, industry practitioners and stakeholders of lifts and escalators in October 2021 to share Mainland and overseas experience, introduce innovative technologies for enhancing monitoring of aged lifts and escalators, and explain the benefits of modernisation of aged lifts and escalators.

519. Progress reports were submitted to the Office in November 2021 and July 2022 respectively. The Office replied EMSD on 28 July 2022, accepting that EMSD had fully implemented all improvement recommendations stated in the investigation report and its follow-up work on the case was ended.

## Food and Environmental Hygiene Department and Architectural Services Department

## Case No. DI/431 – Management and Repair of Public Toilets by Food and Environmental Hygiene Department and Architectural Services Department

### Background

520. Since 2000, the Food and Environmental Hygiene Department (FEHD) had outsourced street cleansing services (which include cleansing services for public toilets) to cleansing service contractors (contractors). As at September 2020, there were 808 public toilets under FEHD's management across the territory. Cleansing services for 610 of the public toilets were provided by contractors (outsourced toilets). Those for the remaining 198 public toilets located in the New Territories and outlying islands were directly provided by FEHD (directly managed toilets).

521. There had been media reports from time to time about the poor hygiene condition, dilapidated facilities and damaged items pending repair in some public toilets, not only causing inconvenience to users, but also affecting tourists' impression of Hong Kong. Given the importance of public toilet management to people's daily lives and its possible impact on Hong Kong's reputation as a metropolitan, The Ombudsman decided to conduct this direct investigation to examine the Government's mechanism and efforts relating to public toilet management, maintenance and repair, with a view to making recommendations for improvement.

### The Ombudsman's observations

522. To keep public toilets clean and hygienic, users should of course be considerate, self-disciplined and observe relevant rules, while the Government should endeavour to keep toilet facilities in good and clean condition. This direct investigation had identified the following areas for

improvement in the Government's management and maintenance of public toilets in respect of cleansing services, repair and refurbishment.

*(I) Inadequate Definition for "High-utilisation Public Toilets"*

523. Utilisation rate of a public toilet was a key factor for FEHD in determining the level of resource deployed on cleansing services for toilets and its decision whether to include a toilet in the refurbishment programme. Public toilets with 300 visitors or more a day were classified as "high-utilisation public toilets" by FEHD. The contractors concerned were required to deploy toilet attendants to station at those "high-utilisation public toilets". For public toilets not in the "high-utilisation" category, FEHD would provide routine cleansing services via cleansing workers employed by contractors. Nevertheless, with regard to utilisation rates, FEHD did not have a consistent counting method in the early years. It was not until 2018 that the Department engaged a service provider to conduct visitor counting at two public toilets. The exercise was then extended to cover all 795 public toilets in 2019 to gauge the number of visitors.

524. The Office of The Ombudsman (the Office) analysed the data in FEHD's statistical report on the public toilet visitor counting exercise conducted in 2019 and found a total of 248 "high-utilisation public toilets" (i.e. 31% of all public toilets). Among them, 101 (or 41% of all "high-utilisation public toilets") registered 1,000 visitors or more a day; while 15 (or 6% of all "high-utilisation public toilets") registered 3,000 or more a day, which was 10 times the benchmark for "high utilisation" (being 300 visitors a day). In terms of maintenance, repair, inspections and refurbishment, the Office considered it unreasonable for FEHD to have treated all the 248 "high-utilisation public toilets" with visitor counts ranging from 300 to 3,000 or more a day in the same way.

525. The Office was of the view that FEHD should review the definition of high utilisation and its mechanism of putting public toilets into three categories. It should conduct a comprehensive analysis of the

utilisation rates of all public toilets so as to identify those requiring special treatment, and then adopt different management and planning measures from the others. For instance, FEHD should, on a need basis, require more workers to be deployed for routine cleansing, and increase the frequency of deep cleansing operations and inspections. For further improvement, FEHD should collate statistics that include demographic data and tourist number, as well as the scale and visitor count of individual public toilets in each district, and deploy resources properly and flexibly according to actual circumstances in order to enhance public toilet planning and management.

*(II) Lack of Analysis on Defaults by Contractors*

526. With respect to outsourced toilets, FEHD monitored the performance of contractors in accordance with the service contracts, which contain specific performance indicators for different service items. Contractors rendering sub-standard cleansing services would be issued Default Notices (DNs) and would have their monthly service fees deducted by the local District Environmental Hygiene Offices (DEHOs) of FEHD. They would face the same consequences if they fail to complete a maintenance item at the specified public toilet within 24 hours.

527. The DEHOs maintain separately their own records on the issuance of DNs to contractors. They would conduct statistical analysis on those records where necessary. Nevertheless, they need not submit those records to the FEHD Headquarters, which had not in turn compiled or analysed the relevant records. Consequently, the FEHD Headquarters hardly knew the number of contractors having rendered sub-standard cleansing services, which contractors were the more frequent offenders, and the reasons for their non-compliance with service requirements. As the management department of public toilets, FEHD should strengthen its analysis of the problems and devise specific improvement measures to enhance the effectiveness of its monitoring system.

528. As for inspections, FEHD concentrated its resources on "high-utilisation public toilets" with toilet attendants. Inspections at "low-utilisation public toilets" had been less frequent, and inspections at remote public toilets had been infrequent and less than one time a day. The Office considered FEHD's practice reasonable owing to resource constraints. However, FEHD should not overlook public toilets not in the "high-utilisation" category and those located in remote areas. For those in remote areas, while they might have fewer visitors on normal days, their utilisation rates would rise sharply when people flock to the suburbs on holidays. The Office noticed that in the past, Senior Health Inspectors of DEHOs had the discretion on inspection frequencies for public toilets located in remote areas, and FEHD had not issued any guidelines on the minimum frequency and number of inspections for those public toilets. This might result in variance in the number of inspections and some public toilets in remote areas might have been left uninspected for too long. The Office noted that FEHD had made improvement by implementing revised internal guidelines in January 2021 that stipulate inspections at public toilets in remote areas be conducted at least once every 10 working days.

*(III) Unsatisfactory Management System for Directly Managed Toilets*

529. Performance indicators for outsourced toilets (such as the cleanliness level must be at Grade A) were not applicable to directly managed toilets. With respect to outsourced-public toilets, FEHD might issue DNs to contractors and deduct their monthly service fees in case the contractors' services had fallen short of contract requirements. However, in respect of directly managed toilets, no objective performance indicators had been set by FEHD for its cleansing workers or Foremen.

530. FEHD explained that the cleansing work were supervised by Foremen, who would directly instruct cleansing workers to redo the cleansing tasks properly if the cleanliness level was found not satisfactory during inspections. Nevertheless, there were no objective indicators on the "proper" or "satisfactory" level of performance. Data

provided by FEHD showed that between January and September 2020, with respect to the 198 directly managed toilets, no cleansing workers or Foreman had attended discipline hearing or been punished in accordance with the civil service disciplinary mechanism because of unsatisfactory performance in rendering cleansing services for directly managed toilets. Complaint data, on the other hand, revealed that around 8% to 12% of complaint cases every year (involving issues such as public toilet cleanliness and repairs) were related to directly managed toilets. The Office believed that occasional sub-standard performance of frontline workers was only to be expected, and FEHD would issue DNs to contractors when their employees have been delinquent in their duties. That FEHD data showing there being zero number of cases in which FEHD cleansing staff had underperformed may mean that all the cleansing staff had been performing satisfactorily, or that the data simply could not reflect the actual situation. FEHD should make reference to its mechanism for monitoring contractors and formulate specific service indicators for compliance by its cleansing workers.

531. Furthermore, among the 198 directly managed toilets, the Office found that five belong to the "high-utilisation public toilets" category, but FEHD had not deployed any toilet attendants there. Without toilet attendants providing immediate cleansing services, it would be really difficult to maintain hygiene at the heavily used public toilets. FEHD should consider deploying toilet attendants to those toilets.

*(IV) Failing to Utilise Complaint Data for Enhancing Management Effectiveness*

532. FEHD previously did not collate or compile statistics on complaints relating to public toilets. It had never analysed in a comprehensive manner aspects such as which public toilets having received the most complaints, their complaint frequencies and details, etc. It was not until June 2020 that the Department enhanced its complaint information management system upon the recommendation by the Audit Commission. The Office considered that FEHD should analyse

the crux of problems and areas for improvement by examining the details of complaints, including details of dilapidated facilities, poor cleanliness of premises, or unsatisfactory performance of cleansing workers. By looking into the locations of the public toilets under complaint, the time and frequencies of complaints, and the responsible contractors, the Department could understand the problems better and take specific improvement measures. Take the public toilets in the Yuen Long District, which had received more complaints, as an example. The Office's site visits at those public toilets in March 2021 found that they were bugged by problems like dirtiness, unpleasant odours and defective facilities that had not been properly dealt with. In this light, FEHD should collect data and analyse the crux of the problems in order to map out long-term solutions.

*(V) Actions against Vandalism at Public Toilet Facilities Should Be Strengthened*

533. Both FEHD and users had the responsibility to maintain the hygiene and cleanliness of public toilets. The Department's efforts in stepping up publicity and public education, as well as exploring ways to upgrade public toilet facilities were commendable and should continue, so that the management and environmental hygiene of public toilets could be improved. Information indicated that cases of vandalism at public toilets have surged between 2015 and September 2020: from only zero to one case between 2015 and 2017, to 13 and 89 cases in 2018 and 2019 respectively. The first nine months of 2020 also saw 46 cases of vandalism at public toilets. Regarding such acts of vandalism, FEHD should explore ways to tackle them more proactively. It could, for example, conduct a comprehensive analysis of the problem (such as the location, time and nature of the incidents) with a view to finding solutions and improvement strategies. In addition, it should strengthen communication with law enforcement departments by sharing with them the information it has collected and its analysis of the cases to facilitate more robust enforcement and formulation of stronger security measures.

*(VI) Mechanism for Monitoring Contractors Needs Improvement*

534. The Office found that in cases involving serious delays by the Architectural Services Department's (ArchSD) contractors, the amount of "liquidated damages" demanded by ArchSD pursuant to the terms and conditions of the Government's public works contracts was not that high. A works order of low value would mean a smaller amount of "liquidated damages" to be imposed, even in cases involving prolonged delay. The Office is of the view that delay in works completion would cause partial closure of public toilet facilities and bring inconvenience to users. "Liquidated damages" of insignificant amounts could not reflect the hidden cost borne by the Government because of works delay, and failed to exert any deterrent effect on contractors.

*(VII) FEHD and ArchSD Should Strengthen Communication About Public Toilet Repair*

535. FEHD would request ArchSD to carry out public toilet repair works via ArchSD's Repair Hotline Centre. After making the request, FEHD would not regularly enquire with ArchSD about works progress, and ArchSD would not regularly update FEHD on works progress either. It was only in April 2019 that the two departments, in conjunction with the Electrical and Mechanical Services Department (EMSD), developed a mobile application to link up their computer systems for sharing information about dates and progress of repair works. The Office considers it to be the right way forward to use technology and build a communication platform for enhancing efficiency. FEHD and ArchSD should be more proactive in strengthening communication with each other for closer monitoring of progress on public toilet repair works.

536. Both FEHD's minor works order record system and ArchSD's computer system contained records on the dates and time of FEHD discovering the defects, the dates and time of ArchSD receiving FEHD's requests for repair and issuing works orders to contractors, as well as the contractors' completion dates.

537. The Office noticed that the effectiveness and smooth operation of the system depend greatly on whether the contractors or staff of FEHD report items pending repair as soon as possible. If they do, repair works can commence promptly; otherwise, there would be delay. FEHD should adopt effective measures to ensure prompt submission of repair requests to ArchSD upon discovery of items in need of repair.

*(VIII) FEHD Failing to Update "Toilet Handbook" in a Timely Manner*

538. The Handbook on Standard Features for Public Toilets (Toilet Handbook), compiled by FEHD in 2001 provided reference standards regarding public toilet design, ventilation facilities and lighting; as well as the configuration, installation and materials to be used for the facilities in public toilets. The last update of the Toilet Handbook was in 2011. In recent years, a lot of improvement measures and new facilities had been introduced in public toilets, but related information had not been incorporated into the Handbook. The Office considered that FEHD should update the Handbook regularly and in a timely manner, such that it could serve as reference for public toilet refurbishment projects carried out by FEHD and ArchSD.

*(IX) FEHD Should Enhance Criteria for Public Toilet Refurbishment*

539. The utilisation rate of a public toilet and whether it was located in a major tourist spot are two main factors for FEHD to determine whether to include it in the refurbishment programme. Concerning the calculation of public toilet utilisation rates, FEHD did not have a consistent counting method in the past. It had conducted only one comprehensive visitor counting exercise for 795 public toilets in 2019. On the other hand, whether a certain tourist site is a tourist hotspot may also change with time and tourists' preferences. In this connection, FEHD should conduct regular studies and local consultations, and seek the views of the Tourism Commission. Coupled with the statistics on utilisation rates, the Department may determine whether a public toilet is located in a tourist hotspot and should be given priority in resource

allocation, and therefore be included in the refurbishment programme. This could prevent inappropriate resource allocation for public toilet refurbishment.

*(X) Public Toilet Refurbishment*

540. The Office understood that the number of public toilets to undergo refurbishment was determined by the amount of available Government funds. For the five years starting from 2019/20, the Government had already allocated more resources so that more public toilets could be included in the refurbishment programme. Nevertheless, the progress of public toilet refurbishment had been slow. Only around 48 public toilets were being refurbished each year. At this rate, on average each of the 808 public toilets across the territory would approximately undergo refurbishment only once every 17 years. FEHD should regularly review the priorities in public toilet refurbishment and identify those that have not undergone refurbishment for a long time and with facilities being dilapidated, in disrepair or breaking down frequently. Where necessary and circumstances permit, FEHD might consider conducting surveys to gauge public views on public toilet services and refurbishment plan for local public toilets. It might also consider applying for more Government resources so that public toilets accorded higher priority could be included in the refurbishment programme.

541. The Ombudsman recommended FEHD to –

(a) review the current mechanism in a timely and realistic manner, and collate information that includes demographic characteristics and tourist number of various districts, as well as the visitor counts of individual public toilets, so that resources can be allocated properly and flexibly for improving public toilet planning and management;

(b) conduct comprehensive statistical analysis on cases involving issuance of DNs to contractors and deduction of monthly service

fees related to public toilet cleansing services with a view to identifying inadequacies and introducing specific improvement measures;

(c) continue to step up inspections at outsourced toilets, including those in the suburbs that may have more visitors on holidays;

(d) draw up specific performance indicators for directly managed toilets for compliance by the Department's frontline staff;

(e) consider deploying toilet attendants to "high-utilisation directly managed toilets" so that their cleanliness level can be maintained;

(f) continue with the statistical analysis on public toilet related complaints and make better use of the data for improving public toilet management;

(g) continue to strengthen publicity and education to address the problem of vandalism at public toilet facilities, and maintain communication with law enforcement departments for exploring solutions proactively e.g. providing the law enforcement departments with integrated information as collected and analysed by FEHD in order to facilitate their work in stepping up enforcement actions;

(h) update the Toilet Handbook regularly and in a timely manner so that it can serve as reference for public toilet refurbishment projects carried out by FEHD and ArchSD; and

(i) continue with the timely reviews on utilisation rates, conducting consultations and make use of relevant statistics to determine whether a public toilet remains in a tourist hotspot; re-examine whether there are public toilets that have not undergone refurbishment for a long time, with facilities dilapidated or

frequently breaking down, and consider whether such public toilets should be given higher priority in resource allocation and included in the public toilet refurbishment programme.

The Ombudsman recommended ArchSD to –

(j) assess the feasibility of raising penalties specified in works orders for exerting greater deterrent effect on contractors involved in delay in works completion.

The Ombudsman recommended FEHD and ArchSD to –

(k) continue to strengthen proactive communication with each other for closer monitoring of progress in public toilet repair works, and implement effective measures to ensure that requests for repair at public toilets are promptly submitted to ArchSD upon discovery of the items in need of repair.

**Government's response**

542. FEHD and ArchSD accepted The Ombudsman's recommendations and have taken the following follow-up actions.

*FEHD*

Recommendation (a)

543. FEHD would consider the actual circumstances of its public toilets (including both outsourced and directly-managed toilets) in providing cleansing services, and would deploy resources efficiently in providing toilet attendants, adjusting inspection and cleansing frequencies, arranging deep cleansing services with contractors, etc.

544. In respect of the provision of toilet attendants, FEHD revised its internal guidelines in December 2020. As stated in the guidelines, factors

to be considered for the provision of toilet attendants include daily utilisation of individual public toilets, their utilisation rates in specific periods (e.g. during festive events or the swimming season, and at weekends/on holidays for toilets located at a tourist spot), whether the toilets are located at a tourist spot, the hygiene conditions, the number of complaints, etc. The relevant guidelines have been implemented since January 2021. For public toilets with very high utilisation, two toilet attendants are provided for the period with the highest utilisation to cater for the actual needs. Subject to actual usage, some public toilets are further provided with all-day, round-the-clock toilet attendant service.

Recommendation (b)

545. FEHD has completed a revamp of its Contract Management System in the second quarter of 2022. The revamped Contract Management System can collect records of the follow-up actions taken by DEHOs against defaults by contractors more effectively, including verbal warnings and DNs issued. By analysing relevant statistics, FEHD can gauge and examine the quality of the contractors' services comprehensively, review their inadequacies and introduce specific improvement measures.

Recommendation (c)

546. FEHD continues to increase the frequency of inspection at outsourced toilets. FEHD has implemented the revised internal guidelines since January 2021, which stipulate that inspections at public toilets in remote areas (regardless of whether the public toilets are outscourced or directly-managed) are to be conducted at least once every 10 working days.

547. As always, FEHD considers the actual circumstances of the public toilets in deploying resources, arranging cleansing services and providing toilet attendants. Given that some public toilets are mostly used on holidays, FEHD has made appropriate arrangements, including

increasing the frequencies of cleansing and inspection on busy days, so as to ensure cleanliness of public toilets.

Recommendation (d)

548. Guidelines on the maintenance and management of public toilets are specified in FEHD's Operation Manual for Cleansing Services. FEHD further revised the Operation Manual for Cleansing Services in April 2022 by setting specific performance indicators for both outsourced and directly-managed public toilets. For example, floor and wall surfaces should be dry; free of litter, chewing gum, urine, dirt, dust, marks, stains, etc., so as to achieve "no foul smell", "dry floor" and "no stains".

Recommendation (e)

549. FEHD has implemented the revised internal guidelines since January 2021, specifying the provision of toilet attendant service at "high-utilisation public toilets" (regardless of whether the public toilets are outsourced or directly-managed). The guidelines also specify that, FEHD would take into account the actual circumstances of individual toilets, such as whether the toilets are located at a tourist spot, the hygiene conditions, the number of complaints, and their utilisation rates in specific periods (e.g. during festive events or the swimming season, and at weekends/on holidays for toilets located at a tourist spot), in addition to utilisation rates, and consider providing toilet attendant service and/or other improvement measures.

Recommendation (f)

550. FEHD completed the revamp of the complaint management information system and fully implemented it in its headquarters and all DEHOs in February 2021. The revamped system collected can assist FEHD in recording and analysing the complaints received, including the complaints related to public toilets. The system can also provide monthly statistical reports for overall analysis. By analysing the complaint data,

FEHD's headquarters and DEHOs can introduce specific improvement measures to properly address relevant problems.

551. Furthermore, a visitor feedback mechanism has been incorporated into the FEHD's public toilets with the Smart Public Toilet System. It collects users' views on the public toilet services. By analysing relevant data, FEHD can deploy resources more efficiently and enhance the service quality of its public toilets.

Recommendation (g)

552. FEHD has been disseminating messages on the importance of toilet hygiene and proper use of toilet facilities through various means, including making use of the Facebook and Instagram pages of Keep Clean Ambassador Ah Tak, and installing broadcasting systems and posting publicity stickers at public toilets.

553. Regarding the problem of vandalism at public toilet facilities, FEHD would continue to strengthen communication with the Police, and DEHOs would share with the Police their consolidated information and assist in the analysis of cases, so as to combat the relevant criminal offences.

Recommendation (h)

554. FEHD is conducting a comprehensive review of the Toilet Handbook and aims to complete the review by 2022. Various standards and requirements for the design of public toilets would be updated, such that FEHD, ArchSD and other relevant departments can refer in carrying out toilet refurbishment projects. These include the design and requirements for the provision of universal toilet, and the design and requirements for the provision of larger toilet compartment for priority use by the elderly. FEHD will review the need for updating the Toilet Handbook from time to time in the future.

Recommendation (i)

555. As always, FEHD considers the utilisation rate, the condition of facilities, whether the toilet is located in a major tourist spot, the length of time since its last refurbishment, to decide whether a public toilet is to be included in its refurbishment programme. In particular, when considering whether the toilet is located at a tourist spot, FEHD would conduct consultations and analyse utilisation rates as recommended by The Ombudsman. For example, after considering the Tourism Commission's view and their respective utilisation rates, FEHD had included the Peak Tower Public Toilet (Central and Western District) and the Stanley Municipal Services Building Public Toilet (Southern District) in its refurbishment programme. The works were completed in December 2020 and July 2022 respectively.

556. Moreover, FEHD has included public toilets which had not been refurbished for long period of time in its refurbishment programme. For example, the Queen's Road Central Public Toilet (Central and Western District) and the Hong King Street Public Toilet (Yuen Long District) are toilets with high utilisation rates and had not been refurbished for more than 12 years. Facelifting works and refurbishment works of these two toilets were completed in May 2021 and March 2022 respectively.

*ArchSD*

Recommendation (j)

557. ArchSD has reviewed the feasibility of increasing the penalties specified in works orders and formulated the relevant mechanism and method of calculation, so as to exert more substantial deterrent effect on contractors delaying the works. The relevant mechanism and contract terms would be implemented in future maintenance term contracts.

*FEHD and ArchSD*

Recommendation (k)

558. FEHD and ArchSD have jointly developed a "Minor Works Order Record System" mobile application with EMSD and has extended its use to all districts since March 2020. When FEHD's relevant staff discover dysfunctional toilet facilities, they would immediately submit a maintenance request to ArchSD and EMSD through the mobile application, and monitor the repair progress, so as to speed up the entire process from discovery to repair, and systematically collate management information for further analysis. As at September 2022, FEHD had made about 37 000 and 13 000 repair requests for public toilets to ArchSD and EMSD via the system respectively. ArchSD completed the repair works of 99.9% of the repair requests it received within the ranges of the target completion dates, while EMSD completed the repair works of 95.3% of the repair requests within three days.

## Food and Environmental Hygiene Department

## Case No. DI/441 – Effectiveness of Mosquito Prevention and Control by Food and Environmental Hygiene Department

### Background

559. The mosquito problem was a public concern. Mosquito infestation would not only be a nuisance to daily life, but also spread deadly diseases such as dengue fever and Japanese encephalitis.

560. The Pest Control Advisory Section and District Environmental Hygiene Offices' (DEHOs) Pest Control Sections under the Food and Environmental Hygiene Department (FEHD) were responsible for mosquito prevention and control in public places all over Hong Kong. FEHD also closely liaised with other Government departments and organisations, and provided them with technical support and training to assist in anti-mosquito work at venues and premises under the latter's management.

561. There were public views that FEHD's selected locations for setting up gravidtraps (formerly ovitraps) were incomprehensive, thereby producing inaccurate survey results. The time lag in FEHD's release of surveillance indices made it difficult for the public to stay on top of the latest situation. Moreover, the relatively high indices recorded in some districts in certain months as reported by the media indicated serious mosquito infestation in those districts. There were also media reports about FEHD's improper management over the Pest Control Sections leading to ineffective mosquito prevention and control.

### The Ombudsman's observations

562. FEHD played a leading role in anti-mosquito work. Its duties were multi-faceted, including surveillance of *Aedes albopictus* (generally known as "Asian Tiger Mosquito") infestation and initiating strategic

actions in response to surveillance data, taking preventive and control measures, handling public complaints about mosquito nuisance, and managing the Pest Control Teams (PCTs) under the Pest Control Sections. After examining FEHD's anti-mosquito work, the Office of The Ombudsman (the Office) had identified the following areas for improvement.

*(I) Dengue Vector Surveillance Programme*

563. FEHD's key objective was to prevent and control the transmission of diseases by mosquito vectors. Since 2003, FEHD had operated the Dengue Vector Surveillance Programme (DVS Programme) by setting up ovitraps/gravidtraps territory-wide to monitor the prevalence of *Aedes albopictus*, a species with extensive distribution and higher risk of transmitting dengue. As at April 2021, a total of 3,440 gravidtraps were placed in 64 selected survey areas throughout the 19 administrative districts in Hong Kong.

*(II) Analysis and release of information*

564. The Office's investigation revealed that FEHD released monthly the Gravidtrap Index and Density Index of all survey areas by means of table and graphic map. The Gravidtrap Index enumerates the percentage of gravidtraps with the presence of *Aedes albopictus* (referred to as *Aedes*-positive gravidtraps), thereby evaluating whether the species was extensively distributed within a survey area. The Density Index represented the average number of *Aedes albopictus* mosquitoes collected by each *Aedes*-positive gravidtrap for quantifying their level of activity.

565. FEHD had classified the Gravidtrap Index into different levels and provided a descriptor for each level. When the index surged to the alert levels, i.e. Levels 3 and 4, FEHD should alert the public. However, FEHD only provided the index monthly in actual figures without mentioning their respective levels and implications.

566. As the Gravidtrap Index was classified into different levels, FEHD should have announced the index and its corresponding level. Based on the descriptor for each level, the public could better understand the severity of mosquito infestation in different survey areas and the proper anti-mosquito measures to be taken. When the index surged to the alert levels, FEHD should also highlight such survey areas of special concern for better warning effect. Moreover, the public might be uncertain about the coverage of the 64 survey areas. FEHD should delineate each area's boundaries and release data, including the index and its level, with the assistance of diagrams and interactive maps to make all critical information clear at a glance.

567. In its monthly release, FEHD would highlight the Monthly Ovitrap/Gravidtrap Index (MOI/MGI) to explain to the public whether the threats posed by *Aedes albopictus* were serious. The MOIs/MGIs over multiple years were compared to reveal the trends. The MOI/MGI, obtained by aggregating data from all survey areas, could theoretically reflect the territory-wide breeding of *Aedes albopictus* in that month. Nevertheless, there were as many as 64 survey areas. Even within the same month, the indices in different areas might vary substantially. Taking the data from 2016 to 2020 as an example, despite no significant fluctuation of the MOIs/MGIs during this period, there was a rising trend in the number and frequency of survey areas recording indices at Level 3 to Level 4 each month.

568. As such, the MOI/MGI was too broad-brush in reflecting the extensiveness of *Aedes albopictus* in Hong Kong. The more infested areas were often averaged out by those less infested ones causing the public to under-estimate mosquito infestation. Insofar as realistically revealing the overall condition of mosquito infestation of a particular month was concerned, and for the purpose of yearly and multi-year comparisons, the MOI/MGI was seemingly too general without in-depth analysis.

569. Therefore, FEHD should review how to optimise the use of data from the DVS Programme, such as conducting a thorough trend analysis of the number of survey areas recording different levels of the MGI, especially Levels 3 and 4. This was to ensure that the results obtained can more accurately reflect the actual condition of mosquito infestation in Hong Kong, and to enhance the breadth and depth of such analysis.

*(III) Launch of Density Index*

570. In April 2020, FEHD launched the Density Index, which directly corelates with the Gravidtrap Index in reflecting mosquito infestation. For instance, when both indices were at high levels, it shows that *Aedes albopictus* was extensively distributed in the survey area, and its quantity was also high. When the Gravidtrap Index was low but the Density Index was relatively high, it means that *Aedes albopictus* was not extensively distributed but was relatively active in the vicinity of specific gravidtraps.

571. FEHD had introduced the Density Index with good intention as it allowed another perspective for the public to understand the infestation of *Aedes albopictus* in Hong Kong. However, the Density Index had been launched and released monthly without proper explanations to facilitate the public's comprehension of its objective, concept and correlation with the Gravidtrap Index. In such circumstances, the public might easily confound the two indices, possibly undermining the Density Index as an indicator of the activity level of *Aedes albopictus*.

572. As the Density Index had already been introduced, FEHD should avoid causing misunderstanding by specifying that the Density Index now in force is for reference only. Meanwhile, FEHD should promptly classify the Density Index into different levels with a descriptor provided for each level, and make sure that the surveillance data released is more explicit, uniform and comprehensible.

*(IV) Response mechanism*

573. Where a survey area recorded a monthly Gravidtrap Index at alarm levels (i.e. Level 3 or 4), FEHD would activate the response mechanism to convene district anti-mosquito task force meetings with Government departments and organisations, property management agents and private venues in the area concerned. The management offices of residential premises, schools, construction sites and public utilities affected would also be notified.

574. FEHD was mainly responsible for the anti-mosquito work in public places. Hence, when more serious mosquito infestation was detected in certain survey areas, FEHD needed to promptly collaborate with other departments and parties managing venues and premises in those areas to bring the index down to the target level rapidly. The Office considered FEHD to have acted positively and commendably in establishing the response mechanism, which would not only expedite communication and liaison, but also create synergy for the overall anti-mosquito work.

575. The Office noted that FEHD did mention the response mechanism in its press releases but mainly in the months when the mechanism was activated, and that its details were lacking. FEHD had not publicly promoted and disseminated details of the response mechanism through other channels as well.

576. Anti-mosquito work was not just the purview of FEHD. It is crucial for other relevant departments, stakeholders and members of the public to do their part to achieve satisfactory results. Moreover, the purpose of establishing the response mechanism was mainly for stepping up communication and liaison amongst stakeholders to enhance the effectiveness of anti-mosquito work. If the public were well informed of the mechanism's details, they can assist FEHD in monitoring and facilitating its actual operation. Besides, if serious mosquito infestation persists in a survey area even after activation of the response mechanism,

the public could report the situation direct to the relevant departments or management authorities for follow-up action. The Office urged FEHD to strengthen publicity of the response mechanism with its details more widely disseminated for greater public awareness and participation, thereby enhancing the effectiveness of anti-mosquito work.

*(V) Anti-mosquito work*

577. In addition to the territory-wide surveillance of *Aedes albopictus*, FEHD also conducted surveillance of *Culex tritaeniorhynchus* (vector of Japanese encephalitis) and *Anopheles* (vector of malaria), which were less extensive and posed a lower risk of disease transmission, at selected locations. Its surveillance included collecting samples of adult mosquitoes for laboratory tests to assess the risk of disease transmission.

578. Whether territory-wide surveillance of all mosquito vectors was necessary and which surveillance methodologies were proper for different species were matters relating to FEHD's professional judgement based on its knowledge of various mosquito species and assessment of their risks. These matters wee not subject to the Office's comment. Nevertheless, since FEHD had adopted the current surveillance models for years, it was worth reviewing whether they were still entirely applicable to the present environment and situation. FEHD should devise a mechanism for regularly reviewing its methodologies, including any need to step up surveillance efforts, change or adjust the surveillance process, and include more species in its surveillance. In conducting the review, FEHD might consider inviting local academic institutes to participate in joint research for obtaining expert advice from different sectors. The research results could be used to improve FEHD's strategies and implementation of anti-mosquito work.

579. Meanwhile, FEHD had a duty to initiate different levels of control actions as specified in its Pest Control Technical Circular (Mosquito) No. 3 (Technical Circular) in accordance with the levels of Ovitrap/Gravidtrap Index recorded for a particular survey area. Thus, the

Office had selected a random sample of four survey areas with an index at alert levels, namely Pok Fu Lam (37.9% in June 2018), Yau Tong (45.1% in July 2018), Wong Tai Sin Central (30.4% in June 2019) and Ma On Shan (42.2% in June 2019) and requested FEHD to provide the relevant pest control records for the Office's scrutiny.

580. After scrutiny, the Office confirmed that targeted control actions were initiated by FEHD within the 100-metre radius of *Aedes*-positive ovitraps, including application of larvicidal oils and larvicides at breeding sites, removal of stagnant water and fogging operations with adulticides. The DEHOs of certain survey areas also sought support from other sections for more manpower to handle the control work, conducted joint inspections with relevant departments and provided them with technical advice. Nonetheless, some of FEHD's records were only about the daily routines for mosquito prevention and control in those survey areas, with no indication of control actions taken according to the Technical Circular. FEHD should give proper instructions requiring its staff to clearly record the anti-mosquito actions taken according to the Technical Circular for enhancing internal supervision and monitoring the effectiveness of control actions.

*(VI) Use of mosquito-related complaint data*

581. FEHD's major target was controlling mosquito vectors because those species pose a serious threat to public health. As regards the nuisance caused by mosquitoes, FEHD tackled it concurrently with its control of mosquito vectors and handling of public complaints about mosquito infestation. FEHD's information showed that it had in place a mechanism for handling mosquito-related complaints, under which FEHD staff were required to contact the complainants to obtain further details, conduct investigations and perform anti-mosquito work. FEHD also maintained the monthly and annual statistics on mosquito-related complaints received territory-wide and in each district.

582. Regarding the collation and analysis of mosquito-related complaint data, as well as the trends of caseload and districts subjected to more serious infestation, FEHD explained that mosquito-related complaints were affected by many factors, including weather, environment and public concern about the mosquito problem. Given the differences in geographical location and demographic features of each district, the complaint data could not entirely reflect the condition of mosquito infestation in a particular district. As an example, FEHD cited public concerns about the mosquito problem as one of the factors, stating that a spike in mosquito-related complaints during 2016 and 2018 coincided with cases of Zika virus infections and an outbreak of dengue fever in Hong Kong. Nevertheless, FEHD gave no further analysis and explanation on the trends of mosquito-related complaints in the past.

583. The Office acknowledged FEHD's rationale for according lower priority to the handling of mosquito nuisance. As a matter of fact, most of the mosquito species found in Hong Kong were non-vectors causing only a nuisance with no serious threats to public health. FEHD also carried out investigations and anti-mosquito work in response to public complaints. However, FEHD had not thoroughly collated and analysed the complaint data, nor had it initiated strategic anti-mosquito measures in districts where mosquito nuisance is more serious. FEHD could not adequately address public concerns about the mosquito problem, nor could it meet public expectations for the authorities' preventive and control work.

584. For the general public, the nuisance caused by different mosquito species was indistinguishable. As long as they suffer from frequent mosquito stings in everyday life, they would perceive mosquito infestation as serious. The surveillance data released by FEHD might strike them as falling short of their perception. Hence, FEHD should allocate resources for collation and analysis of mosquito-related complaints to gauge public concerns and identify the districts and locations subjected to higher risk of mosquito infestation, so that it could respond by deploying the manpower and resources of PCTs in a more

systematic and efficient manner. In the long run, FEHD should explore the feasibility of incorporating the mosquito-related complaints into its mosquito surveillance data, so as to reflect more comprehensively the actual condition of mosquito infestation in various districts.

*(VII) Supervision of PCTs*

585. The duties of pest control, including mosquito control, in public places throughout the territory were performed by FEHD's PCTs (comprising in-house and contractor staff) under DEHOs' Pest Control Sections. Some of PCTs' in-house staff were foremen tasked with routine inspections and surprise checks on contractor staff. The remaining in-house staff were divided into 93 teams, each comprising 4 to 11 members, including Workmen II led by a Foreman or Ganger. They were deployed to 19 administrative districts in Hong Kong to perform mosquito prevention and control duties. The contractor staff of 2,178 were all responsible for mosquito prevention and control, with 48 to 192 members in each district.

586. FEHD supervised the performance of PCTs according to its Operational Manual for Pest Control Services (applicable to both in-house staff and contractors) and Operational Manual for Management of Pest Control Contracts (applicable to contractors only) (referred to as OMs). The OMs required FEHD to conduct routine field inspections and surprise checks on the service of contractors. Surprise checks on FEHD's in-house teams were also stipulated under the relevant OM.

587. Upon scrutinising the inspection records of three survey areas (namely Wong Tai Sin Central, Tuen Mun West and Ma On Shan), the Office noticed inadequacies in both the routine and surprise inspections on contractors' teams conducted by FEHD's inspection officers of different ranks. After verification, FEHD explained that they were caused by certain officers' failure to carry out inspections as required, or to input the records on the Contract Management Computer System after completing the inspections. FEHD had given due advice to the relevant

officers. The Office pointed out that the selection of only a few survey areas for scrutiny had already revealed incomplete/irregular inspection records or insufficient number of inspecting involving officers of different ranks. This reflected not only inadequacies on the part of inspecting officers in discharging their duties, but also the lack of proper supervision over the inspection work by senior management. FEHD should, therefore, consider establishing a mechanism for periodically reviewing whether the inspection requirements under the OMs had been fully complied with, so as to ensure effective monitoring by way of inspection as expected.

588. Within the regime of PCTs, the scope of duties discharged by FEHD's in-house staff and contractors was more or less the same. Adequate supervision over both groups is crucial to ensure proper deployment of manpower. However, the Office noticed that although inspections of FEHD's in-house staff were conducted, they were only subject to surprise checks in every two months and four months. The frequency was too low and worth a review.

589. It had also come to the Office's attention that some requirements for inspection frequency under the two OMs were inconsistent. Taking the inspection by foremen on the contractors as an example, the OM for Pest Control Services stipulated the frequency on a monthly basis, while the OM for Management of Pest Control Contracts provided it on a daily or weekly basis. The wordings could lead to misunderstanding. Noting the inconsistencies, FEHD undertook to review the OMs and make necessary amendments.

590. Based on the analysis in the above paragraphs, FEHD should comprehensively scrutinise and review the OMs (including introducing a mechanism to ensure compliance with the inspection requirements, reviewing the frequency of inspections on its in-house teams, and amending those inconsistent paragraphs on inspection frequencies), with a view to enhancing the effectiveness in supervising the PCTs.

591. In the light of the above, The Ombudsman has recommended FEHD to –

*DVS Programme*

(a) appropriately consolidate the data released monthly under the DVS Programme to make important information clear for better warning effect;

(b) review how to optimise the use of the DVS Programme data for more detailed trend analyses so as to depict the actual condition of mosquito infestation in Hong Kong more accurately;

(c) specify that the Density Index announced is for reference only, and promptly categorise the index into different levels and provide a descriptor for each level, such that the surveillance data will be more explicit, uniform and comprehensible;

(d) strengthen publicity of the response mechanism activated by surveillance indices to raise public awareness and participation;

*Anti-mosquito work*

(e) devise a mechanism for reviewing mosquito surveillance methodologies and seek expert advice from different sectors to improve strategies and implementation of anti-mosquito work;

(f) draw up appropriate administrative measures to ensure proper recording of control actions taken in survey areas with the index at alert levels for scrutiny where necessary;

*Use of mosquito-related complaint data*

(g) collate and analyse mosquito-related complaints to gauge public concerns and obtain such information as the districts and

locations subjected to higher risk of mosquito infestation, so that it can respond by deploying the manpower and resources of PCTs in a more systematic and efficient manner; and

*Supervision of PCTs*

(h) comprehensively scrutinise and review the two OMs (i.e. the OM for Pest Control Services and the OM for Management of Pest Control Contracts), with a view to enhancing effectiveness in supervising the PCTs.

**Government's response**

592. FEHD accepted The Ombudsman's recommendations and has taken the following follow-up actions.

*Recommendation (a)*

593. Starting from May 2021, when announcing the Gravidtrap Index (GI) on FEHD's website, the different levels of the GI have been shown in different colours. The meanings of the four levels (i.e. the distribution of *Aedes albopictus* in the survey area being not extensive, fairly extensive, extensive or very extension) as well as the preventive measures that venue managers and members of the public should take in response to the different levels are clearly listed on the website. The survey areas of which the GI reaches level 3 or level 4 are labelled in red or purple, respectively, so as to raise public awareness. When announcing the GI of the survey areas, a table analysing the yearly trend of the index is included, and five survey areas with the highest GIs at level 3 or level 4 are listed. There are also hyperlinks to the Government's Geoinfo Map website, the interactive digital maps of which shows the coverage of each survey area in detail, allowing venue mangers and members of public to understand relevant information. Furthermore, FEHD releases monthly press release, reporting the situation and trend of the GI, the quantity of the survey areas of which the

GI reaches alert levels, as well as the preventive measures to be taken by members of the public.

*Recommendation (b)*

594. Apart from generating and announcing the GI, FEHD formulates and announces the GI of each survey area (a total of 64 survey areas), so as to more accurately reflect the actual mosquito infestation situation of each survey area.

595. Starting from July 2020, when disseminating the GI to relevant government departments, locations of gravidtraps with repeated positive findings and with high mosquito density have been provided to facilitate targeted mosquito control actions by relevant government departments.

596. After consolidating the data obtained from the DVS Programme, FEHD conducts detailed trend analyses regarding the condition of mosquito infestation in various areas. When the GI reaches the alert levels (i.e. level 3 or level 4), FEHD will step up relevant mosquito prevention and control work, so as to eliminate all breeding/potential breeding places. Furthermore, FEHD analyses the specific locations of gravidtraps with *Aedes albopictus* found and their quantities, so as to implement mosquito control actions with relevant bureaux/departments (including the Housing Department, the Leisure and Cultural Services Department, the Education Bureau, the Development Bureau, the Civil Engineering and Development Department, etc.) in venues under their respective management (e.g. parks, schools, construction sites, public housing estates, hospitals, etc.).

*Recommendation (c)*

597. FEHD clearly indicates on its website that members of the public should refer to the GI as the primary reference, and adopt relevant actions in response to its different levels.

598. Since March 2022, FEHD has classified the Density Index (DI) into three levels, and listed on FEHD's website the DI classification, classification descriptions and the preventive and control measures recommended for each level. The lowest level, level 1 (i.e. the DI being 1 to 1.5), indicates that mosquito is not abundant in the locations with positive gravidtraps. Level 2 (i.e. the DI being 1.6 to 2.4) indicates that mosquito is slightly abundant. The highest level, level 3 (i.e. the DI being 2.5 or above) indicates that mosquito is abundant. The indexes are displayed in different colours, making it easier for the public to grasp the number of adult *Aedes albopictus* collected in gravidtraps in the survey areas.

*Recommendation (d)*

599. FEHD's website contains a dedicated webpage which releases the GI of *Aedes albopictus*, and explains the meanings of the different levels of the GI as well as the preventive measures that venue managers and members of the public should take in response to its different levels. When the GI of a survey area reaches the alert levels, FEHD would request relevant bureaux/departments to conduct more district-based public education, including liaison work with local residents, property management companies, district organisations, schools, etc., to promote mosquito preventive measures.

600. FEHD continues to disseminate information on mosquito control through different channels, including the Keep Clean webpage; broadcast of Announcements in the Public Interest; posters at main public transport facilities; and the Facebook and Instagram pages of Keep Clean Ambassador Ah Tak and YouTube, etc.

601. FEHD continues to be in close liaison with relevant stakeholders such as District Councils, Rural Committees, Area Committees, Village Representatives and other relevant district organisations, adjusting its mosquito control work to suit local needs, and inviting them to conduct joint site visits and organise appropriate public engagement activities.

*Recommendation (e)*

602. In accordance with the recommendations in Director of Audit's Report 2014, FEHD conducts annual reviews for the DVS Programme, including survey methodology, coverage, frequency of surveillance and ways of information dissemination, etc. Views from the relevant departments and stakeholders would be taken to identify room for improvement.

603. In February 2019, FEHD invited an expert from the World Health Organisation to Hong Kong to review its work on local mosquito prevention, control and surveillance. FEHD has taken on board the expert's recommendations, including replacing the ovitraps with the newly designed gravidtraps since April 2020, increasing the frequency of pesticides testing and introducing new mosquito trapping devices, etc.

604. Besides, FEHD would from time to time conduct research on mosquito-borne virus and biological control in collaboration with local academies.

*Recommendation (f)*

605. When Area GI reaches the alert levels (i.e. level 3 or level 4), FEHD will undertake targeted mosquito control work, so as to eliminate all breeding/potential breeding places. FEHD also updated the relevant guideline in August 2021, requesting the respective DEHOs of the survey areas at alert levels to submit Bi-weekly Reports to explain the control actions taken, until the Area GI drops below the alert levels.

606. Besides, FEHD and other relevant bureaux/departments set up a high-level liaison mechanism on mosquito control. The mechanism will be triggered once the GI has continuously reached the alert levels in respect of a survey area, such that more effective co-ordination and scrutiny on mosquito prevention and control operations among bureaux/departments can be made. The relevant bureaux/departments

also regularly report to FEHD on their mosquito prevention and control work undertaken at the areas under their respective management, so as to keep track of the relevant prevention and control work.

607. FEHD is also developing a mobile application to enable staff of pest control service contractors to report operational data on-site, so as to ensure proper recording of control actions taken in the survey areas with the GIs at the alert levels for scrutiny where necessary.

*Recommendation (g)*

608. Since October 2021, FEHD has been recording the geotags of mosquito-related complaints in the Departmental Geographical Information System, enabling hotspot analysis in its Complaint Management Information System. The system can enable FEHD to identify the hotspots of environmental hygiene complaints in each district, to gauge public concerns and obtain such information as the districts and locations subjected to higher risk of mosquito infestation. This allows manpower and resources to be deployed more systematically and efficiently, the mosquito control strategy to be optimised, and the effectiveness of the control measures to be assessed, all of which further improve the situation of mosquito infestation of the hotspots.

*Recommendation (h)*

609. FEHD has updated the two OMs (i.e. the Operational Manual for Pest Control Services and the Operational Manual for Management of Pest Control Contracts) in July 2021 to align the frequencies of inspection for both in-house teams and contractors on a monthly or weekly basis, and require Senior Overseers or Health Inspectors to conduct surprise checks on both in-house teams and contractors every two months.

610. Furthermore, apart from requiring inspection officers to input their inspection records on the Contract Management System (CMS) after

completing the inspections, FEHD has enhanced the CMS, which would report to the respective supervisors after receiving the records, so as to facilitate monitoring, and to ensure that the relevant OMs are adhered to.

## Government Secretariat – Constitutional and Mainland Affairs Bureau

## Case No. DI/443 – Government's Arrangements for Engaging Outside Interpretation Services

### Background

611. The Administrative Guidelines on Promotion of Racial Equality (the Guidelines) promulgated by the Constitutional and Mainland Affairs Bureau (CMAB) require that all Government bureaux and departments (B/Ds) as well as related organisations under their purview have a responsibility to provide appropriate interpretation services to public service users where necessary. This will ensure that people who cannot communicate effectively in Chinese or English (i.e. Cantonese, Putonghua, spoken English and written Chinese and English) can enjoy equal access to public services.

612. At present, a support service centre for ethnic minorities, which is operated by a non-governmental organisation commissioned by the Home Affairs Department, provides general interpretation services. Apart from using the services offered by this centre, B/Ds and related organisations will by themselves acquire suitable foreign-language interpretation services in the market depending on their operational needs and circumstances.

613. In the past, some law enforcement departments would refer to the registered list of non-Government freelance interpreters maintained by the Judiciary Administration (Jud Adm) for judicial purpose (the List) when looking for outside interpreters who provide legal interpretation services in foreign languages and other Chinese dialects (those other than Putonghua and Cantonese). Jud Adm, however, has since August 2018, ceased making the List available to other parties and providing updates. On the other hand, the Government had not compiled information about outside interpreters who provide interpretation services in foreign

languages and other Chinese dialects for B/Ds and related organisations' reference. Nor has it set any uniform requirements for qualification of such interpreters. After Jud Adm stopped providing the List and its updates to other parties, the law enforcement departments' arrangements for interpretation services would inevitably become less efficient.

614. The Government has continued to refine the Guidelines since their promulgation in 2010. The Office of The Ombudsman (the Office) considers the Government has been proactive and positive in this regard. The direct investigation aims to examine how CMAB can improve the overall efficiency for engaging outside interpretation services while implementing the Guidelines.

**The Ombudsman's observations**

615. On the Government's arrangements for engaging outside interpretation services, the Office has the following observations and comments.

*(I) To Coordinate the Establishment of a Central Database of Foreign-language Interpreters*

616. As B/Ds and related organisations are no longer offered updates on the Judiciary's list of freelance interpreters, this will certainly compromise the efficiency of relevant departments in performing duties (in particular law-enforcement-related) and providing public services. In the Office's opinion, CMAB can facilitate the compliance with the Guidelines by acting as the coordinator and liaise with B/Ds and related organisations on the establishment of a central database of foreign-language interpreters. With such a database, B/Ds and related organisations can select and acquire appropriate outside interpretation services in a more convenient way. The Office recommends that while coordinating the establishment of a central database, CMAB consider inviting the Judiciary's freelance interpreters to apply for the

Government's central registration of outside interpreters and updating the relevant information in a timely manner.

*(II) To Explore Measures for Efficient Selection of Outside Interpreters and Service Procurement*

617. The central database of outside foreign-language interpreters, of which establishment will be coordinated by CMAB, could contain details of the interpreters' services (including the languages they can interpret, their academic qualification and whether they are the Judiciary's freelance interpreters), experience, areas of specialisation (such as legal, medical, general interpretation, etc.) and their schedule of availability. Providing these details would enable B/Ds and related organisations to select quickly suitable interpreters who can provide services and to contact them and launch procurement procedures.

618. The Office considers that CMAB as the authority enforcing the Guidelines can establish uniform confidentiality requirements and guidelines on code of practice for outside interpreters engaged by B/Ds and related organisations. For people of different races who speak different languages, this will help strengthen their confidence in the outside interpretation services acquired by the Government. The overall quality of interpretation services can be enhanced as well. Moreover, it will take more time and steps to require outside interpreters to make a declaration of confidentiality and sign an agreement on code of practice each time they undertake an interpretation job. In order to save time and streamline the procedures for B/Ds and related organisations' procurement of interpretation services and assigning jobs, CMAB can explore the feasibility of having outside interpreters to sign a declaration of confidentiality and an agreement on code of practice in advance when including them in the central database.

*(III) To Monitor Systematically Arrangements for Outside Interpretation Services and Document Interpreters' Performance*

619. Currently, B/Ds and related organisations keep their own records of unsatisfactory performance of outside interpreters and handle these interpreters. Such practice is inefficient. CMAB should establish channels for B/Ds and related organisations to comment on outside interpretation services to enable systematic monitoring and documenting of the performance of individual outside interpreters.

*(IV) To Explore Feasibility of Providing Remote Interpretation Services*

620. CMAB can remind B/Ds and related organisations to take the initiative to assess whether remote interpretation services can meet the requirements for the interpretation jobs they are going to assign to outside interpreters (including the Judiciary's freelance interpreters). The use of remote interpretation services allows more flexibility, which can help enhance the administrative efficiency and meet the needs of people of different races and languages more promptly.

*(V) To Collate Data on Public Service Users' Needs for Interpretation Services in Other Chinese Dialects*

621. For long-term planning, CMAB can consider collating data on the needs of the public for interpretation services in other Chinese dialects so that the Government can devise the plan for follow-up action.

622. In view of the above, The Ombudsman recommended CMAB to –

(a) coordinate the establishment of a central database of outside foreign-language interpreters;

(b) explore and formulate measures for efficient selection of outside interpreters and service procurement. For example, the central

database could contain details of the interpreters such as the languages they can interpret, their experience, areas of specialisation and schedule of availability. CMAB should also explore the feasibility of requiring the interpreters to sign a uniform declaration of confidentiality and agreement on code of practice in advance;

(c) explore the feasibility of collecting and documenting information about any violation of confidentiality requirement or code of practice by outside interpreters in the database when being engaged by B/Ds and related organisations. CMAB should also establish a mechanism for follow-up action;

(d) remind B/Ds and related organisations to explore the feasibility of providing remote interpretation services; and

(e) collate data on the needs of public service users for interpretation services in other Chinese dialects to facilitate the Government's review and planning in this regard. In the long run, CMAB should consider including in the central database the information about interpreters providing interpretation services in other Chinese dialects to assist B/Ds and related organisations in engaging outside interpreters for such services.

**Government's response**

623. At present, B/Ds and related organisations, having regard to the actual circumstances and their respective needs, will engage suitable service providers for interpretation to flexibly provide interpretation services for people of diverse race. A support service centre for ethnic minorities, which is operated by a non-governmental organisation commissioned by the Home Affairs Department, provides general interpretation services. The centre's interpretation services has satisfied the interpretation service needs of most of the public authorities. As regards The Ombudsman's observations and recommendations, they are

mainly concerned with law enforcement agencies that need to engage professional foreign language interpretation services in legal aspects.

624. CMAB in general accepted The Ombudsman's recommendations and has taken the following follow-up actions.

*Recommendation (a)*

625. To facilitate B/Ds and related organisations in procuring foreign-language interpretation services, especially in court and/or related areas, CMAB has followed the Office's recommendation to compile a List of Non-government Foreign Language Interpreters (the List) and invite freelance interpreters in foreign languages currently engaged by the Jud Adm to register first. The List was made available for B/Ds and related organisations' reference in August 2022.

*Recommendation (b)*

626. For B/Ds and related organisations' reference, the List compiled by CMAB contains details covered in the Letters of Service Engagement of Freelance Interpreter issued by Jud Adm to the interpreters (including the languages they can interpret and the validity period of their service engagement with Jud Adm), as well as the interpreters' availability. In the light of implementation experiences, CMAB will explore the arrangement of requiring the interpreters to sign a uniform declaration of confidentiality and agreement on code of practice in advance.

*Recommendation (c)*

627. In the light of implementation experiences, and subject to actual circumstances and operational needs, CMAB will explore how to collect and document breaches of confidentiality requirement or code of practice by interpreters when being engaged by B/Ds and related organisations, and study an appropriate follow-up mechanism.

*Recommendation (d)*

628. CMAB encouraged B/Ds and related organisations to explore the feasibility of providing remote interpretation services via email in October 2021.

*Recommendation (e)*

629. CMAB sent an email to B/Ds and related organisations in October 2021, requesting them to collect data on the demand of interpretation services in Chinese dialects by public services users starting from November 2021.

## Government Secretariat – Security Bureau and Fire Services Department

## Case No. DI/448 – Government's Control of Illicit Fuelling Activities

### Background

630. The prevalence of illicit fuelling activities in Hong Kong has long been a matter of public concern. Premises carrying out such illegal operations (commonly known as "illegal filling stations") are found in various districts, and some of them are even close to residential neighbourhoods. These stations generally lack fire protection and firefighting equipment and pose fire safety threats to the public. Against this background, the Office of The Ombudsman (the Office) launched a direct investigation to examine the Government's measures to combat illicit fuelling activities, with a view to exploring areas for improvement.

### The Ombudsman's observations

631. At present, the Fire Services Department (FSD) combats illicit fuelling activities under relevant legislations (including the Fire Services (Fire Hazard Abatement) Regulation, Dangerous Goods Ordinance (DGO) and Dangerous Goods (General) Regulations) from the fire safety perspective, mainly through surprise inspections, complaint handling and inter-departmental joint operations. To this end, FSD has set up an Anti-illicit Fuelling Activities Task Force (Task Force). Moreover, FSD combats the use of dangerous goods vehicles (DGV) for illicit fuelling activities through the licensing regime for DGV. FSD also mounts publicity campaigns against such illicit activities through various channels and platforms.

632. After examining its work, the Office considers FSD to have conscientiously endeavoured, within the confines of existing legislation and manpower resources, to combat illicit fuelling activities through enforcement action and the licensing regime for DGV, so as to protect

public safety. Nevertheless, illegal filling stations remain prevalent in view of their huge demand and profitability. To deter such operations and on the basis of existing legislation, the Office has identified the following areas for improvement in FSD's manpower resources, enforcement action, statutory penalties, and publicity and education.

*(I) Manpower Resources*

633. The Task Force comprises only seven members, including a supervisor and other members divided into three teams. In 2020 each team conducted an average of around 1.17 inspections per working day. In addition to inspections, the Task Force is also responsible for gathering intelligence and conducting joint operations with relevant departments, mainly the Customs and Excise Department (C&ED) and the Hong Kong Police Force (HKPF). However, there were as many as 350 black spots associated with illegal filling stations where the Task Force had carried out inspections and enforcement action. Constrained by relatively tight manpower, FSD should review the Task Force's existing staff establishment and, based on actual circumstances, explore the need for its adjustment through internal redeployment and/or seeking additional resources from the Government, so as to cope with its heavy workload.

*(II) Enforcement Action*

634. In recent years, some illegal filling stations have been run in more flexible modes to evade FSD's enforcement action. For instance, the diesel for sale is stored in fuel tanks or barrels on board a goods vehicle, and the stock of diesel at the illegal filling station is kept below the statutory exempt quantity. The Office also notices that under the current DGV licensing regime, a licence holder intending to use his/her DGV for operating an illegal filling station could engage a third party to run the business on-site. This would make it difficult for FSD to establish the licence holder's involvement.

635. Concurrently with this direct investigation, FSD was undertaking an exercise to amend the DGO and its subsidiary legislation. The amendments include reducing substantially the statutory exempt quantity for storage and conveyance of diesel from 2,500 litres to 500 litres. The amendments came into effect on 31 March 2022. The Office believes that such measure would be conducive to stepping up control of illicit fuelling activities by FSD. Nevertheless, given the various modes adopted by operators to evade regulation, coupled with the prevalence of illegal filling stations, FSD should continue to strengthen its enforcement efforts. The Office recommends that FSD, where manpower reallocation is practicable, consider increasing the frequency of surprise inspections and joint operations with C&ED and/or HKPF.

*(III) Penalties*

636. Between 2016 and 2021 (up to 30 June), no offenders were sentenced to imprisonment after being convicted of participating in illicit fuelling activities. The maximum fines imposed by the court ranged from $5,000 to $50,000, which were insufficient to create an adequate deterrent effect in comparison with the profits derived from operating illegal filling stations. The Office is pleased to note that among the legislative amendments already made, the maximum levels of fines under relevant legislation have been amended to increase the deterrent effect. The Office recommends that FSD continue to monitor whether the amended penalties are effective in deterring illicit fuelling activities. Where the effect is unsatisfactory, FSD should have a timely consideration of further legislative amendments to raise the penalties.

*(IV) Publicity and Education*

637. The Office notices that FSD mainly relies on traditional media and platforms for publicity and public education, with less use of new media for enhancing the public's vigilance against illicit fuelling and encouraging them to report such activities. FSD's publicity and education initiatives are aimed at the general public, less often oriented to

the potential customers of illegal filling stations, i.e. professional drivers. Hence, the Office recommends that FSD, on the basis of existing publicity campaigns, explore ways for diversifying the channels and methods of publicity and public education, with a view to encouraging the public to report illicit fuelling activities, and promoting awareness of the hazards posed by illegal filling stations among potential customers.

*(V) Exploring the Feasibility of Introducing Control-at-source Improvement Measures*

638. The Office's investigation shows that some oil companies in Hong Kong sell Euro V diesel at wholesale prices to customers for their own use and distributors for resale. However, neither FSD nor the oil companies concerned have any idea about the identity of the clients purchasing diesel from the distributors. As such, even if the diesel is obtained for operating illegal filling stations, FSD would be unable to trace those cases. Moreover, the legislation enforced by FSD does not regulate, in any form, the supply and sale of dangerous goods (including Euro V diesel), nor does it empower FSD to mandate oil companies or distributors to provide client information for tracking the flow of transactions. In other words, under the existing regulatory framework, while FSD has endeavoured to combat illicit fuelling activities, its hands are tied in terms of stemming the supply of fuels for illegal filling stations, and hence its effort can hardly tackle the root of the problem. To address the problem of illegal filling stations at root, a more effective approach is to attempt to stem the supply of fuels for these stations.

639. In the Office's view, the Government may evaluate the effectiveness of the aforesaid improvement measures after implementation for a certain period of time. If the results are unsatisfactory, the Office recommends that the Government explore the feasibility of introducing control-at-source improvement measures, so as to combat illicit fuelling activities at the source of supply. The existing market of Euro V diesel involves many operators and stakeholders in the sector. When implementing the recommendation, the Government would

need to achieve the effect of combating illicit fuelling activities at source on the one hand, and minimise the impact on the sector on the other. The Office appreciates that the formulation of related improvement measures would be complex, and their successful implementation may require the professional expertise and experience of multiple departments. Therefore, should the need for a study arise, the Office recommends that consideration may be given to the Security Bureau (SB) in taking the lead to carry out the feasibility study. It may consider designating the responsibilities and duties of relevant departments, as well as setting up an inter-departmental collaboration mechanism. In undertaking the study in the future, SB may consider suitable arrangements having regard to the distribution market of diesel at that time.

640. In sum, The Ombudsman recommended FSD to –

(a) review the existing staff establishment of the Task Force and, based on the actual circumstances, explore the need for its adjustment to cope with the heavy workload;

(b) after implementing recommendation (a), consider increasing the frequency of surprise inspections and joint operations with C&ED and/or HKPF;

(c) continue to review the amended penalties for greater deterrence against illegal fuelling activities; and

(d) explore ways for diversifying the channels and methods of publicity and public education, so as to encourage the public to report illicit fuelling activities and promote awareness of the hazards posed by illegal filling stations among potential customers.

The Ombudsman also recommended SB to –

(e) review the measures in recommendations (a) to (d) after implementation for a certain period of time and, if the results are still unsatisfactory, explore the feasibility of introducing control-at-source improvement measures, so as to combat illicit fuelling activities at the source of supply.

**Government's response**

641. FSD accepted The Ombudsman's recommendations (a) to (d) and has taken the following follow-up actions.

*Recommendation (a)*

642. FSD agrees that, with a view to combating the growing illicit fuelling activities more effectively and dealing with the varying operation mode of illegal filling station operators which aims to evade the investigation of the enforcement authorities, there is a need to review the staff establishment of the Task Force for coping with the heavy workload. After thorough review, FSD would request for additional resources in due course under the established mechanism to increase the manpower for combatting illicit fuelling activities.

643. FSD is considering providing additional staff to the Task Force by employing retired personnel on contract terms in order to meet the immediate needs. In fact, as an interim measure, FSD, through internal redeployment of resources, has deployed manpower from various units temporarily to join surprise inspections and large-scale joint-departmental enforcement operations since the second half of 2021.

*Recommendation (b)*

644. From August 2021 to July 2022, FSD conducted a total of 21 regional joint-departmental surprise inspections and territory-wide large-scale enforcement operations with HKPF and C&ED (i.e. once or twice per month), smashing a total of 60 illegal filling stations, seizing a total

of about 280,000 litres of diesel and about 950 litres of petrol, and prosecuted 83 suspects.

*Recommendation (c)*

645. The amended DGO came into effect on 31 March 2022. Relevant amendments include raising the maximum fine for the offence of contravening section 6(1) of DGO from $25,000 to $100,000, etc. The relevant amendments also include reducing the general exempt quantity of storage and conveyance of diesel from 2,500 litres to 500 litres, etc. FSD considers that relevant amendments would impose more restrictions on the operation mode of illicit fuelling activities. The amended sections relevant to the increase of fines are tabulated as follows –

| **Relevant sections** | **Fines** | |
|---|---|---|
| Section 6(1) of the DGO on the relevant offence of storing, conveying or using dangerous goods exceeding the statutory exempt quantity without licence | Before amendment | Maximum fine of $25,000 and imprisonment for six months |
| | After amendment | A fine at level 6 ($100,000) and imprisonment for six months for a first offence;<br><br>A fine of $200,000 and imprisonment for 12 months for a subsequent offence. |
| Section 9B of DGO on the relevant offence of breaching any terms or conditions of dangerous goods licence | Before amendment | Not exceeding a fine of $10,000 and imprisonment not exceeding one month |
| | After amendment | A fine at level 5 ($50,000) and imprisonment for one month for a first offence; |

| | | |
|---|---|---|
| | | A fine at level 6 ($100,000) and imprisonment for three months for a subsequent offence. |
| Regulation 121 of the Dangerous Goods (General) Regulation (Cap. 295B) on the prohibition of direct transfer of fuel to any vehicle from tank wagon | Before amendment | Maximum fine of $5,000 |
| Section 134 of the Dangerous Goods (Control) Regulation (Cap. 295G) on the prohibition of direct transfer of dangerous goods from licensed DGV | After amendment | Maximum fine at level 4 ($25,000) |

646. FSD will monitor the implementation of the amended legislation closely and review whether the fines after legislative amendment can effectively enhance the deterrence effect against the relevant persons participating in illicit fuelling activities.

*Recommendation (d)*

Facebook platform

647. Apart from issuing press releases to the media on combatting illicit fuelling activities as per current practice, since October 2021, FSD has also proactively used the Facebook platform to promote the relevant enforcement operations and remind the public not to patronise illegal

filling stations. A relevant promotional short video was also uploaded to the Facebook page for public viewing.

Press conferences

648. In the recent large-scale joint-departmental enforcement operations, FSD held press conferences after the operations to provide details of the operations, introduce the operation mode of relevant illegal filling stations, urge the public and potential customers (i.e. professional drivers) not to patronise illegal filling stations and encourage the public to report suspected illicit fuelling activities via the FSD hotline. During the press conference for "STRONG THUNDER" operation in April 2022, FSD also introduced the enhanced control of diesel and the significantly increased penalties under the amended DGO.

Thematic website

649. FSD has set up a thematic website to introduce the amended DGO, including the offences and penalties related to illicit fuelling activities.

Advisory letters

650. Targeting at the operators of illegal filling stations using licensed DGV from time to time to conduct illegal activity, FSD sent advisory letters to the DGV licensees and applicants advising and reminding them not to participate in any kind of illicit fuelling activities.

Thematic TV programme

651. FSD initiated to promote information of illicit fuelling activities for the first time on a free-to-air television channel by producing a thematic TV programme on combatting illicit fuelling activities. The TV programme was broadcasted in late June 2022. FSD has also cooperated with different District Offices and relevant District Management

Committees to display promotional banners at different illicit fuelling activities black spots in early 2022 to remind the public and potential customers (i.e. professional drivers) not to patronise illegal filling stations.

652. FSD would continue to enhance the knowledge and awareness of the public about the risk of illegal filling stations through promotion and education, and encourage the public to report the relevant activity.

*Recommendation (e)*

653. SB did not accept recommendation (e) due to the following.

654. As pointed out by the Office in the investigation report, the diesel market involves many operators and stakeholders in the sector. To implement the recommendation with a view to achieving the effect of combatting illicit fuelling activities at source, the impact on the sector needs to be minimised at the same time. The Office also pointed out in the report that the formulation of related improvement measures would be complex.

655. Under the regulatory system of dangerous goods under DGO, the intent of the Ordinance is to control the manufacture, storage, conveyance and use of dangerous goods by means of a licensing system for the purpose of ensuring fire safety during the processes, rather than imposing restrictions on the supply and sale of dangerous goods. If control-at-source measures are introduced in accordance with recommendation (e) of the investigation report, for example, by imposing restrictions on the supply and sale of dangerous goods, it will not be in line with the legislative intent and purpose of DGO. It will also go beyond its regulatory scope. Moreover, it will involve significant changes to the entire regulatory regime of dangerous goods, causing extensive impacts.

656. The substances regulated by DGO are of a wide variety, including many consumer goods widely used by the public in daily life. Therefore, the recommendation to restrict the supply and sale of dangerous goods may cause inconvenience to the public's daily lives, business operations, and more. It would not be in line with the Government's principle of facilitating the business sector and the general public.

657. Separately, the scale, operation and mode of operation of diesel distributors and retailers are complex, involving multi-layeredness, diversity and variability. The idea of combating illicit fuelling activities at source is impracticable and its effect of curbing illicit fuelling activities is limited. In addition, the relevant recommendation goes beyond the intent and purpose of DGO in regulating dangerous goods, and would possibly affect the daily lives of the public and operation of the business sector. SB, after careful consideration, cannot accept recommendation (e) of the investigation report.

658. FSD has all along adopted a multi-pronged approach to specifically address the potential fire safety hazards associated with illicit fuelling activities, including carrying out inspections, investigations and taking enforcement actions from the fire safety perspective, and co-operating closely with other law enforcement agencies in conducting surprise joint operations from time to time to combat illicit fuelling activities. As with other policy initiatives, SB will closely monitor the effectiveness of the work of the relevant departments in this regard, and will conduct a review in due course.

## Home Affairs Department, Labour Department and Immigration Department

## Case No. DI/447 – Government's Regulation of Boarding Facilities for Foreign Domestic Helpers

### Background

659. Since the 1970's, the Government has allowed the importation of foreign domestic helpers (FDHs) into Hong Kong. As of September 2020, around 370,000 FDHs were employed in Hong Kong. Amid the COVID-19 epidemic, there was extensive media coverage on local infection cases of FDHs, revealing an array of problems about boarding facilities for FDHs, such as over-crowdedness, poor hygiene and suspected violations of permitted building use.

660. Given the Government's policy to import FDHs and the large number of persons involved, it has a duty to ensure reasonable protection of their well-being, including their temporary boarding facilities. In this connection, the Office of The Ombudsman (the Office) launched a direct investigation to examine the responsibilities of relevant departments, including Labour Department (LD), Home Affairs Department (HAD) and Immigration Department (ImmD), on the regulation of FDH boarding facilities as well as their collaboration, with a view to recommending improvement measures where necessary. The focus of the Office's investigation is on FDH boarding facilities operated by employment agencies (EAs).

## The Ombudsman's observations

*(I) Improving the Standards of FDH Boarding Facilities Operated by EAs*

Justifications

661. During their stay in Hong Kong, the several hundred thousand of FDHs may need accommodation out of their employer's residence in various circumstances. In particular, during the "two-week" rule period[1] upon completion or premature termination of employment contract, some FDHs may remain in Hong Kong briefly, pending return to their place of origin or the Government's approval of visa for joining a new employer. In other words, they have a practical need to stay on the residential premises commonly known as FDH boarding facilities. The demand for FDH boarding facilities is related to the total number of FDHs imported to Hong Kong, how many of them changed employers locally, and the time taken by ImmD to process their visa applications. However, the Government has no systematic data on the demand, locations, number and facilities of those premises, nor is there any dedicated legislation for regulating FDH boarding facilities.

662. The Office's investigation has revealed that upon receiving complaints about FDH boarding facilities in the past, LD often referred them to HAD for handling under the Hotel and Guesthouse Accommodation Ordinance (HAGAO) (Cap. 349) or the Bedspace Apartments Ordinance (BAO) (Cap. 447). The Office is of the view that if the FDH boarding facilities are operated in the same mode as guesthouses or bedspace apartments, HAD is duty bound to follow up pursuant to the two ordinances. However, according to the understanding of the Office, EAs operate FDH boarding facilities in multiple modes. Notably, many boarding facilities operated by EAs are for FDHs' exclusive use and are therefore not advertised openly. Meanwhile, some

[1] The Government's existing policy provides that FDHs are required to leave Hong Kong upon completion of the employment contract or within two weeks from the date of its premature termination, whichever is earlier.

of them are free of charge. Those boarding facilities thus fall outside the ambit of the HAGAO or the BAO. Referrals to HAD for follow-up action under the above legislation alone are clearly inadequate in regulating FDH boarding facilities.

663. Currently, the consulates of certain FDH-exportation countries have introduced an accreditation system for local EAs, authorising them to provide job placement services for their nationals. While the measure can help ensure the basic standards of FDH boarding facilities operated by accredited EAs, the accreditation systems of consulates are not mandatory under any local legislation. Setting requirements for FDH boarding facilities by consulates alone may not be sufficient to address the problem, not to mention that protection of the well-being of FDHs is a duty incumbent upon the Hong Kong Government.

664. The Office appreciates that EAs perform a social function in operating boarding facilities for FDHs in need of temporary accommodation. The quality of those boarding facilities which charge minimal or no fees at all is inevitably constrained by resources. The purpose of regulatory measures is not to stamp out those premises, but to provide the Government with a means to ensure reasonable accommodation for FDHs employed in Hong Kong and to stipulate the standards for compliance by operators. Substandard boarding facilities for FDHs are unacceptable to society from a humanitarian point of view, while tarnishing Hong Kong's reputation at the same time.

665. Based on the above analysis, the Office considers it essential for the Government to adopt measures to improve the standards of FDH boarding facilities operated by EAs.

Responsible department

666. The Office considers the new improvement measures should be implemented by LD, the department responsible for labour policy and administration. From the perspectives of law, policy objective and actual

operation, it is rational and reasonable for LD to adopt improvement measures to enhance the quality of FDH boarding facilities operated by EAs which fall outside the ambit of the HAGAO and the BAO for protecting the well-being of FDHs employed in Hong Kong.

Short- and medium-term measures

667. Given the complexity in devising and implementing a statutory regulatory regime, the Office is of the view that the Government may first consider making improvements through administrative measures, including creating a database of FDH boarding facilities operated by EAs, publishing a list of FDH boarding facilities, issuance of more guidelines to the EA sector, introducing new licensing procedures, etc.

Long-term measures

668. The Office considers that LD should evaluate the effectiveness of the short- and medium-term measures after implementation for a certain period. If the result is unsatisfactory, LD should explore the feasibility of introducing a statutory regulatory regime through legislative amendments in the long run, with a view to more stringent regulation of FDH boarding facilities operated by EAs.

669. In considering whether to introduce a new regulatory regime, LD reiterated that the Employment Ordinance (EO) is intended to provide the protection of the wages of employees, to regulate general conditions of employment and EAs, and for matters connected therewith. LD is not empowered by the EO to regulate boarding facilities operated by EAs. If a new regulatory regime is to be established, it remains to be clarified whether the EO is the suitable instrument. Moreover, LD is concerned about possible loopholes to emerge upon implementation of the new regime. For instance, to evade the requirements under the new regime, EAs may arrange for unrelated persons or companies to operate the boarding facilities, or arrange to accommodate FDHs in the boarding facilities operated by other persons or organisations. The Office

acknowledges the concerns of LD. Should the need to introduce a statutory regulatory regime by legislative amendments arise, it is incumbent upon the Government to study and consider the issue thoroughly, including how to amend existing legislation to confer adequate powers on the authorities to perform regulatory duties, and how to plug any loopholes that may emerge upon implementation.

670. FDH boarding facilities operated in the same mode as "hotel or guesthouse" or "bedspace apartment" are already regulated under the HAGAO or the BAO. Should the need to introduce a new regulatory regime arise in the future, whether FDH boarding facilities within the ambit of the two ordinances should be excluded from the new regime is subject to the study and decision of LD jointly with HAD. Apart from these two types of FDH boarding facilities, the Office considers that the new regulatory regime, if needed in the future, should encompass all FDH boarding facilities operated by EAs.

*(II) "Live-in Requirement" during Contract Period*

671. The existing policy requires all Hong Kong employers to sign with their FDHs the Standard Employment Contract (SEC) prescribed by the Government. Clause 3 of the SEC provides that during the employment period, the FDH shall work and reside in the employer's Hong Kong residence specified in the SEC. Clause 15 of the SEC stipulates that any variation to clause 3 by the employer should be made with the prior consent of the Commissioner for Labour (the Commissioner). The Office's investigation reveals that some employers may request their FDHs to stay in boarding facilities operated by EAs during the contract period. A common scenario is that the employer's residence is not yet ready for accommodating the FDH upon their arrival in Hong Kong. The findings of the Office show that some employers fail to comply with clause 3 of SEC in the above scenario without the prior consent of the Commissioner as required under clause 15, and that it generally involves just one or a few days.

672. The Office considers that the "live-in requirement" under clause 3 of the SEC, aimed at protecting the welfare of FDHs in receiving free board and lodging from their employers, should be enforced stringently. The Office accepts that some employers may be compelled to arrange temporary accommodation for FDHs via EAs, such as when their residence is not ready due to unforeseeable circumstances upon the FDHs' arrival in Hong Kong. Yet, it is a different case if employers deliberately ignore their obligation to make advance preparation for accommodating the FDHs before their arrival in Hong Kong. From the perspectives of business operation and customer service, it is understandable for EAs to provide boarding facilities for FDHs in certain situations. But if this flexibility measure is misused or even abused, it is against the original intent of the measure and improper. As to whether the "live-in requirement" should be maintained, it is a policy issue not subject to comments of the Office.

*(III) Processing of Applications for Employment Visa*

673. The time taken by ImmD to process applications from FDHs for employment visa affects the demand for FDH boarding facilities. The Office is pleased to note that during the epidemic, ImmD has implemented measures to expedite the approval procedures, including flexible staff deployment and more extensive use of electronic services.

674. The Ombudsman recommended LD to –

(a) liaise with stakeholders and request EAs to submit information about their FDH boarding facilities (if any), thereby creating a database of FDH boarding facilities operated by EAs;

(b) compile and publish a list of FDH boarding facilities operated by EAs for better information transparency and facilitating informed choices of FDHs, as well as fostering improvement in the sector's operation standards by market forces;

(c) revise the Code of Practice for Employment Agencies (CoP) with more specific details on the relevant laws, standards and guidelines applicable to EAs engaged in FDH boarding service for their reference and compliance; in addition, consider drawing up a set of guidelines for reference by the EA sector, taking into reference the existing guidelines of relevant departments and the requirements of consulates on the boarding facilities of EAs accredited for FDH placement;

(d) require an EA to undertake, in the application for new licence or licence renewal, that it will ensure compliance with relevant legislation and the requirements of Government departments if it provides boarding facilities for job seekers; and take appropriate enforcement action under the EA licensing regime if the EA's FDH boarding facilities are found in breach of other Government departments' requirements subsequently;

(e) step up education in urging the EA sector to actively cooperate with the Government's initiatives, and encouraging voluntary improvement of FDH boarding facilities;

(f) step up publicity and education on employers' obligation to comply with the "live-in requirement" under clause 3 of the SEC, remind the EA sector of the "live-in requirement" if engaged in FDH boarding service, and take appropriate follow-up action if it discovers any employers or EAs ignoring their obligation by allowing FDHs to live out of the employer's residence during the employment period; and

(g) evaluate the effectiveness of the measures in recommendations (a) to (f) and (j) after implementation for a certain period; if the result is unsatisfactory, explore the feasibility of introducing a statutory regulatory regime through legislative amendments in the long run, with a view to more stringent regulation of FDH boarding facilities operated by EAs.

The Ombudsman recommended HAD to –

(h) review and optimise the procedures for handling complaints about FDH boarding facilities to expedite case handling.

The Ombudsman recommended ImmD to –

(i) continue to review and improve its measures and efficiency in processing applications for visa to change employers submitted by FDHs locally, and expedite the approval procedures as far as resources permit, thereby minimising the potential demand for FDH boarding facilities arising from their stay in Hong Kong pending visa approval.

The Ombudsman also recommended LD, HAD and ImmD to –

(j) strengthen routine collaboration between LD and stakeholder bureaux and departments for exchanging information about the operation of FDH boarding facilities, formulating regulatory measures jointly, and making referrals as necessary. HAD and ImmD should provide information and assistance as necessary.

**Government's response**

675. LD, HAD and ImmD accepted The Ombudsman's recommendations and have taken or will take follow-up actions.

*LD*

Recommendations (a) to (d) and (g)

676. Under the existing licensing regime, there is no requirement for EAs to operate or provide boarding facilities for job-seekers (including FDHs). According to the CoP, should EAs use their EA premises to provide boarding facilities or bedspaces, or provide such facilities in

other non-EA premises to job-seekers, they must ensure that the relevant approval(s) or licence(s) for operating the boarding facilities or bedspaces have been obtained from all relevant government authorities, and the requirements as specified in the relevant laws are fully and satisfactorily met. LD is formulating proposals to revise the CoP to strengthen the monitoring of boarding facilities operated by EAs on the foundation of the existing regime and enhance the transparency of information. On completion of the review, LD plans to consult the stakeholders in early 2023 with a view to promulgating the revised CoP in Q3 2023.

Recommendation (e)

677. LD has from time to time organised various promotional and publicity activities, including seminars and briefing sessions, to promote and remind EAs to comply with relevant statutory provisions and the CoP. LD has beefed up the content of the seminars and briefing sessions with points-to-note for EAs carrying out other activities, if any, at EA's licensed address, including providing FDH job seekers with information on the boarding facilities provided or operated by EAs, if any. LD will continue to organise the promotional and publicity activities.

Recommendation (f)

678. LD has, through press releases and other promotional channels, reminded employers, FDHs and EAs that FDHs and employers must observe the "live-in requirement" and the consequences of breaching the requirement. Warning letters have been issued to employers failing to provide suitable accommodation for their FDHs, and the relevant cases have been passed to ImmD for record and follow-up action as appropriate. In the "Employers' Corner" on the FDH Portal (www.fdh.labour.gov.hk), employers are reminded to comply with the "live-in requirement". LD has revoked the licence of an EA which provided accommodation to employed FDHs which is in breach of the "live-in requirement". LD has also included relevant promotional messages at the EA Portal and published a new pamphlet to remind EAs

of the "live-in requirement". LD will continue to publicise the "live-in requirement" and take follow-up action on non-compliance.

*HAD*

Recommendation (h)

679. HAD has always been handling complaints and referrals about FDH boarding facilities relating to the HAGAO and BAO in accordance with the established procedures and performance pledges (i.e. to conduct site inspections within eight working days). HAD has been receiving very few complaints or referral of this type of cases. Nevertheless, HAD has reminded staff to expedite the processing of cases as far as practicable.

*ImmD*

Recommendation (i)

680. During the epidemic, ImmD implemented a series of measures to expedite the processing of FDH employment visa applications, including streamlining of workflow, flexible manpower deployment, strengthening the application of electronic services, etc. ImmD will continue to review and improve its efficiency in processing FDH employment visa applications as far as resources permit with a view to minimising FDHs' waiting time for employment visas.

*LD, HAD and ImmD*

Recommendation (j)

681. LD has all along been working closely with the relevant bureaux and departments (including HAD and ImmD) to handle complaint cases involving the operation of boarding facilities for FDHs. In furtherance of collaboration and communication amongst LD, HAD and ImmD, contact

points have been established to facilitate exchange of information about the operation of boarding facilities and making of referrals. HAD and ImmD will provide information and assistance as necessary.

## Transport Department

## Case No. DI/450 – Transport Department's Requirements for Physical Fitness Certification of Driving Licence Applicants/Holders

### Background

682. In Hong Kong where the traffic is busy, drivers must have good driving manner and skills, and maintain both physical and mental health to ensure their capability to drive motor vehicles and avoid accidents.

683. Many jurisdictions have introduced more stringent requirements for physical fitness certification of senior drivers and professional drivers, and even imposed driving restrictions on them to enhance road safety. In Hong Kong, driving licence applicants/holders are required by law to declare to the Transport Department (TD) as to whether or not they are suffering from any disease or physical disability specified in the relevant legislation or any of those which would be liable to cause their driving of a motor vehicle to be a source of danger to the public. As for drivers having reached the age of 70, they must provide a Medical Examination Certificate to TD at least every three years for the issue or renewal of their driving licence. Nevertheless, in terms of setting the medical examination items and standards and specifying requirements for drivers' physical fitness for different classes of vehicles, there is still a gap between Hong Kong and other jurisdictions. In view of the aging population in Hong Kong and the fact that commercial vehicles, especially heavy commercial vehicles, have a greater risk of being involved in traffic accidents and casualties, the Office of The Ombudsman (the Office) considers that TD should keep pace with the times and learn from the experience of other jurisdictions in adjusting the requirements for physical fitness certification of drivers. This will help mitigate the risk of traffic accidents caused by drivers' health problems that affect their capability to drive.

## The Ombudsman's observations

684. On TD's requirements for physical fitness certification of driving licence applicants/holders, the Office identified the following areas for improvement.

*(I) To Specify Examination Items of Physical Fitness Certification for Obtaining a Driving Licence and Provide Medical Professionals with Guidelines in This Regard*

685. TD should make reference to the relevant requirements in different jurisdictions and consider specifying the examination items that driving licence applicants must undergo and the information that registered medical practitioners should put in the Medical Examination Certificate. That will help both the Government and the applicants understand whether the latter are physically fit to drive. TD can also, upon consultation with medical professionals and the related sectors, consider establishing uniform guidelines for the relevant medical examinations so that medical professionals can assess more effectively whether the driving licence applicants are physically fit to drive.

*(II) To Establish a Mechanism for Medical Examinations of Commercial Vehicle Drivers (Especially Drivers of Heavy Vehicles) Reaching a Specified Age and Impose More Stringent Requirements for Their Physical Fitness*

686. TD should learn from the practices of different jurisdictions and establish a system for medical examinations of commercial vehicle drivers (especially those driving heavy commercial vehicles). Under such system, those drivers reaching a specified age will be required to undergo regular medical examinations and meet more stringent requirements for physical condition before they can be issued a driving licence for commercial vehicles or get their licences renewed.

*(III) To Step up Publicity and Education to Remind Drivers to Take Care of Their Physical and Mental Health and to be Alert to Changes in Their Capability to Drive*

687. TD should continue to step up its publicity and education among drivers of different age groups to remind them to pay attention to their physical fitness and also be considerate towards others. Drivers should be alert to potential health risks that may affect their capability to drive, and be advised to prevent such problems. They should also be encouraged to undergo regular and specific medical examinations for prevention/treatment of diseases or changes in functional capacity that may affect their capability to drive. If drivers can make efforts to slow down the degeneration of their functional capacity and receive timely treatment for diseases, it will help extend their driving years.

688. Furthermore, TD should strengthen education of drivers on the legal requirement for reporting changes in their health condition to TD and the importance of so doing. TD can also make reference to the practices in other jurisdictions to approach medical professionals and seek their support in reminding drivers to notify TD as soon as possible when their health condition is at a stage that may affect their capability to drive.

*(IV) To Explore Ways to Facilitate Professional Drivers of Commercial Vehicles to Undergo Medical Examinations*

689. The Office understood that it would inevitably increase the financial burden of professional drivers of commercial vehicle if they are required to undergo and pay for more frequent and stringent medical examinations. Nevertheless, if the Government were to provide free medical examinations to a large number of professional drivers in the long run, it would involve resources and public funds and it requires careful consideration. TD should, therefore, proactively explore ways to facilitate professional drivers to take medical examinations, such as subsidising the medical examinations of professional drivers in need and

liaising with relevant departments including the Department of Health to explore suitable medical resources that can be used on the medical examinations.

690. In view of the above, The Ombudsman recommended TD to –

(a) specify examination items of physical fitness certification for obtaining a driving licence and provide medical professionals with guidelines in this regard so that they can assess more effectively whether the driving licence applicants are physically fit to drive;

(b) establish a mechanism for medical examinations of commercial vehicle drivers (especially drivers of heavy vehicles) reaching a specified age and impose more stringent requirements for their physical fitness;

(c) step up publicity and education to remind drivers to take care of their physical and mental health and to be alert to changes in their capability to drive; and

(d) explore ways to facilitate professional drivers of commercial vehicles to undergo medical examinations.

**Government's response**

691. TD accepted The Ombudsman's recommendations and has taken the follow-up actions below.

*Recommendations (a), (b) and (d)*

692. TD has all along been concerned about the physical fitness of drivers, and understands the importance of motorists' health with a view to ensuring safety of road users. In this connection, TD has commenced a review on the requirements for physical fitness certification of driving

licence applicants/holders and consulted the relevant bureaux/departments (B/Ds) on the preliminary results of its review.

693. Having regard to the views gathered from the relevant B/Ds, TD considered it necessary to set up an Expert Panel to conduct a detailed review, including the diseases or physical disabilities specified in the First Schedule of the Road Traffic (Driving Licences) Regulations (Cap. 374B) and the existing Medical Examination Certificate (TD256), as well as to provide relevant professional advice. Against this backdrop, TD has set up the Expert Panel comprising representatives from the relevant B/Ds, Hospital Authority and the Hong Kong Academy of Medicine in early June 2022. The Expert Panel has commenced its work since mid-June 2022.

694. TD will consult the Panel on Transport of the Legislative Council and relevant stakeholders in due course according to the progress of the review.

*Recommendation (c)*

695. TD will continue to step up publicity and education, including organising the publicity campaign "Safe Driving and Health Campaign", to enhance the awareness of health and safe driving of commercial vehicle drivers of different age groups. During the annual "Safe Driving and Health Campaign", TD encourages commercial vehicle drivers (including public transport drivers) such that they may receive free health checks at supporting medical institutions. In the past five years, on average, about 2 000 commercial vehicle drivers joined the free health checks each year.

696. In addition, through meetings with the trade and regular newsletters, TD will remind operators and the trade to pay attention to drivers' physical condition and encourage them to have regular check-ups. TD will also collaborate with the relevant department/organisation in dissemination of health message to the trade in order to promote the

health awareness of commercial vehicle drivers. For example, TD invited Lok Sin Tong Benevolent Society, Kowloon (a subvented organisation of the Tobacco and Alcohol Control Office of the Department of Health) to deliver talk to the taxi trade about the benefits of quitting smoking and their smoking cessation service at TD's taxi trade conference meetings in June 2022.

697. TD updated The Ombudsman about the implementation progress of various recommendations on 25 May 2022 and would provide another update to The Ombudsman in December 2022.