THE GOVERNMENT MINUTE

IN RESPONSE TO

THE ANNUAL REPORT OF
THE OMBUDSMAN 2023

Government Secretariat
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THE GOVERNMENT MINUTE IN RESPONSE TO THE ANNUAL REPORT OF THE OMBUDSMAN 2023

Introduction

The Chief Secretary for Administration presented the Annual Report of The Ombudsman 2023 (the Annual Report) to the Legislative Council at its sitting on 12 July 2023. 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 nine direct investigation and 141 full investigation cases in the Annual Report. This Government Minute responds to the nine direct investigation and 42 full investigation cases for which recommendations were made by The Ombudsman. The vast majority of the 211 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 is pleased to know that The Ombudsman pointed out in the Annual Report that the current-term Government's endeavours are starting to bear fruit. We will continue to embrace a result-oriented governance culture and enhance the standard of public administration of Government departments and public bodies in order to meet the public's expectations.

Part II
– Responses to recommendations in full investigation cases

Buildings Department

Case No. 2021/2055 – (1) Failing to properly follow up on the complaint against a consultant, a works contractor and a registered inspector for alleged non-compliance with the Code of Practice for the Mandatory Building Inspection Scheme and the Mandatory Window Inspection Scheme 2012; (2) Failing to properly follow up on the works contractor's non-compliance with the requirements under the Minor Works Control System; and (3) Disclosing the complainant's identity to the consultant's staff

Background

The complainant was the owner of a flat (the concerned flat) of the concerned building. From January to September 2018, the owners' corporation (OC) of the concerned building engaged a consultant and a registered contractor to carry out major repair works for the building (the first-time works); and appointed a registered inspector (RI) of the consultant to carry out the prescribed inspection under the Mandatory Building Inspection Scheme (MBIS) after the completion of repair works. In July 2018, when the repair works were near completion, the complainant identified water seepage and a crack at the beam in the concerned flat. The Joint Office (JO) for investigation of water seepage in buildings jointly set up by the Food and Environmental Hygiene Department and the Buildings Department (BD) conducted an investigation and pointed out that the water seepage might be originated from the external wall. After receiving report from the complainant, the contractor carried out repair works (the second-time works) from October 2019 to January 2020. Thereafter, the water seepage problem in the concerned flat reappeared in May 2020, and the investigation by JO revealed again that the cause of seepage might be originated from the external wall. The complainant believed that the water seepage problem was caused by improper repair works, and the consultant

and contractor concerned should have the full responsibility to resolve the problem. Moreover, before the water seepage problem was resolved, the concerned RI submitted the Certificate of Building Inspection to BD in May 2019, stating that no repair works were required for the building. The complainant had lodged a complaint to BD and inquired about relevant works and building inspection matters to BD, but considered that BD had not followed up properly.

2. Eventually, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against BD. The allegations were summarised as follows –

(a) failing to properly follow up on the complaint against a consultant, a works contractor and a registered inspector for alleged non-compliance with the Code of Practice for the Mandatory Building Inspection Scheme and the Mandatory Window Inspection Scheme 2012 (the Code). The alleged contraventions included –

i. the concerned RI was aware of the water seepage in the concerned flat, but still submitted the Certificate of Building Inspection and related documents in May 2019, stating that no repair works were required for the building; and BD handled the complaint based on the concerned contractor's view, without taking into account the notary report submitted by the complainant and JO's investigation results in 2018 and 2020;

ii. the concerned RI did not enter the concerned flat and related units on each floor of the building to inspect the drainage pipes, which deviated from the requirement of conducting prescribed inspection in person;

iii. the concerned RI failed to provide all documents required by the Code when submitting the Certificate of Building Inspection and related documents in May 2019. The inspection report, daily inspection records, records of the

scaffolding on the external wall of relevant floors from December 2018 to May 2019 and the inspection record of the drainage pipe of another unit of the building were found missing; and

iv. regarding the repair of external walls of the floor related to the concerned flat, the concerned consultant and contractor did not arrange the repair of external walls of the related units during the first-time works; and the second-time works were not carried out and recorded in accordance with the Code.

(b) failing to properly follow up on the works contractor's non-compliance with the requirements under the Minor Works Control System (MWCS). In June 2020, the complainant reported to BD that the concerned contractor did not submit the required documents for the second-time works, while BD accepted submission of supplementary documents by the concerned contractor afterwards and did not follow up the non-compliance. In addition, the complainant considered that BD should proactively notify the OC of such non-compliance; and

(c) disclosing the complainant's identity to the staff of the concerned consultant by BD's staff during a telephone conversation. As a result, the consultant and contractor threatened the complainant to withdraw the complaint lodged to BD, otherwise, legal action against the complainant would be taken.

The Ombudsman's observations

Allegation (a)(i)

3. BD clarified that the work involved in this case was not handling water seepage, as well as pointing out that water seepage at both internal and external of buildings did not fall within the scope of prescribed inspection and prescribed repair. Hence, there should be no contradiction

among water seepage identified in the concerned flat and no prescribed repair required for the building as reported by the concerned RI. The Office considered BD had handled the complaint in accordance with its purview and the requirements under MBIS. Since there was no evidence of maladministration by the Department, Allegation (1)(i) was unsubstantiated.

Allegation (a)(ii)

4. BD had followed up the allegation on the concerned RI not carrying out the prescribed inspection in person. According to the Office's understanding, failure to carry out the prescribed inspection in person was an offence and offenders might be prosecuted. However, after BD's investigation, there was no evidence to prove the complainant's allegation that the concerned RI did not personally carry out the required inspection. No further action was therefore taken by BD. Upon examining BD's response, the Office had no ground to question its investigation result and conclusion, and therefore considered that Allegation (a)(ii) was unsubstantiated.

Allegation (a)(iii)

5. BD had explained the requirements of the Code on the submission of documents by the RI upon completion of the prescribed inspection and how to handle situations where the required documents were incomplete. Since the concerned RI had already withdrawn the submitted Certificate of Building Inspection and related documents, the Office considered that it was not inappropriate for BD not to follow up the application. The Office considered that Allegation (a)(iii) was unsubstantiated.

Allegation (a)(iv)

6. BD clarified that both the first-time and the second-time works were not carried out under MBIS and hence, the Code was not applicable. The Office had reviewed relevant documents and considered that the

concerned works contractor had already made submission under MWCS with respect to repair works carried out on the external walls of relevant units during the first-time works. In fact, since the repair works were not prescribed repairs under MBIS, the scope and standard of the works would not be subject to the Code, but rather should be carried out in accordance with the requirements under MWCS. The Office considered that there was no proof to indicate BD had improperly followed up the complaint, therefore, Allegation (a)(iv) was unsubstantiated.

Allegation (b)

7. The Office considered that, although BD had conducted a review after receiving the Office's referral of the complaint and issued a warning letter to the concerned contractor, BD did not take appropriate follow-up action in accordance with the prevailing policy when first receiving the complainant's enquiry. Therefore, Allegation (b) was substantiated.

Allegation (c)

8. After analysing the records of tele-conversation, the Office concurred with BD's observation that the complainant's identity was first mentioned by the staff of the consultant but was not disclosed proactively by BD's staff. It was understood that according to BD's guidelines on handling complaints, the staff should handle the identity of the complainant with care and keep the identity of the complainant confidential unless with the complainant's consent. The Office considered that, regardless of whether the staff of the consultant had the opportunity to know or deduce the complainant's identity from other source, it would be inappropriate for BD's staff to indirectly disclose/reaffirm the complainant's identity without authorisation. Therefore, Allegation (c) was substantiated.

9. Overall, The Ombudsman considered this complaint partially substantiated and recommended BD to –

(a) remind staff to seriously handle reports of contravention under the MWCS so as to ensure that the MWCS could achieve its desired purpose; and

(b) regularly circulate relevant guidelines on handling complaints to remind staff not to directly or indirectly disclose or reaffirm the identity of the complainant to a third party in any manner, without the consent of the complainant.

Government's response

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

Recommendation (a)

11. In order to ensure that the system could achieve its desired purpose, emails were issued to remind staff of the Mandatory Building Inspection Section to seriously handle reports of contravention under MWCS, including following the established procedures when handling cases involving minor works. In case of doubt, they might consult the Minor Works Unit of the Department.

Recommendation (b)

12. BD would promulgate to staff by email regularly every six months the relevant guidelines on handling complaints and not to disclose the identity of the complainant.

Buildings Department

Case No. 2021/4354 – Failing to follow up on the unauthorised erection of roof cover at a plastic recycling yard

Background

13. Allegedly, a factory in the subject location was found to have commenced the erection of a roof cover in August 2021. The complainant repeatedly requested the Planning Department (PlanD) and the Lands Department (LandsD) to follow up. LandsD referred this case to the Buildings Department (BD), but the erection of such roof continued and was completed in early September 2021. Being dissatisfied that BD did not follow up on the roof cover erection at the factory in the subject location after receiving the referral from LandsD, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against BD.

The Ombudsman's observations

14. On 23 August 2021, BD received a complaint referred by the District Lands Office (DLO) stating that there were suspected unauthorised building works (UBWs) in progress on an agricultural land at a lot. BD also received a complaint referred by the PlanD regarding the same issue on 26 August. On 7 September, BD subsequently received a complaint via 1823, stating that there were UBWs in progress on the concerned lot. On 9 and 13 September and 5 October, DLO referred the site photos provided by the complainant to BD. The BD's follow-up process after receiving the above complaint/report were as follows –

(a) on 25 August, the staff of BD's appointed consultant attempted to conduct an inspection of the concerned lot but access could not be gained. However, inspection from outside the concerned lot did not reveal that there were building works in progress. The consultant's staff left a contact slip requesting the owner or occupant to contact BD for arranging an inspection;

(b) on 9 September and 9 October, the consultant's staff attempted twice to conduct inspection of the concerned lot but access could not be gained again. However, inspection from outside the concerned lot revealed a metal structure with a metal roof was found on the concerned lot. The height of the concerned structure exceeded 4.57 meters (m) which did not comply with the exemption criteria (i.e. a height not exceeding 4.57m) as stipulated in the Buildings Ordinance (Application to the New Territories) Ordinance;

(c) on 8 October, the consultant submitted the report of its inspection conducted on 9 September to BD. After reviewing the report and comparing it with the information (including the site photos) referred from the DLO on 5 October, BD found that the concerned metal structure still existed and the scale of which had increased with some metal panels erected at the external wall;

(d) on 26 October, staff of BD conducted site investigation to ascertain the scale of the concerned structure; and

(e) on 31 December, BD issued a removal order to the owner of the concerned lot requiring the removal of the concerned structure in view of its height exceeded 4.57m which did not comply with the relevant exemption criteria and the concerned structure was considered as new UBWs or UBWs in progress by making reference to the aerial photo record obtained from DLO.

15. The above information showed that after BD received a referral from DLO on 23 August 2021, staff of BD's appointed consultant were assigned to inspect the site two days later. Based on the inspection results and the information provided by DLO, a removal order was issued to the owners of the lot concerned.

16. After reviewing the relevant information, the Office considered that BD had followed up the UBWs within the concerned lot in accordance

with its enforcement policy and therefore, the complaint was unsubstantiated. The Office urged BD to monitor the compliance status of the removal order and take appropriate action in the light of the development of the case.

17. Nevertheless, the complainant lodged a complaint with the relevant departments while the erection of UBWs were in progress. The information showed that the scale of the UBWs had increased subsequently, indicating that the UBWs had been carried out continuously over a certain period of time. The Office considered that such a situation was far from ideal and did not meet the expectation of the public when they made the complaints/reports. The Office noted that in this case, although the consultant visited the concerned lot on 25 August and 9 September, it took over a month for the consultant to submit the inspection report to BD. In addition, as staff of the consultant were unable to gain access to the concerned lot and could only conduct inspections from the outside, this might have affected the progress and effectiveness of the investigation.

18. Overall, The Ombudsman considered this complaint unsubstantiated and recommended BD to –

(a) review whether there is room for improvement to the efficiency of BD's follow-up actions on cases involving UBWs erection in progress; and

(b) consider using small unmanned aircraft (SUA) or high-point filming tools to assist investigation when inspection staff are unable to gain access to land lots where suspected to have actionable UBWs.

Government's response

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

Recommendation (a)

20. BD has reviewed its follow-up procedures for cases of UBWs in-progress and implemented the following measures to improve office efficiency –

(a) progress meetings with the relevant consultants had been held regularly and the consultants had been reminded to submit inspection reports within the timeframe as specified in the consultancy contract. For those consultants with unsatisfactory performance in report submission, BD would take appropriate actions according to the contract management mechanism, including to request and urge the consultant to improve its performance by issuing advisory letters, warning letters and adverse performance report;

(b) to effectively enhance progress monitoring, BD had increased the frequency of progress meetings with the relevant consultant from monthly to weekly until the consultant's performance in report submission had improved;

(c) SUA would be used by inspection staff to take aerial photos when access to land lots suspected to have actionable UBWs could not be gained (see response to Recommendation (b) below);

(d) to reduce the time for consultants to submit inspection reports which were submitted in hard copy, BD has enhanced its Building Condition Information System to facilitate electronic submission and processing of reports by consultants and BD respectively. This would also enable BD to monitor the work progress of consultants more effectively; and

(e) to enhance the electronic reporting form and the questions asked by the 1823 hotline for obtaining more accurate and detailed information from complainants, e.g. the exact location, estimated

height/roof-over area, relevant photos and videos of the UBWs in-progress, etc. in order to enable staff of BD to follow up the cases more efficiently.

Recommendation (b)

21. BD has implemented the following arrangements –

(a) the provisions of the consultancy contract has been reviewed and agreement from the relevant consultants has been obtained for staff of the consultant to use SUA to take aerial photos when access to land lots suspected to have actionable UBWs could not be gained in order to assist and expedite the progress of investigation;

(b) in addition, for some special cases, staff of BD could utilise internal resources, by arranging trained and experienced staff to use SUA to take aerial photos; and

(c) issued internal guidelines to enable BD staff to have a better understanding of the utilisation of SUA to assist inspection and expedite investigation.

Buildings Department and Food and Environmental Hygiene Department

Case No. 2022/0569A and 2022/0569B – The reply letter of a water seepage complaint did not correspond with the relevant investigation reports

Background

22. On 25 February 2022, 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 jointly by the Food and Environmental Hygiene Department and the Buildings Department.

23. According to the complainant, the water seepage problem in the flat upstairs (the Flat) caused nuisance to him. Upon conducting tests by using microwave tomography and infrared thermography (New Technologies) in September 2020, JO confirmed that the waterproofing of the guest bathroom of the Flat was defective. Therefore, a Nuisance Notice was issued in January 2021, requesting the property owner to abate the nuisance.

24. In June 2021, JO conducted the confirmatory test with New Technologies at the Flat. On 30 September, JO replied to the complainant in writing (Reply on 30 September) that the source of water seepage could not be ascertained by the confirmatory test, hence no further law enforcement action could be taken.

25. Later, the complainant obtained from JO the reports of the tests conducted in September 2020 and June 2021. Both reports indicated that the water seepage was originated from the floor slab of the guest bathroom of the Flat. The complainant was of the view that there was obviously an error in the Reply on 30 September, and that JO was suspected of coming up with a wrong conclusion in an attempt to terminate the water seepage

investigation. Therefore, he lodged a complaint with the Office against JO.

The Ombudsman's observations

26. According to the explanation of JO, although the consultant has deduced from the confirmatory test that the source of water seepage was the floor slab of the guest bathroom of the Flat, after taking into account and analysing the relevant information, JO came to a conclusion that the water seepage might have originated from the master bathroom rather than the guest bathroom of the Flat. As a result, JO replied to the complainant in writing on 30 September 2021 that the source of water seepage could not be ascertained. The Office pointed out that whether JO could ascertain the source of water seepage after analysing the information of the confirmatory test was a matter of professional judgement. The Office would not comment on it.

27. However, the Office noticed that although the consultant indicated in its reports that the source of water seepage had been ascertained, JO simply stated in its Reply on 30 September that "the results of the confirmatory test report indicated that the source of water seepage cannot be ascertained". It did not explain whether the conclusion was drawn after considering and analysing other relevant information. This indeed would give rise to the suspicion (especially for those who had read the consultant's reports) that JO's conclusion did not correspond with the facts.

28. As all parties involved in a water seepage case may request for a copy of the reports submitted by the consultant to JO under the Code on Access to Information, if JO does not accept the conclusions made in the reports, it is advisable to have the appropriate explanatory notes included lest those who have requested for the information mistake the findings of the reports for the final conclusion.

29. Besides, if JO suspected that the master bathroom of the Flat might be the source of water seepage, it should have conducted further tests in accordance with the established procedures to identify the source of seepage, instead of stating in the Reply on 30 September that it would stop following up on the case. When JO learned the complainant's complaint in January 2022, it decided to re-open the investigation. This, however, was merely a remedy rather than a follow-up on the case according to the established procedures.

30. The Office understood why the complainant, having read the consultant's reports and found its conclusion different from the one stated in the Reply on 30 September, was suspicious that JO came up with a wrong conclusion in an attempt to terminate the water seepage investigation. However, it would not comment on it because the complainant's concern was his personal opinion.

31. To conclude, The Ombudsman considered the Reply on 30 September inaccurate and incomplete. Also, JO did not follow the procedures when it stopped following up on the case without making further attempts to identify the source of water seepage. The Ombudsman considered this complaint partially substantiated and recommended that JO should –

(a) by taking reference of the case, remind its staff to –

i. carefully account for the investigation results in its reply letter to the informant to avoid misunderstandings; and

ii. continue to follow up on the case in accordance with the established procedures if other source of water seepage was suspected upon completion of the confirmatory test.

(b) consider whether appropriate explanatory notes could be added to the report to indicate that the conclusion of the report is not the

same as JO's final conclusion of the case, if the conclusion set out in the consultancy's report was not accepted in the end.

Government's response

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

Recommendation (a)

33. JO admits that the reply letter explaining the investigation results could have been further elaborated as it has not clearly indicated that the consultancy's report does not represent JO's final conclusion on the case. JO has reminded its staff to carefully account for the investigation results in its reply letter to the informant to avoid misunderstanding.

34. In addition, JO has reminded its staff to handle the relevant procedures in a prudent manner. If other source of water causing continued seepage was suspected upon completion of the confirmatory test, the staff of JO should continue to follow up in accordance with the established procedures.

Recommendation (b)

35. JO has, since then, added appropriate explanatory notes to all applicable consultancies' investigation reports, stating that the conclusion of the report in question does not necessarily represent JO's final conclusion on the case. The staff of JO would continue to, based on the actual situation of each case, analyse and evaluate the conclusions in the consultancies' reports and determine the source of water seepage based on their professional experience.

Buildings Department and Lands Department

Case No. 2022/0975A and 2022/0975B – Failing to properly follow up on a report of unauthorised structures in a New Territories Exempted House

Background

36. Allegedly, the complainant complained via 1823 on 29 June 2021 that the owner of the relevant flat concerned (the Flat) had illegally altered the internal layout of the Flat; illegally connected toilet pipes; and illegally installed several pipes onto the external wall of the building (collectively, the Alteration Works), which might affect the structural integrity of the building and cause seepage in the complainant's flat. The case was referred by 1823 to the Buildings Department (BD) and the Lands Department (LandsD) for follow-up. In July 2021, BD and LandsD replied to the complainant via 1823 respectively. LandsD indicated that the complaint would be referred to other departments (including BD) for follow-up. BD advised that the relevant building was a New Territories Exempted House (NETH) under the purview of LandsD; and that the alteration made to the bedroom(s) in the Flat was exempted from the Buildings Ordinance, and that the case would be referred by BD to a relevant District Lands Office (DLO) of LandsD for follow-up.

37. From late July 2021 to late January 2022, the complainant complained about the aforesaid issues three times via 1823 and filed further complaints against the owner of the Flat for having illegally enclosed the balcony of the Flat (the Balcony) and that the relevant alteration of the internal layout affected the fire-resisting construction of the building. Later DLO simply reiterated that the complaints would be referred to other departments (including BD) for follow-up. BD, on the other hand, indicated that it would take enforcement action against the Balcony in the order according to its enforcement policies, while the other issues had been referred to LandsD for follow-up. Up until the complainant lodged a complaint with the Office of The Ombudsman (the

Office), no enforcement action against the Alteration Works or the Balcony had been taken by either BD or LandsD.

38. The complainant then lodged a complaint with the Office, alleging that BD and LandsD had passed the buck to one another and failed to follow up his complaints about the unauthorised structure(s) in the Flat.

The Ombudsman's observations

39. After examining the information (including the relevant legislation, enforcement policies, inspection reports, building licence, aerial photographs, etc.) provided by BD and LandsD, the Office was of the opinion that reports by the complainant were handled by both departments in accordance with the prevailing legislation and regulatory regimes, but a lack of proper communication and explanation was evident in the process.

40. Regarding the unauthorised building works (UBWs) on the Balcony, DLO suspended the lease enforcement actions and referred the case to BD for follow-up; and BD would issue removal orders to the relevant owners when the large-scale clearance operations against the concerned housing estate would be carried out in the future. The orders were all based on the enforcement policies and guidelines, so the Office considered it could not be mentioned to involve any maladministration. The Office was pleased to learn that although the Balcony was not in immediate danger and was not a priority case according to LandsD's enforcement policies, DLO decided to further review the case to consider expediting the lease enforcement actions after receiving the Office's referral of the complaint and knowing that BD had no objection to DLO for taking lease enforcement actions against the UBWs in the Flat.

41. Although BD and DLO had respectively decided whether and when to take actions against the Alteration Works and the Balcony in accordance with their respective purview, prevailing policies and

guidelines, the Office identified the following inadequacies in both departments in handling the complainant's case –

(a) despite the multiple receipts of referral of the complainant's case from 1823 since June 2021, DLO all along simply requested 1823 to pass the case to other departments (including BD) for follow-up. It did not give the complainant a clear explanation as to why it would not take enforcement action against the Alteration Works and why it would defer actions against the Balcony. Therefore the complainant was left with an impression that DLO had not follow up on his case, and BD also had no idea of DLO's decision on not to take action against the Alteration Works after considering the complainant's case. BD therefore indicated multiple times in its replies to the complainant that his complaints would be/had been referred to DLO for follow-up. It came as no surprise, therefore, that the complainant had the impression that both departments had been passing the buck to one another;

(b) when referring the complainant's case to DLO on 13 September 2021, BD actually knew that the complainant had reported the enclosure of the Balcony, which was confirmed as UBWs during an inspection on 9 August 2021. However, BD only informed DLO of its observations about the Alteration Works and did not mention the action to be taken against the enclosed Balcony (i.e. BD would issue removal orders to the relevant owners when large-scale clearance operations against the concerned housing estate would be carried out in the future). This was still the case when BD later replied to DLO's referral on 8 December. This was perhaps why DLO had all along advised the complainant via 1823 that his case should be taken up by BD instead. In the meantime, BD kept on repeating its reply to the complainant dated 28 September 2021 (i.e. the Balcony was put on record and BD would take enforcement action in sequence according to the enforcement policies). These were enough to lead the complainant to believe that both departments had been passing the

buck to one another all along. It was not until 1 June 2022, when BD received a referral from DLO about the existence of UBWs in the Flat again, that BD was prompted to inform DLO on 4 July of the actions it intended to take; and

(c) on the other hand, even though BD did not mention its actions to be taken against the Balcony when referring the complainant's case to DLO on 13 September 2021, it did attach the photographs taken during the inspection on 9 August showing the enclosed Balcony. If DLO had subsequently reached out to BD to ascertain whether BD would take actions against the UBWs, it could have kept abreast of BD's stance as soon as possible for considering whether to take lease enforcement actions, obviating the need for repeated referrals of the case to BD.

42. The Office considered that, even though BD and LandsD had acted upon the complainant's reports in accordance with the prevailing regulatory regimes, the repeated referrals of the complainant's case to one another for follow-up under the circumstances above without proper explanation and communication reflected problems in inter-departmental collaboration. That was why the two departments seemed to be giving their own disparate accounts when they explained their respective follow-up findings to the complainant and invited an impression of shifting responsibilities to one another.

43. Based on the views above, The Ombudsman considered the complainant's complaint against BD and LandsD partially substantiated and recommended that –

(a) BD and LandsD should remind their staff to strengthen mutual communication and coordination when handling complaints of UBWs regarding NETHs; seek clarification with the other department proactively to ascertain whether it would take enforcement action within its own purview; and if necessary, provide a consolidated reply to complainants; and

(b) LandsD should remind staff to explain clearly to complainants its follow-up action/reasons for not taking action.

Government's response

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

Recommendation (a)

45. BD has reminded its staff concerned on 18 November 2022 that when dealing with reports related to suspected UBWs in NTEHs, they should enhance communication and coordination with LandsD, proactively clarify with LandsD when needed whether enforcement action will be taken according to their respective purview and in suitable cases provide a consolidated reply to the complainant.

46. On 10 January 2023, LandsD issued a set of guidelines to all DLOs regarding the handling of UBWs in NTEHs. Reminding DLOs that when referring cases to BD, DLOs should request BD to advise whether the UBWs in question do not fall within its law enforcement regime under the Buildings Ordinance, and whether such UBWs constitute obvious danger to life and property, so as to clarify whether BD would take law enforcement actions under their regulating regimes. A template reply to complainants was also enclosed with the guidelines for the reference of DLOs. The template contains consolidated information on the respective terms of reference of BD and LandsD for dealing with UBWs in NTEHs and a clear explanation to the complainant that the case of suspected UBWs has been referred to BD, and that if BD confirms that such UBWs do not fall within its law enforcement regime or constitute obvious danger, DLOs will take lease enforcement action against the structures concerned according to its enforcement policies and priority. The said template also requires DLOs to provide BD with a copy of its reply letter or email to the complainant so as to enhance communication and coordination with BD.

Recommendation (b)

47. DLO issued an email to the relevant members of its staff on 2 November 2022, reminding them that in handling similar complaints in the future, they should explain clearly in their replies the follow-up action or the reasons for not taking action.

Department of Health

Case No. 2022/0225 – Making factual errors in the quarantine orders issued to the complainant and his family and failing to take proper follow-up action

Background

48. On 11 January 2022, the complainant was notified by DH that his son and daughter had been identified as close contacts of a person diagnosed with Coronavirus Disease 2019 (COVID-19), and that the Department of Health (DH) would issue quarantine orders (QOs) to the complainant as well as his wife, son and daughter respectively to require them to undergo quarantine at the Penny's Bay Quarantine Centre (PBQC). According to the complainant, he was told by a staff member of DH that the quarantine end date on his QO and that on his wife's had been miswritten as 22 January, and that DH was aware of the mistake and would revise the date accordingly. The quarantine end date of the complainant and his family should be 21 January.

49. On 19 January, PBQC staff said that the quarantine end date of the complainant and his wife was 22 January as stipulated on their QOs. The complainant tried to explain the above situation to DH staff, who said they would follow up but did not get back to the complainant. On 21 January, PBQC staff said that the complainant's son and daughter could be discharged from quarantine as scheduled while the complainant and his wife had to stay until the next day (i.e. 22 January) as required by their QOs. According to the instruction given by the Civil Aid Service (CAS), the complainant tried to contact DH at 2125 1111 (Hotline (1)) that night but in vain. On 22 January morning, the complainant was able to get through Hotline (1) but the staff member answering his call told him to call 2125 1133 (Hotline (2)) instead. The complainant then called Hotline (2) as instructed. The staff member answering his call first stated that Hotline (2) served those who were undergoing quarantine after returning from overseas. However, the complainant expressed disagreement with the said

statement. In response, the staff member concerned argued that the complainant had quoted him/her out of context, and added that Hotline (2) was also for handling enquiries related to the discharge arrangements of PBQC. Since the staff of Hotline (2) failed to provide instant assistance for the complainant, he continued to seek help from PBQC staff by reiterating his family's situation. On 22 January evening, the complainant and his family members were discharged from PBQC.

50. Subsequently, the complainant lodged a complaint to the Office of The Ombudsman (the Office) against DH. The complainant pointed out that making errors on the QOs was an elementary mistake, while DH's delay in correcting the information was misconduct (Allegation (a)). He also pointed out that Hotline (1) was not applicable to his case and that he had to explain his situation to different DH staff repeatedly, which reflected the lack of communication among the staff (Allegation (b)). In addition, the complainant pointed out that the staff of Hotline (2) failed to provide assistance for him and he was dissatisfied with the responses and attitude of the staff member who answered his call (Allegation (c)).

The Ombudsman's observations

Allegation (a)

51. The Government's purpose of requiring isolation of persons diagnosed with COVID-19 and quarantine of their close contacts was to prevent further spread of the virus. Accuracy of the information on the relevant statutory orders was essential for cutting the virus transmission chains. QOs were statutory orders involving personal freedom of members of the public. The frontline staff of PBQC were required to carry out their duties such as conducting tests and making discharge arrangements according to the information stipulated on QOs. In the view of the Office, although the Contact Tracing Office (CTO) under the Communicable Disease Branch of DH's Centre for Health Protection (CHP) was burdened with heavy workload, it was obliged to ensure the accuracy of information in the relevant documents and to correct errors as soon as possible. In this

case, CTO miswrote the quarantine end date on the QOs of the complainant and his wife. On 11 January evening, the Quarantine Centre Task Force (QCTF) under the Emergency Response and Programme Management Branch of CHP learned about the said mistake during telephone conversation with the complainant and then informed CTO to revise the QOs. Nonetheless, CTO had not followed up on their case or amended the information even when the correct end day of their quarantine period (i.e. 21 January) arrived. CTO did not start taking follow-up actions or amending the QOs until they received further complaints from the complainant on 22 January. By then, the complainant's delay in discharge from PBQC was already irreversible, so it was meaningless to revise the QOs. Apart from materially affecting the complainant, CTO's failure to accurately prepare the documents and take follow-up actions to rectify the errors therein in a timely manner also unnecessarily increased the workload of the staff of CAS and medical post at PBQC (Medical Post) as well as that of the staff of DH's hotlines and 1823 hotline. The Office found the mistake and delay extremely unsatisfactory.

52. Therefore, The Ombudsman considered Allegation (a) substantiated.

53. In this case, four members of the same family were required to undergo quarantine due to the same confirmed COVID-19 case. There were many other similar cases as the schoolmates of the complainant's children travelling on the same school bus with the person diagnosed with COVID-19, as well as their family members, were also involved. Thus, it was relatively easy for the complainant to notice that the quarantine period on the QOs were miswritten. QCTF also noticed the errors in the information on the QOs. The Office understood that haste makes waste but issuing statutory documents such as QOs was a duty of serious nature. In the Office's opinion, DH should review and enhance the verification procedures for issuing documents such as IOs and QOs to improve the accuracy of information therein. DH should also formulate guidelines to ensure that all cases involving incorrect information could be properly recorded, reported and handled.

Allegation (b)

54. The Office noted that the staff of Hotline (l) had assisted the complainant in following up his request for discharge by referring his case to QCTF in accordance with DH's guidelines. However, the staff member concerned advised the complainant to direct his inquiries to Hotline (2) at the same time, which might mislead him into thinking that Hotline (1) would not follow up on his case. DH had already clarified that there were no guidelines instructing the 1823 hotline staff to advise the public to call Hotline (2). In addition, Hotline (1) had to deal with a large number of calls every day but DH failed to deploy more manpower in a timely manner for answering enquiries. The Office found the arrangement unsatisfactory.

55. The Office noticed that the QOs of the complainant and his wife were issued by CTO. After noticing the existence of incorrect information on the QOs on 11 January, QCTF asked CTO to make corrections accordingly. The case was eventually handled by CTO. The Office opined that DH should consider reviewing the referral procedures and guidelines to ensure that CTO staff tasked with updating QOs could be informed of complaints and follow up on them as soon as possible.

56. Regarding the follow-up actions taken by PBQC staff, there was nothing wrong for the frontline staff of CAS and Medical Post of PBQC to perform their duties according to statutory orders. Nevertheless, the complainant's problem might have been resolved earlier if the frontline staff were more proactive in communicating with the complainant and referring his case to the parties concerned after learning about his situation. In that case, the complainant would not have to seek help by calling Hotline (1). Anyhow, the Office considered that it was more important for DH to provide PBQC staff with clear guidelines to explain how they should follow up on complaints about QOs with incorrect information that were lodged by persons under quarantine. Otherwise, assistance provided by PBQC staff might be limited and improper when the staff were already preoccupied with work.

57. In summary, The Ombudsman considered Allegation (b) partially substantiated.

Allegation (c)

58. Due to the lack of independent corroborative evidence, the Office was not sure of the actual details of the telephone conversation between the Hotline (2) staff member and the complainant on 22 January (including the staff member's attitude and tone, as well as his explanation for why Hotline (2) was responsible for handling enquiries of inbound travellers from the Mainland, Macau and Taiwan). Regarding the handling of the complainant's case, while DH did not provide the staff of Hotline (2) with guidelines that had been given to that of the 1823 hotline, the Hotline (2) staff still, drawing on their own knowledge, managed to refer the case to Medical Post and CTO for further follow up. On the same day, CTO issued the amended QOs to the complainant and his wife, showing that the staff of Hotline (2) had endeavoured to follow up on the complainant's case.

59. Therefore, The Ombudsman considered Allegation (c) unsubstantiated.

60. In response to the policy updates, DH arranged for the staff of Hotline (2) to assist in answering enquiries of persons undergoing quarantine in PBQC. The Office considered it laudable as a flexible strategy in manpower deployment. However, since the outbreak of the epidemic in early 2020, the anti-epidemic measures had been updated from time to time in view of the epidemic development. Frontline staff were burdened with heavy workload and had to deal with emergencies from time to time. Apart from timely manpower deployment, the Office advised DH to improve internal and inter-departmental communication and to provide all the frontline staff with clear guidelines for proper response to and handling of public enquiries.

Other observations

61. In January 2022, the Office published an investigation report entitled "Handling of a large-scale compulsory quarantine exercise by Department of Health and Civil Aid Service" (Investigation Report). In the case set out in the report, DH explained that it had to immediately arrange for the early discharge of more than 2 000 residents from PBQC between 7 and 9 May 2021 because the Government updated on 7 May 2021 the quarantine arrangement for local confirmed COVID-19 cases involving a mutant strain. The updated quarantine arrangement, under which persons previously placed under a 21-day compulsory quarantine would be discharged upon receiving negative test results, came into effect on the same day. The prolonged stay of the complainant in that case and his family members at PBQC was a result of a manpower shortfall for the arrangement. At that time, the Office accepted DH's explanation and considered the mistake made in haste understandable, and DH stated that, to provide proper care for people under quarantine and to prevent similar incidents of prolonged stay at PBQC from recurring, inter-departmental meetings had been held with the then Food and Health Bureau (now renamed as Health Bureau) and relevant departments for a comprehensive review of the quarantine and discharge arrangements concerned and for follow-up.

62. On 10 January 2022, the Government announced and implemented an updated anti-epidemic policy regarding a shortened compulsory guarantee period on the same day. In the present case, the complainant and his wife were not among the group of people allowed to be discharged earlier from PBQC under the policy updated on 10 January 2022. As the policy update was announced on 10 January 2022 and put into effect on the same day, DH staff had to deal with more than 1 800 cases of shortened quarantine period in a tight timeframe, which further increased the workload of CTO. DH also admitted that CTO's delay in revising the QOs of the complainant and his wife was due to a temporary manpower shortfall as a result of heavy workload. In the view of the

Office, DH failed to learn a good lesson from the incident covered in Investigation Report for improvements.

63. The Office understood that quarantine arrangements would be updated in light of the development of the epidemic. However, it had been almost two years since the outbreak of the epidemic when the present case happened. Even though DH and relevant departments might not be able to accurately and comprehensively estimate the speed at and extent to which the fifth wave of the epidemic aggravated, DH should have been able to foresee the heavy workload brought by updates to quarantine arrangements and make corresponding arrangements in advance. The Office advised DH and the Health Bureau to consider spacing out the announcement and implementation dates of quarantine policy updates, so as to leave DH more time to redeploy manpower, prepare guidelines and make appropriate preparations to prevent the recurrence of making mistakes in haste and rectification delays.

64. In view of the above, The Ombudsman considered this complaint partially substantiated and recommended DH to –

(a) review and enhance the verification procedures for issuing statutory orders to improve information accuracy;

(b) formulate guidelines to ensure that the staff follow up in a timely manner on cases relating to inaccurate information on statutory orders, and keep proper record of relevant cases;

(c) consider reviewing the referral procedures and guidelines, so that CTO staff tasked with updating QOs would be informed of complaints and would follow up on them as soon as possible;

(d) issue clear guidelines to frontline staff to explain how they should follow up on cases where persons under quarantine suspected that the information on the QOs was incorrect; and

(e) consider spacing out the announcement and implementation dates of updates on mandatory quarantine arrangements, so as to leave DH more time to make appropriate preparations such as manpower redeployment and guideline preparation.

Government's response

65. DH accepted and followed up on the recommendations proposed by The Ombudsman in the investigation report. The consolidated update on the progress and implementation status is as follows.

Recommendation (a)

66. DH implemented the improvement measures mentioned in Recommendation (a), namely, launching the "Online self-reporting for COVID-19 patient" platform and the "Declaration System for Individuals Tested Positive for COVID-19 Using Rapid Antigen Test" platform on 26 February 2022 and 7 March 2022 respectively. The systems enabled the public to register their positive rapid antigen test (RAT) results online, as well as their close contacts in the same household. Upon reporting and submitting the required information, the public could download their isolation orders (IOs) and QOs, with the aim of reducing human errors and improving accuracy. In light of the epidemic development, the Government has discontinued the quarantine arrangements for close contacts (including household members living with the infected persons), definition of close contacts and issuance of QOs effective from 29 December 2022, in order to further resume social and economic activities and restore normalcy in daily life for the public. In addition, DH has ceased issuing IOs effective from 30 January 2023. The Health Officer no longer issues IOs to infected persons according to the Prevention and Control of Disease Regulation (Cap. 599A). All persons tested positive (whether through nucleic acid tests or RATs) are not required to report and provide personal particulars via the online platforms of CHP.

Recommendation (b)

67. DH implemented the improvement measures mentioned in Recommendation (b) in early July 2022. CTO provided the email address (i.e. ktcc_control@dh.gov.hk) and phone number (i.e. 2529 0238) to CAS and Medical Post to contact CTO staff directly, such that the frontline staff of CAS and Medical Post could follow up in a timely manner on cases of inaccurate information on statutory orders and properly record the cases according to the relevant guidelines. When Medical Post received reports of inaccurate information on QOs, it would immediately notify CTO by email (ktcc_control@dh.gov.hk) and keep proper record.

Recommendation (c)

68. On 9 September 2022, the hotline centre updated the guidelines on enquiry handling and referral procedures, under which public enquiries through the COVID-19 hotlines (2125 1111 / 2125 1122 / 1830 111) on amending the information on IOs or QOs were referred to CTO for direct follow-up and reply. QCTF also implemented two improvement measures to prevent the recurrence of similar incidents. Firstly, all notifications regarding complaints or enquiries from close contacts would be sent to CTO by email, instead of either by phone or by email as in the previous practice. QCTF was required to call CTO to confirm its receipt of such notifications while CTO was required to reply QCTF by email regardless of the review results. QCTF staff would then print and file the emails together with the corresponding QOs and ensure that all relevant correspondences were recorded. In addition, if QCTF did not receive any email replies from CTO within 12 hours after sending out the email notifications, QCTF staff would consolidate and record all unanswered cases and send the consolidated records to CTO at 12:00 noon every day to inquire about the investigation results. The operation manager of QCTF would also call the head of CTO to ensure that the latter would inform relevant staff to follow up on those cases. CTO also implemented a relevant improvement measure, namely, replying QCTF by email regardless of the review results.

Recommendation (d)

69. DH implemented the improvement measures mentioned in Recommendation (b) in early July 2022, issuing guidelines to DH and CAS staff under which CAS and Medical Post staff at PBQC could contact CTO directly by email (i.e. ktcc_control@dh.gov.hk) or phone (i.e. 2529 0238), such that frontline staff could follow up in a timely manner on cases of inaccurate information on statutory orders. When Medical Post received reports of inaccurate information on QOs, it would immediately notify CTO by email (ktcc_control@dh.gov.hk) and keep proper record.

Recommendation (e)

70. As matters such as updating quarantine requirements, arrangements and implementation date involved policy formulation, DH would reflect the views of The Ombudsman to the relevant policy bureaux. In fact, the Government had learned from experience and set different dates for announcing and implementing quarantine measure updates. For example, the Government announced on 8 August 2022 an update to the quarantine arrangements for inbound travellers, with the effective date being 12 August 2022.

71. DH will ensure that the above-mentioned new measures, which are already implemented, will continue to be carried out in a smooth and orderly manner. DH will also continue to communicate with various stakeholders in a timely manner and take heed of The Ombudsman's recommendations, so as to review and enhance current procedures in light of actual circumstances.

Department of Health

Case No. 2022/0578 – (1) Mistakenly putting a building that did not involve any confirmed cases of COVID-19 on the list of residential buildings with cases tested positive within 14 days; (2) Failing to explain and apologise to the complainant; and (3) Failing to take proper follow-up action

Background

72. The complainant resided at a village house (Block X), which was put by Department of Health (DH) on the "List of Buildings resided by Cases Tested Positive for SARS-CoV-2 Virus in the Past 14 Days" (the List) on 26 February 2022. To the complainant's knowledge, there were no infection or suspected cases involving households of Block X. The complainant called 1823 and DH's hotline to make a complaint on 27 and 28 February 2022 respectively, but his calls were not answered. On 28 February 2022, the complainant filed a complaint to DH by email. On 3 March 2022, the complainant found that Block X was removed from the List.

73. On 23, 29 and 31 March 2022, DH responded to the complainant via email and provided him with hyperlinks to different topics on the COVID-19 Thematic Website (Thematic Website). On 12 May 2022, DH called the complainant. Eventually, the complaint lodged a complaint with the Office of The Ombudsman (the Office) against DH in respect of the following allegations –

(a) DH mistakenly put Block X on the List. He believed that the error was due to DH's failure to verify the address of infection cases, misleading residents to be on guard against Block X instead of Block Y where there was a confirmed case, thus reducing the effectiveness of anti-epidemic measures (Allegation (a));

(b) DH did not provide an explanation or apology to him despite having found the error and removed the incorrect information from the List (Allegation (b));

(c) DH had all along wrongly taken his complaint as a general enquiry and provided no substantive replies to him in March 2023 (Allegation (c)); and

(d) during the telephone conversation with him on 12 May 2022, DH staff attempted to attribute the error of writing Block Y instead of Block X to the fact that the two village house blocks were semi-detached. He considered that DH was using this as an excuse for the error. The complainant was also dissatisfied with DH for not recording the conversation with members of the public when giving verbal replies (Allegation (d)).

The Ombudsman's observations

74. DH explained that Block X was put on the List as a result of human error while inputting the address of the confirmed case concerned. The incorrect information had been uploaded to the List over ten days after the day of report. DH was not aware of the error until the Office initiated a preliminary inquiry into it.

75. The Office noticed that while this case took place in February 2022, the Government announced the Preparedness and Response Plan for Novel Infectious Disease of Public Health Significance and activated the Serious Response Level in as early as January 2020. When the Serious Response Level was activated, DH would conduct epidemiological investigation and contact tracing of staff or patients meeting the surveillance case definition together with hospitals, put close contacts of confirmed cases of novel infection under medical surveillance and/or quarantine, and put other contacts under medical surveillance. According to the information provided by DH in this case, the procedures for updating the List involved staff from different sections and no verification

mechanism was in place, so an omission or delay in one of the steps would easily lead to errors. As of February 2022, there was still delay in updating the List because the process of assigning case numbers had to be completed manually. The Office considered that DH should continue to review the procedures for data entry to improve efficiency.

76. The Office understood that unerring accuracy in manual data entry over a long time was not easy. Considering DH's workload and manpower in the material time, it would be difficult for DH to have all the information verified. Nevertheless, the Office considered strict accuracy of data entry of paramount importance for contact tracing of cases and cutting the transmission chains. As such, The Ombudsman considered Allegation (a) substantiated.

77. The Office accepted DH's explanation for removing Block X from the List on 2 March 2022. The Office did not see any evidence suggesting DH had been long aware of the error committed but failing to inform the complainant of it, and the Office noticed that DH had apologised to the complainant for the error. The Ombudsman, therefore, considered Allegation (b) unsubstantiated.

78. The complainant suspected that the information was incorrect and had repeatedly called and emailed DH. DH only provided in its replies hyperlinks to Thematic Website that was not relevant to the List. The Office recognised that DH received a considerable amount of enquiries about epidemic situation, and one effective approach to handle them was to provide related hyperlinks. Nevertheless, the hyperlinks in DH's replies failed to address the major concerns expressed in the complainant's email. The Ombudsman, therefore, considered Allegation (c) substantiated.

79. In the absence of corroborative evidence, the Office was unable to ascertain the contents of the telephone conversation between DH staff and the complainant. Nevertheless, the Office considered that DH staff should focus on explaining the Department's findings when replying to the complaint. DH admitted making an error in its reply of 19 May 2022 to

the complainant. In its subsequent reply of 24 June 2022, DH explained the incident again and clarified the purpose of calling the complainant on 12 May 2022. The Office considered DH had responded to the complainant's concern regarding this allegation. DH's failure to record the telephone conversation was not maladministration. The Ombudsman, therefore, considered Allegation (d) unsubstantiated.

80. Overall, The Ombudsman considered this complaint partially substantiated and recommended DH to –

(a) review the procedures for data entry of confirmed cases to improve efficiency;

(b) consider including random checks in the procedures to enhance information accuracy; and

(c) make timely review of the arrangements for handling complaints, and strengthen staff training to remind them to examine complaints carefully and reply to the complaints accordingly.

Government's response

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

Recommendation (a)

82. The Centre for Health Protection (CHP) of DH had optimised the related information processing system. After members of the public who had tested positive for COVID-19 reported information regarding their confirmed cases through the "Online self-reporting for COVID-19 patient" (CDPI) (for reporting positive nucleic acid test result only) or "Declaration System for Individuals Tested Positive for COVID-19 Using Rapid Antigen Test" (RATp), the system would send the relevant information directly to the Case Portal, which would automatically assign a case

number to each of the confirmed cases, thereby simplifying the process of manual data entry by backend support personnel. Based on the relevant data, CHP would update the List. To speed up contact tracing by reducing the delay caused by manual data input, DH would continue to actively explore ways to further automate or simplify the data entry processes for confirmed cases.

Recommendation (b)

83. Measures had been implemented by CHP to enhance the accuracy of addresses reported through CDPI or RATp. When members of the public were entering their addresses in the "Building/Estate/Street" column, the system would identify relevant keywords and offer standardised address options automatically, making it easier for them to input their full addresses accurately. For problems in the reporting of cases, CHP would contact relevant persons to verify their information and offer support.

Recommendation (c)

84. DH has been constantly reviewing its complaint processing procedures, and would, among other things, provide more comprehensive instructions to case-handling staff for appropriate and more effective handling of cases. To expedite the handling of all inquiries and requests for assistance, CHP had increased manpower, redeployed staff from other teams to provide support, and arranged for the relevant staff to work overtime. DH also provides appropriate training and guidance to its staff, including arranging for experienced personnel to provide on-site training and coaching. To prevent complainants from making repeated complaints or escalating their cases, staff are encouraged to seek the assistance of their supervisors if necessary for handling complicated cases. In addition, CHP regularly reviews the progress of the handling of cases with an aim to providing an initial response within ten days of receipt of complaints, followed by a detailed response within four weeks. As some complicated cases may require additional processing time, DH will reply to and inform

the complainants of the status of such cases within four weeks of receipt of complaints.

(Note: All anti-epidemic measures have been suspended.)

Department of Health

Case No. 2022/0943 – (1) Failing to properly and promptly issue isolation documents to the complainant's five family members; (2) Spelling the name wrong on two of the isolation documents; and (3) Lack of coordination between call centres, such that their staff repeatedly asked for information about the complainant's family members

Background

85. The complainant reported positive result of COVID-19 Rapid Antigen Test (RAT) to the Department of Health (DH) for her five family members between 29 and 31 March 2022, followed by another phone call to DH on 6 April 2022 to provide further information in order to obtain the respective isolation notices/records. Between 12 and 17 April 2022, the complainant had a number of email and call exchanges with different staff of DH's call centres and had repeatedly provided the relevant information about her five family members. However, DH had failed to inform her of the status of the five cases or to provide her family members with the requested isolation documents and medicine. She later received her five family members' isolation documents on 21 April 2022, but the names on two of the documents were wrongly spelt.

86. The complainant was dissatisfied that DH failed to issue isolation documents and deliver medicine to her family members in a proper and timely manner (Allegation (a)); DH wrongly spelt the names on two of the isolation documents (Allegation (b)); and DH's call centres lacked coordination among each other (Allegation (c)). Thus, the complaint lodged a complaint with the Office of The Ombudsman (Office) against DH.

The Ombudsman's observations

87. The complainant had in fact been able to contact several DH's staff and each of the staff was keen to help. The cause of the problem was not the heavy workload per se. If the relevant workflow and procedures could be streamlined and coordination could be enhanced, not only would the complainant be able to get the requested documents earlier, but DH could also avoid multiple handling of the same case and re-generation of additional workload in a vicious cycle. Given that the COVID-19 epidemic started in Hong Kong in January 2020, the Office considered it reasonable for the public to expect the government to have made better preparation and be able to discharge basic functions like issuance of isolation documents for the public to report to their employers or schools and delivery of goodies bags and other appropriate support promptly. Moreover, while there was no doubt that DH faced immense pressure at that time, DH's workload could not justify the significant error and delay in issuing the documents in this case. As regards the delivery of the goodies bags, the complainant and DH mentioned two different dates on which the complainant first requested medicine. As there was no independent corroborative evidence, the Office could not ascertain that DH had delayed responding to the request. The Office, therefore, considered Allegation (a) partially substantiated.

88. DH explained that the wrongly spelt names on the two Isolation Records (IRs) were a result of Centre for Health Protection (CHP) staff's typographical mistakes when manually inputting the data into a computer system called IR Robot for the issuance of the documents. For documents with legal effect, the Office considered the mistakes quite unacceptable. The Office urged DH to critically review the IR handling processes and identify steps which could be automated, as well as arrange adequate cross checking. The Office, therefore, considered Allegation (b) substantiated.

89. Different hotlines maintained different call logs and referral to CHP could be made by different means including emails, telephone calls and voicemails. The Office considered that there was lack of coordination

among different hotlines operated by different departments and the procedure of referral of requests and enquiries to CHP/DH is ineffective. From the user's perspective, a single number with more lines is more desirable than numerous numbers for different but related issues. Staff of that particular number should be trained to perform triage of different requests to the relevant call centres for handling. Even if it was considered necessary to maintain different hotlines, more publicity should be provided to the public on the different functions of different hotlines to avoid delaying handling requests or double handling. The Office, therefore, considered Allegation (c) partially substantiated.

90. Overall, The Ombudsman considered this complaint substantiated and recommended DH to –

(a) review the online platform and internal workflow as well as to streamline the procedure of issuing Isolation Order (IO), Quarantine Order (QO) and IR, etc. to confirmed cases;

(b) identify steps of issuing IO, QO and IR which can be automated and/or streamlined to minimise human error;

(c) remind the staff the importance of accurate data and arrange cross check of the work related to issuance of IO, QO and IR;

(d) streamline the procedure of internal referral of requests for IO, QO and IR to CHP from different hotlines; and

(e) adopt a single number with more lines for triage to relevant call centres instead of numerous numbers for COVID-19 related enquiries, or to enhance the publicity of the different functions of different hotlines.

Government's response

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

Recommendation (a)

92. DH continuously enhanced the design of the "Online self-reporting for COVID-19 patient" (CDPI) and "Declaration System for Individuals Tested Positive for COVID-19 Using Rapid Antigen Test" (RATp). Pop-up messages were introduced in both platforms to redirect people to the correct platform. From 12 May 2022, if the public declared in a wrong platform, the Contact Tracing Office (CTO) would pick up those cases and contact them to help complete the declaration process as appropriate. From 1 September 2022, the two platforms required people to enter their mobile phone number twice to ensure that the number entered was correct and they could receive the SMS notification in order that they could continue the reporting process. To ensure RAT declarers could successfully complete the declaration procedure, two SMS reminders would be sent to those who have not yet uploaded their HKID card and RAT photographs. DH also amended the notice on CDPI to avoid misunderstanding.

Recommendation (b)

93. DH explained that delivery of IR was fully automated in IR Robot with adequate capacity to entertain a large number of requests in a short period of time. However, with the multiple channels through which the public could send in their requests for IR, there were limitations of the IR Robot that information collected by emails or telephone calls would not be automatically captured by IR Robot but need to be input manually. To enhance the accuracy of information in IR, data validation was put in place for the IR Robot to validate HKID number and telephone number.

Recommendation (c)

94. DH also arranged cross-checking of the information before issuing the isolation documents. The Operation Command Centre under CHP would also check the input from frontline staff against the IR database with the existing data. Upon completion of verification, CHP would manually input the relevant information into the IR Robot for automatic generation of IR. DH also regularly reminded the handling staff of the importance of accuracy of input data and of the need to take special care when inputting data for minimising errors resulting from typographical mistakes. Manual checking would be conducted before passing information to IR Robot to avoid human errors. Senior officers would also provide clear instruction and necessary assistance.

Recommendation (d)

95. DH designated internal contact points for coordinating issuance of IRs. Requests for IO would be referred to the officer in CTO while requests for IR would be followed up by the administration team in CHP. Enquires received from different hotlines would be centralised in Communicable Disease Branch and then redirected to the corresponding teams for better managing and handling of cases. To avoid multiple handling, a master list of IR was created since April 2022 to facilitate coordination between various teams under CHP. Processing of each IR was to be logged in this master list, and staff were encouraged to check the master list first when handling IR requests.

Recommendation (e)

96. DH uploaded all related numbers on a list in table form on COVID-19 Thematic Website for easy reference. The Government Facebook page "Tamar Talk" also shared a summary table to list out the major hotlines. DH launched the Interactive Voice Response System (IVRS) for the DH hotline since September 2022. Callers might select the service they needed and forward the calls to the appropriate parties for

follow-up action. DH also incorporated information related to COVID-19 to the "HKSAR Government COVID-19" WhatsApp Helpline so that members of the public could gain access to COVID-19 information.

(Note: All anti-epidemic measures have been suspended.)

Efficiency Office

Case No. 2022/2065 – Failing to reply to a complaint and respond to the complainant's request for the name, rank and telephone number of a staff member

Background

97. In his telephone conversation with staff A of 1823 of the Efficiency Office (EffO) on 16 June 2022, the complainant mentioned about his previous complaint against staff C of 1823. Staff A responded that as the case had all along been handled by staff B, he would ask the latter to call the complainant. However, staff B did not call back. Thereafter on 18, 20 and 21 June, the complainant requested staff A to call him to explain why staff B had not called back, but he did not get any reply. The complainant thus requested on 22 and 23 June staff A's supervisor to call him back, and requested on 24 and 27 June for the name, rank and telephone number of staff A's supervisor (subject information). On 27 June, 1823 gave a written reply to the complainant but did not respond to his complaint against staff A and his request for the subject information. Eventually, the complainant lodged a complaint with the Office of The Ombudsman against 1823 for failing to reply to his complaint and respond to his request for the subject information.

The Ombudsman's observations

98. 1823 has to handle a great number of calls and emails from the public, and considerable resources will be consumed in handling, in particular, cases involving repeated calls and emails. That said, 1823 should still proactively maintain its service level. For this complaint against staff C, the complainant had contacted 1823 frequently since December 2021. During the fifth wave of the epidemic in 2022, 1823 also had difficulty in maintaining even its basic service. Therefore, it might not be possible for 1823 to spend time and resources on such kind of complaints indeed. However, during the conversation with the

complainant on 16 June, staff A had in effect promised to ask staff B to call the complainant. Even though staff B considered it not necessary for him to call the complainant after reviewing the case, he should assign other staff members to call and inform the complainant that a written reply would be issued. 1823 should remind its staff members to avoid making any promises that are difficult to fulfil given its resource constraints.

99. Based on the above, The Ombudsman considered this complaint substantiated and recommended EffO to –

(a) remind staff members to follow up and reply appropriately when handling complaints/requests in future, so as to avoid giving people the impression of evading complaints and shirking responsibilities; and

(b) strengthen staff training to improve their skills in communicating with different complainants and their ability to handle complex cases.

Government's response

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

Recommendation (a)

101. 1823 has conducted a briefing session and a sharing session, reminding frontline staff members and supervisors to learn from this case, as well as to follow up and reply appropriately when handling complaints/requests in future, so as to avoid giving people the impression of evading complaints and shirking responsibilities.

Recommendation (b)

102. 1823 has strengthened staff training on communication skills and handling of complex cases (e.g. enriching the scenarios for methods of handling cases).

Efficiency Office and Transport Department

Case No. 2022/0871A (Efficiency Office) – 1823 having failed to make proper arrangements with the Transport Department regarding handling of emails from members of the public amid the fifth wave of COVID-19

Case No. 2022/0871B (Transport Department) – Failing to make proper arrangement with 1823 regarding handling of emails from members of the public amid the fifth wave of COVID-19

Background

103. The complainant alleged that in response to the COVID-19 epidemic situation, 1823 under the Efficiency Office (EffO) had since 23 February 2022 suspended the handling of public enquiries and complaints to TD and five other government departments submitted via email, so that it could concentrate its resources to support the hotline service of the Centre for Health Protection and handle incoming calls relating to the epidemic and environmental hygiene issues. 1823 had suggested that the six departments (collectively called "participating departments") consider handling public emails themselves.

104. The complainant emailed TD on 6 April to enquire about how to obtain the TD555 Form (viz. the Application Form for Learner's Driving Licence). The TD's computer system continued to redirect his email to 1823. As a result, the complainant received an auto-reply email from the 1823 computer system, which stated that 1823 had suspended handling email enquiries and complaints.

105. The complainant was dissatisfied that 1823 had failed to make proper arrangements with TD for handling emails from members of the public, thereby causing inconvenience to them. Eventually, the complainant lodged a complaint to the Office of The Ombudsman (the Office) against 1823 and TD.

The Ombudsman's observations

106. In view of the surge in enquiries and the pressure of shortage in manpower brought about by the epidemic, the Office considered that 1823 had no alternative but to implement the suspension of email handling service from 23 February 2022. In fact, EffO had tried to recruit more staff and redeploy manpower during the relevant period, but the problem of manpower shortage still could not be solved. On the other hand, TD found it difficult to deploy staff to receive and handle email messages sent to its email address because of manpower constraints and its engagement in providing support to fight the epidemic. About 40% of email enquiries sent to TD were directly handled by 1823 in the past. With insufficient manpower, TD could hardly reply and follow up on all public emails itself.

107. According to TD and EffO, during the suspension of email handling service, members of the public who wished to make enquiries to TD could still call 1823, the TD hotline or the offices of TD's various divisions, or they could write to the TD headquarters/various offices, email individual officers or check the TD website for the information/forms they needed. Since members of the public were not able to enquire of TD by email to its departmental address and would avoid visiting TD offices in person during the epidemic, the Office believed that most of them would choose to contact the Department by phone. However, 1823 had to focus its resources on supporting the Department of Health's hotline and handling COVID-19-related calls. Consequently, most telephone enquiries about TD had to wait a long time or even be left unanswered. Besides, those who chose to make enquiries through the general enquiry email probably would not know which TD officer was responsible for the matter involved, and therefore would not send emails or make phone calls to contact individual staff members directly. Enquiries by post usually took a longer time and the Office believed this was not the enquiry channel most people would choose.

108. That said, at the peak of epidemic, all government departments faced the problem of manpower shortage. When the Government

announced the special work arrangement for employees from 25 January 2022, it also pointed out that individual departments might temporarily reduce the provision of some public services and asked for the community's understanding. The Office considered that with a tight manpower supply and substantial increase in workload, TD and 1823 had made every effort to provide feasible channels for the public to make enquiries at that time. For the complainant's case, his enquiry was about how to obtain the Application Form for Learner's Driving Licence, and this form could be downloaded from TD's website.

109. Before and during the suspension of email handling service, 1823 and TD had announced through their websites, press releases, responses to enquirers, etc. the suspension arrangement and other alternative means to raise enquiries with TD. However, 1823 should have worked with TD to revise the automatic replies sent by its system. Take the complainant's case as an example. Knowing that 1823 would not handle emails for TD, the complainant chose to send his email directly to the email box of TD. Despite that, he still received an automatic reply from 1823. If both 1823 and TD were unable to handle emails sent to TD's email box by the public, other enquiry channels of TD should be provided in the automatic replies, so as to avoid arousing confusion among the public or even the feeling that they had nowhere to turn to for assistance upon receipt of such replies.

110. Besides, the complainant had requested the participating departments to handle emails from the public by themselves during the upcoming suspension of email handling service by 1823 on 22 February 2022. If 1823 had clearly informed the complainant in its reply that TD and certain departments had already refused the request, the complainant would not have misunderstood that TD would handle his email of 6 April.

111. Based on the above, The Ombudsman considered the complaint against EffO and TD unsubstantiated but both departments were found to have inadequacies. Both had failed to provide relevant information clearly and accurately to the enquirer, whereas EffO had also failed to inform the complainant that TD and some other departments had rejected the

suggestion to handle public emails on their own during the 1823's suspension period regarding processing of public emails.

112. The Ombudsman recommended TD and EffO to instruct 1823 to provide relevant information and replies clearly and accurately to enquirers to avoid misunderstandings.

Government's response

113. TD and EffO accepted The Ombudsman's recommendation. 1823 has discussed and agreed with TD that, in the future, if 1823 has to suspend email handling service and TD cannot handle public emails by itself, TD will suspend the transfer of public emails to 1823 and issue auto-replies to senders through TD's email system, informing the sender that TD has suspended the receipt of email messages sent to its email address and members of the public can use alternative means to contact TD, check TD's public services and download public forms. TD completed modification work of its email system in January 2023 for implementing the above arrangement.

Electrical and Mechanical Services Department

Case No. 2022/2481 – (1) Omission in the inspection of electrical works; (2) Unreasonably requiring the complainant to give a cautioned statement before initiating investigation into his report; and (3) Failing to properly handle the complainant's report of suspected contraventions of the Electricity Ordinance or its subsidiary legislation

Background

114. The complainant alleged that he had been involved in the renovation of an integrated children and youth services centre (the Services Centre) of a non-profit organisation. He found that the electrical works were jerry-built and posed electrical safety hazards which might endanger the youngsters using the facilities of the Services Centre. Therefore, he advised the electrical supervisor of the engineering company concerned to rectify the problems, but to no avail. Hence, he filed a report with the Electrical and Mechanical Services Department (EMSD) by telephone in April 2021, but an officer told him that the inspection staff of the EMSD had not found the irregularities reported by him, and had issued a certificate of compliance. The officer invited him to file a report in writing. In May 2021, he wrote to the EMSD to report the case, and was invited by the EMSD in June 2021 to give a statement in person to facilitate the EMSD's investigation.

115. In March 2022, the EMSD replied to the complainant that as the EMSD did not have the photos of the electrical installation mentioned by him, and had failed to contact the owner/tenant of the Services Centre to arrange for a site inspection, there was insufficient evidence to substantiate any breach of the Electricity Ordinance (the Ordinance) or the relevant subsidiary legislation. In the same month, the complainant went to the Services Centre himself to take photos of the suspected non-compliant parts of the electrical installation and provided them to the EMSD for follow-up action. After reviewing the photos, the EMSD staff agreed that

the electrical works concerned were suspected to be substandard, and the matter would be further pursued. However, the investigation had not been completed by the time he lodged a complaint with the Office of The Ombudsman (the Office), leaving the electrical hazards unchecked.

116. The complainant alleged that the EMSD –

(a) had made omissions in the inspection and acceptance of the electrical works of the Services Centre (Allegation (a));

(b) had unreasonably required him to sign the interview record, which mentioned his suspected contravention of the Ordinance, before initiating investigation into his report (Allegation (b)); and

(c) had failed to properly handle his report on the suspected contravention found in the electrical works of the Services Centre (Allegation (c)).

The Ombudsman's observations

Allegation (a)

117. According to the Ordinance, the EMSD is not required to undertake inspection of the electrical works of the Services Centre, which should instead be carried out by the registered electrical workers engaged by the registered electrical contractor. Therefore, The Ombudsman considered Allegation (a) unsubstantiated.

Allegation (b)

118. The EMSD had explained to the Office why the complainant was invited to give a cautioned statement. After reviewing the relevant records of the EMSD, the Office considered the records consistent with the EMSD's version that it initiated an investigation into the complainant's report in May 2021, but not after taking his statement in June 2021. The

Office did not rule out the possibility of miscommunication between the complainant and the EMSD staff. Had the staff explained the purpose of the meeting more clearly to the complainant at that time, it might have helped to avoid his misunderstanding that the EMSD was making things difficult for him. In light of the above, The Ombudsman considered Allegation (b) unsubstantiated.

Allegation (c)

119. After scrutinising the relevant guidelines of the EMSD, the Office noted that the guidelines required the EMSD staff to arrange a site inspection after initiating an investigation. If they were unable to enter the premises during the first inspection, a Notice to Inspect Electrical Installation should be issued to the owner/tenant. The EMSD explained that due to the fourth wave of the epidemic, it had decided to issue the Notice without attempting to conduct a site inspection first. However, during the six months between the complainant's report filed in May 2021 and the conclusion of the case in November 2021, the EMSD made no attempt to conduct a site inspection or follow up on the unanswered Notice to ascertain the condition of the electrical installation on-site. In fact, if the complainant had not gone to the Services Centre himself to take photos for the EMSD's reference, the EMSD would not have arranged a site inspection afterward, and the electrical hazards would have continued to exist and pose a threat to public safety. Given that the electrical installation of the Services Centre affected public safety, and the complainant had been involved in the electrical works, provided the EMSD with details of the electrical hazards, and fully cooperated with the EMSD's investigation (including giving a cautioned statement), the Office considered that the complainant's report should have been taken more seriously and handled with more caution. Furthermore, judging from the fact that the complainant was able to enter the Services Centre to take photos of the electrical installation, if the EMSD had followed up on the unanswered Notice in the first place, it should have been able to enter the Services Centre for a site inspection and should have found the defective electrical installation earlier. In hindsight, the EMSD's decision to conclude the case

in November 2021 was unsound, as it had not attempted to conduct a site inspection or contact the Services Centre through other means to ascertain the condition of the electrical installation on-site. Fortunately, the complainant persisted in following up on his report, thus resulting in the ultimate rectification of the electrical installation in the Services Centre without any occurrence of electrical accidents in the interim.

120. The Office also noted that according to the guidelines, the EMSD staff should acknowledge receipt of/give an interim reply to a report within 10 working days after receiving the report. If the investigation of a case could not be completed in about two months, a second interim reply should be given to the informant within 10 working days upon the expiry of two months from the receipt of the report. After completing the investigation and concluding the case, a final reply should be given to the informant within 10 to 15 working days. The guidelines also required a written reply to be given to the informant if a report was made in writing. However, the records showed that the EMSD staff had obtained the complainant's correspondence address during the telephone conversation on 4 May 2021, but no written interim reply was given to the complainant subsequently. After the EMSD decided to conclude the case in November 2021, no final reply was given to the informant within 10 to 15 working days. Had the EMSD provided a written interim reply to the complainant's report in accordance with the guidelines, it might have helped the complainant understand the department's follow-up actions and avoid Allegation (b). In light of the above, The Ombudsman considered Allegation (c) substantiated.

121. In addition, the Office noted that the guidelines of the EMSD did not specify how or whether it was necessary to follow up on the case where no reply was received after the issue of the Notice to Inspect Electrical Installation, or where access to the premises for inspecting electrical installations was denied. The Office considered it helpful for staff to handle reports of electrical unsafety more effectively if the follow-up procedures after issuing the Notice are added to the guidelines.

122. In conclusion, The Ombudsman considered the complaint against the EMSD partially substantiated, and recommended the EMSD to –

(a) remind staff to comply with the guidelines stringently when handling reports of electrical unsafety; and

(b) review the guidelines to consider adding follow-up procedures after issuing the Notice to Inspect Electrical Installation.

Government's response

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

124. On 18 November 2022, the EMSD held an experience-sharing session for all staff responsible for handling reports on electrical safety. Staff have been reminded to strictly follow the guidelines when handling reports on electrical safety, and have been briefed on the contents of the revised guidelines.

125. The EMSD has further reviewed the prevailing guidelines on handling reports and made amendments to the follow-up procedures after issuing a Notice to Inspect Electrical Installation. If no reply is received before the deadline specified in the first Notice, the EMSD staff shall issue another Notice within 10 working days. If no reply is received before the deadline specified in the second Notice or access to the premises for inspecting electrical installations is denied, the EMSD staff shall issue an "advisory letter" within 10 working days to request the person-in-charge of the premises to properly repair the electrical installations concerned, or take further actions (such as applying for a warrant from the Magistrate to enter the premises) within 10 working days if there is sufficient evidence.

Environmental Protection Department

Case No. 2022/1020B – (1) Failing to hold a consultation on the contract renewal of a dedicated liquefied petroleum gas filling station; and (2) Failing to properly follow up on the problem of noise caused by the dedicated liquefied petroleum gas filling station

Background

126. According to the two complainants, the Government set up a dedicated liquefied petroleum gas filling station (DFS) at Kwong Chun Street, Tai Po (hereinafter referred as "Tai Po DFS") many years ago. Vehicles using the Tai Po DFS had been causing traffic congestion and noise problems in the vicinity. While the contract for the Tai Po DFS would end in December 2024, the Electrical and Mechanical Services Department (EMSD) renewed the contract with the operator of the Tai Po DFS in May 2021 without conducting any consultation. Besides, the Environmental Protection Department (EPD) told the Tai Po District Council (DC) twice in 2021 that it would follow up timely and take appropriate action if the activities of the Tai Po DFS gave rise to noise problem. Yet, the problem persisted.

127. Tender notices for contracts of DFSs were gazetted in December 2020 and January 2021, and new contracts were awarded in mid-2021 by EMSD. The two complainants lodged a complaint with the Office of The Ombudsman (the Office) and alleged that –

(a) EMSD failed to conduct consultation on the contract renewal of the Tai Po DFS, resulting in missing the opportunity to alleviate the traffic congestion and noise problems concerned (Allegation (a)); and

(b) EPD failed to properly follow up on the problem of noise (Allegation (b)).

The Ombudsman's observations

Allegation (a)

128. The Office has thoroughly scrutinised the information provided by EMSD and EPD. According to the two government departments, an inter-departmental working group (the Working Group) was set up to review the issues related to DFSs. As EPD was the chair of the Working Group and made the decision not to conduct consultation on the new contract arrangement for the DFSs, the government department responsible for the complaint in respect of the alleged "failing to conduct consultation" (i.e. Allegation (a)) should be EPD.

129. The purposes of the District Administration Scheme put in place by the Government in 1982 were to achieve a more effective coordination of government activities in the provision of services and facilities at the district level, to ensure that the Government is responsive to district needs and problems, and to promote public participation in district affairs. Government departments would seek views on the work carried out in a district and matters that are likely to affect the livelihood, living environment or well-being of local residents, and consult district-based organisations, such as DCs, area committees and owners' corporations, as necessary, with a view to responding to local needs appropriately.

130. Consultation exercises would help the affected parties to understand the background, factors for consideration, implementation details, etc. of the policies or measures, thereby facilitating their implementation. During the consultation, government departments might also learn from circumstances that had not been taken into consideration, thus providing an opportunity to make adjustments or improvements to the policies or measures before implementation. Therefore, the Office considered that timely and adequate consultation was an important element of good administration. Unless there were very strong justifications (e.g. situations involved public safety or hygiene and required urgent

responses), government departments were expected to conduct proper consultation on measures affecting the people's livelihood of the district.

131. Regarding EPD's justifications for not conducting consultation on the new contract arrangement for the Tai Po DFS, the Office noted that the Working Group had already decided to renew the contract of Tai Po DFS before the information of tendering and the new contract were published in the Gazette. Therefore, the Office opined that the gazettal of the tender invitation and the new contract could not serve the purpose of public consultation. Over the years, there were concerns suggesting that the Tai Po DFS had been causing traffic problems in the vicinity and people had been requesting for relocation of the Tai Po DFS to another location in Tai Po. The Office was of the view that, even if the operation of the DFSs would remain more or less the same as before and the Government had already received quite some views while considering the future arrangements and formulating policies for the DFSs, the Working Group should still conduct consultation to explain to the affected parties the justifications for retaining the Tai Po DFS in situ and to advise the affected parties the relevant mitigation measures, with a view to addressing their concerns over the years. Meanwhile as noted above, during the consultation process, government departments might learn from circumstances that had not been taken into consideration.

132. The Office understood that the social situation in 2019 and the COVID-19 epidemic had exerted certain impact on the operation of government departments and DCs. The Office opined that the Working Group could still consider other feasible ways, such as circulation of papers, online dissemination of information or via the Tai Po District Office, to duly consult the affected parties. In addition, the Office did not accept the explanation that the tendering process would not be delayed if the consultation was not conducted. Since the contract expiry date for the Tai Po DFS was a fact already known to the government departments, to ensure timely management of the contract matters for the DFSs, they should carry out the work in advance instead of sacrificing the necessary procedures.

133. The Office was of the view that the gazettal of the tender invitation and the new contract could not replace consultation nor even be regarded as an alternative way to notify the Legislative Council and the local community. The prevailing general practice for the Government to strengthen the communication with the public was dissemination of information through various platforms including press releases, websites and social media, while the DCs had been receiving different papers specifically prepared by the Government. Relying solely on Gazette to disseminate information was not only less effective but could also give the impression of avoiding controversy.

134. In conclusion, The Ombudsman considered Allegation (a) substantiated.

Allegation (b)

135. The Office was not in a position to comment on whether vehicles travelling in the vicinity of the Tai Po DFS had caused traffic noise problems to the nearby residences, as this was a matter of professional judgement for EPD and not an administrative matter within the ambit of the Office.

136. EPD explained that during the period in question, it had not received any noise complaints against the Tai Po DFS, and there was no information suggesting that the station gave rise to noise concern. On the other hand, the noise generated by vehicles travelling on the roads in the vicinity of the station or vehicles queuing up to enter the station fell outside the purview of EPD. From the administration point of view, EPD had duly followed up the concerns over the noise of the Tai Po DFS. The Ombudsman considered Allegation (b) unsubstantiated.

137. Based on the above investigation findings, The Ombudsman was of the view that the complaint against EPD was partially substantiated, while the complaint against EMSD was unsubstantiated. The Ombudsman recommended that EPD should learn from the experience in this case and,

in future, when encountering similar situations, carry out appropriate consultation to explain to the affected parties the rationale for the Government's policies/measures, and listen to their views, so as to ensure transparency in the Government's administration.

Government's response

138. EPD accepted The Ombudsman's recommendation and would conduct appropriate consultation in the future when renewing the contracts of DFSs.

Environmental Protection Department

Case No. 2022/2068B – (1) Failing to properly handle a complaint about illegal discharge of effluent from a village house; and (2) Failing to reply to the complainant's complaint lodged with 1823

Background

139. The complainant alleged that effluent had been discharged from a village house in the village (the Village House) for a long time, causing serious environmental pollution and sanitary nuisances. In April 2022, the village representative lodged a complaint with the concerned District Office via the respective Rural Committee (Case 1). The case was initially referred to the Environmental Protection Department (EPD) for follow-up actions and was subsequently passed on to the Food and Environmental Hygiene Department (FEHD) for handling. Given the perennial nature of the problem, the complainant lodged a complaint via 1823 in June of the same year, stating that there was effluent discharge from the aforesaid site over a prolonged period which caused mosquito problem (Case 2). The case was referred to FEHD and EPD for follow-up actions. However, the complainant opined that the follow-up actions taken by FEHD could only solve the odour and mosquito problems temporarily; and EPD had not yet given any response when the complainant lodged a complaint with the Office of The Ombudsman (the Office) against EPD. In summary, the complainant lodged a complaint in respect of the following –

(a) EPD and FEHD failed to properly handle the complaint concerned and tackle the problem at source, causing illegal discharge of effluent from the Village House (Allegation (a)); and

(b) EPD failed to reply to the complainant's complaint lodged with 1823 (Allegation (b)).

The Ombudsman's observations

Allegation (a)

140. EPD and FEHD had explained to the Office the roles and responsibilities of the two departments in the incident, the follow-up actions and investigation results taken in response to the relevant complaints. After reviewing the information related to the case, including the work and investigation records of the two departments, the Office made the following comments.

141. Upon the Office's investigation, there was no evidence showing FEHD's maladministration. The Office acknowledged that given the complexity of this pollution case (e.g. involving seepage of an underground privately-owned drainage pipe, the septic tank of the Village House being located on a slope instead of a flat surface, the seepage occurred during rainy seasons, etc.), it would be difficult for EPD or any individual department to handle the case and identify the source on its own. It took the concerted efforts of all the relevant departments to exchange information and investigate into the case based on their respective jurisdictions and areas of expertise to progressively identify the source of the seepage. In view of the approach adopted by EPD in handling the complaint, the Office considered that EPD had taken appropriate follow-up actions according to the situation and the latest development, and eventually identified the source of the pollution and the ways to uproot the problems. The follow-up inspection by EPD showed that the repair work of the drainage pipe concerned was completed and seepage of effluent was no longer detected.

142. Overall speaking, the Office considered that EPD and FEHD had fulfilled its responsibilities in the case and strived to handle the seepage of effluent at the site concerned. There was no evidence of maladministration by the two departments. The Ombudsman considered Allegation (a) unsubstantiated.

Allegation (b)

143. According to the information provided by the complainant, she was the complainant of Case 2. The Office considered that, as this case was rather complicated, it was understandable that EPD would need more time to process the case and could not reply to the complainant with the findings at an earlier stage.

144. Furthermore, EPD had explained why it did not issue a preliminary reply to the complainant directly or via 1823 and only liaised with the village representative when following up on Case 2. The Office had reviewed the EPD's procedures and guidelines on handling pollution complaints and accepted the explanation given by EPD that it was not a necessary requirement for its staff to issue preliminary replies in response to/acknowledge receipt of the complaints referred by other departments (including 1823). As such, EPD's failure to issue separately a preliminary reply to the complainant after receiving Case 2 from 1823 did not constitute misconduct for the purpose of its guidelines. On the other hand, as the complainant mentioned in Case 2 that she had lodged a relevant complaint before and the details tallied with Case 1, EPD mistakenly regarded the two cases as related (i.e. Case 2 was a follow-up complaint made by the village representative or the village representative together with other villagers). Hence, EPD reported the progress of the case only to the village representative (the person who represents the villagers to follow up on village affairs) during the follow-up process. The Office considered that the explanation given by EPD was not unreasonable and the way it handled the case could hardly be regarded as inappropriate.

145. Having examined the information related to the case, the Office opined that EPD had generally handled the case and responded to the complaint in accordance with the established procedures and guidelines, and therefore considered Allegation (b) unsubstantiated.

146. Nevertheless, the complaint was partly caused by the fact that the complainant had not received any reply from EPD after lodging the

complaint with 1823, which led to the misunderstanding that EPD had not followed up the case or had ignored her complaint. Due to the complexity of the case, it took EPD more than three months from receiving Case 2 to giving a substantive reply. The Office considered that since Case 2 was referred by 1823, it would have been more desirable if EPD could have, through 1823, given the complainant a timely account of the progress of the case and the reasons for the delayed reply, thereby avoiding the failure to convey messages to the complainant due to misidentification of the complainant, as in the present case.

147. In conclusion, The Ombudsman considered the complaints against EPD and FEHD unsubstantiated. However, there was room for improvement in the handling of Case 2 by EPD.

148. The Ombudsman recommended that EPD should remind its staff that, when handling complaints referred by 1823, if they anticipated that their investigations would take a longer time to complete and substantive replies could not be issued soon, staff should issue timely interim replies, directly or via 1823, to complainants and keep them informed of the progress of its investigation and the reasons why more time would be required for giving a substantive reply.

Government's response

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

150. EPD has sent an email to remind all divisions the following –

(a) when handling complaints referred by 1823, if they anticipate that their investigations would take a longer time to complete and substantive replies could not be issued soon, they should issue timely interim replies, directly or via 1823, to complainants and keep them informed of the progress of its investigation and the

reasons why more time would be required for giving a substantive reply; and

(b) if more than one complaint is involved in the same case, unless it could be confirmed that the complaints are lodged by the same person, separate replies should be given to the individual complainants respectively to avoid misunderstanding.

151. EPD would also re-circulate relevant departmental guidelines on handling pollution complaints for staff's reference on a regular basis.

Employees Retraining Board

Case No. 2022/1957 – Unclear guidelines on and definition of the term "highest educational attainment" in the course application form

Background

152. On 22 June 2022, the complainant made a complaint to the Office of The Ombudsman (the Office) against the Employees Retraining Board (ERB).

153. According to the complainant, he had attended a course (Course A) offered by a training body appointed by ERB from October to November 2016. In June 2022, ERB alleged that he had misrepresented his educational attainment in applying for Course A and demanded him to return to ERB the cost of Course A and the retraining allowance he had been granted totalling over $5,000.

154. As regards his educational attainment, the complainant explained that he enrolled in a part-time bachelor's degree programme at a university in 2015, but suspended his study in 2016. Subsequently, he completed the programme and obtained his bachelor's degree in 2019. As he had not yet obtained the degree when enrolling for Course A in 2016, he declared that his "highest educational attainment" was "Diploma to sub-degree", which was based on his understanding of this term in the general context of study and job search. Nevertheless, ERB referred to the definition of "highest educational attainment" in Note 3 of the course application form, pointing out that it meant "the highest level of full curriculum study that applicants are attending or have attended at schools", which covered the part-time bachelor's degree programme that the complainant had taken. Hence, ERB considered that the complainant had misrepresented his educational attainment.

155. The complainant denied having deliberately misrepresented his educational attainment. He questioned the lack of clarity in the guidelines

of ERB's course application form regarding the term "highest educational attainment", including that –

(a) ERB had failed to add a note next to the term "highest educational attainment" in the course application form to draw applicants' attention to its definition (Allegation (a)); and

(b) ERB had failed to define "full curriculum study", causing the complainant to take it as full-time education programme. Thus, he did not declare that he had taken the part-time bachelor's degree programme (Allegation (b)).

The Ombudsman's observations

156. "Highest educational attainment" is a mandatory field in the course application form and it is essential for ERB to confirm whether applicants are among its service targets and the training resources are properly utilised. In the Office's viewpoint, it is vitally important that applicants correctly understand and declare their "highest educational attainment" because failure to provide accurate information may result in ERB's recovering the training cost and retraining allowance granted after the completion of the course. The applicants may even be liable to the penalty set out in the application guidelines.

157. On the other hand, ERB's definition of "highest educational attainment" in the application guidelines may be different from ordinary people's understanding, which is the education level attained after completing a course and obtaining the certificate of the course. If applicants consider it sufficient to adopt the common interpretation of the term without reading the instructions given by ERB, it is possible that they will inaccurately declare their highest educational attainment.

158. After receiving the Office's referral of this complaint, ERB reviewed the case and eventually accepted the complainant's explanation and exempted him from the compensation or other penalties. The Office

considered that ERB had taken heed. That said, given that the definition of "highest educational attainment" was of significance and might have great impact on approving course applications, and that it might be different from ordinary people's understanding of the term, the Office considered that ERB should more effectively remind applicants about the requirements and definition of "highest educational attainment" to avoid misunderstanding or disputes. After examining ERB's course application form, the Office had the following views on the complainant's two queries about the application form.

Allegation (a)

159. As ERB has already explained the term "highest educational attainment" in the application guidelines in its course application form, applicants should study each item of the guidelines. However, applicants are obliged to declare accurately their "highest education attainment". The Office considered it appropriate for ERB to strategically put a reminder in the course application form to alert applicants to the relevant explanation. The complainant's suggestion of adding a note next to the term "highest educational attainment" would be a feasible way of guiding applicants to read the explanation.

160. The explanation of "highest educational attainment" was provided by means of a note (i.e. Note 3) in very small font, which was neither noticeable nor clear, in the existing application guidelines. For this reason, applicants might miss the explanation. In the Office's view, using bold and bigger font or underlining the words could help alert applicants and make the explanation easier to read.

Allegation (b)

161. According to Note 3 of the application guidelines, "highest educational attainment refers to the highest level of full curriculum study that applicants are attending or have attended at schools". Nevertheless, ERB did not specify the meaning of "full curriculum study" in the course

application form or the application guidelines. It only offered an explanation in the administrative guidelines issued to the training bodies appointed.

162. It is necessary for ERB to specify the meaning of "full curriculum study" for applicants' reference because it forms part of the definition of "highest educational attainment". As "full curriculum study" was not a commonly used term for members of the public, ERB should not assume or expect applicants could understand its meaning. The meaning of "full curriculum study" was only explained in the administrative guidelines issued by ERB to the training bodies while applicants were not provided with the definition of the term. The Office considered this inadequate.

163. In light of the analysis above, the Office was of the view that the definition of "highest educational attainment" in ERB's course application form was unclear. Hence, this complaint against ERB was considered to be substantiated.

164. The Ombudsman recommended that ERB promptly review and amend its course application form and application guidelines to give a clear definition and explanation of the terms "highest educational attainment" and "full curriculum study". If the application guidelines cannot be exhaustive because of the large number of items to be noted, ERB may consider releasing relevant information by other means, such as attaching a supplementary sheet to the application form, publishing the information on its website, engaging the training bodies to remind applicants, etc.

Government's response

165. ERB accepted The Ombudsman's recommendation and has amended its course application form and added a note next to the term "highest educational attainment" in bold and underlined font as well as using bold and bigger font for the definition. The course application form has included an explanation of the term "full curriculum study".

Food and Environmental Hygiene Department

Case No. 2021/3102 – (1) Failing to apply for a Closure Order against an unlicensed restaurant; and (2) Failing to respond to the complainant's enquiry

Background

166. According to the complainant, he complained to the Food and Environmental Hygiene Department (FEHD) about the unlicensed operation of a restaurant over the years. Despite FEHD's prosecutions instigated against the restaurant, the unlicensed operation continued. The complainant was dissatisfied that FEHD had not applied to Court for a closure order against the restaurant (Allegation (a)).

167. On 18 May 2021, the complainant emailed FEHD, asking the reason for not closing down the restaurant. FEHD did not reply to the complainant (Allegation (b)).

168. On 8 September 2021, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against FEHD.

The Ombudsman's observations

Allegation (a)

169. FEHD explained that although the premises concerned (the Premises) was not one of those accorded priority for application for a closure order, FEHD did consider in late April 2019 and in a period after early November 2020 whether it should make such an application in accordance with the relevant criteria.

170. The Office was aware that the District Environmental Hygiene Office (DEHO) of FEHD issued memoranda to the Independent Checking Unit (ICU) and the Buildings Department (BD) in 2019 and 2021

respectively, requesting the layout plans of the Premises for considering whether it should apply for a closure order. While their replies were pending, the Licensing Section of FEHD received new applications for a food business licence in respect of the Premises from different applicants. Hence, DEHO had set aside its consideration of applying for a closure order.

171. The Office found FEHD's explanation not unreasonable. Given that three different applicants had applied for food business licences for the Premises, and the unlicensed restaurant on the Premises was not operated by the latest applicant, DEHO had no basis to apply to Court for a closure order against the previous applicant's unlicensed operation when processing a new licence application. Yet, members of the public who were not aware of the material facts might have an impression that the unlicensed restaurant had been in operation on the Premises since 2018.

172. In hindsight, the Office could not deduce whether DEHO would have applied to Court for a closure order if it had successfully obtained the layout plans of the Premises from ICU between October 2019 and April 2020 and from BD between February and June 2021. However, the Office was of the view that DEHO ought to have taken the initiative to follow up with ICU and BD if their replies remained outstanding after a long period of time. The Office considered it difficult to understand why FEHD did not take any follow-up action.

173. The Office did not further investigate why ICU and BD had not responded to DEHO's requests for layout plans because they were not under complaint in this full investigation case. The Office was of the view that FEHD should follow up on the matter and strengthen its collaboration with the two institutions to ensure that its information request procedures are effective.

174. Moreover, the Office found that FEHD usually requests information on premises by way of a memorandum. However, the Office learnt that regarding the properties sold by the Hong Kong Housing

Authority (HKHA), government departments could check the as-built drawings (including alterations or additions approved by ICU) via the Housing Electronic Building Records Online System (HeBROS). By obtaining an electronic certificate from ICU, government departments could access the system to search, read and obtain the relevant layout plans and documents. FEHD should consider enhancing its efficiency by changing its practice and checking building plans of premises online.

175. Overall, the Office's investigation findings revealed that the FEHD staff failed to follow the guidelines to document records of inspections on the Premises and inspect the restaurant operating without a licence on the Premises every week and instigate prosecutions accordingly.

176. Furthermore, DEHO staff were not aware that the application for (Provisional and Full) General Restaurant Licences for the Premises submitted in August 2017 was cancelled by the Licensing Section in early August 2019. As a result, it failed to inspect the Premises once a week as stipulated in the guidelines on conduct of inspections. The Office also found in the course of investigation that the notification mechanism between the Licensing Section and DEHO needed improvement.

177. In view of the above analysis, The Ombudsman considered Allegation (a) unsubstantiated but there were other inadequacies on the part of FEHD.

Allegation (b)

178. FEHD admitted that it had failed to give a substantive reply to the complainant's enquiry of 18 May 2021. It apologised to the complainant and instructed the staff concerned to make improvement.

179. FEHD also admitted that it had neither provided the complainant with the information requested in his email of 20 April 2021, nor responded to his request. Although FEHD became aware of the situation in the course of the Office's investigation, it still failed to follow up on the

complainant's request for information. Despite the apology to the complainant and instructions to its staff, FEHD indeed did not follow up on the complainant's request.

180. As seen in the above paragraphs, FEHD failed to properly handle the complainant's enquiry and request. Nor did it manage to rectify promptly the problems in this case. Hence, The Ombudsman considered Allegation (b) substantiated.

Other problems

181. In its response to the draft investigation report, FEHD indicated that since the records were not complete, it could not confirm whether the staff concerned had failed to follow the guidelines to conduct weekly inspections and prosecute the operator of the unlicensed restaurant on the Premises. As the prosecution records of FEHD showed that the Premises was prosecuted only once a month during the relevant period, the Office suspected that FEHD staff had not followed the guidelines on inspections. Even if the staff concerned did inspect the Premises every week in accordance with the guidelines, the absence of relevant records was obviously not in compliance with the guidelines. Besides, if prosecutions have been instigated every week in accordance with the guidelines, there should be other records, like the prosecutions instigated every month, showing that the work has been done, unless the weekly inspections conducted during that particular period did not find any unlicensed restaurant operation. Regarding FEHD's disciplinary investigation of the staff concerned, as it is a personnel matter, the Office did not intervene.

182. Besides, paragraph (v) of the Introduction of the Guidelines on Interpretation and Application (the Guidelines) of the Code on Access to Information (the Code) stipulates that all requests for information, whether made under the Code or not, should be considered on the same basis as that applicable to requests under the Code. In other words, when departments decide the release or otherwise of the requested information, consideration should be given in accordance with the provisions of the Code.

According to paragraph (vi) of the Introduction of the Guidelines, in case a non-Code request is to be refused, departments, should, as far as possible, give reasons for refusal in accordance with the provisions in Part 2 of the Code, and also advise the requester of the review and complaint channels. In addition, paragraph (viii) of the Introduction of the Guidelines stipulates that to varying degrees every government department should respond positively to informal requests for information. It is important that the Code is not used, or perceived to be used, within or outside the Government, as a device for obstructing this sort of information flow.

183. The Office noticed that, the complainant requested DEHO's records of actions taken in handling his complaint, including the dates, time, name and rank of the staff involved in the actions and the actions taken on 20 April 2021. However, DEHO replied to the complainant in the same month and informed him of the investigation findings and actions taken, without providing the requested information. Although the complainant's request for information of 20 April 2021 was not made under the Code, the Office considered that FEHD ought to have adhered to the Code's principles and proactively decided whether or not to release the requested information to the complainant in accordance with the provisions of the Code.

184. Although DEHO's reply in April 2021 provided the name and rank of the case officer and the actions taken, the dates and time of inspections were not included, and DEHO did not make it clear whether the actions were taken by the staff mentioned in the reply. Besides, if FEHD considered that records of inspections were internal documents which should not be released to the complainant, it should have made reference to Part 2 of the Code and explained the reason for refusal, regardless of whether the complainant and FEHD interpreted "the relevant records of actions taken" in the same way, and FEHD should not have ignored his request.

185. Although the complainant did not repeat his request for the relevant records of actions taken, or express any discontents regarding

DEHO's reply in April 2021 in his subsequent email and complaint, it did not mean there was no impropriety on FEHD's initial handling of the complainant's request for information. Hence, the Office did not agree with FEHD's conclusion.

186. It is the Office's aim to assist government departments in making improvements and promote better public administration by way of complaint investigations. The Office expected that departments could positively deal with complaints, gain experience from cases where inadequacies have been identified after investigations and make self-improvement.

187. Overall, The Ombudsman considered this complaint partially substantiated and recommended that FEHD should –

(a) strengthen internal supervision to ensure that staff responsible for conducting inspections and instigating prosecutions against unlicensed restaurants will perform their duties in accordance with the guidelines and keep proper work records;

(b) enhance collaboration with ICU and BD in following up on requests for information so that they can respond to such requests in a timely manner;

(c) remind its staff to take the initiative to contact other departments if the latter do not respond promptly to FEHD's requests for information;

(d) when going through the procedures for applying for a closure order, consider obtaining building plans via HeBROS so as to enhance effectiveness and efficiency;

(e) review regularly the internal communication mechanism between the Licensing Section and DEHO to ensure that the enhanced Licencing Information Management System can achieve the

desired results, and DEHO can follow the guidelines to conduct inspections and take enforcement action according to the latest status of the licence applications;

(f) remind its staff to draw on experience from this case and respond to public enquiries in a timely manner, and strengthen its staff's understanding of the Code with enhanced training so that they will be able to respond to the enquiries and requests for information made by members of the public in accordance with the Code (and its spirit);

(g) follow up on the complainant's request for information in his email of 20 April 2021 and expedite the handling of the request if the complainant still pursues it; and

(h) complete the investigation of the staff concerned as soon as practicable and draw on the experience from this case to improve the internal supervision of DEHO from an administrative perspective to avoid recurrence of missing inspection records as seen in this case.

Government's response

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

Recommendation (a)

189. FEHD already has guidelines in place on conducting inspections and instigating prosecutions against unlicensed restaurants. The guidelines set out clearly for FEHD staff the requirements regarding the licensing and inspection of food business, including the frequency of inspections for unlicensed food premises and record-keeping etc. FEHD is of the view that this case may involve individual staff failing to comply with the relevant guidelines and is an isolated incident. FEHD has reviewed the

enforcement against unlicensed food premises and introduced a series of new initiatives, such as regular sample checking of at least 30% of the inspection records of unlicensed food premises, to improve internal supervision. FEHD also reminded DEHOs on 15 June 2023 via email to comply with the relevant guidelines.

Recommendation (b)

190. Apart from issuing memorandum, FEHD will follow up on requests for information with ICU and BD by emails. FEHD reminded relevant staff in October 2022 that, if no response is received, they have to take the initiative to contact relevant departments to follow up on the progress of the requests.

Recommendation (c)

191. FEHD instructed and reminded the staff of relevant sections in October 2022 to take the initiative to contact the departments concerned and follow up on the progress of the requests if no response is received after a prolonged period.

Recommendation (d)

192. If the premises against which a closure order is sought is under the purview of HKHA, DEHO staff will use HeBROS to obtain the building plans of the premises as soon as possible. As for premises located in private properties, FEHD will continue to obtain the building plans of the premises from BD, and timely check with BD as necessary and follow up on the progress of the requests.

Recommendation (e)

193. FEHD has improved the communication mechanism between its Licensing Section and DEHOs and enhanced the Licensing Information Management System (LIMS), so that apart from internal despatch of letters

under the established procedures by the Licensing Section, LIMS will also automatically send relevant information (including cancellations of licence application) by email to DEHO staff for prompt follow-up actions. FEHD will review regularly the internal communication mechanism between the Licensing Section and DEHOs to ensure that the enhanced LIMS can achieve the desired results.

Recommendation (f)

194. The Complaints Management Section of FEHD sends emails to DEHOs on a regular basis to remind them of the points to note on handling and responding to complaints or enquiries from members of the public. DEHOs will also forward such emails to relevant staff as reminders for compliance with the requirements and details on handling complaints. Moreover, DEHOs will from time to time remind the staff of relevant sections to respond to the enquiries/requests for information made by members of the public strictly in accordance with the work guidelines and the Code and its spirit, and inform the complainants of the investigation progress and results in a timely manner.

Recommendation (g)

195. FEHD made a reply to the complainant on 26 October 2022. Since then, no request or comment has been received from the complainant. If the complainant approaches FEHD again, FEHD will handle the request expeditiously.

Recommendation (h)

196. FEHD has completed the disciplinary investigation into the staff concerned and taken relevant disciplinary action. In addition, a review of the enforcement action against unlicensed food premises was completed on 13 April 2023. A series of new initiatives to improve internal supervision has also been introduced, such as regular sample checking of at least 30% of the inspection records of unlicensed food premises, to

improve internal supervision. FEHD also reminded all DEHO on 15 June 2023 via email to comply with the relevant guidelines.

197. FEHD believes that the internal review and the new initiatives can address the Office's concern about this case and effectively improve the internal supervision of DEHOs to avoid recurrence of missing inspection records as seen in this case.

Food and Environmental Hygiene Department

Case No. 2022/2902 – (1) Failing to monitor a rural committee in the process of issuing certificates of indigenous residents; and (2) Lack of an appeal mechanism for cases turned down by the rural committee

Background

198. The complainant wished to apply for a niche at an Islands District columbarium for his lately deceased father. According to the 1823 website, niches at the columbaria in the Islands District are only available for indigenous villagers, or residents of the District for a continuous residing period of not less than ten years, or their children. The applicant must be certified by the respective rural committee (the Certificate) that the deceased was an indigenous villager, a local resident or a child of such person of the island concerned, before submitting an application to the Food and Environmental Hygiene Department (FEHD).

199. The complainant claimed that his father had lived with his grandparents on the island in question since his childhood for not less than ten years continuously. He considered his father eligible for a columbarium niche on the island and requested the rural committee of the island (the RC) to certify his father's eligibility.

200. The RC refused the complainant's request on the grounds that only a resident who had resided on the island for a continuous period of seven years immediately before his/her death was eligible for a niche on the island (the Niche). Moreover, the RC claimed that children of indigenous villagers were not eligible for the Niches. It also disagreed with the eligibility criteria stated on the 1823 website.

201. When the complainant telephoned FEHD in August 2022, FEHD explained to him in detail the application criteria for public columbarium niches in the Islands District and stated that the Niches were allocated to the indigenous villagers of the island in question, or the bona fide residents

of the island for a continuous residing period of not less than seven years, or their minor children. FEHD suggested the complainant refer to the application guidelines for the niches at Mui Wo Lai Chi Yuen Columbarium which had been in commission since 2021, because the application criteria were the same for both columbaria.

202. Subsequently, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against FEHD, considering that the Department to have the following improprieties –

(a) FEHD had authorised, but did not monitor, the issue of Certificates by the RC and it was unfair to an applicant who could not seek redress even his/her application was unreasonably refused by the RC (Allegation (a)); and

(b) FEHD had failed to provide another application channel or an appeal mechanism in case the RC refused to issue the Certificate, rendering the applicant to have no means to seek help (Allegation (b)).

The Ombudsman's observations

203. In 1991, the former Regional Council exercised the power under section 24 of the Cremation and Gardens of Remembrance (Regional Council) By-laws to direct that the gardens of remembrance (with columbaria therein) in the Islands District be set aside for the exclusive use of their residents, thereby providing them with convenient service for disposal of human remains. Pursuant to the Provision of Municipal Services (Reorganisation) Ordinance, the Cremation and Gardens of Remembrance (Regional Council) By-laws was then repealed on 1 January 2000 and substituted by the Cremation and Gardens of Remembrance Regulation. Section 19(a) of the Cremation and Gardens of Remembrance Regulation empowers the Director of Food and Environmental Hygiene to direct that any particular garden of remembrance or any part thereof (including any columbarium therein) be set aside or allocated for the

reception or disposal of ashes of particular persons or of persons belonging to any particular community, race or religion.

204. The criteria for allocation of niches in the Islands District are as follows -

(a) Cheung Chau Garden of Remembrance

The deceased must be certified by Cheung Chau Rural Committee as an indigenous villager of the Islands District, or a bona fide resident of Cheung Chau for a continuous residing period of not less than ten years, or the child of a local resident.

(b) Other Gardens of Remembrance in the Islands District (Lamma Island and Peng Chau)

The deceased must be certified by the respective rural committee as an indigenous villager of the Islands District, or a bona fide resident of the Islands District for a continuous residing period of not less than seven years, or the child of a local resident.

205. Established in 2000, FEHD has since adopted the above policy to handle applications for public columbarium niches in the Islands District. The eligibility for a niche must be certified by a rural committee confirming that the deceased had fulfilled the relevant criteria.

206. FEHD responded that, when answering the complainant's enquiry, the relevant staff member explained to him in detail the application criteria for public columbarium niches in the Islands District. FEHD also clarified in its response that the RC defined "bona fide residents for a continuous residing period of at least seven years" with reference to the principle under the Rural Representative Election Ordinance. Accordingly, the RC considered bona fide, long-term residents of the island to be those who had resided on the island for a period immediately before death with the island deemed to be their principal place of residence.

The same principle has been adopted by the other rural committees in the Islands District in handling similar cases.

207. The RC considered the complainant to have failed to produce documentary proof that his father was an indigenous villager of the island. Moreover, his father was no longer deemed to be a bona fide resident of the island for having moved out years ago before his death. Hence, the RC refused to issue the Certificate. FEHD considered the RC to have handled the complainant's application according to the mechanism.

208. The RC's decision to accept or reject the complainant's application was a matter of judgement about facts, in which the Office did not intervene because rural committees are outside its remit. FEHD, after obtaining information from the RC, considered the RC to have handled the complainant's application according to the mechanism, and the Office had no grounds to question FEHD's view. Therefore, Allegation (a) is unsubstantiated.

209. While rural committees are not subordinate to FEHD and thus not subject to its monitoring, and no appeal mechanism concerning the issue of Certificates by the rural committees is available, FEHD, would, upon receiving requests for assistance from members of the public, liaise with the rural committees and provide feasible assistance according to specific circumstances. Consequently, applicants may approach FEHD for help in case the rural committees refuse to issue the Certificates. Since the complainant did not file a request for assistance or complaint with FEHD, the Office could not comment on whether he really had no means to seek help. Overall, Allegation (b) is unsubstantiated.

210. As for the information on 1823's website, as provided by FEHD, the original content about the application criteria for niches in the Islands District was unclear. It was unsatisfactory on the part of FEHD to have not discovered and rectified the problem earlier. Even after FEHD revised the information in November 2022, the 1823 website did not clearly specify that "a continuous residing period" means the period that the

deceased had continuously resided in the district immediately before death, and might still cause confusion. The Office opined that FEHD should make further revision.

211. Overall, The Ombudsman considered this complaint unsubstantiated but there were other inadequacies found. The Ombudsman recommended FEHD to discuss with 1823 for further revising the website information to clearly state that "a continuous residing period" means the period that the deceased continuously resided on the island concerned right before his/her death; and review other materials for public information, such as leaflets and brochures, so as to ensure the accuracy and consistency of the information disseminated.

Government's response

212. FEHD accepted The Ombudsman's recommendation and has finished updating all information concerned.

Government Secretariat – Civil Service Bureau

Case No. 2021/4326 – Failing to provide statistics on disciplined services staff's acceptance of advantages

Background

213. On 17 December 2021, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against the Security Bureau (SB), Immigration Department, Customs and Excise Department, Correctional Services Department, Fire Services Department, Hong Kong Police Force and Government Flying Service (the departments concerned) for failing to handle his request for information in compliance with the Code on Access to Information (the Code).

214. In late October 2021, the complainant requested the departments concerned to provide statistics on acceptance of advantages by the departments' staff between January 2020 and September 2021, including the number of applications for acceptance of advantages offered to staff in their official and private capacities as well as the number of approved and rejected applications under the Code, etc. In November 2021, the departments concerned refused the complainant's request for information for reasons that the statistics were not available and it would require a lot of manpower resources to extract, collate and compile the requested statistics, citing paragraphs 1.14 (not obliging departments to create a record which does not exist) and 2.9(d) (information which could only be made available by unreasonable diversion of a department's resources) of the Code in refusing the request.

215. In November 2021, the complainant submitted to the departments concerned requests for review and amended his requests for information to cover a shorter period between September and October 2021. After reviewing the complainant's request for information, SB replied to the complainant on behalf of the departments concerned on 2 December 2021, restating that the refusal of his request was made in accordance with

paragraphs 1.14 and 2.9(d) of the Code. SB further explained that the report forms on acceptance of advantages of the departments concerned were kept in the subject files and/or personnel files of respective sections or units of the departments. Hence, compilation of the requested statistics would require the departments concerned to coordinate centrally the retrieval of related documents from a large number of files in their respective sections or units, and this would draw on huge public resources.

216. Subsequently, the complainant lodged a complaint to the Office. In gist, he was dissatisfied that the departments had not discussed with him the possibility of modifying his requests to a mutually acceptable level or considered the public interest involved. Furthermore, when processing his requests for review, SB had not fully considered that he had already amended his requests to cover a shorter period.

The Ombudsman's observations

217. SB and the departments concerned explained that the departments did not maintain the requested statistics at that time, and it would consume considerable public resources to compile the statistics. The Office agreed that as the departments recorded the acceptance of advantages offered to its staff in their various capacities in paper form only at that time, considerable resources would be required for compiling the statistics requested by the complainant, regardless of the length of time period covered. The departments concerned had to deploy manpower resources to examine the relevant files of each section or unit in order to extract relevant information from a large volume of paper documents for consolidation and preparation of the required statistics. Furthermore, the departments had already deployed a lot of resources in anti-epidemic work and it was understandable that they were not able to allocate additional resources to compile the relevant statistics. Therefore, against the above background, the Office accepted the citation of paragraphs 1.14 and 2.9(d) of the Code by SB and the departments concerned as the reason for the refusal of the complainant's request for information.

218. This case revealed that the six departments concerned had not compiled statistics on their staff's acceptance of advantages. The Office also noted that the Civil Service Bureau (CSB) did not require Offices of Secretaries, bureaux and departments to compile such statistics and considered there was room for improvement in this regard. In the Office's view, compilation of relevant statistics would not only facilitate the handling of public enquiries when necessary, but also assist the Government in monitoring their staff's acceptance of advantages under the administrative system. It should help demonstrate the Government's commitment to accountability and good governance, and would be highly useful for maintaining open and accountable public administration and a civil service of probity.

219. Overall, The Ombudsman considered this complaint unsubstantiated and recommended CSB to consider requiring Offices of Secretaries, bureaux and departments to utilise data access technology to maintain records for speedy compilation of statistics on staff's acceptance of advantages when necessary.

Government's response

220. CSB accepted The Ombudsman's recommendation and requested bureaux and departments to use technology to capture and maintain digital records of staff's applications for acceptance of advantages starting from 1 July 2023, for speedy compilation of relevant statistics when necessary and internal monitoring. All bureaux and departments now use electronic means to capture and maintain such records.

Government Secretariat – Education Bureau

Case No. 2021/3695 – (1) Harbouring a teacher and lack of regulation of alleged misconduct of resigned teachers; (2) Improper handling of a complaint against a teacher and an institute; and (3) Improper handling of a complaint against the Bureau's staff

Background

221. The complainant's family member studied in the Diploma Yi Jin Programme offered by an institute (the Institute). The complainant lodged a complaint to the Institute about suspected misconduct of a resigned teacher (the Teacher) who used false information and personal political views as teaching materials for the classes held on 13 and 20 January 2021. Being dissatisfied with the handling of the complaint by the subject district School Development Section of the Education Bureau (EDB), the complainant lodged a complaint with the Office of The Ombudsman (the Office) against the Bureau. The allegations were summarised as follows –

(a) harbouring the Teacher and lack of regulation of alleged misconduct of resigned teachers (Allegation (a));

(b) improper handling of a complaint against the Teacher and the Institute (Allegation (b)); and

(c) improper handling of a complaint against the Bureau's staff (Allegation (c)).

The Ombudsman's observations

Allegation (a)

222. There is no lack of regulation as EDB has an independent mechanism under the Education Ordinance to handle complaints about alleged misconduct of teachers, including those who have resigned, and

teachers under EDB's investigation are also subject to corresponding restrictions when changing jobs. The Office was of the view that, EDB's approach of waiting for the completion of the Institute's report before taking further follow-up actions, such as inviting responses from the Teacher, aligned with the relevant procedures and did not involve any maladministration.

223. However, the Office observed that in the initial written reply received by the complainant one year after seeking assistance (i.e. January 2022), EDB was vague about how it would follow up on complaints regarding professional misconduct. Although there were improvements in EDB's subsequent reply, no explanations were provided for not reporting the progress or outcome of the investigation to the complainant. This lack of transparency on the part of EDB inevitably created an unfavourable impression. Given that the mechanism for investigating alleged misconduct of teachers is applicable to complaints or reports of the same nature, the Office was of the view that EDB could make the relevant information accessible through public channels to enhance transparency and avoid misunderstandings.

224. The Office considered that there was no evidence suggesting that the Bureau harboured the Teacher or was in lack of regulation of alleged misconduct of resigned teachers. Nevertheless, it would be more desirable if its reply to the complainant was clearer. Thus, Allegation (a) was unsubstantiated.

Allegation (b)

225. It was a required procedure under the EDB's Internal Guidelines for the Institute to conduct an investigation first. Therefore, the Office was of the view that there was no impropriety on the part of EDB in not intervening directly in the operation of a private school. From an administrative point of view, EDB followed up the case in accordance with the Internal Guidelines.

226. At a meeting with the Institute and EDB held on 8 April 2021, the complainant raised four allegations against several staff members of the Institute. However, it was not until 24 May 2021, when the complainant brought up the issues again, that he learned that no follow-up actions had been taken. If these issues were considered formal complaints requiring follow-up or monitoring, EDB should have promptly initiated the necessary procedures in accordance with the Internal Guidelines (including requiring the complainant to sign a consent form and an authorisation form (if applicable)). If EDB considered follow-up unnecessary because the issues had already been brought to the Institute's attention, EDB should have clearly communicated the reasons for not following up to the complainant. However, EDB did neither and deemed the follow-up process to have been completed, which did not align with good public administration practices.

227. Besides, EDB gave reasons for the delay and failure to respond to a complaint dated 15 June 2021 and acknowledged its mistakes. The Office noted that EDB had urged the staff concerned to make improvements.

228. The Office considered that Allegation (b) was partially substantiated.

Allegation (c)

229. The complainant raised queries regarding the handling of the complaint against staff members A and B by staff members C and D, who held the same ranks as staff members B and A respectively. The complainant also expressed concerns about the verbal reply being provided by staff member D, who held a lower rank. The Office was of the view that the above arrangements did not violate the requirements of the EDB's relevant circular.

230. The complainant also believed that he was not informed about the progress of the investigation due to a change in the staff responsible for the

follow-up, which occurred as a result of his complaint. The Office was of the view that the arrangement was in line with EDB Internal Circular. While there was no impropriety in this regard, EDB should have clearly communicated either the progress of the case or the reasons for not disclosing the investigation results to the complainant.

231. The Office considered that Allegation (c) was unsubstantiated. However, EDB should be more prudent when handling complaints against staff and more sensitive to complainants' needs. Assigning lower ranking or less experienced staff to deal with complainants was not inadequate but could easily give rise to other complaints, and thus there is room for improvement.

232. Overall, The Ombudsman considered this complaint partially substantiated and recommended EDB to –

(a) improve communication with complainants in cases involving alleged misconduct of teachers; consider making the public aware of the relevant procedures and the reasons for not disclosing the results of investigations, either on the website or through other channels;

(b) review the complaint handling procedures and internal communication system to ensure consistent adherence to the requirements outlined in the Internal Guidelines, including those on acknowledgment of receipt, interim replies and substantive replies, so as to avoid omissions resulting from unexpected absences of individual staff members; and

(c) review the procedures for handling complaints against staff members, including the means of reply and the ranks of complaint handling officers; and strengthen staff training on communication with complainants.

Government's response

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

Recommendation (a)

234. Being responsible for teacher registration and monitoring of teachers' professional conduct, EDB handles all cases involving teachers' misconduct or violations of the law in a stringent manner in accordance with the Education Ordinance (Cap. 279) and established procedures. Penalties are imposed, where appropriate, in a just manner if cases are substantiated. EDB has a clear mechanism and procedures in place to handle cases of alleged misconduct of teachers. These have been communicated to the public through various channels, including replies to questions raised by Legislative Council Members and press releases. Furthermore, EDB issued the Guidelines on Teachers' Professional Conduct (the Guidelines) in mid-December 2022, with Appendix 4 outlining the mechanism for handling suspected professional misconduct of teachers. The Guidelines are available on EDB website (www.edb.gov.hk - Main Page > Teachers Related > Guidelines on Teachers' Professional Conduct) for public access and information.

Recommendation (b)

235. EDB is developing a plan to optimise the overall Information Technology (IT) systems of Regional Education Offices (REOs). Within the multi-faceted plan, EDB will give priority to the optimisation of the complaint handling IT system. This will ensure that staff members can provide timely reports on the progress of investigations to complainants.

Recommendation (c)

236. EDB will, as far as practicable, request complainants to provide contact information for written communication, so that replies could be

made in writing. In response to the Office's recommendation, EDB will enhance the relevant staff training course content and remind staff members concerned of the proper attitudes required in handling complaints, which will help them better understand the needs of complainants. Starting from this year, EDB will organise one to two training workshops per year, conducted by mediation professionals, for the staff of REOs. This initiative will be implemented for an initial period of five years and will enhance staff's knowledge of mediation and communication skills.

Government Secretariat - Education Bureau

Case No. 2021/4263 – Unreasonably having different requirements for local and international schools to resume full-day face-to-face classes and extra-curricular activities during the COVID-19 epidemic and failing to inform the public of such requirements

Background

237. During 2020 to 2022, the Education Bureau (EDB), in light of the changing COVID-19 epidemic situations, promulgated several rounds of class suspension and resumption arrangements. The Office of The Ombudsman (the Office) received complaints against EDB for unreasonably having different requirements for local schools and private schools offering non-local curriculum (PSNLCs) to resume full-day face-to-face classes and extra-curricular activities. EDB was considered failing to inform the public of such requirements. It was also alleged that when face-to-face classes of primary schools were suspended before those of secondary schools in early 2022, students of the same age at local schools and PSNLCs were treated differently due to different class structures.

The Ombudsman's observations

238. The Office noted the factors for consideration in determining the overall resumption arrangements of face-to-face classes and extra-curricular activities and EDB's assessments of and arrangements for local and PSNLCs including curricula, public examination schedules, class structures, timetable arrangements, school calendars and campus environments, etc. Given the uniqueness in circumstances of individual schools, the Office considered EDB's view against a "one-size-fits-all" approach reasonable. In this regard, the Office appreciated EDB's approach in allowing schools which had the facilities and abilities to implement additional precautionary measures to apply for full-day face-to-face classes. Nonetheless, it was of the view that all schools, local and PSNLCs, which were able and willing to make adjustments to implement

the necessary social-distancing measures should be allowed to apply for full-day face-to-face classes.

239. EDB advised on the capabilities to implement additional social-distancing measures, as well as the learning needs of students led to the different requirements for local schools and PSNLCs. To satisfy the learning needs of students in PSNLCs, face-to-face classes were more necessary. Although this would reduce social distance, PSNLCs were more capable of implementing additional precautionary measures. The Office had no grounds to dispute EDB's judgement. It was also noted that such requirements were drawn up in consultation with the school sector and other stakeholders. As the then COVID-19 epidemic persisted and the temporary measures might continue to last for a period of time, EDB was urged to constantly review the class resumption criteria in consideration of students' needs, stakeholders' views and the changing situation of the epidemic.

240. Regarding extra-curricular activities, the Office noted EDB's concerns over the low self-care abilities of kindergarten students and their need to rest after school and therefore the related activities would suspend.

241. As regards the suspension of face-to-face classes by school section instead of by age, the Office accepted EDB's explanation which was to minimise disturbance to students' learning as a group and for a more rational administrative arrangement for schools in devising learning and schooling timetable.

242. As for EDB's dissemination of relevant information, while EDB had utilised various channels to communicate with different stakeholders, the Office found that when EDB explained to the complainants and the media, major focus was laid on schools' abilities in fulfilling the social-distancing requirements. That could give rise to the perception that social-distancing measures were the dominant, if not sole, factor in its determination of resumption arrangements. To avoid this misunderstanding, the Office saw a need for EDB to improve the

dissemination of information and its response to queries so that the rationale behind the differences in requirements for different types of schools could be more comprehensively understood.

243. After giving due considerations to EDB's all responses, The Ombudsman found the complaint about unreasonably having different requirements for local schools and PSNLCs unsubstantiated. Nevertheless, The Ombudsman considered that there was room for EDB's clearer dissemination of information concerning the different requirements and recommended EDB to –

(a) constantly review the class resumption criteria in consideration of students' needs, the stakeholders' views and the changing situation of the epidemic; and

(b) improve the dissemination of information and its response to queries so that the rationale behind the differences in requirements for different types of schools could be more comprehensively understood.

Government's response

244. EDB accepted The Ombudsman's recommendations. The follow-up actions are as below.

Recommendation (a)

245. EDB had taken into account the changing situation of the pandemic, the views from the school sector and advice of health experts to adjust the anti-epidemic measures at schools and related class arrangements in a timely manner. Starting from February 2023, all schools resumed whole-day face-to-face classes in a gradual and orderly manner. As for extra-curricular activities and other anti-epidemic measures, the "Vaccine Pass" requirement for schools was lifted and arrangements for after-class activities were also relaxed, while the guidelines "Health

Protection Measures for Schools" were updated in consultation with Centre of Health Protection in December 2022 including the adjustments on the lunch and seating arrangements.

Recommendation (b)

246. EDB continued to keep close communication with various stakeholders (including the public) informing our latest arrangements and guidelines via multiple channels, including the issuance of press releases, uploading of the relevant updated documents on EDB's website, etc. EDB kept the schools closely informed of the updated arrangements by dissemination via the EDB's Communication and Delivery System and emails. The schools were also reminded to keep parents, students and related stakeholders informed of their whole-day school resumption plans as early as possible. Besides, EDB adhered to the Office's recommendations to address public enquiries with adequate elaborations on our consideration of various factors and explanation of the objectives to cater for the needs of students from diversified backgrounds and different types of school.

247. EDB will take into account experience gained from handling the epidemic in dealing with future incidents.

Government Secretariat - Education Bureau

Case No. 2022/1959 – (1) Perfunctory follow-up on the complainant's allegation against her daughter's guidance teacher for improper physical contact; and (2) Allowing the school to delay processing her request for viewing the closed-circuit television footage

Background

248. According to the complainant, her daughter studied in an aided primary school. During the daughter's time at the school, she was not only bullied by classmates, but also subjected to improper physical contact by a guidance teacher (the Teacher) on 1 March 2021. The incidents allegedly included pushing her outside the activity room on the G/F and pulling her inside the female washroom on the G/F. Her daughter was emotionally disturbed by the incidents and started to have symptoms of depression and suicidal tendencies. She was on psychiatric medication and often needed to take leave from school. As a result, the complainant requested the school to follow up on the matter, including viewing the relevant closed-circuit television (CCTV) footage of 1 March. In the same month, the complainant also called the Education Bureau (EDB) for assistance and was advised to communicate with the school directly. Subsequently, due to dissatisfaction with the handling of the incidents by the then principal, the complainant lodged a formal complaint to EDB in May 2021, and requested continued follow-ups in September 2021. In response, EDB referred both the complaint and the request to the school for handling and response under its school-based mechanism.

249. In December 2021, EDB deployed staff to meet with the complainant and the school. During the complaint process, the complainant was informed that the relevant CCTV footage of 1 March was automatically deleted due to the long lapse of time. The complainant was dissatisfied with EDB's perfunctory follow-up on her complaint against the school. This includes its failure to visit the school in a timely manner to gain an understanding of the incidents, and for arranging an interview

with her and the school only until about seven months after receiving the complaint, as well as allowing the school to delay processing her request for viewing the CCTV footage, resulting in the deletion of the footage. Thus, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against the Bureau.

The Ombudsman's observations

250. Upon receipt of a complaint, EDB will, depending on its content and nature, determine whether to directly intervene in the investigation or refer the complaint to the relevant school for follow-ups in accordance with the school-based mechanism, the purpose of which is to handle complaints in a more effective and efficient manner. The achievement or otherwise of this objective depends primarily on whether EDB, upon receipt of the complaint, can accurately assess the complaint nature and content, including its severity, before making referral for action by an appropriate organisation. It also depends on whether EDB will continue to monitor the complaint process and make an accurate judgement about whether and when to provide the appropriate type and extent of support or intervention to the school concerned.

251. The Office considered that this complaint did not only involve a suicidal primary school student suspected of being bullied by classmates, but also a school staff member being accused of having improper physical contact with the student. The allegations were serious, although they might not pose an immediate threat to the student's safety, the incident, if not resolved in a timely manner, would undoubtedly continue to affect the student's emotions, social life and learning, and even other students in the class as well as the school's operation. Therefore, a prompt and proper resolution to this complaint was one of the key factors in helping the student get her life back on track.

252. However, as revealed in the information, the complainant had clearly expressed her dissatisfaction with the school's handling of the matter in her letters to EDB and requested follow-up actions. She had also

attached letters issued by psychologists and psychiatrists to prove her daughter's emotional conditions. Against this background, nevertheless, EDB classified the complaint as relating to the school's daily operation or internal affairs without any "special circumstances". Instead of providing material support or direct intervention at an earlier stage, the complaint was once again referred to the school for direct follow-ups under the school-based mechanism. It was not until December 2021 when the complainant expressed her dissatisfaction again and requested follow-ups from EDB that the Bureau began to make further intervention. The criteria adopted by EDB to determine when to provide support or intervene were perplexing.

253. The Office considered that, EDB's classification of a case, which had been confirmed by psychologists and psychiatrists to have involved emotional issues, as a complaint relating to a school's daily operation or internal affairs was inappropriate.

254. Despite further intervention since December 2021, EDB responded to the complainant in June and July 2022 only upon referral of the case by the Legislative Council Secretariat and the Office. Furthermore, without examining relevant complaint records of the school, EDB had come to a shaky conclusion that the school had properly handled and responded to the complaints. Even after the Office stepped in to investigate, EDB had failed to proactively examine the relevant records, instead, it was the school that took the initiative to submit part of the records to EDB. It gave a perception that EDB was in lack of proactivity towards the complaint.

255. Although the school was not the subject of the investigation, after having direct dialogue with the school and reviewing relevant complaint records, the Office agreed that the school had made every effort to support the complainant and her daughter in various ways. It had also attempted to ascertain the facts by questioning relevant parties. The school could be deemed as having duly fulfilled its duties. However, due to the school's failure to timely review and retain the relevant CCTV footage, which was

the only objective evidence, the footage was automatically deleted. As a result, the situation on 1 March remained a matter of differing accounts. On this note, the Office noticed that the section on record-keeping in the Guidelines for Handling School Complaints provided only a brief description of schools' obligation to maintain clear complaint case records without further elaboration. The Office held the view that EDB should learn from this case and revise its guidelines to specify the types of records to be retained (e.g. objective evidence such as CCTV footages) by schools under specific circumstances (e.g. upon receipt of complaints such as those related to student safety or improper physical contact). This would facilitate examination of records by schools and EDB when necessary.

256. In the light of EDB's course of follow-up actions in this case, it is unconvincing that the Bureau has done its due diligence to monitor schools. On this, EDB provided supplementary information to the Office on its the follow-up actions taken for the complaint case, including maintaining close communication with both parties through phone calls since making referral to the school. Nevertheless, the Bureau did not keep the official written records regarding the phone conversations with the complainant and the school.

257. Based on the above analysis, The Ombudsman considered the complaint partially substantiated and recommended EDB to –

(a) review and consider revising its internal guidelines on maintaining records of follow-up actions (including those of telephone conversations) for proper documentation of the complaint handling process;

(b) review its internal guidelines and the Guidelines for Handling School Complaints in relation to complaint classification and special circumstances to ensure that the classification of complaints is accurate, precise and not overly broad; and

(c) make reference to this case and consider revising and issuing clearer guidelines to schools regarding the types of evidence that should be retained in specific circumstances when handling complaints.

Government's response

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

259. EDB attached great importance to the student's welfare. Regarding the case in question, EDB had followed up with the school and complainant to ensure that the student had been adequately taken care of by the school, and that the complaint would be handled fairly and properly. EDB had been maintaining frequent contact with them with a view to understanding and monitoring the progress of the school's follow-up actions and investigation. EDB provided advice to the school from time to time, including reminding the school of the need and importance of carefully handling the emotion of the student concerned and offering necessary support. As observed by EDB, same as the Office's comments, the school had adequately supported the complainant, diligently investigated the case and provided clear responses to the complainant, fulfilling its duties as per EDB's instructions and requirements.

260. EDB is reviewing its internal guidelines on maintaining records of follow-up actions (including those of telephone conversations) as well as the formulation of related templates, so as to facilitate more proper and timely documentation of the complaint handling process. In parallel, EDB is reviewing the relevant sections on complaint classification and definitions of special circumstances. Updates will be made accordingly on the relevant internal guidelines, including the provision of specific details on the types of cases with which EDB will step in to investigate.

261. Regarding schools' handling of complaints, EDB will revise the Guidelines for Handling School Complaints to include information that

reminds schools of the types of evidence that should be retained when handling complaints. EDB will duly notify schools of the updates after completing relevant revisions, and the updated guidelines and documents will be uploaded onto EDB website for schools' reference.

Government Secretariat – Then Food and Health Bureau

Case No. 2022/1535 – Confusing arrangements and lack of coordination in distribution of free rapid antigen test kits to elderly persons

Background

262. The then Food and Health Bureau (the then FHB) issued a press release on 20 April 2022 to announce that both members and non-members elderly persons could collect free rapid antigen test (RAT) kits from the service units for the elderly (service units). According to the complainant, she complained via 1823 on 26 April that a Chinese medicine clinic (the subject clinic) in Yuen Long District had posted a notice, stating that RAT kits would only provide to elderly service users of the clinic. 1823 had referred the complaint to the then FHB for follow-up. The then FHB replied 1823 that the complaint should be followed up by the Hospital Authority (HA).

263. The complainant considered that, while being responsible for the distribution of RAT kits, the then FHB neither addressed the complaint nor sought to understand from HA the reason behind the subject clinic to display such notice. It reflected that the then FHB did not take measures to ensure the service units distributed RAT kits to the elderly who were non-members or non-service users of the subject clinic as required (Allegation (a)). The complainant also pointed out the inconsistency in the distribution of RAT kits by various service units, which indicated the confusing arrangement and a lack of coordination within the then FHB (Allegation (b)). The complainant considered that, while the target recipients for the RAT kits are elderly persons, the then FHB only briefly announced the arrangements through press releases, without information on the quantity, date and time of distribution by each service unit, thus making it inconvenient for the elderly to collect the RAT kits (Allegation (c)). Therefore, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against the then FHB.

The Ombudsman's observations

Allegations (a) and (b)

264. The distribution of RAT kits to all elderly individuals in Hong Kong involved 680 distribution units managed by various departments and organisations covering 18 districts of Hong Kong, thereby making it difficult to rely on a single department to handle all the work and related complaints. The authorities were responsible for formulating the relevant policy and coordinating the distribution arrangements, while the work details of distribution were devised and implemented by the participating departments/organisations and services units. Similarly, the division of work in handling the complaints was based on the same principle. The Office considered these arrangements reasonable. Records provided by the departments showed that the authorities had consulted the participating departments/organisations before implementing and adjusting the distribution arrangement of RAT kits. Meanwhile, the Department of Health (DH), the Social Welfare Department (SWD) and HA reported to the authorities the actual operation and views of their service units.

265. As regards the target recipients, the Office considered that on the one hand, the authorities aimed to have a wider scope of the distribution so as to assist the elderly to develop the habit of taking RAT as soon as possible; on the other hand, given the diverse nature, target groups and operations of various service units, service units had to ensure that the daily service provision would not be affected by the additional distribution work. On 20 April 2022, the authorities made the decision to expand the scope of target recipients to include non-service users and non-members. Following the same principle, participating departments/organisations and service units had the discretion to determine whether they would adopt the extension, as well as set their own priorities and arrangement based on their specific circumstances. The Office regarded it a compromise arrangement. Taking SWD as an example, the Office considered it understandable to maintain the arrangement of distributing RAT kits to their service users only, having regard to the actual situation of some service units.

266. Therefore, The Ombudsman opined that Allegations (a) and (b) were unsubstantiated.

267. The authorities delivered RAT kits to the service units mainly through logistics companies. This case occurred in April 2022 which was the early stage of the distribution of RAT kits. At that time, the distribution arrangement was intended to be short-term measures to cope with the epidemic. Therefore, it was understandable that the authorities had not been able to arrange for logistics companies to deliver the RAT kits to the designated service units on a regular basis, resulting in the service units not being able to draw up a regular distribution schedule. Nevertheless, the arrangement for the distribution of RAT kits had lasted for several months and were continuously extended. However, while the distribution arrangement continued to be extended for several months, some service units still had to wait for the logistics company to confirm the date of distribution each time, and they were unable to make earlier preparations and notify the elderly in advance. Taking DH as an example, its service units only posted notices on site to inform whether RAT kits were available for distribution on that day and whether they had all been distributed. The Office considered that there was room for improvement. The authorities should make reference to the data and suggestions provided by the participating departments/organisations, and request the logistics company to regularise the schedule of distribution to the service units, so that the service units and the elderly who planned to collect the RAT kits could make early arrangements.

Allegation (c)

268. The Office accepted the authorities' explanation that there was no mandatory requirement for participating departments/organisations to standardise the dissemination of information about the distribution arrangements. The Office noted that, basic information such as the addresses and telephone numbers of the service units were provided on the website linked to the press release, as well as the websites of the DH, SWD and HA's CM KINEtics, and therefore members of the public should have

little difficulty in finding out the locations of the service units and their contact details through these websites. However, the subvented elderly centres listed on the SWD's website repeatedly appeared in different tables as they were categorised by the scope of services offered. This could cause inconvenience for the elderly.

269. Regarding the authorities' response that the elderly could generally find out the relevant arrangements through the service units with which they were familiar, the Office considered that the general distribution arrangements of each service unit, including the dates, time and target groups varied. If the elders (especially those who were non-members or non-service users) needed to collect the RAT kits from service units with which they were not familiar, they had to look up the information one by one and make enquiries with the service units or visit the service units in person to find out the details of the distribution. Besides, unless the logistics company was able to distribute the RAT kits on a regular basis, under the arrangement at that time, even if an elderly person was already familiar with a service unit, he/she still needed to make enquiries and visit the service unit in person before knowing whether the RAT kits were available for distribution on that day.

270. The Office considered that the way of disseminating information about the distribution arrangements by the related service units was inadequate and inappropriate. Apart from bringing inconvenience to the elderly and their families, the enquiries would also cause extra workload to the service units, which might affect their day-to-day services.

271. Therefore, The Ombudsman opined that Allegation (c) was partially substantiated and the authorities should jointly review the existing way of dissemination of information on the arrangements for the distribution of RAT kits with participating departments/organisations to facilitate the public and enhance transparency.

272. In light of the above, The Ombudsman considered that the complaint against the then FHB partially substantiated and recommended the Health Bureau to –

(a) request the logistics company to formulate a fixed daily schedule for the distribution of RAT kits for all service units to facilitate service units to prepare for the distribution and to notify the public as early as possible; and

(b) jointly review with the participating departments/organisations the current approach of disseminating information on the distribution arrangements of RAT kits with a view to enhancing transparency.

Government's response

273. The Health Bureau accepted The Ombudsman's recommendations.

274. After three years of COVID-19 epidemic in Hong Kong, significant improvements have been made to the prevention and treatment capacities of the local healthcare system as well as the handling capacity of society, to effectively respond to the continuously evolving virus. With the cancellation of issuing isolation orders from 30 January 2023 and the lifting of mask-wearing requirement on 1 March, COVID-19 has been managed as a type of upper respiratory tract infection. Our society has resumed normalcy in full.

275. The above distribution of RAT kits has come to an end following the resumption of normalcy. The Government will learn from the experience gained during the epidemic. Should there be a need for anti-epidemic operations in the future, the Government would take into account the valuable advice from the Office and improve the relevant guidelines and recommendations in light of the actual development.

Government Secretariat – Health Bureau

Case No. 2022/2195 – Giving an inadequate reply to the complainant, without telling him to which departments reports of contravention could be made

Background

276. The complainant said that he reported a suspected breach of the Prevention and Control of Disease Ordinance (the Ordinance) on 13 May 2022 to the former Food and Health Bureau on 16 June 2022, and alleged that the shared use of the "LeaveHomeSafe" (LHS) QR code for the same address by the entire housing estate concerned was unreasonable. On 27 June, HHB included an extract of the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) (the Regulation) (including the webpage link) in their reply to the complainant and asked him to report to the relevant enforcement departments direct. On 30 June, the complainant asked the Bureau which departments the above "relevant enforcement departments" referred to, and the Bureau once again extracted the relevant contents of the Regulation (including the webpage link) for him and asked him to report directly to the relevant enforcement departments. On 5 July, the complainant asked the Bureau (reorganised as the Health Bureau (HHB)) to tell him what the "relevant enforcement departments" were, so that he could report the case to the department(s) direct. The Bureau replied to him on 6 July and provided him with a webpage link to information of the authorised officers enforcing the Regulation. After accessing the webpage, he found that the Bureau was one of the departments enforcing the Regulation.

277. Dissatisfied with HHB's several replies which in his opinion were irrelevant and perfunctory, the complainant wondered that the Bureau was shirking its responsibility as it asked him to report to the relevant enforcement departments direct while being one of these departments enforcing the Regulation. Thus, the complaint lodged a complaint with the Office of The Ombudsman (Office) against HHB.

The Ombudsman's observations

278. Upon receiving the complainant's complaint, HHB referred the case to the Home Affairs Department (HAD) for follow-up, and was replied that the case was not within HAD's scope of work. HHB had no attempt to clarify the responsibility for this case. Rather, it provided the webpage link to information of all authorised officers for the relevant Ordinance in its reply to the complainant and told the complainant that he could contact the relevant departments according to the situation of the case without explaining which departments they were. The Office believed that this had undoubtedly shifted the responsibility for clarifying the departments responsible for this case to members of the public. If members of the public decided to give up reporting the case, the act(s) of breaching the regulations set by HHB would not be followed up on appropriately. On the other hand, if the case was reported to the departments of all authorised officers for the Ordinance as a result of failure to identify the responsible department(s), unnecessary workload might be created to various departments. Both of these situations would be unsatisfactory. HHB, as the major policy bureau for the Ordinance, should have the responsibility to clarify which department(s) to be responsible for enforcement under what scenario(s) when enacting the legislation, before granting the power of enforcement to officers of such department(s). It should also fully communicate and reach consensus with the departments before the law was put into effect. If HHB subsequently referred the case to the department concerned and was replied that the case was not within the scope of work of that department, it should take the initiative to clarify the areas of responsibilities with the department and then tell the complainant direct which department should be responsible. In doing so, HHB could even avoid any "enforcement vacuum", i.e. the situation where there was no regulation of or enforcement against certain acts regulated by relevant laws. The Office therefore urged HHB to improve the handling of such reports/complaints, and enhance inter-departmental collaboration.

279. In HHB's response to the Office, HHB stated that the case should be handled primarily by HAD and the Hong Kong Police Force (HKPF). Nonetheless, when handling the complainant's report and upon receiving HAD's reply stating that the case was not within HAD's scope of work, HHB neither followed up with HAD nor referred the case to another department it considered relevant, i.e. HKPF. The Office thus believed that HHB did not follow up on the complainant's report appropriately to its knowledge.

280. Besides reporting on the suspected breach, the complainant believed that the shared use of the LHS QR code for the same address by the entire housing estate concerned was unreasonable. HHB's reply only mentioned requirements such as the measurements of posters of the LHS QR codes, without addressing whether the use of one QR code for the same address by the entire housing estate was reasonable or whether there were any relevant rules.

281. In addition, the Office noticed that the incident reported by the complainant took place in mid-May, but the information provided in HHB's reply was about the social distancing measures which took effect from 16 to 29 June and from 30 June to 13 July. Although the Government mentioned "largely extended the existing social distancing measures" in the reply, there had been frequent adjustments to the social distancing measures since the outbreak of the COVID-19 epidemic after all, and thus it was difficult to judge whether the information provided by HHB was applicable to the incident mentioned by the complainant, and the reply might sound irrelevant to the recipient as well.

282. Based on the above analysis, The Ombudsman considered this complaint substantiated and recommended HHB to clarify the departments responsible for this case, and improve the replies to enquiries/reports from members of the public by responding positively and providing more appropriate information.

Government's response

283. HHB accepted and followed The Ombudsman's recommendation to improve the replies to enquiries/reports from members of the public to ensure that the Government can respond to such enquiries positively and provide more appropriate information.

Government Secretariat – Health Bureau, Home Affairs Department and Housing Department

Case No. 2022/0234A (Home Affairs Department) – (1) Failing to arrange door-to-door specimen collection for the complainant's parents before ceasing of the "restriction-testing declaration" operation; and (2) Wrongly advising the complainant's parents to use stool specimen bottle for specimen collection

Case No. 2022/0234B and 2022/0234C (Housing Department and Health Bureau) – Failing to arrange door-to-door specimen collection for the complainant's parents before ceasing of the "restriction-testing declaration" operation

Background

284. The complainant lived with her parents in a public housing estate (the Estate). On 22 January 2022, the Government announced that their building (the Building) would be cordoned off on the same day, and all residents of the Building were subject to compulsory testing. The "restriction-testing declaration" (RTD) operation at the Building was executed by the subject District Office under the Home Affairs Department (HAD).

285. From the Government's press conference held on that day, the complainant learned that door-to-door specimen collection would be arranged for people with impaired mobility. As her parents had impaired mobility due to poor health, she requested the service for her parents repeatedly, but HAD staff replied that the service could not be arranged and her parents could submit stool specimen for testing. However, stool specimen bottles were actually for young children's use only. Consequently, upon the reopening of the Building the next morning, her parents were still awaiting specimen collection at their flat. She subsequently called the Housing Department (HD) to request the service

for her parents, but to no avail. Eventually, the testing contractor collected her parents' specimens at their flat on 25 January.

286. Against the abovementioned, the complainant lodged a complaint with the Office of The Ombudsman (the Office) with the following allegations –

(a) the former Food and Health Bureau (FHB), HAD and HD had failed to collect specimens for her parents at their flat before the reopening of the Building as committed by the Government at the press conference (Allegation (a)); and

(b) HAD had wrongly advised her parents to submit stool specimens for testing (Allegation (b)).

The Ombudsman's observations

Allegation (a)

287. The RTD operation at the Estate was large-scale involving several blocks. The Government had to conduct a huge number of testing with limited resources and within a short period of time. Given that infection risks to testing personnel undertaking door-to-door specimen collection were higher, their mass infections if any would exacerbate staffing pressure, and the need to prevent abuse of door-to-door service, the former FHB agreed that the service would only be provided after ascertaining the specific conditions of the residents concerned and getting hold of the testing results of other residents. The Office considered this approach pragmatic.

288. Nevertheless, the Government had already committed in its press release on 22 January 2022 to arranging door-to-door specimen collection for people with impaired mobility and the elderly. After the Government confirmed on the morning of 23 January that no positive cases were found among the persons who had undergone testing, and HD also confirmed on

the same day that all the 25 cases needed door-to-door specimen collection, the former FHB was bound to urge the Contractor to provide the residents with the service as soon as circumstances permitted. The Office considered the Contractor of the former FHB collecting on 25 January (i.e. two days after the completion of the RTD operation at the Building) the specimens of the complainant's parents to have fallen short of public expectation.

289. Moreover, while the Office accepted HAD's explanation that the Contractor's refusal to undertake door-to-door specimen collection during the RTD operation was beyond the subject District Office's control, the subject District Office, being in charge of the RTD operation, should have informed residents of the latest arrangements. However, after reopening of the Building, neither the former FHB nor the subject District Office informed the residents pending door-to-door specimen collection of whether they should continue to wait, how long the wait would be, and whether they would have to bear the legal consequences for non-compliance with the compulsory testing order. This should have unavoidably caused anxiety among the residents concerned, and was unsatisfactory.

290. As for HD, it was in charge of the RTD operation at two other blocks of the Estate at that time and had no substantive role in the RTD operation at the Building, but upon receiving notification in the early hours on 23 January 2023, HD staff member still assisted in verifying whether the 25 residents of the Building had genuine need for door-to-door specimen collection on the same day. The Office agreed with HD's view that its role was limited. Although the complainant's parents had not been provided with door-to-door specimen collection service during the RTD operation at the Building, HD should not be blamed for the incident. However, the Office found inadequacy on the part of the HD staff member for failing to proactively contact HAD or the former FHB for follow-up after receiving the complainant's enquiry/request on 23 January.

291. Regarding Allegation (a), The Ombudsman considered the complaint against the former FHB substantiated. The complaint against HAD and HD was unsubstantiated, but they had other inadequacies.

Allegation (b)

292. HAD confirmed that a staff member assisting in home visits on the day had mistakenly advised the complainant's parents that they could submit stool specimens in bottles for testing. The Ombudsman, therefore, considered Allegation (b) against HAD substantiated. HAD subsequently corrected the staff concerned and apologised for the incident.

293. Overall, The Ombudsman considered that the complaint against the former FHB substantiated; the complaint against HAD partially substantiated; and the complaint against HD unsubstantiated but there were other inadequacies found.

294. The Ombudsman recommended –

(a) the Health Bureau (HHB) and HAD to take reference from this case and remind their staff to carry out RTD operations properly, and where necessary, draw up suitable operational guidelines; and

(b) HD to take reference from this case and remind its staff to handle enquiries properly, including referring cases to the suitable departments or organisations for follow-up actions when necessary.

Government's response

295. HHB, HAD and HD accepted The Ombudsman's recommendations and have taken the following follow-up actions.

Recommendation (a)

296. After three years of COVID-19 epidemic in Hong Kong, significant improvements have been made to the prevention and treatment capacities of the local healthcare system as well as the handling capacity of society, to effectively respond to the continuously evolving virus. With the cancellation of issuing isolation orders from 30 January 2023 and the lifting of mask-wearing requirement on 1 March, COVID-19 has been managed as a type of upper respiratory tract infection. Our society has resumed normalcy in full.

297. As advised by HHB, the Government has not carried out any RTD operation since mid-September 2022. The Government will learn from the experience gained during the epidemic. Should there be a need for anti-epidemic operations in the future, the Government would take into account the valuable advice from the Office and improve the relevant guidelines and recommendations in light of the actual development.

298. In addition, summing up the experiences of this case, the subject District Office has also reminded its staff that they should keep all residents abreast of the latest arrangements should they have the opportunity to conduct RTD operations again. If there is a need to carry out anti-epidemic related operations in the future, HAD will as always strive to fulfill its duties with dedication and follow the latest guidelines promulgated by HHB.

Recommendation (b)

299. HD uploaded the background information, relevant policies and key learning points of the case concerned to HD's intranet for the access and reference of the staff. Moreover, HD re-circulated the guidelines on "Procedures in Handling Public Complaints" regularly, i.e. at least twice a year, to remind its staff to handle all public complaints and enquiries properly and to refer cases to the appropriate department(s) or organisation(s) for follow-up actions when necessary. The

recommendation in The Ombudsman's Investigation Report had been implemented by HD.

Government Secretariat – Housing Bureau

Case Nos. 2022/2400(1), 2022/2400(2), 2022/2400(3) and 2022/2400(4) – (1) The then Transport and Housing Bureau and the subsequent Housing Bureau allocated a site for transitional housing, ignoring local residents' expectation and views that it would be used as open space as planned by the Government; and (2) Exempting the successful applicant organisation from the requirements set out on the website concerned, i.e. applying for amendment to planning permission for temporary use and launching public consultation, which was unfair to other applicant organisations

Background

300. The complainants lodged complaints with the Office of The Ombudsman (the Office) against the then Transport and Housing Bureau (the then THB) and the Housing Bureau (HB) (which took over the handling of transitional housing projects from the then THB) for improperly utilising a Government site zoned for open space on Hung Lok Road (the Site) adjacent to the complainants' residential estate for the purpose of transitional housing.

301. According to the complainants, "Point to Note 2" (Note 2) on the then THB's website (the Webpage Information) specified that community organisation should carry out feasibility study for using the Site as transitional housing project; interested community organisation had to apply for amendment to planning permission from the Town Planning Board (TPB) under Section 16 for the proposed temporary use and for short-term tenancy from the Lands Department (LandsD). It was further stated that as public consultation would be involved in the process, approval of the application was not assured. Subsequently, the then THB claimed that the Hung Lok Road Project was regarded as a temporary use which is always permitted under the Outline Zoning Plan (OZP) and planning permission from TPB was not required.

302. The complainants' allegations were summarised as follows –

(a) the then THB and HB used the Site for transitional housing purpose, neglecting local residents' expectations and views of the Site being used as open space as committed by the Government (Allegation (a)); and

(b) it was unfair to other applicant organisations to exempt the community organisation which had successfully obtained the site from the requirements specified on the then THB's website, i.e. applying for amendment to planning permission under Section 16 for the proposed temporary use and conducting public consultation (Allegation (b)).

The Ombudsman's observations

Allegation (a)

303. HB clarified that, after the then THB had received the Site's information from LandsD, the Task Force on Transitional Housing (Task Force) consulted the Transport Department and the Leisure and Cultural Services Department and learned that the feasibility studies for the provisions of recreational facilities or public carpark on the Site were still at preliminary stages with detailed implementation schedules for implementation yet to be drawn up. It is thus confirmed that the Site would remain vacant. The Task Force also conducted site assessment before selecting the Site for transitional housing project. Given that the duration of Hung Lok Road Project would not exceed five years together with the requirement for an exit plan, the Task Force considered that it would not affect the Site's long-term development of park, other recreational facilities or public carpark while optimizing use of precious land resources.

304. The Office considered the then THB and the Task Force have handled the matter in line with the Government's policy for promoting the development of transitional housing. Before the long-term development

of park, recreational facilities or public carpark on the Site was confirmed and implemented, the Task Force made use of the Site which had been vacant for the Hung Lok Road Project with a short-term nature, while ensuring that the Site's long-term development would not be affected. Its actions were reasonable. The question of whether the Site was suitable for transitional housing purpose involved professional judgement of housing development and was not subject to the Office's comments.

Allegation (b)

305. The Office scrutinised the relevant information and records, which include the press release with entitled "Town Planning Board agrees on eligible transitional housing for temporary use" and the correspondence between relevant organisations. Based on the aforesaid decision of TPB, the then THB and HB explained that the Hung Lok Road Project could be regarded as a temporary use which is always permitted under the OZP and planning permission from TPB was not required. Statutory public consultation was not involved under the established procedures. Consequently, no statutory public consultation was conducted. The Office found no impropriety in this.

306. HB clarified that Note 2 in the Webpage Information was not applicable to the Hung Lok Road Project. It was a general reminder applicable to transitional housing projects not located in the urban and new town areas, where planning permission from TPB for the proposed temporary use was required. Nevertheless, the Webpage Information did not mention this at all. Nor did it specify or explain its scope of application or exemption. The Office considered Note 2 inaccurate, which could easily cause misunderstanding. Moreover, as many transitional housing projects were in the urban and new town areas, the Office failed to understand why information only applicable to transitional housing projects outside the urban and new town areas would be defined as "general reminder".

307. Meanwhile, HB asserted that although the Hung Lok Road Project did not involve statutory public consultation, the Task Force had, based on the principle of good public administration, conducted local consultation in which it had consulted various stakeholders on many occasions which in fact achieved the same purpose as statutory public consultation. The Office did not agree on this. The "public consultation" in Note 2 referred to the public consultation required for the application for relevant planning permission. The complainants probably expected that their views submitted during the public consultation process would be considered during TPB's assessment of the planning application for the proposed temporary use of the Site. However, the local consultation conducted by the Task Force was not for the purpose of collecting and reflecting the views of residents to TPB. Hence, the purposes of the local consultation and statutory public consultation should not be mixed up.

308. The Office noticed that the press releases issued by the Task Force about approved projects provided only the total funding and estimated number of units provided under each project. HB had not provided any information showing that the Government released details about those projects via other general channels (such as the Government's social media accounts). In such circumstances, the public mainly relied on the Webpage Information to obtain details about the Hung Lok Road Project, so it was even more crucial to keep the Webpage Information precise and accurate. As mentioned above, Note 2 in the Webpage Information about the Hung Lok Road Project published by the then THB in January 2022 was inaccurate. While Note 2 was revised by the then THB in May 2022, it still failed to specify clearly and accurately whether the transitional housing project listed required planning permission from the TPB, and whether statutory public consultation was involved. The Office considered the revised version, which read "Community organisation may need to apply planning permission under the Town Planning Ordinance (if applicable) and apply for Short Term Tenancy for using the site(s)", was even murkier and unable to clarify the essential information about the projects.

309. Overall, The Ombudsman considered the then THB's Webpage Information about the Hung Lok Road Project inaccurate, and considered this complaint partially substantiated and recommended HB to –

(a) review information dissemination of transitional housing projects to ensure that the information provided is accurate, clear and relevant; and

(b) continue to maintain effective communication with residents and strike a balance between the development of the Hung Lok Road Project and the residents' concerns such as the design of the project.

Government's response

310. HB accepted The Ombudsman's recommendations and has taken follow-up actions. Details are as follows.

Recommendation (a)

311. The relevant contents of HB's webpage on transitional housing were revised and the inapplicable note was deleted on 10 May 2022. In addition, the details of transitional housing projects published on the webpage will be updated on an ongoing basis to ensure that the information is accurate, clear and relevant.

Recommendation (b)

312. HB will continue to liaise with stakeholders in the district in respect of the transitional housing project at Hung Lok Road. For example, the operating organisation and contractor of the project met with representatives of the residents concerned on 15 May 2023 to discuss the proposed changes to the design.

313. The operating organisation replied in writing to the representatives of the residents concerned on 19 May and 23 June 2023, stating that it would consider in detail the residents' views on the project design and construction measures, as well as the feasibility of the design changes proposed by the residents. The latest layout plan was also attached for residents' reference. The updated design was provided to the residents for reference in August 2023 by the operating organisation.

314. All the recommendations in The Ombudsman's Investigation Report had been implemented by HB.

Government Secretariat – Then Transport and Housing Bureau

Case No. 2022/1348 and 2022/1584 – (1) Inappropriate use of a site for transitional housing, ignoring local residents' demand for more recreational facilities and acting against their reasonable expectation of the site development; and (2) Failing to follow the established procedures to hold a consultation on the project and releasing misleading information

Background

315. The complainants lodged a complaint with the Office of The Ombudsman (the Office) against the then Transport and Housing Bureau (THB) for improperly utilising a Government site zoned for open space (the Site) at Hung Lok Road adjacent to the complainants' residential estate for the purpose of transitional housing.

316. According to the complainants, the Transport Department (TD) said at the meeting with resident representatives in April 2021 that it would take forward development of the Site using the "single site, multiple uses" approach. However, without prior consultation, the then THB proposed using the Site for transitional housing purpose and listed the Site as a potential site for transitional housing development in the information released on its website (the Webpage Information) in January 2022. Amongst others, "Point to Note 2" (Note 2) stated that community organisations interested in using the Site for transitional housing project (Hung Lok Road Project) had to apply for amendment to planning permission from the Town Planning Board (TPB) under Section 16 for the proposed temporary use and for short-term tenancy from the Lands Department (LandsD). It was further stated that as public consultation would be involved in the process, approval of the application was not assured. Subsequently, the then THB claimed that the Hung Lok Road Project was regarded as a temporary use always permitted under the Outline Zoning Plan (OZP) and application to TPB was not required.

317. The complainants' allegations were summarised as follows –

(a) the then THB ignored local residents' demand for more recreational facilities and acted against their reasonable expectation of the site development. In addition, the complainants questioned whether using the Site for transitional housing purpose was appropriate, whether a balance had been struck among various factors, and whether the then THB had conducted assessment on site selection (Allegation (a)); and

(b) the then THB failed to follow the established procedures to hold a consultation on the Hung Lok Road Project and released misleading information in January 2022 (Allegation (b)).

The Ombudsman's observations

Allegation (a)

318. The Housing Bureau (HB) clarified that, after the then THB had received the Site's information from LandsD, the Task Force on Transitional Housing (Task Force) consulted TD and the Leisure and Cultural Services Department and learned that the feasibility studies for the provisions of recreational facilities or public carpark on the Site were still at preliminary stages with detailed implementation schedules for implementation yet to be drawn up. It is thus confirmed that the Site would remain vacant. The Task Force also conducted site assessment before selecting the Site for transitional housing project. Given that the duration of Hung Lok Road Project would not exceed five years together with the requirement for an exit plan, the Task Force considered that it would not affect the Site's long-term development of park, other recreational facilities or public carpark while optimizing use of precious land resources.

319. The Office considered the then THB and the Task Force have handled the matter in line with the Government's policy for promoting the development of transitional housing. Before the long-term development

of park, recreational facilities or public carpark on the Site was confirmed and implemented, the Task Force made use of the Site which had been vacant for the Hung Lok Road Project with a short-term nature, while ensuring that the Site's long-term development would not be affected. Its actions were reasonable. The question of whether the Site was suitable for transitional housing purpose involved professional judgement of housing development and was not subject to the Office's comments.

Allegation (b)

320. The Office scrutinised the relevant information and records, which include the press release with entitled "Town Planning Board agrees on eligible transitional housing for temporary use" and the correspondence between relevant organisations. Based on the aforesaid decision of TPB, the then THB and HB explained that the Hung Lok Road Project could be regarded as a temporary use which is always permitted under the OZP and planning permission from TPB was not required. Statutory public consultation was not involved under the established procedures. Consequently, no statutory public consultation was conducted. The Office found no impropriety in this.

321. HB clarified that Note 2 in the Webpage Information was not applicable to the Hung Lok Road Project. It was a general reminder applicable to transitional housing projects not located in the urban and new town areas, where planning permission from TPB for the proposed temporary use was required. Nevertheless, the Webpage Information did not mention this at all. Nor did it specify or explain its scope of application or exemption. The Office considered Note 2 inaccurate, which could easily cause misunderstanding. Moreover, as many transitional housing projects were in the urban and new town areas, the Office failed to understand why information only applicable to transitional housing projects outside the urban and new town areas would be defined as "general reminder".

322. Meanwhile, HB asserted that although the Hung Lok Road Project did not involve statutory public consultation, the Task Force had, based on the principle of good public administration, conducted local consultation in which it had consulted various stakeholders on many occasions which in fact achieved the same purpose as statutory public consultation. The Office did not agree on this. The "public consultation" in Note 2 referred to the public consultation required for the application for relevant planning permission. The complainants probably expected that their views submitted during the public consultation process would be considered during TPB's assessment of the planning application for the proposed temporary use of the Site. However, the local consultation conducted by the Task Force was not for the purpose of collecting and reflecting the views of residents to TPB. Hence, the purposes of the local consultation and statutory public consultation should not be mixed up.

323. The Office noticed that the press releases issued by the Task Force about approved projects provided only the total funding and estimated number of units provided under each project. HB had not provided any information showing that the Government released details about those projects via other general channels (such as the Government's social media accounts). In such circumstances, the public mainly relied on the Webpage Information to obtain details about the Hung Lok Road Project, so it was even more crucial to keep the Webpage Information precise and accurate. As mentioned above, Note 2 in the Webpage Information about the Hung Lok Road Project published by the then THB in January 2022 was inaccurate. While Note 2 was revised by the then THB in May 2022, it still failed to specify clearly and accurately whether the transitional housing project listed required planning permission from TPB, and whether statutory public consultation was involved. The Office considered the revised version, which read "Community organisation may need to apply planning permission under the Town Planning Ordinance (if applicable) and apply for Short Term Tenancy for using the site(s)", was even murkier and unable to clarify the essential information about the projects.

324. Overall, The Ombudsman considered the then THB's Webpage Information about the Hung Lok Road Project inaccurate, and considered this complaint partially substantiated and recommended HB to –

(a) review information dissemination of transitional housing projects to ensure that the information provided is accurate, clear and relevant; and

(b) continue to maintain effective communication with residents and strike a balance between the development of the Hung Lok Road Project and the residents' concerns such as the design of the project.

Government's response

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

Recommendation (a)

326. The relevant contents of HB's webpage on transitional housing were revised and the inapplicable note was deleted on 10 May 2022. In addition, the details of transitional housing projects published on the webpage will be updated on an ongoing basis to ensure that the information is accurate, clear and relevant.

Recommendation (b)

327. HB will continue to liaise with stakeholders in the district in respect of the transitional housing project at Hung Lok Road. For example, the operating organisation and contractor of the project met with representatives of the residents concerned on 15 May 2023 to discuss the proposed changes to the design.

328. The operating organisation replied in writing to the representatives of the residents concerned on 19 May and 23 June 2023, stating that it would consider in detail the residents' views on the project design and construction measures, as well as the feasibility of the design changes proposed by the residents. The latest layout plan was also attached for residents' reference. The updated design was provided to the residents for reference in August 2023 by the operating organisation.

329. All the recommendations in The Ombudsman's Investigation Report had been implemented by HB.

Home Affairs Department

Case No. 2021/3748(I) – Failing to respond to a request for information within the target response time prescribed in the Code on Access to Information

Background

330. The complainant alleged that on 8 September 2021, a District Office (DO) under the Home Affairs Department (HAD) wrote to the Chairman of the Owners' Committee of the housing estate where the complainant lived (the OC), indicating that the Government was conducting a consultation exercise on a tenancy agreement with respect to a proposed transitional housing project at a particular site (the Project). On 16 September, the complainant wrote to DO to request extension of the consultation period and provision of the detailed reasons plus all the documents in relation to the Project in accordance with the Code on Access to Information (the Code). In its reply to the complainant on 4 October, DO stated that the consultation period had been extended to 6 October, and attached a notice about the extension already sent to the Chairman of the OC on 23 September for the complainant's reference. DO also told the complainant that his information request had been referred to the then Transport and Housing Bureau (THB) and the District Lands Office concerned (DLO) under the Lands Department for follow-up. Nevertheless, the complainant had not received any response from then THB or DLO when he lodged the complaint with the Office of the Ombudsman (the Office).

331. On the aforementioned, the complainant lodged a complaint with the Office against HAD for failing to reply to his information request in accordance with the target response time specified in the Code.

The Ombudsman's observations

332. DO received on 16 September 2021 the complainant's email request for information and extending the consultation period. Since transitional housing projects were under then THB's purview, DO did not possess the requested information. Consequently, it relayed the complainant's request to then THB that same day. In its email to then THB, DO pointed out that residents of three housing estates in the vicinity also requested extension of the consultation period, and the complainant asked the Bureau to provide more information for him to consider. DO also attached the complainant's email for then THB's reference. On 23 September 2021, then THB notified DO of its decision to extend the consultation period, so DO wrote to all the groups on the List (including the OC) to inform them of then THB's decision that day.

333. While DO had referred the complainant's request and email to then THB on 16 September 2021, it failed to communicate to then THB clearly in its email that the Bureau was expected to follow up on the complainant's information request and reply to the complainant direct. In response to the complainant's complaint to 1823 on 3 October, DO referred his information request to then THB and DLO again on the following day and asked them to reply to him direct. It also notified the complainant of the referral on 4 October. This had exceeded the target response time specified in the Code, i.e. to give the applicant an interim reply within ten days of receipt of a written request. DO had apologised to the complainant for the delay.

334. DO received a garbled email from then THB on 21 October 2021. However, its staff mistook that the email was misdirected and therefore, failed to confirm its original content with then THB. It was not until 16 November 2021 when then THB enquired of DO about its reply to the complainant that DO discovered that the garbled message was not misdirected but was the Bureau's reply intended to be provided to the complainant via DO. That day, DO relayed then THB's reply to the complainant.

335. The above reveals a number of inadequacies in DO's handling of the complainant's information request. As a result, there was delay in handling the request and the complainant could not obtain the requested information as soon as possible.

336. First of all, DO only replied to the complainant's information request of 16 September on 4 October 2021. This exceeded the target response time of ten days as specified in the Code.

337. Secondly, while scrutinising the relevant work records, the Office noticed that although DO did mention the complainant's information request when it referred his email to then THB on 16 September 2021, it did not ask the Bureau to follow up or provide a response. It only asked then THB explicitly to reply to the complainant's information request after the complainant had lodged a complaint with 1823. In response to the Office's investigation, HAD admitted to DO's inadequacies in communication with then THB in its 16 September 2021 email.

338. Furthermore, while then THB's email reply to DO on 21 October 2021 was garbled, DO just assumed that the email was misdirected without clarifying with the Bureau. Until then THB received our referral and made enquiry with it, it had not corrected the mistake, thereby causing a delay in replying to the complainant, which was not satisfactory.

339. In light of the above, The Ombudsman considered this complaint substantiated.

340. In order to straighten out the process of case follow-up in the future, the Office was glad to note that DO has strengthened its liaison and communication with other relevant departments with respect to the handling of public enquiries, including that staff are required to ring up the relevant department promptly after making an email referral to confirm receipt and explain the content of it, and copy to the relevant departments their replies to members of the public. DO has also reminded its staff to pay more attention to the requirements of the Code and the target response

time specified therein when dealing with similar enquiries, and communicate with the enquirers in a timely manner to keep them informed of the case progress.

341. The Ombudsman recommended that HAD should examine the settings of its email system regarding the garbled email with a view to identifying and resolving related technical issues.

Government's response

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

343. On 25 April 2022, DO reported the case of garbled email to the Information Technology Management Unit (ITMU) of HAD, providing both the garbled email and the original email for troubleshooting. After investigation, ITMU found that the email from then THB was corrupted when it was received by DO. This was only an isolated case which has nothing to do with the email system itself. The corrupted email will be repaired and the original text recovered by the system automatically when it is replied to or forwarded.

344. To avoid similar occurrences, DO has repeatedly reminded its staff to contact the sender department at once when receiving a garbled email or having doubts about the content of an email to confirm what the email is about. They are also reminded to seek technical support from ITMU in checking the email system of the staff member concerned, identifying the cause of problems and resolving technical issues. After observation, no other garbled emails have been found so far.

Housing Department

Case No. 2022/0166 – Failing to consider the complainant's situation when allocating public rental housing units to her

Background

345. According to the complainant, she was a single mother who needed to take care of six children aged under 16. Regarding the application for public rental housing (PRH) made by her and her children, the complainant told the Housing Department (HD) that, as stipulated by the relevant legislation, children under the age of 16 years must not be left unattended at home. However, HD had twice allocated two adjacent units to them. Thus, the complainant lodged a complaint with the Office of The Ombudsman (the Office) accusing HD of not taking into the account the requirements of the relevant legislation when handling their PRH application.

The Ombudsman's observations

346. HD allocates units to applicants on a random basis strictly according to their family size and subject to the availability of units at that time. The original intention of allocating two units in close proximity to large families is to cater for the housing needs of applicants as soon as possible when there is no suitable large unit available. Such practice is generally recognised. When the complainant was due for flat allocation, HD, before being informed by the complainant of her wish to be allocated one unit, made the first and second allocation for her according to the availability of resources at that time. The Office considered that this was in line with the HD's allocation policy. However, as the family composition of the complainant was relatively rare, the established allocation procedures might not cater for the unique circumstances of her family. While the applicant should take the initiative to make special request for allocation, if HD was aware of any cases with special circumstances, it could take a further step to consider whether the

established allocation procedures were still applicable. For the complainant's case, it would be more desirable if HD could be aware of the special family composition of the complainant and find out her childcare arrangement at an early stage so as to make flexible arrangements.

347. On the other hand, the Office noted that it was not until the second allocation that HD was informed by the complainant of her wish to be allocated one unit only. The Office was of the view that, if the complainant considered it unreasonable for her and her children to live in two separate units, she should inform HD of her wish to be allocated one unit only as soon as she refused the first offer.

348. After the complainant had refused the second offer, HD made repeated attempts to contact her to find out her actual childcare arrangement and to confirm her reasons for refusing the offer. As HD failed to contact the complainant, a letter was issued to her in November 2021 according to the established allocation policy and procedures. The Office noticed that, in the main body of the letter, HD stated that the complainant had "failed to furnish 'acceptable reasons' for refusing the housing offer"; and in the attached sheet of the letter, HD explained that it had made repeated attempts to contact the complainant but to no avail. If HD could explain to the complainant at the same time that the purpose of contacting her was to find out her actual childcare arrangement and to confirm her reasons for refusing the offer, it could better help the complainant understand the issue.

349. Having re-examined the complainant's case upon the Office's intervention, HD admitted that there were inadequacies in handling the complainant's flat allocation without taking into consideration her family situation and composition, and had taken remedial and improvement measures.

350. Moreover, when examining the relevant records of the case, the Office noticed that, in the HD's replies of July 2020 and May 2021 in

response to the complainant's submission of medical proofs, HD had informed the complainant that when her PRH application was due for flat allocation, HD would allocate "a PRH unit suitable for a seven-person household (一間符合七人家庭的公屋單位)" / "a PRH unit suitable for an eight-person household (一個符合八人家庭的公屋單位)" to her by means of random computer batching, subject to the availability of PRH resources. The Office understood that such wordings might have been taken from some sample replies, but the wordings were not accurate in the case of large families. For the present case, the complainant would inevitably expect from the two reply letters that HD would only allocate one unit to her, and made her less likely to think of the possible need to make an early request to HD for allocation of one unit. The Office agreed that if there were suitable single units for allocation, HD should not allocate two units in close proximity to large family applicants. As explained by HD, its replies to the complainant made in July 2020 and May 2021 were based on the fact that there were/might have a small number of suitable recovered units in the district she chose. Regarding the HD's explanation, however, the Office believed that, as the allocation of PRH was conducted by random computer batching, HD had not made any special arrangements for the complainant's allocation because it did not know her wish to be allocated one unit only until she refused the second offer. Therefore, at the time when HD issued the above replies to the complainant, it could not be ruled out that she would be randomly allocated two units. In fact, the complainant was allocated two units in the subsequent two offers. To prevent large family applicants from expecting that HD would only allocate one unit for their applications, HD should avoid stating in the reply letters in future that "a" ("一間" / "一個") PRH unit would be allocated to the applicant. If HD would like to keep the wordings "一間" / "一個" to express its basic principle of allocating one unit, it might consider including a note in the replies, stating that this was the basic principle but HD might, depending on the PRH supply at the time of allocation, allocate two units in close proximity to applicants if there was no suitable single unit, so as to avoid misunderstanding.

351. The Office also noticed that HD did not remind applicants in the Application Guide of the possibility that large family applicants might be allocated two units. If HD could make it clear to large family applicants that they may be allocated two units, it would help remind applicants with special needs to inform HD earlier of their wish to be allocated one unit only for HD's consideration. HD should, at the same time, draw applicants' attention that for large family applicants who insist on waiting for the allocation of one unit only due to special needs, their waiting time for flat allocation may be substantially lengthened given the shortage of supply. As for the complainant's case, she should be aware that, given the tight supply of large units, she might have to wait a much longer time for allocation; and if she could broaden her choice of district, she might have a higher chance of early allocation.

352. The Office understood that HD, in view of the tight supply of large units, had to consider allocating two units to large family applicants. It was perfectly normal for large family applicants, despite having different family compositions, to expect that they could take care of each other under the same roof as their applications were made on a household basis. It was also the HD's usual practice to allocate one unit for one application. The Office considered that, in addition to the above improvement measures, HD could take the initiative to explore other possible options to facilitate applications of large families (such as combining two adjacent units into one subject to structural feasibility of the building).

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

(a) enhance sensitivity and consider reasonably whether it is necessary to make special arrangements after being informed of the unique circumstances of applicants, in addition to examining whether there are "acceptable reasons" for refusing the housing offer for the case concerned according to the established guideline and procedures;

(b) consider revising the wordings "一間" / "一個" in the reply letters to avoid misunderstanding;

(c) make it clear to applicants when processing PRH applications from large families in future as well as in the Application Guide that large family applicants may be allocated two units by HD; and that if they insist on accepting the allocation of one unit only due to special needs, their waiting time for flat allocation may be substantially lengthened given the shortage of supply; and

(d) explore other possible options to facilitate applications of large families (such as combining two adjacent units into one subject to structural feasibility of the building).

Government's response

354. HD accepted The Ombudsman's recommendations and has taken follow-up actions. Details are as follows.

Recommendation (a)

355. As the circumstances of each application for PRH vary, HD will continue to consider whether there are "acceptable reasons" for refusing the housing offer having regard to the individual circumstances of each application and with reference to the information and documents provided. HD staff, when handling special cases in future, will continue to find out the actual needs of the case, and make appropriate arrangements and allocation according to the existing allocation policy and procedures.

Recommendation (b)

356. To prevent large family applicants from expecting HD to allocate only one unit for their applications, HD has included a note in the relevant letters to applicants, making it clear to applicants with a household size of six or more persons (i.e. large family applicants) that when their PRH

applications are due for allocation but there is no single unit meeting the relevant allocation standard, HD will, subject to the availability of resources, allocate two PRH units in close proximity to large family applicants as far as practicable in order to meet their housing needs as soon as possible.

Recommendation (c)

357. To enable large family applicants to know in advance they may be allocated two units, HD has included relevant information on the allocation arrangement in the Application Guide for PRH. Regarding the waiting time of large family applicants, since the progress of PRH allocation depends on various factors, including the applicants' choice of district, the number of applications with the same family size in individual districts, the supply of PRH units in each district and whether applicants with a higher priority accept flat offers, the waiting time of applicants in individual districts may vary. Therefore, in its letter to applicants, HD has reminded large family applicants that if they insist on accepting the allocation of one PRH unit only due to special needs, their waiting time for flat allocation may be substantially lengthened given the shortage of supply in PRH units meeting the allocation standard applicable to them.

Recommendation (d)

358. For large family applicants who insist on accepting the allocation of one PRH unit only, if there is no single unit meeting the relevant allocation standard when their PRH applications are due for flat allocation, HD staff will take the initiative to contact the applicants to find out their housing needs and explain the relevant allocation arrangements. Taking into account the urgency of their housing needs and the actual needs of their families at the time, the applicants may consider whether to accept the allocation of two PRH units in close proximity in order to address their housing needs as soon as possible.

359. As regards the option of combining two adjacent units, it may not necessarily be feasible given the varied designs and building structure of units in different estates. However, for large family applicants who wish to be allocated one PRH unit only, if there is no single unit meeting the relevant allocation standard when their PRH applications are due for allocation but HD has two adjacent recovered units, HD staff will take the initiative to contact the applicant to find out their housing needs. If the applicants accept the allocation of two adjacent PRH units and request for combining the units, HD will study the feasibility of combining the units according to the relevant requirements of the Buildings Ordinance and subject to the conditions of individual buildings, including building structure, fire safety and daylighting requirements.

360. The recommendations in The Ombudsman's Investigation Report had been implemented by HD.

Housing Department

Case No. 2022/2046 – Continuing to communicate with the complainant by post despite the latter's objection to such arrangement

Background

361. The complainant resided in a public rental housing (PRH) flat under the Hong Kong Housing Authority. She was an authorised occupant of the flat. By the end of 2021, the complainant was recommended for compassionate rehousing by the Social Welfare Department on the ground of social and medical needs. She was allocated another PRH flat and accepted the housing offer in early 2022. According to the prevailing policy, the estate office would have to follow up on the deletion of her name from the tenancy of the flat she was residing in so as to avoid double housing benefit. The complainant claimed that her letters had previously been stolen and opened, and repeatedly requested the Housing Department (HD) to contact her by email instead of sending letters addressed to her by post to the PRH flat where she lived. Subsequently, as HD still continued to send letters addressed to the complainant by post to the PRH flat where she lived in November 2021, March and June 2022, she lodged a complaint with the Office of The Ombudsman (the Office) against the department in June 2022.

The Ombudsman's observations

362. HD explained that, as a third party had used the complainant's email to contact the estate office, HD suspended using email to contact the complainant in order to avoid leakage of her personal data to the third party. The Office considered this not unreasonable. Besides, it was also considered to be appropriate for HD to telephone the complainant to confirm whether it could still contact her by email. However, it was not a well-considered approach for HD to send invitation letters to the complainant in November 2021 and March 2022 after its failure to get in touch with the complainant by way of phone calls or notes. The Office

considered that HD could have first tried to contact the complainant by other means to which she did not object, such as inviting her for an interview at the office by email which did not contain her personal data, or sending her the information that HD had to convey to her in the form of an email attachment protected with a password which should be known only to the complainant, e.g. identity card number. Nevertheless, there was no indication of such similar attempts by HD.

363. In addition, the Office considered that even if the complainant's email account had been used by a third party, and HD suspected that this had rendered the complainant unable to receive emails from HD using that account, and even if it was assumed that the means suggested in the paragraph above would not work, these were considered not substantial grounds for HD to switch to posting letters to her right away. This was because the complainant had claimed that her letters had been stolen and opened, and HD had already switched to contacting her by non-postal means earlier on.

364. As the matter developed, on 28 April 2022, the complainant informed HD staff that they could continue to contact her by email. The Office considered that the complainant had the responsibility to protect the login details of her email account. As she had indicated that HD could continue to communicate with her by email, HD should no longer be worried that such means of communication would result in leakage of her personal data, and should not send her letters by post anymore. However, the complainant subsequently still did not turn up to go through the formalities for deletion from the tenancy as stated in the invitation email (the responsibility for the unsuccessful deletion from the tenancy certainly did not lie with HD), and HD contacted her again on 13 and 23 June by post, a means which had already met with clear objection from the complainant and which did not help to resolve the matter. This was not only futile, but also attracted complaints. Although HD did not agree with the Office's view and reiterated that it was not inappropriate to post letters to the complainant, sending her letters would indeed not help resolve the problem because the complainant did not respond to HD's invitation letters

issued in November 2021 and March 2022. Therefore, The Office considered that HD, in responding to the Office's investigation, was unable to explain clearly how the problem could be resolved by posting letters to the complainant.

365. The Office agreed that HD had the responsibility to promptly deal with the tenancy matters of the PRH flat where the complainant lived. The Office also acknowledged the efforts by HD in handling the complainant's case. However, the Office had reservations regarding HD's argument that communicating with the complainant by post was an effective way to convey messages to her as proved by the fact that the complainant usually responded after HD had sent her letters. The Office considered that regarding the complainant's response to the letters as mentioned by HD, HD should understand that her response was only to reiterate her request not to be contacted by post and express her dissatisfaction rather than indicating that she would proceed with the formalities for deletion from the tenancy and such a result could hardly support the argument that posting letters to the complainant was an effective way. The Office had to point out that the complainant had the right to request HD to switch to communicating with her by email instead of by post as she did not wish the information related to her to be known to others (including household members). Unless HD was sending her letters, for example, in the exercise of its powers conferred by legislation or in the manner of handling as stipulated by law (where sending a letter is necessitated), as in the complainant's case, HD had no reasonable justification for still posting letters to the complainant despite knowing that she had indicated to be contacted by email.

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

(a) review and study whether there is a need to improve the existing administrative procedures and working guidelines and enhance the training of staff to resolve the deadlock of this case to prevent tenants from prolonged tenancy duplication as a result of ignoring

HD's request to complete the formalities for deletion from the tenancy; and

(b) brief its staff on the experience learnt from this case to prevent the occurrence of the same problem when they encounter the same difficulty in the future.

Government's response

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

Recommendation (a)

368. HD has reviewed the existing internal administrative procedures and working guidelines, and has decided to maintain the existing procedures for handling tenancy duplication cases. Besides, HD will enhance the relevant training in courses provided to the frontline estate management staff and has shared this experience in a training course, which was a sharing session on cases of the Office held on 19 July 2023.

Recommendation (b)

369. HD has shared the experience gained from this case in the Estate Management Division Senior Staff Meeting (i.e. including directorate staff such as Assistant Directors and Regional Chief Managers, who are responsible for estate management) and instructed Regional Chief Managers to disseminate the relevant information to their frontline management staff. Given the uniqueness of each case, estate management staff should understand the different situations of each case before handling and following up on the case in an appropriate and flexible manner according to the established policies and procedures to avoid similar situations arising in the future.

Housing Department

Case No. 2022/2185 – Failing to monitor the handling of unauthorised laundry racks in a public housing estate by the management company

Background

370. In August 2021, the complainant, a tenant of a public housing estate under the Hong Kong Housing Authority, complained about the unauthorised laundry racks installed on the external walls of many flats in the estate (the Problem). The Housing Department (HD) issued written replies to the complainant in September and November 2021 respectively, stating that the management company had issued enforcement notices to the tenants concerned requiring rectification and would follow up on the Problem.

371. In mid-July 2022, the complainant found that the Problem persisted with unauthorised laundry racks newly installed. The complainant considered HD to have failed to properly monitor the management company in handling the Problem and thus filed a complaint with the Office of The Ombudsman (the Office) against the department.

The Ombudsman's observations

372. Based on the Office's investigation findings, HD and the management company had, after receiving the complaint, followed up on the Problem, including conducting inspections of the external walls throughout the estate in August 2021 and July 2022 respectively, and reminding tenants via the Estate Newsletter not to alter landlord's fixtures at will.

373. However, after the period for rectifying the Problem had expired in late October 2021, the management company only verbally advised the 15 tenants who still had not removed the unauthorised laundry racks to rectify the Problem. Its failure to take further action, such as issuing a

written warning about the consequences of non-compliance with the enforcement notice, might have caused the tenants to misunderstand that HD would not stringently enforce the enforcement notice, resulting in the Problem not being rectified earlier.

374. During the more than eight months between November 2021 and mid-July 2022, around four months were covered by the fifth wave of the COVID-19 epidemic, leaving around four months for the tenants to arrange rectification works. By mid-July 2022, nine tenants still had not removed the unauthorised laundry racks. The Office considered that the Problem not being rectified earlier was only partly due to the epidemic. The lack of timely action by the management company, such as issuing written warnings, was probably one of the reasons.

375. HD explained to the Office the grounds for continuously persuading the remaining tenant, who still had not rectified the Problem, to co-operate (e.g. no imminent/obvious hazard was posed by the laundry racks). However, the Office noticed that HD found a total of 54 tenants with the Problem during the systematic large-scale inspections in August 2021 and July 2022 respectively. The enforcement notices were issued to all those tenants to require rectification within the specified period, and 53 of them subsequently removed their laundry racks. Regarding the remaining one case, HD only planned to consider further action if there was imminent/obvious hazard posed by the tenant's laundry rack, which might cause the tenants who had duly complied with the enforcement notices to think that HD was acting unfairly. While issuing enforcement notices to the non-compliant tenants to require rectification, HD, on the other hand, failed to stringently demand that the remaining tenant rectify the Problem as soon as possible. It would give an impression of disparity in its enforcement action against the Problem. The tenant concerned and even other tenants might misunderstand that causing the Problem or not complying with the enforcement notices would have no consequences. As such, HD might find it difficult in future to effectively address irregularities by issuing enforcement notices to tenants.

376. Overall, The Ombudsman considered this complaint partially substantiated and recommended that HD should take further action promptly and where necessary against non-compliant tenants in outstanding cases, including issuing a written warning about the consequences of non-compliance with an enforcement notice.

Government's response

377. HD accepted The Ombudsman's recommendation and had taken the following follow-up actions.

378. HD agreed to the recommendation of the Investigation Report, i.e. to take further action promptly and where necessary against non-compliant tenants, including issuing a written warning about the consequences of non-compliance with an enforcement notice, and had included it in the agenda of the review of the existing Estate Management Division Instruction (EMDI).

379. While reviewing the EMDI, HD had also revised the Marking Scheme for Estate Management Enforcement in Public Housing Estates (Marking Scheme). The revised Marking Scheme will take effect in the fourth quarter of 2023. As the revision of the Marking Scheme is related to the contents of the EMDI, HD will update the EMDI accordingly upon the implementation of the revised Marking Scheme, and notify The Ombudsman when the updated EMDI takes effect.

Information Services Department

Case No. 2022/2434(I) – Unreasonably refusing to provide a list of media organisations invited to cover the July 1 Reunification Anniversary events and the internal guidelines or policies pertaining to the selection criteria of media organisations

Background

380. On 16 June 2022, the complainant, on behalf of a media organisation, submitted to the Information Services Department (ISD) an application for access to information, i.e. a full list of media organisations invited by ISD to cover the July 1 Handover Anniversary celebrations/festivities, and the internal guidelines, polices and/or communications pertaining to the criteria of selecting media organisations for the July 1 events. On 6 July 2022, ISD declined the media organisation's request by citing paragraph 2.3 of the Code on Access to Information (the Code), which provides that the disclosure of information which would harm or prejudice Hong Kong's security may be refused. Subsequently, the media organisation approached ISD for a review. On 26 July 2022, the Department decided to uphold its decision.

381. The media organisation considered ISD's refusal unreasonable as the media organisations that covered the July 1 events were not a state secret. The complainant could not understand how the disclosure of a list of invited media organisations could pose a security threat to Hong Kong when the full list of registered media organisations was available on the website of the Office for Film, Newspaper and Article Administration (OFNAA). Against this background, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against ISD.

The Ombudsman's observations

382. Paragraph 2.3(b) of the Code could be applied to refuse disclosure of information if the harm or prejudice that might result from disclosure outweighs the public interest in disclosure.

383. The Office acknowledged the assessment that visits of national leaders and foreign heads of states and governments require the most stringent security arrangements as they are high-value targets of attack. Any information about the visits, including the itinerary and the participating organisations, can possibly assist terrorists to undermine the protection of these dignitaries. To avoid any harm or prejudice to the protection of President Xi Jinping during his visit to Hong Kong, the Office found it not unreasonable for ISD to have withheld the list of invited media organisations before the events took place by citing paragraph 2.3(b) of the Code.

384. ISD has also explained why there were still security concerns surviving the events if the list of invited media organisations was disclosed after the anniversary events. Although the Office considered that the security concerns of each event may differ and should be assessed on a case-by-case basis, the Office could not rule out the possibility that disclosure of the list of invited media organisations might assist terrorists to infer how the security clearance mechanism was operated and evade such mechanism in the future, leading to potential harm or prejudice to the operations, sources and methods of those whose work involved duties connected with Hong Kong's security.

385. According to the Code and its Guidelines, a risk of harm or prejudice suffices for non-disclosure of information and the weight to be attached to the risk will depend on the nature of the harm which might result. In this case, in view of the grave security concern of the 25th anniversary events and the serious nature of the harm which might result from disclosure of the list of invited media organisations, i.e. prejudice to the protection of President Xi during his visit to Hong Kong and assisting

the evasion of the security clearance mechanism for the protection of dignitaries in the future, the Office had no basis to dispute ISD's decision of non-disclosure of the said information by citing paragraph 2.3(b) of the Code. On the other hand, the Office considered that the full list of registered media organisations published on the website of the OFNAA was general information for public reference and was unlikely to have implications for the security arrangements for the visits of dignitaries.

386. ISD has also clarified that it does not have any internal guidelines, policies and/or communications pertaining to the criteria of selecting media organisations for physically covering visits of national leaders and foreign heads of state or governments. It therefore could not provide such information to the complainant. While the Code does not oblige Government departments to acquire information not in their possession, the Office considered that ISD should have addressed this part of the information request more properly by stating clearly in its reply to the complainant dated 6 July 2022 that it does not possess the requested information. The Office urged ISD to learn from this case and seek to improve its future handling of information requests under the Code.

387. The Office concluded that the ISD's refusal to disclose the information requested by the complainant not unreasonable but part of the information request should have been handled more properly.

388. Overall, The Ombudsman considered this complaint unsubstantiated but with other inadequacies found. ISD was recommended to provide its officers with more training on the Code so that the latter could better address information requests when the Department did not possess the requested information.

Government's response

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

390. To further enhance the effectiveness in handling access to information requests, more training on the Code would be provided to its officers. While the mandatory orientation training which new recruits are required to attend will be reviewed and refined to give the new recruits a better understanding of the Code, its application and related matters, officers at the rank of Information Officer or above will be provided with refresher training/sharing session on the subject. Officers of other grade in ISD who are required to handle requests for access to information would also be invited to attend the above training.

391. All officers are also encouraged to participate in training programmes/seminars relevant to the Code organised by other parties such as the Civil Service College.

392. A relevant department circular has been uploaded onto the Department's internal portal. The Department will review the departmental circular, re-circulate the updated circular more frequently so as to enhance staff's awareness of the requirements of the Code.

Lands Department

Case No. 2021/3368 – (1) Ineffective follow-up action on suspected occupation of Government land and non-compliance with land use by a plastic recycling yard; and (2) Failing to stop the erection of roof cover at the plastic recycling yard

Background

393. The complainant lodged a complaint with the Lands Department (LandsD) about a plant in the subject location (the plant) which was suspected of unlawful occupation of Government land and violating land use restrictions. LandsD demolished the hoardings and metal gate(s) of the plant on the Government land in June 2021, but they were soon re-erected in July of the same year.

394. Moreover, the plant was found to have commenced the erection of a roof cover in August 2021. LandsD then referred the case to the Buildings Department (BD) but the erection of the roof cover was nonetheless completed in early September of the same year.

395. The complainant thus lodged a complaint with the Office of The Ombudsman (the Office) that LandsD made inadequate effort in following up the irregularities identified in the subject location and failed to deter the erection of the roof cover in the plant.

The Ombudsman's observations

396. An aerial photo of the subject location showed that the unauthorised structure(s) and the area of the unlawfully occupied Government land were not small in size. The plant also repeatedly caused air pollution, against which the Environmental Protection Department (EPD) took law enforcement actions accordingly.

397. According to the information available, the relevant District Lands Office (DLO) received the complaint about the site from EPD earlier in April 2018. However, the former Squatter Control Office (SCO) did not provide the Squatter Control Survey Record (SCSR) of the subject location as per DLO's request, leading to lack of progress in the case handling. The turning point was when the regional SCOs had been gradually subsumed into the respective DLOs since June 2021. DLO ultimately confirmed in October 2021 that there were unauthorised structures on the land lot and the unauthorised structure(s) erected thereon did not conform to the SCSR. In brief, by which time about three and a half years in total had passed since the receipt of the complaint.

398. Upon reviewing DLO's work records, the Office found that when DLO was handling other cases related to the subject location in 2015, it requested the former SCO to provide the SCSR of the subject location, but the former SCO, as in the present case, did not respond to the request. The Office considered the former SCO's unreasonable delay in handling requests for information serious and unacceptable.

399. On the other hand, after requests for SCSR were made in September 2018 and February 2019, DLO did not press the former SCO for the requested information, allowing the case to remain idle for a long period of time. It was only until January 2020 when a number of related complaints were received that DLO sent officers to conduct site inspection and requested information from the former SCO again. The Office considered that there was a lack of follow-up actions by DLO.

400. On the unlawful occupation of Government land in the subject location, DLO posted statutory notices on the metal gate(s) and hoardings of the site in June 2020, requiring the relevant person(s) to cease occupation of the Government land by 16 July but the metal gate(s) and hoardings were only demolished one year after the deadline. LandsD explained that as asbestos-containing material was found in some of the fences, details about the clearance plan had to be considered and formulated carefully, thus affecting the progress of the clearance work.

Yet, even if the above considerations and the implementation of special work arrangement in LandsD were taken into account, the Office still considered the work progress made by LandsD in handling the complaint was inefficient and unsatisfactory.

401. As for the allegation of DLO's failure to deter the erection of the roof cover in the plant, LandsD explained that the case had been referred to BD for follow-up in accordance with its guidelines, and BD subsequently issued a removal order against the new structure. The Office considered that no maladministration was involved when DLO referred the case to BD for follow-up according to its guidelines.

402. In view of the above, The Ombudsman considered that the allegation was partially substantiated and recommended LandsD to –

(a) remind its offices to promptly respond to the enquiries from other offices and escalate the problem to higher level of management at an early stage if necessary, and not to put it on the back burner;

(b) take measures to prevent the Government land in the subject location from being occupied again; and

(c) actively examine whether there is sufficient evidence or to continue collecting evidence if necessary and possible, for considering prosecuting the occupier(s) of the subject Government land, in relation to the repeated unlawful occupation of the Government land concerned.

Government's response

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

Recommendation (a)

404. LandsD issued an email to all DLOs on 7 June 2022 to remind its officers to promptly respond to requests for information raised by other departments or offices. If staff encounter any difficulties in providing the requested information in a timely manner, they should seek steer from their supervisors and liaise with the requesting party properly. The requesting offices should also monitor the case progress and, when a reply from the counterpart remains outstanding after repeated reminders, escalate the case to supervisory level. The above-mentioned email will be recirculated to all sections on a half-yearly basis.

Recommendations (b) and (c)

405. LandsD has taken land control action to fence off the Government land concerned and to erect Government land notice boards. In addition, all evidence collected has been referred to the prosecutor of the Department for consideration of initiating prosecution actions against the offenders.

Lands Department

Case No. 2021/3870B(I) – Failing to respond to a request for information within the target response time prescribed in the Code on Access to Information

Background

406. According to the complainant, a District Office (DO) under the Home Affairs Department (HAD) wrote to the Chairman of the Owners' Committee of the housing estate where the complainant lived (the OC) on 8 September 2021 informing that the Government was conducting a consultation exercise on a tenancy agreement with respect to a proposed transitional housing project (the Project). On 16 September, the complainant wrote to DO to request extension of the consultation period and provision of the detailed reasons plus all the documents in relation to the above transitional housing project in accordance with the Code on Access to Information (the Code). In its reply to him on 4 October, DO stated that the consultation period had been extended to 6 October, and attached a notice about the extension already sent to the Chairman of the OC on 23 September for the complainant's reference. DO also told the complainant that his information request had been referred to the Transport and Housing Bureau (then THB) and the District Lands Office concerned (DLO) for follow-up. Nevertheless, the complainant had not received any response from the then THB or DLO when he lodged the complaint with the Office of The Ombudsman (the Office).

407. As mentioned in the preceding paragraph, the complainant lodged a complaint with the Office against THB and DLO for failing to respond to his information request in accordance with the target response time specified in the Code.

The Ombudsman's observations

408. According to the Code, upon receipt of an information request transferral, a reply should be provided to the information requestor within the target response time specified. In its email of 4 October 2021, DO did ask the then THB and DLO to directly reply to the complainant with respect to his information request. As such, the Office considered that the then THB and DLO should have followed the Code to issue an interim reply and respond to the complainant.

409. Since both the then THB and DLO possessed the information requested by the complainant, DLO opined that the then THB, as the provider of the information relating to the Project, should reply to the information request direct. The Office considered this arrangement understandable. Nevertheless, DLO failed to notify the complainant of the arrangement. It only asked the then THB by email to respond to the complaint direct on 4 October 2021 with a copy to DO and assumed that DO's reply to the complainant on 18 October should suffice.

410. The Office considered that communication between the then THB/DLO and DO had been inadequate regarding the complainant's information request. Furthermore, both the then THB and DLO misunderstood that they needed not follow the Code to send the complainant an interim reply. Hence, the complainant did not receive any reply from either of them, resulting in this complaint. Then THB reminded its staff to closely communicate with relevant departments, to respond in a timely manner in accordance with the Code, and would enhance its staff training.

411. In sum, The Ombudsman considered this complaint against the then THB and LandsD substantiated, and recommended LandsD to step up staff training on handling of information requests to enhance their understanding of the Code's requirements.

Government's response

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

413. The LandsD and the DLO concerned issued internal circulars in July and May 2022 respectively to their staff, reminding them to observe the guidelines and the target response time prescribed in the Code when responding to requests for information by members of the public.

414. The above internal circulars also reminded the staff that if the requested information is held by another department, the request must be referred to the department concerned in a timely manner and relayed to the applicant in order to enhance communication and avoid delay in processing the request.

Lands Department and Transport Department

Case No. 2021/4203C (Transport Department) – Delay in resolving the dispute with the Lands Department on the responsibility for handling the illegally parked bicycles at uncovered Public Transport Interchanges

Case No. 2021/4203D (Lands Department) – Delay in resolving the dispute with the Transport Department on the responsibility for handling the illegally parked bicycles at uncovered Public Transport Interchanges

Background

415. The complainant stated that in early September 2021, he lodged a complaint with 1823 about the illegally parked bicycles at the Hoi Kwai Road Public Transport Interchange (the location) in Tsuen Wan and 1823 referred the complaint to the LandsD and the Home Affairs Department (HAD) for follow-up. However, the situation had not improved. In December 2021, the TWDO replied to the complainant via 1823 that TWDO was still awaiting for the TD and the LandsD to delineate the management responsibility for the location and TWDO did not plan to take any further action for that time being.

416. The complainant was dissatisfied about the delay of TD and LandsD in delineating the responsibility for dealing with the bicycle problem mentioned above, and that the TWDO, as the coordinating department, had not properly fulfilled its coordinating role. Thus, he lodged a complaint with the Office of The Ombudsman (the Office) against HAD, the Transport Department (TD) and the Lands Department (LandsD) in December 2021.

The Ombudsman's observations

Complaints against Transport Department and Lands Department

417. The location is not only an interchange, but also located on unleased and unallocated government land. The TD and LandsD had different views on which department should deal with the problem of illegally parked bicycles: the TD considered that the LandsD should be responsible on the grounds that the location was located on unleased and unallocated government land; the LandsD considered that as the location was a public transport interchange, the management responsibility should rest on the management department of the public transport interchange, i.e. TD.

418. LandsD first pointed out in September 2020 that the location was a public transport interchange managed by the TD and stated that LandsD would not enforce laws against illegally parked bicycles at the location, while the TD was aware of the above-mentioned differences in management responsibility through the TWDO in June 2021. However, after more than a year, the responsibility for removing the illegally parked bicycles had yet to be resolved, which is extremely unsatisfactory. The Office is also concerned about whether the situation will give the public the impression that government departments are sloppy.

419. Although the LandsD conducted a one-time joint operation in January 2022 to temporarily deal with the bicycle problem at the location after the Office intervened in the case, it is considered that the problem of which department to follow up with the clearance of relevant bicycles in the future should be promptly resolved.

420. The Office believed that if the departments could not reach a consensus on the division of labour, they should take action to deal with the relevant issues first, and minimise the impact on the public as soon as possible. On the other hand, they should actively explore ways to completely resolve the dissenting views, such as jointly formulating a work

plan acceptable to both parties, and/or hold inter-departmental management meetings for direct consultations, etc.; if consensus still cannot be reached, the issue should be raised to a higher level of the government, such as directors of relevant bureaux.

421. However, in dealing with problem of delineation of responsibilities and division of labor involved in this case, although the TWDO and 1823 had repeatedly urged the LandsD and the TD to negotiate, the two departments were merely repeating their stances through written correspondence, and had not tried to explore other methods nor ways to resolve the issue, which would likely make one doubt their sincerity and determination to solve the problem, and the situation is disappointing.

Complaints against HAD

422. Although TWDO, as the coordinating department for dealing with illegally parked bicycles in the area, had taken follow up action on the bicycle problems at the location, but her enthusiasm and effectiveness of the actions taken are open to question.

423. First of all, the LandsD verbally raised their objection to take up the responsibility of removing the bicycles at the location during the joint clearance operation in September 2020. As the LandsD's view is related to the division of labour among departments, which is a matter of principle, it should be clarified as soon as possible. However, the Office could not observe from the relevant records that the TWDO had followed up with the Lands Department as soon as possible after the above-mentioned actions were completed. Although the TWDO stated that their staff had verbally requested the LandsD to provide written justification for not removing the bicycle, the TWDO had not kept relevant records, and the Office had no way of verifying whether it was true; even if it was true, it is considered inappropriate to make only verbal request. The Office believed that it was advisable to seek a formal response in writing for such

important issue on matter of principle, which could facilitate future follow up and avoid disputes afterwards.

424. Although the HAD pointed out that, the LandsD did not express its position on whether to remove the illegally parked bicycles at the location after the above-mentioned joint clearance operation in September 2020, the Office noted that the TWDO had not taken the time to urge the LandsD to provide a response, nor enquired about the views of the TD. It was not until many months later that the TWDO referred the bicycle problem at the location to the TD in June 2021, and requested the LandsD and the TD to confirm the delineation of management responsibility of the location in August 2021. If the TWDO could promptly aware of the dissenting views of the two departments in the delineation of management responsibility differences and carry out the coordination work as soon as possible, the time required to resolve the problem should have been greatly shortened.

425. In addition, during the above-mentioned period, the TWDO tried three times to include the location in the joint clearance operation held in March, June and August 2021. According to the explanation of TWDO, the above-mentioned approach was one of the coordination methods aimed at urging the Lands Department to respond and face up to the problem. The Office did not deny the good intentions of the TWDO, but in fact, the responsibility for removing the bicycles had not been delineated at that time, instead of using this indirect method to prompt the Lands Office to change its position, it is better for the TWDO to clearly raise the issue of delineation of responsibility and ask the LandsD to formally provide a response, which is believed to be more direct and effective. Furthermore, the TWDO was just following the usual practice of emailing several proposed target locations (including the location) to the LandsD for confirmation before each operation, the LandsD might not know that the TWDO expected LandsD to provide a response on the delineation of responsibilities of the location. In fact, the LandsD refused to enforce the law against illegally parked bicycles in the above-mentioned three joint operations. It can be seen that the way TWDO repeatedly and unilaterally

included the location in the target locations of the joint operations in an attempt to push the departments to resolve their differences, was just like getting blood from a stone.

426. After the complainant lodged a complaint in August 2021, the TWDO and 1823 repeatedly urged the LandsD and the TD to delineate their responsibilities for handling illegally parked bicycles at the location. However, the LandsD and the TD held different views on law enforcement responsibilities and division of labor during the process, and had been unable to reach a consensus. Their discussion only stayed at the level of repeating their respective stances through written correspondence. In view that the matter had dragged on for a long time since September 2020, the Office believed that the TWDO, as the coordinating department of related issues, should have taken more decisive and effective actions earlier in response to the above situation, such as coordinating the holding of inter-departmental high-level meetings, with a view to urging the two departments to solve the problem through face-to-face consultations.

Other Observations

427. Regarding the complainant's claim that the date of the referral of the complaint by the Office in the TD's reply was incorrect, the TD stated that it was a typographical mistake. The Office urged the TD to remind its staff to pay more attention in the future to avoid similar mistake.

428. As for the complainant's query that the LandsD only replied to him and the Office on 23 February 2022, the Office believed that it would be ideal if the LandsD could reply earlier. In view of the large amount of information that the LandsD had to prepare and submit separately to The Ombudsman before the reply, it was not unreasonable for the LandsD's to reply within two months after the referral of the case by the Office.

429. Based on the above, The Ombudsman believed that both the TD and the LandsD have shortcomings in handling the bicycle problem at the location, so the complaint is substantiated. Although the TWDO made

contributions in coordinating with the two departments to resolve their differences in the delineation of responsibility, her actions were not active and decisive enough, so the complaint is partly substantiated.

430. Regarding this complaint, The Ombudsman recommended that the LandsD and the TD convene a high-level meeting for consultation as soon as possible. If there is still no consensus on the division of labor to deal with the illegal parking of bicycles at the uncovered public transport interchanges, the issue should be submitted to the relevant Bureau for handling.

Government's response

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

432. LandsD had an inter-departmental high-level meeting with HAD and TD on 19 September 2022 to discuss the responsibility and division of labour for handling illegally parked bicycles at uncovered PTIs on unleased government land. Eventually, a consensus was reached. Subsequently, the matter was deliberated amongst the heads of relevant departments at the meeting of the Steering Committee on District Administration on 28 October 2022. The departments concerned agreed to carry out joint clearance operations against bicycles illegally parked at uncovered PTIs on Government land. Specifically, if bicycles illegally parked at uncovered PTIs cause serious obstruction, inconvenience or harm to the public, meeting the conditions for invoking Section 4A and Section 32(1) of the Summary Offences Ordinance, DOs, Hong Kong Police Force and TD will conduct joint operations by adopting the operation model stipulated in the Guidelines for Enhanced Clearance Operations against Bicycles Illegally Parked at Public Bicycle Parking Spaces by invoking the Summary Offences Ordinance to take enforcement action. As for other cases of illegally parked bicycles at uncovered PTIs, they will be included in the list of black spots for inter-departmental joint clearance operations. LandsD will invoke the Land (Miscellaneous

Provisions) Ordinance to take enforcement action according to the Guidelines for Conducting Joint Operations for Clearing Illegally Parked Bicycles laid down by HAD. As usual, DOs will continue to coordinate joint operations where necessary.

433. According to the above work arrangement and under the coordination of the TWDO, the LandsD and the Food and Environmental Hygiene Department conducted a joint clearance operation at the location by the end of 2022, and removed 37 illegally parked bicycles.

Leisure and Cultural Services Department

Case No. 2022/2422B – Insufficient or ineffective enforcement actions/measures against a bicycle shop for prolonged occupation of public bicycle parking spaces

Background

434. It was alleged by the complainant that a bicycle shop (Bicycle Shop A) located at a cycling entry/exit hub (the Hub) placed its bicycles, which were used for its operation, in the cycle parking area near the public toilet of the Hub (the parking area concerned) over an extended time period. The bicycles encroached on the public cycle parking spaces which were specified by the Transport Department (TD). In this connection, he lodged a complaint to the relevant government departments via 1823 in April 2021. On 6 May 2021, the District Office under the Home Affairs Department (HAD), the District Lands Office under the Lands Department (LandsD), the Food and Environment Hygiene Department and the Hong Kong Police Force conducted a joint operation to clean up illegally parked bicycles in the cycle parking area concerned.

435. Unlike the usual illegal cycle parking by members of the public, the case entailed the alleged persistent breach of the contract on the part of a contractor/permit holder operating a place for hire of bicycles at the Hub under the management of the Leisure and Cultural Services Department (LCSD) where the items related to the operation were placed outside the permit area. The District Office and District Lands Office also notified LCSD of the complaint via 1823, requesting LCSD to follow up and take appropriate actions according to the contract when necessary. LCSD replied the complainant that LCSD had already reminded the owner of Bicycle Shop A to comply with the terms and conditions as set out in the contract. That said, given that the cycle parking area was not under the management of the Department, there was a need to refer the case to the relevant departments for appropriate actions.

436. The complainant noticed that despite a joint clearance operation conducted on 6 May 2021 and a reminder given by LCSD urging Bicycle Shop A to comply with the terms and conditions as set out in the agreement, the shop in question did not stop its long-term encroachment of the parking area concerned, but even went further to encroach on more public cycle parking spaces and extend the encroachment into other nearby cycle parking areas.

437. Based on the above, the complainant considered that the actions/measures taken by the relevant government departments against the long-term encroachment of public cycle parking spaces by Bicycle Shop A were either insufficient or ineffective, leading to its even more serious long-term encroachment of public cycle parking spaces. Thus, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against HAD, LCSD, TD and LandsD.

The Ombudsman's observations

438. The Office made inspections to the Hub and its vicinity on 14 and 23 October 2022. During the inspection on 14 October, it was found out that the Hub was located at a street corner with few pedestrian traffic. There were a total of four public cycle parking areas on the periphery of the Hub, most of which were left unused. There were a significant number of bicycles placed on the two parking areas near Bicycle Shop A. The bicycles, being stacked under canvas covers, were put on side, occupying about one fourth of the parking spaces. Besides, there were some bicycles being placed on the pavement adjoining the public cycle parking area outside Bicycle Shop A. Some of the bicycles placed in the parking spaces and on the pavement were found to be marked with the sign of Bicycle Shop A. The situation as revealed in the inspection on 23 October was quite similar to that on 14 October.

439. The complainant considered the measures/actions taken by the relevant departments to be ineffective as he saw that the bicycles of Bicycle Shop A were still being placed in the public cycle parking areas after the

complaint was lodged. That said, the focus of the Office's investigation was on whether the relevant departments had dealt with the illegal cycle parking/breach of contract in accordance with the existing laws/contract. The Ombudsman also understood that the relevant departments could only take action in accordance with the statutory requirements, or when there were substantive evidence proving a breach of contract on the part of the permit holder. Upon the Office's investigation, it noted that LD, TD and HAD had taken follow-up actions after receipt of the complaint and two rounds of joint clearance operations had been conducted by the Departments. Nevertheless, the Office noticed that, when TD issued a notice announcing to the public details of closure of the cycle parking area concerned prior to the clearance operation, the notice period was shorter than the prescribed duration of 14 days.

440. LCSD had deployed officers for site inspection in relation to the alleged complaint. Advice was given to the permit holder despite no breach of contract was identified. There was no evidence pointing to any misconduct on the part of LCSD in handling the complaint case. In spite of the fact that the usage of the parking area concerned was not high, and that the parking of the bicycles marked with the sign of Bicycle Shop A at the area for less than 24 hours did not contravene any laws, there might still be a breach of the terms and conditions as prescribed in the contract if Bicycle Shop A placed its bicycles outside the permit area, on which LCSD should take follow-up action accordingly. As a matter of fact, bicycles marked with the sign of Bicycle Shop A being parked at the parking area concerned were not isolated incidents. The Office was aware that LCSD had already stepped up inspection to address the concerns raised by the complainant.

441. To conclude, The Ombudsman considered the complaint against HAD, LCSD, TD and LandsD unsubstantiated but there was inadequacy found on TD's part. The Ombudsman recommended that LCSD should continue to monitor the operation of Bicycle Shop A and take actions with regard to a breach of the contract where bicycles related to its operation were placed outside the permit area as necessary. In case of persistent

breach of the contract, the Department should consider taking further action.

Government's response

442. LCSD accepted The Ombudsman's recommendation and has already enhanced the monitoring of the operation of the permit holder. In addition to deploying staff to conduct regular inspections of the bike kiosk for at least once a week, LCSD has also launched irregular spot checks to check whether the permit holder carries the bicycles and tricycles between the bike kiosk and public cycle parking spaces when they are not in use. LCSD has also checked if the bicycles parked in the public cycle parking spaces are marked with the sign of Bicycle Shop A. In case the bicycles marked with the sign of Bicycle Shop A are found being parked in the public cycle parking spaces, LCSD will take follow-up action accordingly, including issuing verbal or written warnings to the permit holder and requesting the latter to rectify such a breach as soon as possible.

443. During the period from May to July 2023, a total of 13 regular inspections and one spot check were conducted by LCSD. Among them, the permit holder was found to have breached the contract and parked its bicycles in the public cycle parking spaces for 11 times. LCSD issued verbal warnings to the permit holder immediately and supervised the latter to remove the bicycles in question from the public cycle parking spaces at once. A total of five advisory letters were issued to the permit holder due to the above breaches of contract. No further breaches of contract were found by LCSD during the subsequent inspections on 31 July, 1 August and 8 August.

444. Separately, LCSD has arranged a meeting with the permit holder in a bid to further rectify the problem. LCSD will continue to conduct inspections of Bicycle Shop A and closely monitor the situation. Further follow-up action in accordance with the provisions under the contract will be taken if needed.

Leisure and Cultural Services Department

Case No. 2022/2690(I) – Failing to properly handle a request for information regarding a swimming pool

Background

445. On 11 July 2022, the complainant submitted the "Application for Access to Information" to the Leisure and Cultural Services Department (LCSD) requesting for four information items regarding a swimming pool. LCSD replied and provided the information requested on 19 July. On the following day, the complainant sent an e-mail to LCSD alleging that two of the information items provided by the Department were found to be inaccurate and clarified the actual items he requested were building plans of the swimming pool and size of the service counter (furniture) on 2/F.

446. LCSD handled the aforementioned email in accordance with the general procedures by issuing an interim reply on 28 July. A substantive reply was subsequently given on 18 August (i.e. within 30 days of the complainant's request). The request for one information item was declined on the ground that such an item was intended strictly for internal reference, and there was no response made to the request for another information item that the complainant had clarified.

447. Being dissatisfied with the LCSD's handling of his case, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against LCSD for its failure to properly handle his requests for information made on 20 July, including refusing to disclose some information to him without reasonable grounds and failing to make a response within the timeframe set out in the Code on Access to Information (the Code).

The Ombudsman's observations

448. Upon review of the case, LCSD provided the complainant with all the information he requested. It also explained the reasons for not disclosing the building plans in the first place, the reasons for imposing conditions (i.e. could not display the building plans or disclose information of them to others without the Department's agreement) on such disclosure subsequently, as well as the reasons as to why the complainant's email of 20 July was handled in accordance with the general procedures.

449. The building plans had been possessed by the Architectural Services Department (ArchSD) not but LCSD. Given that LCSD did not hold such information, the Department could have declined the request in accordance with the Code. LCSD took the initiative to seek such information from ArchSD which was welcomed by the Office as a positive move. It did not release such information out of sheer operational and safety concerns. Upon examination of the plans, the Office considered that LCSD's concerns were not unjustified. The plans in question could be deemed as the information in the category as set out in paragraph 2.6(f) of the Code, the disclosure of which would facilitate those individuals with intent to either cause damage to LCSD's properties or disrupt public safety to do such acts, thereby compromising the Department's operation and public safety. As such, the Office considered that the LCSD's decision of non-disclosure did not contravene the Code.

450. The Office considered that the Department should make a disclosure without imposition of conditions should the information concerned did not fall into the category of those information whose disclosure might be refused as set out in Part 2 of the Code. That said, in the event that the information fell into the category of information whose disclosure might be refused, imposing conditions might facilitate the Department in disclosing more information. As far as this case was concerned, LCSD could have refused disclosure of the building plans by invoking the Code. Nevertheless, upon balancing between the public interest in information disclosure and the potential harm or damage it

might cause, LCSD considered that provided that the complainant would not disclose the information to others, the risks posed to the Department's operation and public safety could be sufficiently reduced. Hence, it decided to impose such a condition. Under such circumstances, the Office considered that imposition of the condition, which was intended to make more disclosure to the complainant, did not amount to misconduct.

451. As for the manner in which the complainant's email of 20 July was handled, the complainant had already indicated the application number under the Code, which was previously assigned by LCSD, in the email and clearly explained that he meant to clarify the information he sought in response to the LCSD's earlier reply to his request for information. However, LCSD handled the email in question in the same manner as general enquiries given that the email was not addressed to the Access to Information Officer and that the complainant did not set out the information he sought in the prescribed form. Such handling approach was considered to be inappropriate. Even if LCSD handled the email in the same manner as general enquiries, the staff concerned should have been able to identify, from reading the email content, that it involved requests for information and therefore should have handled the email by adhering to the spirit of the Code, including explaining to the complainant the reasons of refusal under Part 2 of the Code; observing the target response times as set out in the Code; and indicating all the available channels of review and complaints. Such being the case, it could hardly be stated that the LCSD's handling approach was in line with the Code as it refused the provision of building plans on the sheer grounds that the plans were strictly intended for internal reference and it did not inform the complainant of the channels of review and complaints. The Office urged LCSD to step up training for its staff with a view to ensuring that they were able to identity whether requests for information were involved during their course of handling public enquiries, and they would act in accordance with the Code in case requests for information were confirmed.

452. Moreover, despite the complainant's email of 20 July clearly stating his wish to seek the information about the size of the service counter

(furniture) on 2/F, LCSD did not respond to this point and focused on responding to other issues in its reply to the complainant instead. It was not until the intervention of the Office that LCSD provided such information to the complainant. There was room for improvement for LCSD in handling requests for information. The Office urged LCSD to learn from this case and remind its staff to respond to public enquiries and requests for information in a concrete and comprehensive manner in the future.

453. With regard to the timeframe for handling requests, LCSD provided an interim reply on the eighth day upon receipt of the complainant's email of 20 July, and sent him a substantive reply on the twenty-ninth day. Having regard to the time required to communicate with ArchSD and consider the appropriateness of disclosing the information, the Office considered it understandable that LCSD could not make a response within 21 days. As a matter of fact, LCSD did not exceed the 51-day timeframe as set out in the Code in which a substantive reply must be given to the complainant. That said, with the benefit of hindsight, it would have been more satisfactory for LCSD to have handled the email of 20 July in accordance with the Code and have explained in its interim reply to the complainant as to why it would take longer time to handle his request for information.

454. To conclude, The Ombudsman considered the complaint partially substantiated and recommended LCSD that –

(a) training should be stepped up for staff to ensure that they are able to identify whether requests for information are involved during the course of handling public enquiries, and they will act in accordance with the Code in case requests for information are confirmed; and

(b) lessons should be learnt from this case, and staff should be reminded that all public enquiries and requests for information are

to be responded to in a concrete and comprehensive manner in the future.

Government's response

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

Recommendation (a)

456. LCSD has implemented the recommendation. It reminded its staff of the provisions of the Code and shared with them on the Office's views and recommendations by email on 28 February 2023. Their attention was particularly drawn to the importance of being able to identify those requests made under the Code and handle non-Code requests by adhering to the spirit of the Code. In addition, LCSD will continue to arrange re-circulation of the Code, the relevant guidelines and points to note to its staff on a quarterly basis.

457. In addition, with a view to stepping up the training on the Code, LCSD issued an internal email to those officers handling cases relating to the Code on 14 April 2023, requesting them to learn from or review the talk and training videos related to the Code on the LCSD Departmental Portal, and refer to the Selected Cases uploaded onto the Office's website. Meanwhile, LCSD has liaised with the Constitutional and Mainland Affairs Bureau to organise a seminar on the Code for the staff in the coming months so that they will understand more about the Code, including, inter alia, its requirements and salient points.

Recommendation (b)

458. LCSD shared the case details with the relevant officers on 28 February 2023 by e-mail. It also shared with its staff on the Office's view on the Code and its recommendations by another e-mail on 1 March 2023. The staff have been requested to learn from the case, and reminded to act

in accordance with the Code and respond to all public enquiries and requests for information in a comprehensive and concrete manner in the future.

Leisure and Cultural Services Department and Transport Department

Case No. 2022/3637A and 2022/3637B – (1) Failing to tackle the problem of prolonged occupation by dormant vehicles at a public carpark; and (2) Refusing to adopt the suggestion of installing parking meters

Background

459. In October 2022, a complainant lodged a complaint with the Office of The Ombudsman (the Office) against the Leisure and Cultural Services Department (LCSD) and the Transport Department (TD) for failing to tackle the problem of the Shek O Beach Public Carpark (the Carpark), namely prolonged occupation by dormant vehicles, including those abandoned and advertised for sale. He attributed the problem to the Carpark being free of charge and having no time limit for parking and suggested that parking meters be installed, but LCSD and TD refused to adopt the suggestion.

The Ombudsman's observations

460. The Carpark is managed by LCSD with TD's input on potential improvements. It is unclear why the Carpark was set up in the first place (e.g. whether it was to serve a particular target group) or why it was decided that it would be managed by LCSD. All members of the public with parking needs might use the free parking spaces on a first-come, first-served basis and are subject to the prevailing Road Traffic (Parking) Regulations, i.e. parking for a continuous period of more than 24 hours is prohibited. According to LCSD's observations, users included beach visitors, local residents and other members of the public.

461. To deter prolonged parking, LCSD displayed a banner of "parking over 24 hours is prohibited" in the Carpark, been cross-checking daily the registration number of the parked vehicle at each space with that of the

previous day and referred information of suspected overstayed vehicles and vehicles without a proper licence to the Police for prosecution; and request the Lands Department to carry out clearance actions by issuing removal notices to abandoned cars. In 2022, LCSD reported nine suspected overstayed vehicles to the Police. One abandoned private car was spotted and removed.

462. LCSD observed an upward trend in improper use of the spaces in the Carpark. It would continue to explore solutions and step up control, such as inviting other departments for joint law enforcement operations, where due.

463. LCSD and TD acknowledge the high parking demands in the Carpark and consider fee-charging a possible means to improve turnover rate and better manage the spaces. Relevant proposals, including installation of parking meters, had been put forward as early as 1994. They were shelved due to strong objections from local residents, backed up a then Legislative Council member, in 2001. LCSD raised the proposal of installing parking meters in 2021 but it was again objected by local residents.

464. In May 2022, further to a relevant discussion in the Southern District Council meeting, LCSD restarted to explore options to address the issue. TD was against installation of parking meters at the Carpark. According to TD, parking demands from both beach visitors and local residents should be balanced and there being heavy parking demands from local residents, the fee of parking meters would be inadequate to deter prolonged occupation of their private cars and maintain adequate number of vacant parking spaces for beach visitors or other members of the public. Moreover, there are access roads connecting the Carpark, the Shek O Refuse Collection Point and the local village houses. To meet the relevant standards of metered parking layout and the access roads, modification of the Carpark and the access roads would be required and the number of spaces would see a 33% reduction from 195 to 130. Instead of installing parking meters, LCSD will seek input from TD and explore alternatives,

such as implementing different charging mechanisms in the Carpark or converting a nearby mini-golf course to a fee-charging public carpark to provide additional spaces, and roll out public consultation as early as possible.

465. LCSD clarified that all users are bound by the rule of not parking for more than 24 hours continuously and spelt out its actions taken to tackle overstayed and abandoned vehicles. While the problem of improper usage of the Carpark persists, it considered that there was no evidence suggesting that there was maladministration on the part of LCSD.

466. As regards to the suggestion of installing parking meters, TD explained from a traffic point of view why it considered such means not conducive to the situation. While the matter involved TD's professional judgement which the Office did not comment, the Office considered that TD and LCSD should explain the decision clearly to the public since parking meters are installed at some other carparks serving public beaches.

467. The Office noticed that while LCSD and TD considered imposing fee-charging mechanisms beneficial to the management of the Carpark, over 25 years had lapsed since the first proposal on such. LCSD and TD must see to it that a mechanism be introduced as soon as possible. And while local residents, being major stakeholders in the matter, should be allowed to voice their views, the public consultation must also allow the views of other stakeholders to be heard. In this regard, LCSD should initiate public consultations, with input from TD and help of the Home Affairs Department where necessary, as soon as possible. LCSD and TD should also set out clearly their justifications for any proposals from the perspectives of management of public beaches and traffic management respectively to facilitate public understanding.

468. To conclude, The Ombudsman considered this complaint unsubstantiated and recommended that LCSD and TD work out an appropriate mechanism and carry out necessary public consultation as early as possible.

Government's response

469. LCSD and TD accepted The Ombudsman's recommendations and have taken the following follow-up actions.

470. LCSD has been working with relevant departments to work out an enhancement proposal. Comments from the Traffic and Transport Committee of the Southern District Council will be sought and public consultation will be conducted in due course.

471. TD will continue to provide necessary input to LCSD in the development of a suitable parking mechanism at the Carpark and assist LCSD in the course of public consultation. TD has also explained clearly to the public TD's technical assessment that the installation of parking meters at the Carpark would not be able to address the parking demand at the subject site in TD's subsequent replies to relevant public complaints.

Office of the Communications Authority

Case No. 2022/0980 – (1) Failing to properly follow up the complainant's complaint about inaccurate content of news report broadcast on television; and (2) Failing to address the complainant's enquiry about its handling of complaints about broadcast materials

Background

472. The complainant lodged complaints to the Communications Authority (CA) on 2 and 3 December 2021 respectively, alleging that the reports about the civil service pay trend survey 2021/2022 in the news programmes broadcast on 18 May 2021 (the Programmes) by two licensed television stations (collectively "the TV Stations") contained inaccurate information. Links to the online video clips of the Programmes were provided to the CA. Office of the Communications Authority (OFCA) later replied to the complainant that (1) since the recordings of the Programmes could no longer be available as the recording retention periods prescribed by the CA had lapsed at the time of the complaints; (2) the materials published by the television programme service licensees were not television programme services regulated under the Broadcasting Ordinance; and (3) the CA had no authority to request the television programme service licensees to verify the materials they published on the Internet, OFCA hence would not follow up with the complaint lodged by the complainant and would only convey the information to the TV Stations for their reference.

473. The complainant later filed the same complaints with the TV Stations and provided the relevant links. The TV Stations replied to the complainant on 2 March 2022, and 15 February and 8 March 2022 respectively.

474. From 18 January to 24 March 2022, the complainant raised various enquiries in multiple emails to OFCA. The complainant considered that OFCA had not addressed some of his enquiries, including,

(1) whether the CA agreed that in general the TV stations would upload the new programmes onto the Internet after broadcasting on TV (Enquiry 1); (2) whether the CA had ever requested the television programme service licensees to verify the programme content uploaded onto the Internet (Enquiry 2); (3) concerning the complaint, the procedures needed to be completed by OFCA and the time required before conveying to the TV Stations for reference (Enquiry 3); and (4) the reasons for not disclosing to the public the recording retention periods the CA required of the programmes broadcast on the relevant television services, such that members of the public could have lodged their complaints with the CA before the lapse of the required periods, and hence the situation that complaint cases would not be processed for the reason that the recordings of the relevant programmes were no longer available could be avoided (Enquiry 4).

475. Against the above, the complainant lodged a complaint with the Office of the Ombudsman (the Office), expressing discontent with OFCA for failing to properly follow up his complaint about the inaccurate content of the Programmes broadcast by the TV Stations (Allegation (a)), and failing to address his enquiries (Allegation (b)).

The Ombudsman's observations

Allegation (a)

476. The CA, which is neither a government department nor public body listed in Schedule 1 to The Ombudsman Ordinance, does not fall within the Office's ambit of investigation. Nevertheless, the Office opined that it might still investigate the allegation of maladministration about OFCA, being the CA's executive arm and secretariat, in the discharge of its functions. The Office considered that the investigation conducted was not intended to interfere in the CA's regulatory issues or decisions, but to examine, from an administrative perspective, whether OFCA had handled complaints and relevant enquiries of the complainant in accordance with the policies and guidelines stipulated by the CA.

477. Upon examining the CA's website, the Office noted that (1) both "Lodging a Complaint" webpage and its note on broadcast complaints had clearly indicated that the CA would need to retrieve and examine the relevant recording in processing a complaint and that if the public wished to lodge a complaint, they should do so as soon as possible after the broadcast contents concerned had been aired. Otherwise, the CA might not be able to process the complaints due to the fact that the relevant recording was no longer available; and (2) both the downloadable and online complaint forms had set out the subject matters that fell outside the remit of the CA, including programmes available on broadcasters' websites or other websites.

478. The Office considered that the fact that OFCA did not accept the materials of the links provided by the complainant as the content of the Programmes for handling the complaint and indicated that the materials found on the Internet (including the linked materials) would fall outside the ambit of the CA, was in compliance with the CA's policy. Also, the complaint was made almost 200 days after the broadcast of the Programmes. OFCA, acting in line with the CA's directives governing broadcasters on recording retention periods of broadcast materials, did not follow up the complaint or check whether the TV Stations had retained the relevant recordings. This, from an administrative point of view, could hardly be considered maladministration. The Office understood that the complainant would naturally expect the CA to retrieve and investigate on the Programmes, and follow up the complaint as far as possible after providing detailed information of the complaint to the CA. The Office considered that it would be most desirable if OFCA could have simply checked with the TV Stations to find out whether the recordings of the Programmes were still retained beyond the required retention periods, and whether they would be willing to provide the Programmes' recordings to OFCA for investigation. However, since the formulation of the policy on handling broadcast complaints and its implementation (e.g. whether enquiries should be made to the licensees to find out if the relevant recordings concerning the broadcast complaints were still retained beyond

the recording retention periods) fell within the purview of the CA (not OFCA), the Office had no right to interfere in the decision.

479. However, the Office noted an OFCA's remark in its reply to the complainant that "the recordings of the programmes concerned were no longer available". In fact, while the TV Stations did not expressly indicate whether the recordings of the Programmes were still retained in their replies to the complainant, it could be inferred from the replies that they might probably have retained the relevant files beyond the recording retention periods as stipulated in the license conditions. Since the dates on which the complainant filed his complaints had fallen far beyond the recording retention periods for the TV programmes concerned, OFCA, acting in accordance with the CA's directives, decided that it was not necessary to check with the TV Stations on the availability of the recordings of the Programmes for follow up. The Office considered that OFCA's decision, by itself, was not inappropriate. That said, the Office was of the view that OFCA had no grounds to state that "the recordings of the programmes concerned were no longer available" without checking/verifying with the TV Stations on the availability of the relevant files. Notwithstanding OFCA's clarification that the remark was intended to mean that the programme recordings were not available for investigation and follow up as the TV Stations were not required to retain and provide the CA with recordings beyond the retention periods, the Office considered that, after reviewing the context of the replies, the wording used by OFCA was unable to convey such a meaning to the complainant clearly, and thus causing the complainant to misunderstand the reason why OFCA did not follow up the complaint.

480. In view of the above, the Office considered Allegation (a) unsubstantiated, but there were other inadequacies found on OFCA.

Allegation (b)

481. Having examined the information provided by OFCA and the complainant, the Office considered that OFCA had generally responded to

Enquiries 1 to 3 in the replies. Regarding Enquiry 4, OFCA only stressed that the CA had on its website reminded the public to lodge a complaint as soon as possible after the broadcast contents concerned had been aired and considered such arrangements appropriate. Even though the complainant repeatedly questioned the reason for the CA's non-disclosure of the recording retention periods of different broadcast programmes to the public, OFCA did not give any direct response to such enquiry. Instead, OFCA just repetitively repeated the content given in the earlier replies and advised the complainant to refer to those replies. The Office noted that OFCA considered that it had responded to the complainant's enquiries based on the fact that it had repeatedly explained to the complainant on the CA's policy, stance and considerations in handling broadcast complaints, and that the specific recording retention periods and whether the retention periods should be disclosed to the public were not crucial to the matter. The Office was of the view that OFCA did not look into the matter from the perspective of the complainant and failed to specifically address the complainant's concerns. The Office considered OFCA's replies to the complainant unclear, failing to respond properly to Enquiry 4 as raised by the complainant.

482. The Office was of the view that if the CA's stipulation of the recording retention periods for various broadcast materials could be made known to the public, it would be conducive for the public to realise that their complaints might not be followed up due to the lapse of the recording retention periods, and that discrepancy in expectation as in this case could be avoided. In addition, making such disclosure on the complaint form and webpage should not contradict with encouraging the public to lodge complaints as soon as possible. That said, the Office noted that whether to disclose the recording retention periods to the public is a decision of the CA on account of various considerations, and the Office had no intention to interfere in it. The Office considered that OFCA should nevertheless explain clearly the CA's stance in response to public enquiries about the non-disclosure of the recording retention periods for broadcast programmes.

483. In view of the above, the Office considered Allegation (b) partially substantiated.

484. Based on the above, The Ombudsman considered the complaint against OFCA partially substantiated and recommended that -

(a) in future, when handling complaints involving broadcast materials which are beyond the recording retention periods as required by the CA and hence unable to be processed, OFCA should pay attention to the wording of its replies so as to get the message across to the public; and

(b) OFCA should remind its staff members to handle public enquiries prudently, and give clear replies to the questions raised by the public.

Government's response

485. The CA was not an organisation listed under Schedule 1 to The Ombudsman Ordinance, and OFCA was delegated the authority under the Communications Authority Ordinance to act on behalf of the CA in handling broadcast complaints. As far as this case is concerned, OFCA had handled the complaints in accordance with the established policy and procedures of the CA. As such, the investigation conducted by the Office was about the CA's affairs which were discharged by OFCA on its behalf. According to the advice of the legal consultant of the CA, it would be ultra vires for the Office to comment on OFCA's handling of the broadcast complaints which was done as delegated by the CA and in strict adherence to the policy and procedures of the latter.

486. OFCA will continue to process broadcast complaints in accordance with the policy and procedures of the CA. OFCA will strive to provide complainants with clear and accurate replies, acting on behalf of and with the authority delegated by the CA.

Post Office

Case No. 2022/1696 – Unreasonably returning parcels without giving postage refund or written reasons

Background

487. The complainant sent two items "Item 1" and "Item 2" to the United Kingdom (UK) using Vantage (Courier) service on 23 April and 3 May 2022 respectively. The two parcels were returned to him on 3 and 17 May respectively, while the Post Office (PO) explained that there were prohibited items, viz. food and charger, inside. The complainant did not agree with PO's explanation and considered that the two parcels were unreasonably returned to him without postage refund and without written reasons (Allegation (a)). The complainant was also dissatisfied that the two parcels were returned to him, without departing Hong Kong, more than 10 days after the day of posting, which was unreasonably long in comparison with PO's published delivery speed (Allegation (b)). Thus, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against PO.

The Ombudsman's observations

Allegation (a)

488. Senders of mail items had the responsibility to ensure that the mails did not contain prohibited items or dangerous articles. As pointed out by PO, both Item 1 and Item 2 contained foodstuff which were prohibited in Vantage (Courier) Service to the UK. It was in accordance with the relevant terms and conditions that these mails be returned without postage refund. The Office also noted that PO, in its online platform, had built in general reminders reminding senders of such. If the complainant had read the reminders, he should have noticed that his mails contained food which was prohibited from Vantage (Courier) service to the UK.

489. As regards whether the complainant had been informed of the reason for the return of Item 1 and Item 2, PO explained that it had spelt out the reasons in its mail collection notification. For Item 1, the Office noted that in the mail collection notification it was said that Item 1 contained "prohibited item", while "suspected dangerous goods" was recorded on the Form "Record on Return of Mail Item Posted Without Postage Refund" (Form Pos 511A), without any concrete details or descriptions. PO later explained in email, in response to the complainant's enquiry, that the item was returned due to "prohibited commodities (food)". The Office considered that such description, i.e., "prohibited commodities (food)", should be provided to the complainant as the reason for return when the item was returned to him. The Office also noticed the discrepancy in information (prohibited vs dangerous) contained in the SMS notification and Form Pos 511A and would like to remind PO to ensure accuracy and consistency in information. As for Item 2, the mail collection notification stated that it contained "dangerous goods", and when the item was returned, the description of the dangerous goods concerned was not specified in the remarks section of the Form "Record on Return of Posted Item(s) with Dangerous Goods - Without Postage Refund" (Form Pos 512). PO later explained in email, in response to the complainant's enquiry, that the item was returned due to "prohibited commodities (charger)". Again, the Office considered that such description "prohibited commodities (charger)" should be provided to the complainant when the item was returned to him.

490. While the Office noted PO's comments that it would request its commercial partners to improve on the clarity in the reasons of returned mails, the Office was of the view that it was equally important for PO to improve on the level of detail, clarity and accuracy in the reasons it provided to senders when mails were returned.

491. Although the Office found that PO's return of both mail items in accordance with the relevant terms and conditions, the Office considered there were inadequacies in the information about the reasons for returns it

provided to the complainant when the items were returned. The Ombudsman, therefore, considered Allegation (a) partially substantiated.

Allegation (b)

492. Noting that it took four working days for PO to inform the complainant of the return of Item 1, the Office considered that the time taken was not unreasonable.

493. Although Item 2 was with local partner on 4 May, it was sent to the Airline for uplifting on 8 May when cargo space was available. Right before uplifting on the plane, Item 2 was rejected during the Airline's security inspection. It then took three working days for Item 2 to be returned to PO. The Office considered that, taking into consideration that there were three parties involved, i.e. the Airline, local partner and PO, and each of them handled mail items by batch processing, the time taken for PO to inform the complainant of the return of Item 2, i.e. eight working days, was not unreasonably or excessively long. At the same time, the Office understood that the public expected a shorter processing time for such mail returns and it would be more desirable if PO could shorten the time, or else give an account of the time taken.

494. The Ombudsman, therefore, considered Allegation (b) unsubstantiated.

Other Observations

495. The Office noted from the complainant's email to PO that his understanding was that dried food could be sent, which the Office found not unreasonable and might actually be the common understanding of the public. The public might not be aware that prohibited items for mails posted through different means to different destinations might vary. For instance, food was prohibited to be sent to the UK by Vantage but acceptable for Speedpost and e-Express, and even air parcel. PO should draw senders' attention and raise general awareness that there existed such

differences of prohibited items through different means of sending mail to different destinations.

496. For item 2, while the Office understood that it was returned based on the carrier's findings from X-ray screening that it contained "prohibited commodities (charger)", the Office noted that the item was declared to contain "candys" as well. There could have been chances of earlier discovery of "candys" or "charger" but that an alert message was not displayed on the posting platform to remind the complainant when "candys" and "charger" was input, and that data check by local partner had not found any problem either. While the Office appreciated that the list of prohibited items could not be exhaustive, the Office urged PO to continuously review and update the data system in its various posting platforms. The Office noted that by now an alert message would be displayed when "candys" was declared on the online platform EC-Ship.

497. The Office noted that the sender could request reposting but that the complainant had not done so when collecting the returned Item 2. The Office was of the view that whether the complainant requested for reposting Item 2 would not have made any material difference in the present case as Item 2 contained candies which were also prohibited anyway. That said, the Office doubted whether senders in general had knowledge about the appeal mechanism. The Office suggested that PO should consider adding such information on Form Pos 511A and Form Pos 512 or any other relevant documents or messages when returning mail items to senders.

498. Overall, The Ombudsman considered this complaint partially substantiated and recommended PO to –

(a) improve on the level of detail, clarity and accuracy in the reasons it provided to senders when mails are returned;

(b) draw senders' attention and raise general awareness that there exists various differences of prohibited items through different means of sending mail;

(c) continuously review and update the data systems in its various posting platform and local partner's data checking; and

(d) duly inform senders of the appeal mechanism and to consider adding such information on Form Pos 511A and Form Pos 512 or any other relevant documents or messages when returning mail items to senders.

Government's response

499. PO accepted The Ombudsman's recommendations and has taken the following improvement measures.

Recommendation (a)

500. PO liaised with commercial partner to ensure that, with effect from 14 November 2022, the reasons of return be clearly marked on the address labels for easy reference by the senders when mails are returned. PO also refined the clarity and accuracy in the reasons for return of mail as included in the mail collection notification with effect from 23 December 2022.

Recommendation (b)

501. PO disseminated promotional materials through social media such as Facebook, Instagram and the department's website in February 2023 to enhance the public's awareness of the various prohibitions amongst different types of postal services, and provided handy references to counter staff to facilitate their communication with senders before mail acceptance.

Recommendation (c)

502. PO set up an internal mechanism for conducting continuous review and regular update of the database of prohibited items, and closely liaised with commercial partners for the latter's regular updating of their data checking. PO also refined operation procedures and laid down standards for the processing for return of mail items by commercial partners.

Recommendation (d)

503. PO introduced in early January 2023 a new standard form "Record on Return of Mail Item Posted - Without Postage Refund" (Form Pos 511B) by combining Form Pos 511A and Form Pos 512 to enable PO staff to state clearly the reasons of return for senders' reference. The information about the appeal mechanism is also included in Form Pos 511B.

Post Office

Case No. 2022/3124(I) – Refusing to provide the monthly transaction volume of two post offices

Background

504. On 20 August 2022, the complainant requested the Post Office (PO) to provide the monthly transaction volume between January 2003 and June 2022 of two post offices in accordance with the Code on Access to Information (the Code). In reply to the complainant on 2 September, PO stated that it did not have readily available information and therefore could not provide the information requested.

505. The complainant, after reading newspaper articles and documents of a District Council published in September 2021 and July 2022 respectively, considered that PO had maintained a record of transaction volume of post offices. In September 2022, he lodged a complaint with the Office of The Ombudsman (Office) against PO as it had not provided the above information in accordance with the Code.

The Ombudsman's observations

The decision on whether the information should be provided

506. PO, in response to the Office's investigation, had reviewed the case in accordance with the Code. PO divided the time period of 19.5 years which the information requested by the complainant covered into three periods (including (1) before the implementation of Integrated Postal Services System (IPSS) i.e. between January 2003 and the first quarter of 2015; (2) after the implementation of IPSS when the information was backed up to hardware device(s) i.e. between the second quarter of 2015 and September 2019; and (3) when information could be retrieved directly from the operation interface of IPSS i.e. between October 2019 and June 2022) based on the then storage situation of relevant information, and

explained the reasons and considerations for the provision or otherwise of monthly transaction volume of each period.

507. After review of the explanations and information provided by PO, the Office considered that PO had clearly explained the absence of information for period (1). It also accepted PO had the reason to refer to paragraph 2.9(d) of the Code (i.e. information which could only be made available by unreasonable diversion of a department's resources) to refuse to provide the monthly transaction volume for period (2). As for the monthly transaction volume for period (3), PO had agreed to provide it to the complainant after review. However, this also indicated that the initial decision by PO to refuse the complainant's whole request for information had shortcomings. Eventually, PO had conducted a review under the mechanism of the Code and revised the decision so as to provide the monthly transaction volume for period (3).

The process for handling request for information

508. The Office found that PO had, in handling the above request for information, failed to adhere to the Code or the Guidelines on Interpretation and Application (the Guidelines), including –

(a) in its reply to the complainant on 2 September 2022 to refuse the whole request for information, PO neither cited the relevant paragraphs of the Code to explain explicitly the reasons for refusal, nor told the complainant how he could seek a review and lodge a complaint; and

(b) PO, after finding the case relevant to the circumstances stated in paragraph 1.14 and paragraph 2.9(d) of the Code, had not made any attempt to discuss the request for information with the applicant as required by the Guidelines. In response, PO explained that since the complainant had already indicated clearly the time period of the information requested and most of the information was not readily available, PO did not conduct any

discussion with the complainant. PO admitted that there was room for improvement after reviewing the case.

509. Based on the above analysis, the Office concluded that PO's refusal to provide the complainant with the information on the monthly transaction volume for periods (1) and (2) was justified and that the refusal was not in breach of the Code. Also, PO had agreed to provide the information on the monthly transaction volume for period (3) to the complainant after reviewing the case in accordance with the mechanism set out in the Code. Nevertheless, PO's handling of this request for information reflected inadequate knowledge of the Code and the Guidelines among some staff members.

510. In sum, The Ombudsman considered this complaint unsubstantiated but there were other inadequacies found, and recommended that PO should learn from this complaint and strengthen staff training to ensure its staff are conversant with and act in compliance with the Code and the Guidelines in handling requests for information from the public in future.

Government's response

511. PO accepted The Ombudsman's recommendation and has systematically enhanced training and relevant measures, including –

(a) revising and enhancing the procedures for handling requests under the Code set out in the Hongkong Post Departmental Rules (DR);

(b) circulating among staff the procedures and points to note for handling requests under the Code set out in the DR through the internal Hongkong Post Circular every six months as a reminder;

(c) directorate officers regularly conducting briefings for managerial staff to remind them of the above enhanced procedures and share with them cases of handling requests relating to the Code;

(d) providing training sessions on provisions relating to the Code in the DR for new managerial staff; and

(e) organising thematic seminars for managerial staff on a regular basis to explain the procedures and points to note for handling requests under the Code.

Post Office

Case No. 2022/3379 – Inadequacies in the arrangement for SMS notification for inward surface parcel delivery and failure to deliver the mail item according to the latest delivery instruction

Background

512. The complainant stated that he was the recipient of an inward surface parcel. On 27 September 2022, the Post Office (PO) informed him by SMS notification (SMS) that his mail item had arrived in Hong Kong and was under processing, and that he could change to collect the item at post office or change the delivery date before 9 a.m. on 30 September (SMS I). At 9:43 a.m. on 28 September, PO sent him another SMS, informing him of the expected delivery time at about 1 p.m. on the same day (SMS II). As no one would be at home, the complainant, following the instruction of the SMS received on 27 September, changed the delivery date to 6 October with confirmation by SMS received immediately. At night on the same day, PO notified him by SMS that PO had attempted to deliver the mail item on that day but was unsuccessful. According to the delivery record shown on the website of PO, the postman had attempted to deliver the mail item at 10:17 a.m. on that day. On 29 September, the complainant found a "Notification of Collection of Parcel" (the Notification card) postmarked with the same date in his mail box.

513. On 29 September 2022, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against PO with the following allegations –

(a) the SMS sent on 27 and 28 September were contradictory and confusing (Allegation (a)) ;

(b) the staff of the subject post office failed to check and/or follow the latest delivery instructions to deliver his mail item, or the relevant system malfunctioned, and PO failed to properly monitor whether

the staff concerned had followed the system's instructions to arrange delivery (Allegation (b)) ; and

(c) the postman failed to deliver the mail item at about 1 p.m. on 28 September as stated in the SMS sent by PO, but delivered the mail item shortly after the SMS was sent (in 34 minutes), or even did not deliver the mail item (Allegation (c)).

The Ombudsman's observations

Allegation(a)

514. On the day of delivery, the subject district speedpost centre arranged to deliver the mail item earlier since there were fewer mail items than usual. The Office considered that this was not inappropriate. However, based solely on the content of SMS I and II, PO did not mention in SMS I that the mail item might be delivered before the deadline for changing the collection arrangement in the light of actual operational circumstances. This would indeed make the recipient/complainant think that SMS I and II were contradictory and the mail delivery arrangement was confusing. On the other hand, the complainant did change the delivery arrangement before the deadline according to the information in SMS I. It was unreasonable that the complainant had to collect the mail item at the post office in person just because the postman had advanced the delivery and no one answered the door when the postman delivered the mail item. The Ombudsman considered Allegation (a) substantiated.

Allegation (b)

515. As for the complaint about the staff of the subject post office failing to check and/or follow the latest delivery instructions to deliver the mail item, or the relevant malfunctioning of system, PO explained that the delivery postman was responsible for checking the latest delivery instructions and also explained the reasons why the postman concerned did not deliver the mail item according to the latest delivery instructions.

Moreover, PO explained that when the delivery postman arrived at the complainant's unit, his Personal Digital Assistant (PDA) was automatically switched to offline mode and therefore could not receive the complainant's updated delivery instructions. The above explanations were consistent with the computer system records. The Office also noticed that delivery postmen would receive updated delivery instructions on their PDAs in real time after they scanned the barcode of a mail. When the PDAs reconnected to the internet network, however, the PDAs would not automatically notify the postmen of any updated delivery instructions on undelivered items. Moreover, the existing system of PO did not monitor whether delivery postmen had followed the latest instructions to deliver mail. In conclusion, The Ombudsman considered that Allegation (b) partially substantiated.

Allegation (c)

516. It was noticed that SMS II sent by PO was to inform the addressee of the delivery session: the item concerned would be delivered before 1 p.m., and not at about 1 p.m. The complainant claimed that the postman delivered the mail item to his unit shortly after PO had sent SMS II to him. The Office noticed that there were only 30 minutes in between the time when the complainant received SMS II and the delivery postman arrived at the complainant's unit. Like this case, if a recipient's address was at an earlier delivery point in the postman's delivery route, the recipient would have to quickly arrange mail collection or change the mail collection arrangement upon receipt of SMS II. Otherwise, the recipient would have missed the delivery and had to collect the item at the relevant post office. PO would have also wasted its delivery resources.

517. For the complainant's allegation that the postman did not deliver the mail item on the date of delivery, PO had explained the situation above, and the Office considered that there was no evidence to challenge the explanation of PO. However, the Office noticed that the SMS sent to the recipient on the day of delivery stated that the recipient had to collect the unsuccessfully delivered mail item with the Notification card but the

subject central delivery office delivered the Notification card to the recipient's address only on the next day after the SMS notification was issued. The complainant thus inevitably had the above doubts. The Ombudsman considered Allegation (c) unsubstantiated.

518. Overall, The Ombudsman considered this complaint partially substantiated, and recommended PO accelerate the various review processes, including the arrangement of the SMS notification before delivery and the Notification card of inward surface parcels, the network communication and the reception of PDAs, the addition of a function to the computer system to monitor whether delivery postmen deliver mail items according to the latest system instructions, and exploring the possibility of adding an automatic notification function in the PDAs so that delivery postmen would be notified of any latest delivery instructions of the unsuccessfully delivered mail once the PDA was reconnected to the internet network, and implement the improvement measures as soon as possible after the review.

Government's response

519. PO accepted The Ombudsman's recommendation, and has reviewed the arrangements concerned and implemented the following improvement measures –

(a) PO has reviewed the SMS notification arrangement of inward surface parcels before delivery. Since July 2023, in the first SMS sent to the recipients after the surface parcels have arrived at Hong Kong and the sorting process has been completed, the deadline for changing delivery options has been revised from the third working day (before 9 a.m.) after the issue date of the SMS to the next day (before 9 a.m.) so as to deliver the parcels to the recipients as soon as possible and align with the delivery arrangement. To ensure the delivery of parcels after the deadline for changing delivery options, PO has also updated the setting of the computer system to prohibit delivery before the deadline. In addition, the issue time

of the second SMS to the recipients on the delivery day has been advanced from 9:30 a.m. to 9:05 a.m. since June 2023 so that recipients can be notified of the delivery timeslot earlier;

(b) in July 2023, PO revised the issue arrangement and content of the SMS notification to the recipients of the unsuccessfully delivered mail items to make it clearer. Under the new arrangement, the relevant SMS will be sent to the recipient in the afternoon on the same day when the Notification card is issued and the content is also revised, with a view to avoiding confusion previously caused. As for the issue arrangement of the various Notification cards, PO also completed review in May 2023 and implemented the new arrangement in August 2023, including the rationalisation of the commencement of pick-up time of different types of mail in the post offices;

(c) PO has conducted inspection on more than two million entries of delivery results to the PDAs from January to March 2023. The analysis showed that the internet connection in remote areas and commercial areas with many high-rise buildings was relatively poor. Therefore, more mail data had to be entered in offline mode in these areas. With the aging situation of the existing PDAs, PO has already initiated a replacement plan. With the better performance in receiving internet network signals of the new model of PDAs and the on-going development of the mobile network technology in Hong Kong, it is expected that the internet connection situation will be improved in the future. In consideration of the expected substantial expenditure of the replacement plan, PO will carry out the comprehensive replacement of its existing PDAs in stages in the next two to three years;

(d) to enhance the monitoring of delivery postmen in delivering mail items according to the latest system instructions, PO added two new functions to the system in June 2023: (i) sending daily alert

reports with recipients' delivery instructions on changing arrangements and the information on relevant parcels after 9 a.m. to delivery supervisors who will again inform and remind the relevant delivery postmen to follow the delivery instructions; (ii) sending reports of anomalies setting out a list of cases of unmatched delivery instructions and delivery arrangements to supervisors at the end of every operation day so that supervisors can verify and follow up the abnormal cases with delivery postmen at an early stage; and

(e) as regards The Ombudsman's recommendation to add an automatic notification function in the PDAs so that delivery postmen would be notified of any latest delivery instructions once the PDA is reconnected to the internet network, after analysis, PO considers that the proposed additional function would cause heavy burden to the server due to the enormous number of data retrieval, and might thereby affect the performance of the whole PDA system and the back-end delivery system. Balancing the pros and cons, PO believes that the measures mentioned in (d) above will have solved the delivery problem caused by poor internet network reception, and thus will not consider the above recommendation at this stage.

Transport Department

Case Nos. 2022/1460A, 2022/1538, 2022/1562, 2022/1769, 2022/1923, 2022/2014(5), 2022/2014(6), 2022/2014(16), 2022/2014(18), 2022/2140(8), 2022/2144(1) and 2022/2256 – (1) Unreasonably rejecting a housing estate's application for residents' bus services while granting approval to the application submitted by a nearby housing estate, which showed a lack of consistent approval criteria; (2) Slipshod site inspections that failed to find out the actual traffic conditions; and (3) Failing to properly follow up on residents' suggestions for improving the traffic of the housing estate concerned

Background

520. Allegedly, the residents of a housing estate (the Estate) in So Kwun Wat had applied to TD for operating two new residents' service (RS) routes that would run separately between the Estate and Tuen Mun and Tsuen Wan. The Transport Department (TD), however, rejected the applications on the grounds that the residents could use the existing regular public transport service heading for the Tuen Mun and Tsuen Wan. The complainant considered TD's decision unreasonable, stating that the existing public transport services were inadequate to meet the needs of the residents. The complainants lodged complaints with the Office of The Ombudsman (the Office). Their grievances could be summarised as follows –

(a) queried TD had not applied consistent criteria in assessing RS applications. The Department rejected their applications without considering the expectation of the Estate's residents arising from the fact that it had already approved RS for the housing estates in the vicinity with similar or even better public transport services. The complainants accused TD of disparity in treatment and failure to handle the applications of the Estate in a timely manner (Allegation (a));

(b) queried TD's site investigations might have been too sloppy to reflect the actual traffic condition (Allegation (b));

(c) dissatisfied that TD's consultation on bus route no. 61P was inadequate and deviated from normal approval procedures (Allegation (c));

(d) dissatisfied that TD permitted the operator of bus route no. 252 to adjust peak period headway from 8 minutes to 10 minutes, thereby reducing service frequency (Allegation (d)); and

(e) queried TD might not have properly followed up on the residents' suggestions for improving the public transport service around the Estate, including cancelling the prohibited zone for red minibuses (RMBs), introducing 24-hour direct bus routes to and from Tsuen Wan and the urban areas; enhancing the existing bus and minibus services to and from Tuen Mun; re-routeing more bus routes to pass through the Estate; and providing more bus stops at the Estate, etc. (Allegation (e)).

The Ombudsman's observations

Allegation (a)

521. TD had explained to the Office that under the current transport policy, regular public transport plays a primary role while residents' service (RS) provides supplementary services. Hong Kong has a dense population but limited road resources, the Office considered it reasonable of TD to put mass public transport services at the core. TD had been closely monitoring the traffic condition around So Kwun Wat and engaged in discussions with the public transport operators in planning gradual enhancement of services in view of the completion of new residential developments and increased population in the district. In the process, TD had conducted local consultations via the local District Offices (DOs) and

carried out site investigations to understand the residents' demand for transport services.

522. Regarding the RS applications in question, TD had explained how they had been handled and indicated that more time was needed because the timing for conducting site investigations had been affected by the epidemic. TD had rejected the applications for the Tuen Mun route and the Tsuen Wan route mainly because there were already or there would be direct or transfer public transport services to and from the proposed destinations. Besides, other residents who relied on regular public transport services might be adversely affected by the proposed RS. TD's site investigations had confirmed that the existing public transport services could satisfy the residents' needs. The Department's judgement on whether the transport services are sufficient and the impact of introducing new RS or renewing specific RS routes on road networks involves TD's professional judgement, which is not an administrative matter for the Office to comment.

523. With regards to approval criteria, in considering applications for new RS, TD would factor in the regular public transport services already in operation as well as the public transport services under planning by the operators. For instance, the Tuen Mun route application was rejected because the route would affect MTR's plan to enhance the service level of route no. K53 and introduce route no. K51A. Likewise, application for the Tsuen Wan route was rejected because the route would impact on KMB's plan to introduce route no. 61P and strengthen the frequencies of route no. 252. To prevent residents in the same district from being denied bus services with higher frequency and longer service hours, TD had rejected the applications for new RS from the housing estates concerned from a holistic perspective.

524. Conversely, unlike applications for new RS, renewal applications for existing RS would be assessed by TD taking into consideration passengers' demand for the service in question. Even if there has been improvement in the regular public transport service, a renewal application

might still be approved so long as there is no change in passenger demand. The approval criteria are undoubtedly more lenient. In processing the latest RS renewal applications in the same district, TD agreed to conduct a review in response to the operators' feedback, although an investigation had revealed rather low occupancy rates of some routes. While the Office understood that the epidemic had affected the residents' demand for transport, the situation inevitably gave the impression that the Department was biased and could easily invite complaints.

525. With the development of public transport services in So Kwun Wat (especially after service enhancement of route no. K53 and introduction of route no. 61P), travelling to and from Tuen Mun and Tsuen Wan had become easier. According to TD's criteria for assessing RS renewal applications, however, those estates within the district that benefit from such enhanced services would still be permitted to operate RS whose routes overlap those of the public transport. On the contrary, RS applications of new housing estates (such as the Estate) would be rejected because of overlapping routes. The discontent of the residents of new estates was understandable.

526. As the authority for traffic planning, TD should put the overall traffic and transport condition as the primary factor of consideration. As pointed out by the Department, if the individual RS of different housing estates with lower capacity, and yet taking up considerable road surface, are approved in an unrestrained manner, road traffic would be adversely affected. Public transport operators may have difficulties to break even and may not be able to introduce new routes or enhance existing services, which will definitely affect the overall public transport service in the district. The Office considered this principle applicable to approval of RS renewal applications as well. Nevertheless, the other factors of consideration in approving renewal applications seem to reflect that the needs of the residents of the existing RS to override the consideration for optimal use of road resources.

527. Based on the above analysis, the Office was of the view that TD had processed the RS application of the Estate in accordance with established procedures and in a timely manner. Yet, there are discrepancies in its criteria for assessing new RS applications and RS renewal applications, which are not in line with its "regular public transport comes first" transport policy. As TD has pointed out, Hong Kong's public transport system is well-developed and provides multi-modal public transport services to the public, and public transport services in the So Kwun Wat area have already improved. The Office considered that TD should review with the stakeholders the criteria for assessing RS renewal applications and new RS applications with a view to improving the present arrangement. Overall, TD had assessed the applications in question in accordance with the current criteria, which, however, have ample room for review and improvement. As such, the Office considered Allegation (a) partially substantiated.

Allegation (b)

528. TD already elaborated to the Office the methodology of site investigations and the relevant investigation results, and explained the justification for conducting site investigations at different time periods of the day and spot-surveys at the en-route Roundabout bus stop. The Office has pointed out that how, when and where TD conducts site investigations and collects data involves the Department's professional judgement in performing its duties. Having carefully examined the explanation, data and information provided by TD, the Office considered that there was no evidence of maladministration with respect to the site investigations conducted by TD. Therefore, Allegation (b) is unsubstantiated.

Allegation (c)

529. TD already explained that it had followed established procedures to consult the local communities along the route via the local DOs and responded to their views afterwards. As no evidence of impropriety in

TD's consultation process concerning the introduction of route no. 61P was found, the Office considered Allegation (c) unsubstantiated.

Allegation (d)

530. TD had clarified that it had not approved service reduction of route no. 252. It had already asked the operator to improve communication with the passengers. The Office considered Allegation (d) unsubstantiated.

Allegation (e)

531. The Office understood that the residents of the Estate expected that the public transport condition around the Estate could be further improved, and suggested that TD add bus stops, cancel the prohibited zone for RMBs and strengthen cross-district bus services. TD had responded to the applicant's suggestions one by one. Assessment of the feasibility of the public's suggestions involves TD's professional judgement. From an administrative perspective, the Department handled the suggestions of the Estate's residents in accordance with established procedures. As the Office found no evidence of maladministration, Allegation (e) is unsubstantiated.

532. Overall, The Ombudsman considered this complaint partially substantiated and recommended that TD review the criteria for assessing new RS applications and RS renewal applications together with the stakeholders.

Government's response

533. TD accepted The Ombudsman's recommendation and is carrying out an internal review on relevant guidelines for assessing RS applications at policy level. Subject to the review outcome, TD may refine the guidelines.

Transport Department

Case Nos. 2022/1603(1), 2022/1603(2), 2022/1603(3) and 2022/1603(4) – (1) Ineffective site inspections that failed to find out the actual traffic conditions; (2) Failing to take into account the fact that residents' bus services did not involve public money or add burden to the local traffic; (3) Adopting loose approval criteria for renewing a number of residents' bus routes in other housing estates' applications, causing unfairness to the housing estate concerned; and (4) Giving a vague and groundless reply to the complainant

Background

534. According to the complainants, their housing estate (the Estate) in Tin Shui Wai had applied to the Transport Department (TD) several times for operating residents' service (RS) plying between the Estate and Tin Shui Wai Station of Tuen Ma Line. TD stated in its reply that the Estate's applications were rejected because its residents could take Light Rail Transit (LRT) Feeder Bus Route no. K76S and LRT to travel to and from Tin Shui Wai Station, and TD's site inspections confirmed that the above public transport services could satisfy the residents' needs. The complainants complained to the Office of The Ombudsman (Office), alleging that TD had improperly handled the Estate's RS applications and the related complaints, including –

(a) TD's site inspections were conducted before the full intake of the Estate, during the epidemic and at specific time period which could not reflect the actual traffic conditions. It was unreasonable for TD to conduct inspections at LRT Tin Yuet Stop instead of Tin Sau Stop which was closer to the Estate. The complainants opined that the public transport services there could not meet the demand and were inconvenient for the Estate's residents (Allegation (a)), for the following reasons –

i. the walking distances between the Estate and the nearest LRT Tin Sau Stop and bus stop were both about ten minutes and the road was not level;

ii. due to high patronage of LRT, residents of the Estate had to wait for two trains during peak hours before boarding;

iii. without a fixed schedule and only providing three departures during peak hours, Route no. K76S could not provide stable service and could not meet the needs of the residents; and

iv. passenger demand in the district will further increase with the gradual intake of another large housing estate nearby.

(b) the complainants were of the view that TD had not taken into account that the RS did not involve public money and could relieve the loading of public transport, and the proposed RS route of the Estate would be routed via the highway and would not add burden to the traffic in Tin Shui Wai (Allegation (b));

(c) TD rejected the applications of the Estate on the ground that public transport services could satisfy the residents' needs. However, for another large housing estate in the same district (Estate A), although it was located closer to Tin Shui Wai Station and in the vicinity of a number of LRT stops and bus stops, TD had over the years approved the renewal of a number of RS routes of this estate, allegedly adopting loose approval criteria in these cases and causing unfairness to the Estate (Allegation (c)); and

(d) a complainant had lodged complaints with TD about its approval of renewal of RS routes of Estate A on one hand and rejection of RS applications of the Estate on the other hand, but the replies given by TD were vague and groundless, which was unfair to the Estate (Allegation (d)).

The Ombudsman's observations

Allegations (a) and (b)

535. TD had explained to the Office that under the current transport policy, regular public transport plays a primary role while RS provides supplementary services. Hong Kong has a dense population but limited road resources, the Office considered it reasonable of TD to put mass public transport services at the core. TD had been closely monitoring the situation of public transport services along Wetland Park Road (including the Estate) and engaged in discussions with the public transport operators in planning gradual enhancement of services in view of the completion of new residential developments and increased population in the district. In the process, TD had carried out site investigations to understand the residents' demand for transport services.

536. In addition, TD had explained the reason for rejecting the RS applications of the Estate, which was mainly because its site inspections confirmed that the existing public transport services could satisfy the residents' needs and TD and the relevant departments would continue to improve the public transport services and supporting facilities. TD also considered that introduction of the RS would have impacts on public road resources. Regarding the complainants' query about TD's site investigations, TD explained that site investigations had been conducted at different time periods and the rationale for conducting site investigations at Tin Yuet Stop.

537. The Office has pointed out that how, when and where TD conducts site investigations and collects data involves the Department's professional judgement in performing its duties. The Office would not comment on this unless it is apparently unreasonable. Besides, the Department's judgement on whether the transport services are sufficient and the impact of introducing new RS or renewing specific RS routes on road networks also involves TD's professional judgement, which is not an administrative matter for the Office to comment. Having carefully

examined the explanation, data and information provided by TD, the Office considered that TD had handled the Estate's RS applications in accordance with the established procedures and there was no evidence of maladministration with respect to TD's rejection of the Estate's applications.

538. As such, The Ombudsman considered Allegations (a) and (b) unsubstantiated.

539. TD had indicated that it had taken into account the distance between the most inaccessible block of the Estate and its nearest stations/stops and, after assessment, considered that the Estate did not meet the criteria for operating RS. As this involved TD's professional judgement, the Office did not comment on this. As the Estate has multiple blocks, the distances from different blocks to the stations/stops would vary. At present, the distance from the main entrance of the Estate to the LRT Tin Sau Stop/Wetland Park Stop is already 400 to 450 metres. The distance from the most inaccessible block of the Estate to the bus stop of Route no. K76S (Tin Shui Wai bound) is about 550 metres, and one must use a footbridge, and no lift is provided at the footbridge, which is relatively inconvenient for some residents. The Office was of the view that addition of a pedestrian crossing outside the Estate would enhance the convenience of residents in commuting in the long run, but the related works are still at an early design stage. The Office considered that TD should continue to closely monitor the residents' demand for public transport services and supporting facilities, and consider taking appropriate interim measures (e.g. adding temporary bus stop(s)) in the light of the actual situation to meet the needs of residents.

Allegation (c)

540. The Office noted that, unlike applications for new RS, renewal applications for existing RS would be assessed by TD taking into consideration passengers' demand for the service in question. Even if there has been improvement in the regular public transport service, a renewal

application might still be approved so long as there is no change in passenger demand. The approval criteria are undoubtedly more lenient.

541. With the development of public transport services in Tin Shui Wai, travelling between Estate A and Tin Shui Wai Station/other districts had become easier. According to TD's criteria for assessing RS renewal applications, however, Estate A would still be permitted to operate RS. For instance, a phase of Estate A's nearest LRT stop is only two stops away from Tin Shui Wai Station, but it is still permitted to operate RS to and from Tin Shui Wai Station. On the contrary, new RS applications of new housing estates located in Tin Shui Wai North and farther away from Tin Shui Wai Station (such as the Estate) would be rejected on the ground that there are adequate public transport services. And TD considered that the "above benchmark" principle (i.e. the applicant housing estate is already being served by adequate public transport service) not applicable to the case of the Estate. The Office considered it understandable that new estates' residents might have the perception that there was disparity in treatment by TD and be discontented.

542. As the authority for traffic planning, TD should put the overall traffic and transport condition as the primary factor of consideration. As pointed out by the Department, if the individual RS of different housing estates with lower capacity, and yet taking up considerable road surface, are approved in an unrestrained manner, road traffic would be adversely affected. Public transport operators may have difficulties to break even and may not be able to introduce new routes or enhance existing services, which will definitely affect the overall public transport service in the district. The Office considered this principle applicable to approval of RS renewal applications as well. Nevertheless, the other factors of consideration in approving renewal applications seem to reflect that the needs of the residents of the existing RS to override the consideration for optimal use of road resources.

543. The Office opined that there were discrepancies in TD's criteria for assessing new RS applications and RS renewal applications, which

were not in line with its overall transport policy. As TD has pointed out, Hong Kong's public transport system is well-developed and provides multi-modal public transport services to the public. The Office considered that TD should review with the stakeholders the criteria for assessing RS renewal applications and new RS applications with a view to improving the present arrangement.

544. Overall, as TD had assessed the applications in question in accordance with the current criteria, which, however, have ample room for review and improvement, The Ombudsman considered Allegation (c) partially substantiated.

Allegation (d)

545. The Office considered it understandable that the complainant, who resides in the Estate, cited Estate A for comparison as it is a large housing estate in Tin Shui Wai. Estate A was granted approval for renewal of RS mainly because TD would take into consideration the demand of residents for the existing RS according to the criteria for assessing RS renewal applications. And given the different geographical locations of Estate A and the Estate, TD opined that the "above benchmark" principle not applicable to the Estate.

546. TD has never given the above explanation when replying to the complainant. The Office was of the view that TD should clearly explain its stance on the matters queried by the complainant. In its earlier replies to the complainant, TD kept repeating similar points, stressing that public transport services in the district were adequate and TD would consider each application on a case-by-case basis, which could not ease the complainant's concerns and inevitably gave people the impression that TD's responses were perfunctory. The Office was of the view that TD had failed to reply to the complainant properly.

547. As such, The Ombudsman considered Allegation (d) substantiated.

548. Overall, The Ombudsman considered this complaint partially substantiated and recommended TD to –

(a) continue to monitor the Estate's demand for public transport services and supporting facilities and take enhancement measures in a timely manner;

(b) review the criteria for assessing new RS applications and RS renewal applications together with the stakeholders; and

(c) strengthen staff training and remind staff to examine complaints in detail and properly address the content of complaints in the replies.

Government's response

549. TD accepted all recommendations by The Ombudsman and is implementing/has implemented the recommendations with details as follows –

(a) TD has been enhancing the public transport services to tie in with the population intake of the residential developments along Wetland Park Road. To this end, a series of enhancement of public transport services and road improvement work were implemented in 2023;

(b) TD is carrying out an internal review on relevant guidelines for assessing RS applications at policy level. Subject to the review outcome, TD may refine the guidelines; and

(c) TD has reminded colleagues to examine complaints in details and properly address the content of complaints in the replies.

Vocational Training Council

Case No. 2022/2932 – Unreasonably refusing to refund the tuition fee paid by the complainant who had applied for withdrawal of study

Background

550. The complainant, being a candidate of the 2022 Hong Kong Diploma of Secondary Education Examination (HKDSE), was given an offer for admission to the Diploma of Foundation Studies programme by an institution under the Vocational Training Council (VTC). He had also paid the 1st instalment of the tuition fee and other miscellaneous fees. Later, as he had successfully applied for an appeal of his HKDSE results, he was given an offer for admission to an Associate Degree programme from another institution. He applied to VTC for withdrawal of study and refund of the tuition fee paid, but was rejected. Thus, he lodged a complaint to the Office of The Ombudsman (the Office) against VTC for its unreasonable decision.

The Ombudsman's observations

551. The Office noted that it was stipulated on VTC's webpage and in the registration documents distributed to new students that all fees paid were not refundable unless the programme was cancelled or the applicant had accepted an offer for admission to a specified undergraduate programme. However, the terms stated in the "Student Handbook" relating to the possibility of a partial refund of the fees paid if a full-time student withdrew from study before the commencement of a semester were not mentioned. The Office opined that prospective refund applicants might not be aware of the other refund conditions stated in other documents when reading the information relating to refund arrangements in one of the documents. Hence, there was a chance that students who were eligible for a refund might mistakenly consider themselves ineligible. This might lead to unfairness and also might easily give rise to misconception that VTC intended to conceal its refund policies. In this connection, VTC should

enhance the transparency of its refund policies by comprehensively listing out various refund conditions on its webpage and relevant documents, such that prospective refund applicants could read the relevant paragraph and understand clearly his/her eligibility for a refund.

552. As regards the case of the complainant, he conveyed his requests for withdrawal of study and refund of the tuition fee paid to VTC three times via email in late August 2022. After studying the three emails, the Office considered that his requests were clear. There was clearly negligence on the part of VTC staff member for not processing his request for withdrawal of study and refund in accordance with the terms of VTC's "Student Handbook". Upon the Office's intervention, VTC re-examined the case and made rectifications by arranging a partial refund to the complainant according to the terms. The Office was of the view that apart from strengthening staff training to avoid occurrence of similar incidents, it would be more important for VTC to explain clearly and comprehensively its refund policies so as to provide guidance for staff and students facing similar situations in future.

553. In the light of the above, The Ombudsman considered the complaint substantiated and recommended that VTC to –

(a) enhance transparency of its refund policies by listing out the arrangements for refund of tuition fees under all scenarios on its webpage and relevant registration documents; and

(b) strengthen staff training to ensure that they have a thorough understanding of the relevant refund policies of VTC's programmes.

Government's response

554. VTC accepted The Ombudsman's recommendations and has updated the contents of its webpage and relevant documents concerning its

refund policies. Moreover, suitable training has been provided to its staff members.

Part III
– Responses to recommendations in direct investigation cases

Administration Wing, Correctional Services Department, Hospital Authority, Immigration Department and Social Welfare Department

Case No. DI/454 – Operational Arrangements for Statutory Visits under Justices of the Peace Visit Programme

Background

555. Justices of the Peace (JPs) conduct statutory visits to designated institutions pursuant to the Justices of the Peace Ordinance (Cap. 510) and other relevant legislation. The JP Visit Programme serves as one of the important independent channels for persons in custody, detained or hospitalised (institutionalised persons) to express their views and lodge complaints; and as a platform for JPs to make comments and suggestions on ways to improve facilities and service management of the institutions.

556. The JP Visit Programme is administered by the Administration Wing of the Chief Secretary for Administration's Office. JP statutory visits now cover 38 institutions, including correctional institutions under the Correctional Services Department (CSD), detention centres of the Immigration Department (ImmD) and the Independent Commission Against Corruption, psychiatric hospitals of the Hospital Authority (HA), as well as remand homes, places of refuge, probation homes and reformatory schools of the Social Welfare Department (SWD). JPs visit these institutions on a fortnightly, monthly or quarterly basis so as to discharge their statutory visit functions.

557. In 1999, the Government conducted a review of the JP system, including the JP Visit Programme. In light of the importance of the Programme and its long years of operation, the Office of The Ombudsman (the Office) launched this direct investigation to examine the operation of and arrangements for JP statutory visits, including the support provided by

the relevant departments and organisations before and during JP visits and the follow-up actions afterwards, with a view to making recommendations for improvement where necessary.

The Ombudsman's observations

558. Overall, The Ombudsman considered the operation of the JP Visit Programme smooth in general and recognised the contribution of JPs in this regard. However, there was still room for improvement in the operational arrangements for the Programme.

Key Areas on Checklists Prepared by Departments/Organisations May Go Unassessed

559. With respect to statutory JP visits, departments and organisations have prepared their respective checklists highlighting the key areas that JPs may wish to heed when visiting their institutions (including such aspects as the facilities, services and management of institutions, as well as the condition and treatment of institutionalised persons). The checklists, which provide concise guidelines on how an institution should be assessed, are attached to the appointment letters issued to the JPs by the Administration Wing for their reference.

560. Nevertheless, the Office's investigation found that in actual operation, some key areas on the checklists may go unassessed during JP visits. Currently, staff of institutions give introduction to JPs in a briefing at the outset and during the inspection, and respond to questions raised by them. Hence, during the process, staff will provide JPs with certain information related to the key areas on the checklists. As the institution staff generally do not provide information about the key areas on the checklists in a systematic manner, in the event that JPs have not examined certain key areas and at the same time the staff have not proactively provided related information, those key areas may go unassessed during the visit.

561. To avoid the said omission, the Office recommended that departments and organisations should pay attention and in case any key areas on the checklists are yet to be mentioned during the briefing or the inspection of a JP visit, institution staff should proactively provide JPs with related information for assessment of those areas. This would help JPs make a comprehensive assessment of the institution during each visit and achieve the purpose of the JP Visit Programme more effectively.

562. At the end of a visit, JPs are required to complete a JP Visit Logbook (Logbook) and record the complaints, requests and enquiries received during the visit, their directives and recommendations made after meeting institutionalised persons, as well as their assessments, comments and suggestions on the facilities and services provided by the institution. The Logbook will be passed to the institution concerned for follow-up. The Office noticed that the Logbook used by all the departments and organisations was not designed in such a way that the items therein correspond to the key areas on their respective checklists. It did not facilitate JPs to record their assessment of various key areas on the checklists, thereby causing possible omissions of certain areas in the assessment.

563. The Office recommended that departments and organisations, in conjunction with the Administration Wing, review and revise their respective template of the Logbook to incorporate the key areas on the checklist accordingly, so as to facilitate comprehensive assessments and records by JPs.

Lack of Elaboration on Some Key Areas on the Checklist

564. Given the varying nature and functions of their institutions, the key areas on the respective checklists of the departments and organisations differ. The Office noticed that the checklists prepared by CSD and ImmD not only list out the key areas that warrant JPs' attention during their visits at correctional institutions and detention centres, but also include a brief

description of each item. Meanwhile, HA and SWD provide a brief description of some key areas on their checklists.

565. The Office considered it a good practice to provide the above brief descriptions as they assist JPs in understanding the criteria or focus in assessing the key areas. While not every key area on the checklist warrants elaboration, some relatively abstract key areas, such as "policy, procedure and organisation pertaining to patient safety, risk management and patient data security" on HA's checklist, are only given a general title without any explanation or suggestion on the assessment approach. They are of limited assistance to JPs.

566. The Office recommended that HA consider providing more elaboration on its checklist so that JPs can have a clearer idea about how to assess the facilities, services and management of an institution during a visit.

Some Institutions Do Not Notify All Institutionalised Persons Immediately that JPs Are Visiting

567. All JP visits are unannounced to ensure effective monitoring of institutions under the JP Visit Programme. Consequently, when JPs arrive at an institution for a surprise visit, institutionalised persons must be notified of the visit so that they can lodge requests, enquiries and complaints with the visiting JPs in person if they so wish.

568. At present, when the visiting JPs arrive at a certain location of an institution, the duty officer will notify the institutionalised persons at that location that JPs are inspecting and they can raise complaints, requests or enquiries with the JPs on the spot.

569. When JPs commence their visit at an institution under ImmD and SWD, the staff members receiving them will notify immediately other staff members at different locations of the institution, who will in turn notify immediately the persons in custody or hospitalised that JPs have come to

visit. CSD's practice is different: staff members stationed at a certain location of an institution will not be notified of the JP visit until the JPs are close to that particular location.

570. On the other hand, HA indicated that due to time constraints, visiting JPs practically cannot visit all the wards of some larger hospitals. Patients in the wards not chosen by JPs will not be notified of their visit. The Office's investigation found that in some larger hospitals, the actual number of visits at each ward is much lower than that required by the relevant legislation (i.e. at least once a month). As a result of not being notified of the JP visit, patients in those wards not chosen by JPs will lose the chance to express their views, requests or complaints to the JPs in person. This would be inconsistent with the original intent of the JP Visit Programme. In the Office's opinion, even if JPs cannot inspect the entire hospital because of time constraints, all hospitalised persons should have the right to know JPs are visiting and to meet them in person.

571. The Office recommended that CSD and HA favourably consider using the public address system or other means to notify early all inmates or hospitalised persons at different locations of an institution that JPs are about to start a visit. This will ensure that no persons will miss the opportunity to meet JPs as a result of not being notified of the visit, and allow persons wishing to meet JPs adequate time for preparation.

Some Institutions Do Not Inform Institutionalised Persons that They Can Request to Meet JPs in Private

572. In the interest of privacy, visiting JPs may, after considering the risks involved, choose to meet persons in custody, detained or hospitalised in private. In such circumstances, the institution management will make necessary arrangements to facilitate the interview in private and render necessary assistance to the JPs. All correctional institutions under CSD and the Castle Peak Bay Immigration Centre under ImmD have put up notices at conspicuous places to remind inmates or detainees that they can request to meet JPs individually.

573. In the past, the Ma Tau Kok Detention Centre under ImmD and institutions under SWD did not inform the persons in custody or hospitalised that they could ask to meet JPs in private. Upon the Office's intervention, these institutions have made improvements.

574. As for the five psychiatric hospitals under HA, hospitalised persons can request to meet JPs in private. Taking into account the risks involved and the staff's clinical assessment of the person concerned, JPs will decide whether to accede to the request. Nevertheless, considering the possible impact on the emotion and clinical treatment of the hospitalised person if a private meeting cannot be arranged ultimately, HA considers it not appropriate to specify that hospitalised persons can request to meet JPs in private.

575. To safeguard the privacy and right to know of hospitalised persons, the Office considered that institutions should inform them of their right to request a private meeting with JPs. If possible negative impact on hospitalised persons caused by expectation gap with actual arrangements is a concern, HA may specify in appropriate documents (such as Admission Notes) that hospitalised persons can ask to meet JPs in private, but whether such a meeting can be arranged depends on the JPs' decision. This should help to manage the expectation of the hospitalised persons.

Some Institutions Do Not Inform Persons Temporarily Away from an Institution that JPs Have Come to Visit

576. On the day of a JP visit, some institutionalised persons may not be in the institution for certain reasons (e.g. medical appointment at a hospital outside the institution or court attendance). CSD and ImmD will inform such persons of the JP visit upon their return to the institution. Arrangements will be made should those persons wish to file any request or complaint with the JPs. On the other hand, HA and SWD have not put in place similar arrangements.

577. The Office considered that the above practice of CSD and ImmD could help ensure that institutionalised persons temporarily away from the institution during a JP visit have knowledge of the visit and HA and SWD should learn from it.

Mere Verbal Information by Staff on Whether JPs Have Seen All Institutionalised Persons Not Objective or Complete

578. Under the current arrangement, JPs can ask the institution staff during a visit to confirm whether they have seen all institutionalised persons. If not, the staff should provide reasons; for instance, they should explain whether any institutionalised persons have been temporarily escorted to other locations on reasonable grounds (e.g. medical appointment at a hospital outside the institution or court attendance) on the day of visit. The visiting JPs have to confirm the above in the Logbook. This procedure is adopted by CSD, ImmD, HA and SWD alike.

579. The JP Visit Programme serves as an independent channel for institutionalised persons to express their views and lodge complaints. The Office considered that whether JPs have seen all institutionalised persons during their visits is crucial to the attainment of the objective of the Programme. Since each institution contains one or various buildings and houses hundreds of institutionalised persons, it is indeed more pragmatic for institution staff to provide information than for JPs to verify by themselves whether they have seen all institutionalised persons. Nevertheless, mere verbal confirmation of that fact by institution staff may not be seen to be objective or complete.

580. The Office recommended that institutions should, on the day of JP visit or within a week afterwards, provide JPs with a name list of persons temporarily away from the institution during their visit (including the reasons for absence if practicable) and attach it to the Logbook, so as to facilitate JPs to confirm whether they have seen all institutionalised persons during the visit, and to check whether any persons have been absent from two consecutive JP visits. On the name list, the institution

should highlight those institutionalised persons who have been absent from two consecutive JP visits and provide the reasons for their absence for the respective visits. The JPs can, when necessary, enquire with the institution whether those persons have any special circumstances that warrant attention. At the same time, the Administration Wing should issue relevant guidelines to the executive departments and organisations, notify all JPs of the procedure and revise the template of the Logbook to facilitate records by JPs.

Written Replies to JPs Do Not Mention What and How Investigation Findings Are Related to Complainants

581. Upon completion of the processing of a complaint lodged with JPs by an institutionalised person, CSD, ImmD, HA and SWD will inform the JPs in writing of their follow-up action and the investigation result. In its written replies to JPs, ImmD will mention how the Department has related the investigation result (in writing or verbally) to the complainants in detention. The Office's examination of randomly selected cases found that CSD similarly mentions in its written replies to JPs what and how investigation findings were related to the complainants. On the other hand, HA and SWD have not formulated similar procedures.

582. In the Office's view, what and how investigation findings are related to the complainants are essential parts of complaint handling. JPs should be provided with this information in order to understand whether the complaint handling process of the institution is fair and proper, thereby ensuring effective monitoring. At the same time, consistent adoption of such better practice among the executive departments and organisations of the JP Visit Programme can enhance the overall management of the Programme.

Some Institutions Have Not Formulated Procedures to Issue Written Replies to Complainants upon Request

583. Regarding complaints lodged with JPs by institutionalised persons, institutions under CSD, ImmD and HA normally inform the complainants verbally of the result upon completion of investigation. If a complaint is handled by the Complaints Investigation Unit of CSD, the Unit is required to inform the complainant of the investigation result in writing. Both ImmD and HA stated that if the complainant requests a written reply, the institution concerned will make arrangements accordingly. Meanwhile, all institutions under SWD issue written replies to complainants as a standing practice.

584. The Office found it understandable that an institution decides how to reply to complainants taking into account its operational needs, manpower resource and nature of the complaints. Undoubtedly, verbal replies can alleviate administrative work and enhance mutual communication. In this light, the Office agreed that institutions can issue either verbal or written replies to complainants, unless otherwise specified by the complainants.

585. That said, the Office understood that for certain reasons (such as for facilitating appeals in the future or even lodging complaints with other departments), some complainants may want a written reply from the department or institution. If a complainant specifically asks for a written reply, the department or institution concerned should accept the request as far as possible having regard to good administrative principles.

586. If a department or organisation, upon assessing the actual circumstances of a case and operation of the institution in question, considers it inappropriate to issue a written reply pursuant to the complainant's request, it should make a record of the request and mention in its written reply to JPs such a request together with the department or organisation's specific reason for not acceding to the request. The JPs can then make further recommendations where necessary.

Departments and Organisations Are Not Required to Issue Interim Replies to JPs for Cases that Take Time to Process

587. The Administration Wing indicated that given the varied nature and complexity of cases, it is hard to tell how long it will take the departments and organisations to handle the complaints, enquiries or requests received by the visiting JPs, and their suggestions or comments. As such, the Administration Wing has not set any timeframe with respect to case handling and issuance of substantive replies to JPs by the departments and organisations. Statistics between 2019 and 2021 provided by the Administration Wing and the Office's case studies showed that departments and organisations in general could process cases and issue replies to JPs in a timely manner.

588. Nevertheless, for cases requiring a longer processing time, the Administration Wing does not require departments and organisations to issue interim replies regularly to JPs to report on the progress. This calls for improvement, as the Office considered it necessary to keep JPs informed of the case progress regularly for effective monitoring purposes.

Inconsistent Time of Publishing Annual Reports on Justices of the Peace Visits and Failure to Inform the Public

589. Every year, the Administration Wing publishes an Annual Report on Justices of the Peace Visits (Annual Report), giving a detailed account of JP visits and the follow-up actions of departments and organisations in the past year. The Administration Wing has not set any specific timeframe for publishing the Annual Report. In general, it takes the Department five to 12 months every year to compile the Annual Report.

590. As the primary source of information for the public to understand the JP Visit Programme, the importance of the Annual Report speaks of itself. The public naturally has legitimate expectation as to the time of its publication. In certain years in the past, it took the Administration Wing 12 months to publish the Annual Report of the previous year, which was

undesirable. The Office recommended that the Administration Wing devise a timetable for publishing the Annual Report to ensure its publication within a specified period every year.

591. On the other hand, currently, upon publishing an Annual Report on its website and the JP website, the Administration Wing does not issue any press release to inform the public that the latest Report is available online for viewing. The Office considered issuing a press release useful in raising public awareness of the JP Visit Programme, and enhancing public understanding of the work of JPs and the departments and organisations and their effectiveness in the past year, thereby boosting public confidence in the Programme. The Office recommended that the Administration Wing issue a press release in tandem with the publication of an Annual Report in the future.

Content and Function of "Justices of the Peace Zone" on JP website Limited

592. The JP website operated by the Administration Wing includes a "Justices of the Peace Zone" (JP Zone) accessible only to JPs. They can find all the previous issues of "JP Newsletter" and detailed information about all the institutions covered by the JP Visit Programme. As the Office saw it, the JP Zone only provides reference materials to JPs and its content is rather limited and repetitive, with the majority of the information therein having already been provided by the Administration Wing to JPs separately. In this light, the JP Zone is of limited function and reference value.

593. The Chief Executive's 2022 Policy Address puts forward a vision of building a "smart government" and an aim to turn all government services online in two years. In this light, the Office recommended that the Administration Wing consider seeking JPs' views on strengthening digital support for the Programme; for example, whether it is necessary to optimise the JP Zone via information technology in order to provide useful information to JPs more conveniently, to collect their views through more

diversified channels and to facilitate the exchange and sharing of visiting experience among them. The Office believed that the aforementioned digitalisation measures could bolster the support for JP visits and in the long run alleviate the administrative work of the Administration Wing and the executive departments and organisations.

594. The Ombudsman made the following recommendations to the Administration Wing, CSD, ImmD, HA and SWD –

Administration Wing

(a) issue guidelines to the departments and organisations requiring institutions to provide visiting JPs with a name list of the persons temporarily away from the institution (including the reasons for their absence if practicable), notify all JPs of the procedure and revise the template of the Logbook to facilitate records by JPs;

(b) in respect of complaints, requests, enquiries, suggestions or comments requiring a longer processing time, set a timeframe within which the departments and organisations should issue interim replies and report on the progress to JPs to facilitate their monitoring;

(c) devise a timetable for publishing the Annual Report to ensure its publication within a specified period every year;

(d) issue a press release in tandem with the publication of an Annual Report to inform the public that the latest Report is available online for viewing;

(e) consider seeking JPs' views on strengthening digital support for the Programme; for example, whether it is necessary to optimise the JP Zone on the JP website via information technology in order to provide useful information to JPs more conveniently, to collect

their views through more diversified channels and to facilitate the exchange and sharing of visiting experience among them;

CSD, ImmD, HA and SWD

(f) in conjunction with the Administration Wing, review and revise their respective templates of the Logbook to incorporate the key areas on the checklist accordingly; in case any key areas are yet to be mentioned during the briefing or the inspection, institution staff should proactively provide JPs with related information for assessment of those areas, so that they can make comprehensive assessments and records of the institution;

(g) on the day of visit or within one week afterwards, provide visiting JPs with a name list of the persons temporarily away from an institution (including the reasons for their absence if practicable) and attach it to the Logbook, so as to help the JPs assess whether they have seen all institutionalised persons during their visit and check whether any persons have been absent from two consecutive JP visits. The institution should highlight on the name list those who were absent from two consecutive JP visits and provide the reasons for their absence for the respective visits;

(h) if, upon assessment of the actual circumstances of a case and operation of the institution in question, it is conceivably inappropriate to issue a written reply pursuant to the complainant's request, make a record of the request and mention in their written reply to JPs such a request together with the department or organisation's specific reason for not acceding to the request;

(i) CSD and HA favourably consider using the public address system or other means to notify early all inmates or hospitalised persons at different locations of an institution that JPs are about to start a visit;

(j) HA and SWD inform institutionalised persons returning to a ward or an institution after temporary absence that JPs have made a visit so as to safeguard their right to know;

(k) HA and SWD mention in their written replies to JPs what and how investigation findings were related to the complainants, so as to facilitate JPs' understanding of whether the complaint handling process of the institution is fair and proper;

(l) HA and SWD inform institutionalised persons through appropriate documents that they can ask to meet JPs in private; HA may specify in the documents whether a private meeting can be arranged depends on the JPs' decision; and

(m) HA provide more elaboration on how JPs should assess the key areas on the checklist.

Government's response

595. The Administration Wing, CSD, ImmD, HA and SWD accepted The Ombudsman's recommendations and have taken the following follow-up actions.

Recommendations (a), (f) and (m)

596. The Administration Wing has revised the template of the Logbook in conjunction with relevant departments/organisations to facilitate JPs' record of information relating to institutionalised persons temporarily away from the institution during a JP visit. It has also issued guidelines to departments/organisations, requiring institutions to provide visiting JPs with a name list of institutionalised persons temporarily away from the institution together with the reasons for their absence if practicable. The Administration Wing has already notified all JPs of the relevant procedures.

597. CSD staff has all along been taking the initiative to brief the JPs on the background and operation of the institutions during their visits, and provide them with information about the key areas of assessment of the institutions, so as to help them make appropriate assessments and records. Besides, after CSD's discussion with the Administration Wing the items that need to be revised or added to the template of the Logbook, the revised template would be produced for JPs to fill in.

598. In June 2022, in conjunction with the Administration Wing, ImmD reviewed and revised the templates of the Logbook and the checklists of the Castle Peak Bay Immigration Centre and the Ma Tau Kok Detention Centre, and incorporated the key areas of the checklists into the relevant parts of the Logbooks. ImmD will maintain close liaison with the Administration Wing to review the templates of the Logbook regularly and make amendments as necessary. In addition, on the day of JP visit, staff of ImmD will proactively provide JPs with related information for assessment of those key areas, so that the JPs can make comprehensive assessments and records of the Centres.

599. The checklist has been updated and modified in June 2022, with elaborations on the key items, including hospital facilities and environment, patient service, patient safety and communication etc. The updated checklist had been sent to hospitals in July 2022 and is now in use upon the resumption of statutory JP visits to HA hospitals in May 2023.

600. Checklist items were also added to the relevant part of the JP visit Logbook (the Logbook). Hospitals will assist JPs in filling the Logbook by providing explanations, if applicable, and other relevant information addressing JP's enquiries and requests. The revised Logbook was sent to Administration Wing in June 2023 for further review, and it has been in use from November 2023.

601. SWD has, in conjunction with the Administration Wing, reviewed and revised the respective templates of the Logbook to incorporate the key areas on the checklist accordingly. All institutions under SWD have

proactively provided JPs with related information for assessment of those key areas in case they have not yet been mentioned during the briefing or the inspection.

Recommendation (b)

602. After consulting relevant departments/organisations, the Administration Wing has set a timeframe within which the departments and organisations should issue interim replies and reports on the progress to JPs in respect of complaints, requests, enquiries, suggestions or comments requiring a longer processing time.

Recommendations (c) and (d)

603. The Administration Wing will ensure that the Annual Report will be compiled and published within nine months after the end of each year and a press release will be issued in tandem with the publication of an Annual Report. The 2022 Annual Report of the Justice of the Peace Visit was published and the related press release was issued in August 2023.

Recommendation (e)

604. After study and consulting with relevant departments/organisations, the Administration Wing has enriched the content of the JP Zone on the JP website. It has notified the JPs of the optimisation of the JP Zone and invited them to share their views and suggestions on further optimisation of the JP website.

Recommendation (g)

605. CSD has already introduced a new function to the existing "Penal Record Information System II", which will enable institution staff to print a name list of inmates temporarily away from the institution, with reasons for their absence provided, for the visiting JPs' reference. Following a trial

run in the institutions under CSD since April 2023, the function was launched formally in August 2023.

606. Besides, CSD is now actively studying further enhancement of the relevant function through the "Integrated Custodial and Rehabilitation Management System", which will soon be launched. The enhanced function will enable institution staff to print the information of persons in custody temporarily away from the institution for two consecutive JP visits for the JPs' reference. This enhanced arrangement would be rolled out within 2023.

607. With the implementation of the newly adopted measures by ImmD in July 2023, visiting JPs are furnished on-site with a list of detainees temporarily away from the Centre, detailing the reasons for such absence. The furnished list is attached in the Logbook. ImmD will also highlight on the list those who have been absent from two consecutive JP visits and provide the reasons for such absence for the respective visits.

608. Upon the resumption of statutory JP visits in May 2023, the HA starts to provide, on the day of JP visit or within one week afterwards, visiting JPs with name list of patients temporarily away from the hospital and attach it to the Logbook. Patient who is absent in two consecutive statutory JP visits will be highlighted, with reasons of absence, in the concerned name list. To safeguard patient data privacy, the hospitals concerned had also amended the admission notes to patients, informing them the possible use of their personal information for JP visits.

609. In order to help the JPs assess whether they have seen all institutionalised persons during their visits and check whether any person has been absent from two consecutive JP visits, SWD institutions have implemented the arrangement to provide JPs on the day of visit with a name list of persons who are temporarily away from the institution, with the reasons for their absence specified in footnotes and attached it to the Logbook. For residents who were absent for two consecutive times during

JP visits, institutions will highlight their names, and JP can also refer to the last visit record.

Recommendations (h) and (k)

610. The current practice of CSD has already complied with the recommendation of the Office of The Ombudsman. As such, CSD needs not follow up on this aspect.

611. ImmD has all along been reporting in its written replies to the JPs that the detainees who have lodged their complaints have been notified of the investigation results, while stating also the means of notification (written or verbal). It is also ImmD's standing practice that if a detainee requests a written reply to the complaint, ImmD will record the complainant's request and mention such a request in the written reply to the JPs. If ImmD considers that it is conceivably inappropriate to accede to the complainant's request of written reply, the reasons will be stated in the written reply to JPs by ImmD.

612. If it is conceivably inappropriate to issue a written reply pursuant to the complainant's request, the HA will record requests/complaints and mention in a written reply to JPs what and how investigation findings were related to the complainants, and the reason for not acceding to the request (if applicable), so as to facilitate JP's understanding on whether the related handling process is fair and proper.

613. SWD has revised the related guidelines that, if upon assessment of the actual circumstances of a case and operation of the institution in question, it is conceivably inappropriate to issue a written reply pursuant to the complainant's request, institutions would make a record of the request and mention in their written reply to JPs such a request, together with the specific reason for not acceding to the request.

614. SWD has implemented the recommendation to mention in the written replies from institutions to JPs what and how investigation findings

were related to the complainants, so as to facilitate JPs' understanding of whether the complaint handling process of the institution is fair and proper.

Recommendation (i)

615. Since August 2023, CSD has started the trial use of the public address system to inform persons in custody of a JP visit and will closely monitor and assess the impact of the implementation of this recommendation. Later, after discussing with the Administration Wing about the trial, CSD will decide whether or not to implement such arrangement.

616. Hospitals will notify patients, via public address systems or other means, that JPs are about to start a statutory visit.

Recommendation (j)

617. Patients who are temporarily away from wards/hospitals will also be notified a JP visit had been made so as to safeguard their right to know. Nevertheless, patients on home leave will not be notified because they can have other means to get access to complaint channels in the community.

618. SWD has implemented the recommendation to mention in the written replies from institutions to JPs what and how investigation findings were related to the complainants, so as to facilitate JPs' understanding of whether the complaint handling process of the institution is fair and proper.

Recommendation (l)

619. Hospitals has updated the admission notes informing patients their rights to request for a private meeting with JPs. However, it will be subject to visiting JP's decision.

620. SWD has implemented the recommendation through posting notices at specific locations of the institutions to inform institutionalised persons that they can ask to meet JPs in private.

Buildings Department and Lands Department

Case No. DI/452 – Government's Enforcement against Unauthorised Building Works in New Territories Exempted Houses

Background

621. Unauthorised building works (UBWs) in New Territories Exempted Houses (NTEHs) has been a long-standing problem of considerable concern.

622. On 1 April 2012, the Government implemented an enhanced enforcement strategy against UBWs in NTEHs, viz "safeguarding building and public safety, acting in accordance with the law, categorisation for control and management, and prioritisation for progressive enforcement". Enforcement actions against newly-completed UBWs and existing ones in NTEHs would be prioritised according to their severity and risk level. As the enforcement authority, the Buildings Department (BD) accords priority to UBWs constituting imminent danger, UBWs under construction or newly completed ones (i.e. UBWs completed on or after 28 June 2011), and existing UBWs not posing imminent danger but constituting serious contravention of the law and entailing higher potential risks, that are the first round targets. Besides, through the "Reporting Scheme for UBWs in NTEHs", BD collects information on UBWs constituting less serious contravention of the law and ensures their safety. On the other hand, the Lands Department (LandsD) plays a supporting role by providing relevant information to BD and takes lease enforcement actions against UBWs constituting imminent danger or those outside the ambit of BD.

623. After examining the work of BD and LandsD, the Office of The Ombudsman (the Office) had the following comments and recommendations.

The Ombudsman's observations

Statistics on UBWs Not Compiled

624. In the past, the Government had not conducted any comprehensive surveys or compiled statistics on NTEHs or UBWs in those houses, hence the absence of overall statistics on UBWs in NTEHs. Since the implementation of the enhanced strategy, BD had, in the course of follow-up on reports of UBWs or large-scale operations for the identification of first round targets, maintained figures on the number of NTEHs with UBWs found and the number of removal orders issued. It had also input the content of removal orders (comprising the types and numbers of UBWs concerned) into the Building Condition Information System. Nevertheless, BD did not make use of the aforesaid information to compile statistics on UBWs for analysis.

625. The Office considered that without statistics on UBWs, it would be difficult for BD to make systematic assessment of the effectiveness of the enhanced strategy in tackling UBWs in NTEHs and the overall changes after its implementation. For the purpose of analysis, BD should compile statistics on UBWs (including the types and numbers of UBWs involved in removal orders and of those subsequently removed) based on the information collected from its follow-up and enforcement actions. While the statistical information might not cover all NTEHs in the territory, the cumulative data could still provide an objective basis for BD's review of its enforcement actions.

Failing to Curb the Proliferation of UBWs

626. Since the implementation of the enhanced strategy, BD had issued 606 removal orders against UBWs under construction as at 2021. Of those orders, 147 (about 24.3%) remained outstanding as at the end of 2021, among which about 68% were issued in or before 2018, reflecting the long existence of the UBWs concerned. Similarly, of the 2,020 removal orders issued by BD against newly completed UBWs, 755 (about 37.4%)

remained outstanding as at the end of 2021, among which 47.8% were issued in or before 2018. On the other hand, the Office's case studies revealed that although BD could meet its performance pledge to arrange site inspection by a consultant within 48 hours after receiving a report of UBWs under construction, it took 9 to 18 months to issue a removal order after the inspection, which was an obvious failure to meet the objective of taking "immediate" enforcement action. BD's failure to take prompt enforcement actions has in a way encouraged non-compliant owners to delay fulfilling their legal responsibilities.

627. In the Office's view, BD should review the existing guidelines and set clearer internal targets for processing tasks other than site inspections, so as to effectively combat UBWs under construction, thereby meeting the policy objective of curbing the proliferation of UBWs. BD should also explore streamlining the enforcement procedures for tackling UBWs under construction to expedite enforcement and demonstrate its determination to curb UBWs. After the launch of the Office's investigation, BD and LandsD have reached a consensus where as long as a case fulfils certain criteria, BD is no longer obligated to consult LandsD whether the latter has issued or will issue a certificate of exemption. BD reckoned that this new arrangement could substantially reduce the number of cases warranting consultation with LandsD, thereby enhancing work efficiency.

Slow Progress of Large-Scale Operations

628. Each year, BD's consultants carry out large-scale operations in a number of target villages in the New Territories, during which preliminary inspections will be conducted, followed by detailed inspections at individual NTEHs with first round targets. As at the end of December 2021, BD completed inspections of only about 46% of recognised villages (LandsD's List of Recognised Villages covered a total of 642 recognised villages in the territory), and the large-scale operations launched in 2018 remained at the stage of identifying NTEHs with first round targets. A forecast based on BD's latest work targets shows that the Department will

need another 10 years to complete inspections of all recognised villages in Hong Kong.

629. The Office's case studies revealed BD's lengthy preparation for the issuance of removal orders. Besides, its consultants were required to submit various reports and documents to BD from time to time and the Department would give responses after vetting. Since several thousand of village houses are to be inspected each year, such frequent and substantial exchange of physical documents between BD and its consultants inevitably affected their work efficiency.

630. The Office considered that BD should review the existing arrangements for consultants' submission of work reports regarding large-scale operations and proactively identify areas for streamlining (such as more extensive use of electronic submission of reports), as well as explore measures to expedite the vetting of consultants' reports so as to speed up the issuance of removal orders. Meanwhile, BD should continue to monitor the performance of consultants.

Lack of Proactive Follow-up on Cases

631. As at the end of 2021, among the 5,384 removal orders issued by BD, 2,016 (about 37.4%) remained outstanding whilst the deadline for removal had passed. In some of the cases studied, BD's issuance of removal orders was followed by years of inaction. BD's failure to take timely action after issuing a removal order would likely convey a wrong message to the owner concerned that there would be no legal consequences for non-compliance. The owner might even have a false expectation that BD had accepted the existence of the UBWs.

632. BD's Building Condition Information System is equipped with a "to-do list" function to remind staff to follow up on cases. At the same time, the Progress Monitoring Committee comprising BD's senior staff regularly monitors the progress of enforcement actions and draws up timetables for handling outstanding cases. Nevertheless, the serious delays

in BD's follow-up and enforcement actions as revealed in the Office's case studies reflect the ineffectiveness of the existing monitoring mechanism. The Office considered that BD should step up its monitoring of follow-up and enforcement actions on UBWs in NTEHs and clearance of backlog cases of non-compliance in accordance with the timetable set by the Progress Monitoring Committee.

Ineffective Monitoring of Registration of Removal Orders with Land Registry

633. BD's internal guidelines require staff to send a copy of the removal order to the Land Registry (LR) for registration soon after posting the order at the site concerned. However, the Department did not set any specific time frame for such work or establish any internal monitoring mechanism for the registration of removal orders with LR. As a result, BD could not prevent potential delays or even omissions in a systematic manner. In the Office's cases studied, removal orders were sent to LR for registration only about four to 19 months after issuance or even omitted from registration.

634. Owing to BD's failure to arrange timely registration of removal orders with LR, on one hand potential NTEH buyers were unable to check through the land registration records whether the village house concerned involved any outstanding removal orders; on the other hand, the deterrent effect of removal orders could not be realised to the full extent through registration. The Office considered that BD should check the removal orders that were outstanding for any omitted registration with LR, and handle them promptly. In addition, for effective monitoring in the future, BD should set a specific time frame for the registration of removal orders with LR for staff to follow and establish a mechanism for internal monitoring to ensure compliance in all cases.

Insufficient Deterrent Effect

635. BD had brought a total of 1,383 charges against non-compliance with removal orders as at the end of 2021. Of those prosecutions, there were 972 convictions with 86 (8.8%) of them being reconvictions. Some of the removal orders remained outstanding for several years or more. The Office found it necessary for BD to take continuous enforcement actions against owners who repeatedly fail to observe statutory orders so as to urge their compliance.

636. In the past decade, the average fine for each conviction was about $9,500 only and there were only nine cases (involving three NTEHs) in which imprisonment was imposed. The average fine upon re-conviction for persistent non-compliance increased to about $13,400 only. The Office found the aforesaid penalty insufficient to deter non-compliance. Where it involved flagrant contravention of the law (such as NTEHs of four or more storeys) or continuing irregularities, BD should reflect to the Court the seriousness of the case particularly the harm caused by UBWs to society. For greater deterrence, BD should also step up prosecutions against persistent non-compliant owners until their compliance with the removal orders.

Strengthening Publicity and Public Education

637. On publicity and public education, BD has raised public awareness of the enhanced strategy through multiple channels including maintaining communication with stakeholders, publicising leaflets and launching campaigns on digital platforms. BD's effort in this regard was considered laudable by the Office.

638. In the Office's view, conviction cases with a heavy penalty imposed by the Court (especially imprisonment) are important materials for publicity and education. Apart from the practice of citing the penalties imposed by the Court in press releases and warning letters to individual

owners, BD might consider publicising more widely conviction cases involving heavy penalties as a warning to others.

Mechanism for Information Exchange and Coordination between BD and LandsD Should be Improved

639. Construction of an NTEH does not require submission of a plan for BD's approval, but application to LandsD for a certificate of exemption instead. BD has to seek information on individual village houses from LandsD before it can determine whether any UBWs are involved and what enforcement actions should be taken. Similarly, LandsD's decision whether to take lease enforcement actions depends on BD's follow-up actions. BD can obtain information on lot boundaries and locations of NTEHs, aerial photographs and relevant land leases from the Government's internal geographic information system and LR's Integrated Registration Information System. Nevertheless, in the course of follow-up on UBWs in NTEHs, it would still be necessary for BD and LandsD to exchange other important information such as whether the NTEH concerned involves any application for redevelopment and whether LandsD would issue a retrospective certificate of exemption for the house.

640. After the launch of the Office's investigation, BD and LandsD have reached a consensus to streamline the procedures in order to reduce the number of cases warranting consultation with LandsD. Nevertheless, the Office considered it still necessary for BD and LandsD to make improvement measures to ensure timely handling of cases where information exchange is required. The Departments should regularly draw up a list of pending cases with information outstanding, so as to monitor information exchange and avoid delays or omissions, which would compromise enforcement efficiency. The Departments should also consider setting up an inter-departmental liaison group to strengthen coordination and enhance the effectiveness of handling special cases.

Holistic Review of Enhanced Strategy and Mechanism for Assessing Effectiveness

641. In the Office's opinion, it is commendable of the Government to have implemented the enhanced strategy in April 2012 with a clear policy objective to step up enforcement against newly completed UBWs and existing ones which constitute serious contravention of the law. However, the above analysis revealed multiple inadequacies in the actual implementation of the strategy in the past decade that inhibit full accomplishment of the policy objective. As a matter of fact, there were already a large number of UBWs in NTEHs prior to the implementation of the enhanced strategy. Worst still, during the implementation of the enhanced strategy, nearly half of BD's enforcement actions were against UBWs built after the implementation (i.e. UBWs under construction or newly completed ones), and the number of reports of UBWs has been rising. While the Office acknowledged BD's continuous effort in curbing UBWs, the slow progress of large-scale operations and the backlog of cases reflected that the Department might not have the capacity to manage all necessary enforcement actions. This would not only distract BD from tackling cases involving the most serious contravention of the law, but also undermine the credibility of the enforcement policy attributable to ineffective enforcement.

642. The Office considered that BD should consolidate its experience in implementing the enhanced strategy in the past decade, holistically review the policy and resource utilisation and explore how the limited resources could be utilised pragmatically to target the most serious types of UBWs and repeated offenders for the time being. BD should in tandem formulate performance indicators for measuring effectiveness in accordance with the policy objective. This would not only help BD evaluate the effectiveness of work and review the measures, but also allow members of the public to understand more easily whether the problem of UBWs in NTEHs has been improved.

643. The Ombudsman has made the following recommendations to BD and LandsD –

BD

(a) compile statistics on UBWs (including the types and numbers of UBWs involved in removal orders and of those subsequently removed) based on the information collected from follow-up and enforcement actions for analysis purposes;

(b) review the existing guidelines and set clearer internal targets for processing tasks other than site inspections regarding UBWs under construction;

(c) explore streamlining the enforcement procedures for tackling UBWs under construction;

(d) review the existing arrangements for consultants' submission of work reports regarding large-scale operations and proactively identify areas for streamlining (such as more extensive use of electronic submission of reports) as well as explore measures to expedite the vetting of consultants' reports. Meanwhile, BD should continue to monitor the performance of consultants;

(e) step up the monitoring of follow-up and enforcement actions on UBWs in NTEHs and the clearance of backlog cases of non-compliance in accordance with the timetable set by the Progress Monitoring Committee;

(f) check the removal orders that are outstanding for any omitted registration with LR, set a specific time frame for the registration of removal orders with LR and establish a mechanism for internal monitoring;

(g) reflect to the Court the seriousness of cases involving flagrant contravention of the law or continuing irregularities and step up prosecutions against persistent non-compliant owners for greater deterrent effect;

(h) consider publicising more widely conviction cases involving heavy penalties as a warning to others;

(i) holistically review the policy of the enhanced strategy and resource utilisation and explore how the limited resources can be utilised pragmatically to target the most serious types of UBWs and repeated offenders for the time being. BD should in tandem formulate performance indicators for measuring effectiveness in accordance with the policy objective;

BD and LandsD

(j) regularly draw up a list of pending cases with information outstanding for monitoring possible delays or omissions in information exchange; and

(k) consider setting up an inter-departmental liaison group to strengthen coordination and enhance the effectiveness of handling special cases.

Government's response

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

Recommendation (a)

645. BD has kept the information collected from follow-up and enforcement actions for analysis purposes, including the types and numbers of UBWs involved in removal orders and of those subsequently

removed. Relevant information or data from LandsD, Home Affairs Department and Planning Department on NTEHs would also be used.

Recommendation (b)

646. BD is reviewing the existing guidelines for handling UBWs under construction. Target processing time for tasks other than site inspections regarding UBWs under construction will also be set. Revision of the guidelines is expected to be completed within the first quarter of 2024.

Recommendation (c)

647. For enforcement against UBWs under construction, BD has implemented the following simplified procedures –

(a) consensus with LandsD has been reached to adopt new streamlined procedures to reduce the number of cases warranting consultation with LandsD;

(b) simplify the process so that it is not necessary to issue advisory letters before removal orders;

(c) deploy small unmanned aircraft (SUA) system where appropriate to speed up site inspection; and

(d) issue warning letters directly to owners without further inspection in case of non-compliance with removal orders.

Recommendation (d)

648. BD has an established mechanism to continuously monitor the performance and quality of work of the consultants engaged to ensure that they have completed their work in accordance with the requirements in the contracts, and to assess and prepare quarterly reports on the performance of the consultants. If the consultant is found to have under-performed or

failed to comply with the prescribed standards in their work, BD will issue warning letter and under-performance report in a timely manner and require the consultant to improve their services. If the under-performance persists, BD will consider imposing penalties as appropriate, including prohibiting the consultant from bidding for other consultancy services.

649. Regarding submission of reports from the consultants, the following streamlining measures have been adopted to expedite the workflow during large-scale operations in 2023 –

(a) combine preliminary inspection reports with detailed inspection reports for first round targets, thereby streamlining the procedures for separate submission and vetting of reports;

(b) consultants are not required to ascertain compliance with removal orders by inspecting individual UBWs as the owners are required to submit proof to BD upon the removal of the UBWs, and thereby saving efforts in another round of inspections, as well as subsequent work such as submission and vetting of reports; and

(c) establish a new e-platform that allows electronic submission and vetting of all work reports by consultants and BD respectively, while also further facilitates the monitoring of consultants' performance by incorporating a function to track work progress.

Recommendation (e)

650. In 2023, BD has raised the yearly targets for instigating prosecution actions against non-compliance with removal orders from 140 to 300, and for removal of UBWs in NTEHs from 450 to 700.

651. BD has stepped up the monitoring of follow-up and enforcement actions on UBWs in NTEHs. BD's Building Condition Information System has a to-do list function which automatically alerts relevant BD staff to follow up the cases in a timely manner. BD will also monitor the

overdue cases through the Building Condition Information System on a regular and continuous basis. Separately, the BD has set up a Progress Monitoring Committee (PMC) at three levels (comprising directorate officers of the Department), with the Director of Buildings chairing the first level, the Assistant Director chairing the second level, and the Chief Building Surveyor/Chief Structural Engineer chairing the third level. Three levels of PMC will provide different levels of monitoring based on the complexity of the case, which meet regularly and in accordance with the work targets and timetable, to oversee the enforcement against UBWs in NTEHs, including the monitoring of follow-up on the reports and progress of non-complied removal orders. PMC has set annual targets for the removal of UBWs and clearance of long overdue cases in a sequential manner with priority.

Recommendation (f)

652. All removal orders currently pending registration will be registered with LR within 2023. A time frame for arranging registration of removal orders with LR is being formulated and will be included in the guidelines. BD will also establish a monitoring mechanism for the registration of removal orders with LR by making use of the Building Condition Information System to compile regular monthly progress monitoring reports.

Recommendation (g)

653. BD has been providing the court with a case summary for each prosecution case to present the nature and extent of the UBWs, previous conviction records of the offenders and the period of the continuing offence. This information will aid the court in determining the fines (including any daily fines). In addition, higher priority will be accorded to continue instigating prosecution against persistent cases which remain non-compliant after prosecution, removal orders involving NTEHs of four storeys or above constituting serious contravention of the law, and UBWs under construction.

Recommendation (h)

654. To enhance publicity and education, BD will publicise cases of conviction with heavy penalties through different media. Additionally, BD is in the process of designing a new publicity pamphlet, which is expected to be completed by 2023.

Recommendation (i)

655. BD believes the enhanced enforcement strategy has yielded results and necessary to be continued and optimised to enhance work efficiency. BD will focus on and accord higher priority to the handling of serious contraventions of the law and repeated offending cases, as well as to instigate prosecutions against the owners concerned for a greater deterrent effect. In addition, BD has simplified workflow and operation as mentioned under recommendations (c), (d) and (e). BD has also taken technology into account to expedite the handling of UBWs in NTEHs. To shorten the time needed in the identification of first-round targets, BD has been making wider use of SUA to carry out inspection to enhance efficiency of enforcement action. BD will formulate relevant key performance indicators in accordance with recommendation (e) above.

Recommendation (j)

656. LandsD and BD have agreed to draw up a list of pending cases with information outstanding and exchange the list with their counterparts every three months as a reminder and expediting information exchange.

Recommendation (k)

657. BD and LandsD have set up an interdepartmental liaison group to strengthen collaboration among departments and enhance their effectiveness in handling special cases. Meetings have been held in April and June 2023.

Civil Aviation Department

Case No. DI/449 – Civil Aviation Department's Regulation of Paragliding Activities

Background

658. Although paragliding is considered a high-risk sport, paragliding has become more popular in Hong Kong in recent years and related accidents happened from time to time, resulting in injury or even death of the paraglider pilots involved. Some landing mishaps had also caused damage to properties on the ground.

659. The Civil Aviation Department (CAD), as the overseer of civil aviation safety in Hong Kong, has a duty to regulate local paragliding activities and enforce paragliding-related legislation so as to ensure aviation and public safety.

The Ombudsman's observations

660. The Office of The Ombudsman's (the Office) direct investigation has made the following observations and comments with respect to CAD's regulation of paragliding activities –

(I) CAD should Conscientiously Enforce Legislation Relating to Local Paragliding Activities

661. At present, CAD regulates the air services provided by paragliders for reward and the reckless or negligent operation of paragliders through the provisions in the Air Transport (Licensing of Air Services) Regulations and the Air Navigation (Hong Kong) Order 1995 respectively which are applicable to small aircraft (including paragliders). CAD conducted a review on the regulation of local paragliding activities in 2018, and established a permit application mechanism for local paragliding air service providers in October 2019. The Office opined that the lack of

proper regulation and monitoring would dampen the effectiveness of the permit system. CAD should implement concrete measures to monitor the air services provided by permit holders and take proactive enforcement actions against the paragliding services provided without a permit.

662. On the other hand, the Office opined that CAD could consider requiring persons who engage in paragliding activities in Hong Kong to register in advance with the Department or become a member of a local paragliding organisation approved by the Government. In addition, CAD could also consider requiring paraglider pilots to register their paragliding equipment and display the registration numbers conspicuously on their flight equipment or personal gear. On this matter, CAD should take reference from the experience of governments in other places in collaborating with paragliding organisations and proactively discuss with the local paragliding organisations and various stakeholders with a view to formulating a registration scheme for paraglider pilots and/or paragliding equipment that suits the local situation, as well as an authorisation regime for local paragliding organisations, etc.

(II) CAD should Step up Investigations of Alleged Illegal Behaviours

663. At present, investigation of paragliding-related accidents or incidents are conducted by the Air Accident Investigation Authority (AAIA) and Hong Kong Paragliding Association (HKPA), a major local paragliding organisation. CAD would, on the other hand, refer cases allegedly involving violations of relevant laws to the Hong Kong Police Force (HKPF) for follow-up. The Office considered that CAD, as the overseer of civil aviation safety and enforcement department of paragliding-related legislation in Hong Kong, has the duty to take up a more active role in enforcement and investigation.

664. The Office suggested that CAD should officially authorise or appoint organisations it deems appropriate to conduct investigations into paragliding accidents or incidents. CAD should also provide specific guidelines to such organisations that state, among others, the objectives of

investigations and the issues to be investigated, such that the investigations can uncover substantive and pertinent information for CAD and HKPF to decide further investigation and enforcement actions as appropriate.

665. The Office understood that while the prosecution procedures relevant to paragliding-related legislation must be undertaken by HKPF, CAD as the department responsible for enforcing the relevant laws and possesses professional knowledge about civil aviation safety should play a more active role in investigation. CAD should also strengthen its cooperation with HKPF to enhance the effectiveness of enforcement. In this light, the Office recommended CAD to collate and analyse case information from its professional perspective before referring a case to HKPF, and provide HKPF with comprehensive guidelines and general information about the operation of paragliders. Regular communication with HKPF on case analysis, follow-up action and enforcement should also be reinforced.

666. In the long run, CAD should consider allocating more resources to step up enforcement and regulation under the permit system by, say, deploying staff to conduct site inspections and permit-checking at hotspots of paragliding air services.

(III) CAD should Step up Publicity and Public Education on Permit System for Provision of Air Services by Paraglider

667. CAD granted the first permit under the permit system in late 2020. It can be expected that neither the paragliding sector nor members of the public would know much about the system. The Office considered it imperative for CAD to step up publicity on the permit system to enhance public awareness; remind the paragliding sector that a permit obtained under the system is a pre-requisite for providing paragliding services; and raises public alertness to choosing only CAD-approved paragliding air services and to reporting promptly to the authority about any suspected cases of providing paragliding air services for reward without a permit.

(IV) CAD should Consider Extending Validity Period of Permits

668. In processing permit applications, CAD has to meticulously examine the details of the "flight operation procedures" and documentary proofs submitted by applicants, as well as assess the actual operations of the paragliding activities during demonstration flights. The Office considered that while assessments on a six-month cycle can help monitor the performance of permit holders, they would also bring considerable administrative cost to the permit holders and even to CAD itself. To encourage more local paraglider pilots interested in providing paragliding air services to apply for a permit, the Office recommended CAD to consider granting renewed permits with a validity period longer than six months upon reviewing the performance of permit holders to reduce administrative cost of service providers and to boost CAD's administrative efficiency.

669. In light of the above, The Ombudsman recommended CAD to –

(a) explore legislative or administrative measures to require all persons engaged in local paragliding activities to register in real-name in advance, and discuss with the local paragliding organisations and stakeholders with a view to formulating a real-name registration scheme that suits the local situation;

(b) explore legislative or administrative measures to require paraglider pilots to register the paragliding equipment they use and to display the registration number at prominent places of their flight equipment or personal gear;

(c) consider setting up an authorisation regime for local paragliding organisations and, through legislation or administrative measures, authorise appropriate local paragliding organisations to administer and develop paragliding activities in a more systematic manner, including devising safety standards, establishing a

qualification framework and drawing up accident investigation procedures;

(d) consider officially authorising or appointing HKPA (or other organisations CAD deems appropriate) to conduct investigations into paragliding accidents and incidents, and furnishing it with specific guidelines which cover the aims of investigations and the issues to be investigated, such that the investigations can uncover substantive and pertinent information for CAD and HKPF to decide further investigation and enforcement action as appropriate;

(e) collate and analyse case information from the professional perspective of civil aviation safety for HKPF's reference before referring complaint cases on allegedly illegal paragliding activities or services to the latter for follow-up (e.g. providing the salient points of the Safety Guidance on Paragliding Activities and the relevant civil aviation legislation, information on the general operation of the paragliding service providers, and pointing out the behaviour suspected to be in breach the law, etc.);

(f) in the long run, consider allocating more resources in order to strengthen enforcement and regulation under the permit system by, say, deploying staff to conduct site inspections and permit-checking at hotspots of paragliding air services;

(g) step up publicity on the permit system to enhance public awareness about it, remind the paragliding sector that a permit obtained under the system is pre-requisite for providing paragliding services, and raise public alertness to choosing only CAD-approved paragliding air services; and

(h) consider granting renewed permits with a validity period longer than six months to reduce the administrative cost of permit

holders, so as to encourage paragliding air service providers to apply for a permit.

Government's response

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

671. Targeting at paragliding flight safety as the core focus, CAD collaborates with the local paragliding organisations to implement recommendations (a) to (d). With a view to harmonising the administrative arrangements of various organisations, CAD has formulated a collaboration guideline specifying the implementation details of each recommendation. CAD is currently deliberating the details with the local paragliding organisations and would implement these recommendations in Q4 2023. The details are as follows.

Recommendation (a)

672. In accordance with the collaboration guideline, paragliding organisations are required to establish and administer a real-name registration system. To facilitate the registration by those who intend to participate in paragliding activities in Hong Kong, paragliding organisations will set up a dedicated registration platform whereby paraglider pilots could register their qualifications as well as paragliding equipment information. Upon receiving registration details, paragliding organisations will verify the information submitted and assign a unique registration number to individual pilot.

673. Paragliding organisations are required to maintain an updated register and provide CAD with the latest summary upon CAD's request. A real-name registration system can assist in identifying paraglider pilots during rescue missions, investigations and enforcement actions, and enable CAD and paragliding organisations to embark on more effective publicity and education campaigns on aviation safety targeting all paraglider pilots.

Recommendation (b)

674. In addition to assisting paraglider pilots in registering their qualifications and paragliding equipment details and assigning registration numbers, paragliding organisations will also provide registered pilots with labels containing registration numbers which can be affixed to their paragliding equipment. Displaying the registration number on paragliding equipment would assist in identifying paraglider pilots during rescue missions, investigations and enforcement actions.

675. Noting various views from the paragliding sector with regard to affixing labels to the paraglider canopy (e.g. labelling will leave marks on canopy, improper removal of labels may cause damage to the paraglider canopy, etc.), the collaboration guideline formulated by CAD would only require paraglider pilots to affix label with registration numbers to their helmet. Paragliding organisations will follow the collaboration guideline to provide registered pilots with labels to be affixed to the paragliding equipment (i.e. helmets).

Recommendation (c)

676. To enhance paragliding flight safety in a systematic manner, paragliding organisations have formulated Operations Manuals (OM) according to CAD's guideline and comments and with reference to the relevant information of the Fédération Aéronautique Internationale, an international organisation responsible for managing aviation sports competitions, so as to provide their members and the paragliding sector with safe operation parameters, paragliding equipment recommendations and maintenance, incident reporting and accident investigation, etc. Paragliding organisations also disseminate safety information on their website or social media platform from time to time to remind their members and other paraglider pilots of any imminent issues.

677. As always, CAD will continue to review any proposed OM amendments made by paragliding organisations to assist in keeping their

OM up-to-date, and will provide them with suggestions in relation to flight safety. Since CAD's primary concern is aviation safety of paragliding activities, the aforementioned OM are formulated with due consideration on aviation safety. As for how to assist paragliding organisations in developing and promoting paragliding activities systematically, it is beyond CAD's purview.

Recommendation (d)

678. To strengthen the monitoring and investigation of paragliding incidents and to enhance aviation safety, paragliding organisations will follow CAD's collaboration guideline and conduct investigation in accordance with their OM on any paragliding incidents involving their members and/or reported to them. Upon completion of investigation, paragliding organisations are required to provide CAD with the investigation results to record and analyse the incidents and to take enhancement measures in a timely manner.

679. The sole objective of the investigation is to identify the circumstances and causes of the incidents with a view to promoting aviation safety of paragliding and preventing recurrence instead of apportioning blame. Nevertheless, paragliding organisations should follow the collaboration guideline and bring to CAD's attention on any cases or information allegedly involving violations of relevant laws (e.g. information showing the incident was caused by reckless or negligent act resulting in personnel injury, provision of paragliding hire or reward services without CAD's permit, etc.) arising from their investigation. Based on the available information, CAD will then coordinate with HKPF under the established mechanism for follow-up actions as appropriate.

Recommendation (e)

680. Prior to referring cases allegedly involving violations of relevant laws to HKPF for follow-up, CAD will continue to collate and analyse case information from the perspective of aviation safety (e.g. the salient points

of the Safety Guidance on Paragliding Activities and the relevant civil aviation legislation, technical advice from paragliding organisations, etc.) for HKPF's reference. CAD will also maintain close communication with HKPF to assist in case investigation and follow-up.

681. In addition, in order to facilitate frontline officers of HKPF in handling paragliding cases involving violations of relevant laws, CAD has formulated a general guideline, which has come into effect since 16 February 2023, for the reference of all relevant police districts. At the same time, CAD has also commenced joint inspection with HKPF in March 2023 to further strengthen the enforcement on paragliding activities.

Recommendation (f)

682. To step up enforcement on the permit system, CAD continues to review the various records of permit holders (e.g. flight records of the paraglider pilot, paragliding instructor and the students, inspection and maintenance records of the paragliding equipment, etc.). CAD also conducts at least one site inspection on each permit holder every 12 months, so as to ensure that their operations continue to be carried out safely in accordance with the approved operating procedures.

683. In addition, CAD has also conducted site inspections at paragliding hotspots. From June 2022 to July 2023, CAD had conducted eight inspections, with no violations observed.

Recommendation (g)

684. To enhance public awareness on the permit system, remind the paragliding sector that a permit obtained under the system is a pre-requisite for providing paragliding hire or reward services, and raise public alertness to choosing only CAD-approved paragliding hire or reward services, CAD has produced a promotional video based on the highlights of the Safety Guidance on Paragliding Activities as well as the permit system. CAD has

uploaded the video on its website (https://www.cad.gov.hk/english/paraglidingindex.html) for public reference since July 2022, and has taken various opportunities to broadcast it through different channels. In addition, CAD has also produced promotional leaflet for distribution during site inspection, and coordinated with the Agriculture, Fisheries and Conservation Department to post the leaflet on the notice boards of relevant country parks (e.g. Ma On Shan, Shek O and Lantau South), with a view to reminding the public and the paragliding sector of the importance of paragliding flight safety.

Recommendation (h)

685. To reduce the administrative cost of permit holders in permit renewal, and to encourage more paraglider pilots intending to provide paragliding hire or reward services to apply for a permit, CAD has extended the validity period of renewed permits to 12 months since August 2022, and updated the permit application form accordingly.

686. With regard to new applications, the validity period of newly issued permits will remain at three months so that CAD can closely monitor and review the safety performance of the permit holders at the initial stage of newly issued permits.

Efficiency Office, Environmental Protection Department, Food and Environmental Hygiene Department, Highways Department, Home Affairs Department and Lands Department

Case No. DI/455 – Government's Regulation of Illegal Occupation or Obstruction of Streets by Goods and Miscellaneous Articles

Background

687. Illegal occupation or obstruction of streets by goods and miscellaneous articles has been a common street management problem in many districts, causing not only inconvenience but also safety hazards to members of the public and road users. It also adversely affects environmental hygiene and the cityscape. Every year, The Ombudsman receives a large number of related complaints. 1823 under the Efficiency Office (EffO) has also received more related complaints in recent years.

688. As the problem falls within the ambit of various Government departments and is subject to a number of ordinances, different departments are empowered to fully resolve or partly address the issues arisen. Hence, inter-departmental collaboration is essential to close gaps, avoid duplicating efforts and prevent buck-passing. Chaired by the Permanent Secretary for Home and Youth Affairs and comprising heads of departments, the Steering Committee on District Administration played the role of facilitating coordination and deliberation among departments to formulate long-term strategies and define the demarcation of responsibilities jointly in tackling street management problems.

689. In July 2022, the Government set up the District Matters Coordination Task Force. Led by the Deputy Chief Secretary for Administration and with efforts put in publicity, the Task Force aims to tackle local district management issues including illegal refuse deposits and street obstruction. The Task Force has adopted a three-pronged approach, which mainly includes establishing a standard mode of operation to clarify departments' responsibilities and rationalise the inter-

departmental procedures for handling environmental hygiene problems, and supervising relevant bureaux and departments in devising sustainable action plans and key performance indicators. The Ombudsman believed that with continuous efforts, various departments could tackle illegal occupation and obstruction of streets more systematically.

690. In this direct investigation, the Office of The Ombudsman (the Office) examined the Government's regulation of illegal occupation or obstruction of streets by goods and miscellaneous articles, covering the complaint referral mechanism, various departments' ambit and demarcation of responsibilities in enforcement, as well as inter-departmental collaboration and joint operations. Having scrutinised the information provided by EffO, the Environmental Protection Department (EPD), the Food and Environmental Hygiene Department (FEHD), the Highways Department (HyD), the Home Affairs Department (HAD) and the Lands Department (LandsD), The Ombudsman has the following comments and recommendations.

The Ombudsman's observations

Complaint Referral Mechanism

691. Complaints about illegal occupation or obstruction of streets are primarily received by 1823. 1823 could refer most of the complaints to the appropriate departments for follow-up under the prevailing mechanism. As for cases that are more complicated and have been rejected by departments, 1823 would ask different ranks of staff of those departments to re-examine the case for clarification of responsibilities.

692. The Office noticed that between 2018 and 2021, there had been over 2,000 cases per year requiring a processing time of two months or longer, far exceeding the departments' performance pledge of issuing a reply within 30 days and outnumbering the cases rejected by departments (926 to 1,678 cases per year). The Office had grounds to believe that among the cases which were unable to meet the pledge, many of them had

been rejected by departments and re-examined by different ranks of staff of the relevant departments before being taken up.

693. Having examined several inter-departmental cases handled by 1823, the Office noticed that when the demarcation of responsibilities was in dispute, the departments concerned would generally conduct inspections and examine complaint details separately, and then explain to 1823 why the case was not within their ambit or which department should take up the case instead. Despite its effort to mediate, 1823 could hardly be more familiar with the work of the departments than the departments themselves. Nor does it have any power to instruct any departments to take up cases. Hence, 1823 could only collate explanations from the departments concerned and request their staff at different ranks to re-examine the cases. This was inevitably inefficient and cumbersome. Without direct communication or joint inspections, disputes among the departments usually turned into their mere expression of views leaving 1823 in perplexity. This was undesirable.

Departments' Ambit and Demarcation of Responsibilities in Enforcement

694. Currently, enforcement against illegal occupation or obstruction of streets by goods and miscellaneous articles is mainly carried out by FEHD, LandsD and EPD. Meanwhile, HyD is responsible for clearing illegal deposit of construction waste more commonly found on public roads and ancillary road facilities under its management, and clearing unclaimed building materials after LandsD has taken land control actions

<u>FEHD</u>

695. FEHD enforces a number of legislative provisions. Pursuant to sections 83B(1) and (3) of the Public Health and Municipal Services Ordinance (PHMSO), FEHD may institute prosecutions against illegal hawking in public places (the illegal hawking provision). Those who deposit articles in public places resulting in obstruction to scavenging may be liable to prosecution under section 22(1)(a) of PHMSO (the obstruction

to scavenging provision). Street obstruction caused by unauthorised extension of business area in public places may be prosecuted under section 4A of the Summary Offences Ordinance (the street obstruction provision). In handling cases of street obstruction by shops where the facts are straightforward, clear and easy to substantiate, law enforcement officers (including FEHD staff and police officers) may issue a fixed penalty notice of $1,500 pursuant to the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (the fixed penalty provision).

696. Between 2018 and 2021, FEHD had taken more enforcement actions against the aforesaid offences. During the period, the number of prosecution cases increased from 1,647 to 2,607 and the number of cases involving issuance of fixed penalty notices increased from 7,586 to 14,766. The Ombudsman was pleased that FEHD had in recent years allocated more resources to combat illegal occupation and obstruction of streets by goods and miscellaneous articles and its efforts were laudable. Nevertheless, there was still room for improvement in FEHD's work.

697. First of all, after examining the situation of four street obstruction black spots, namely Ho Pui Street and Chuen Lung Street in Tsuen Wan, Chun Yeung Street in North Point, Shun Ning Road and Yee Kuk Street in Sham Shui Po, as well as the Flower Market in Mongkok, the Office found FEHD's inspections and enforcement actions ineffective in curbing irregularities. (Note: The District Matters Coordination Task Force launched a Government Programme on Tackling Hygiene Black Spots in August 2022 to tackle some 600 hygiene black spots and strengthen the cleansing of about 4,000 public places and the clearance of dangerous/abandoned signboards. The Ombudsman believed that the environmental hygiene condition of street obstruction black spots would be improved after the launch of the programme.)

698. Taking Shun Ning Road and Yee Kuk Street in Sham Shui Po as an example, FEHD conducted an average of four or more inspections per day between 2018 and 2021, while the number of prosecutions instituted and fixed penalty notices issued had been maintained at a low level of 0.1

case and 0.3 notice per day on average. The above statistics revealed that FEHD's inspections had been frequent but the enforcement figure remained low, which should reasonably imply that the irregularities had not been prevalent in the area. However, the number of complaints relating to the area in 2021 was more than twofold that of 2018. During the Office's site inspections, the Office also found a large quantity of goods and miscellaneous articles occupying public places as well as shop front extensions, and that the environmental hygiene was poor. The regulatory function of FEHD's inspections was seemingly not realised fully and its enforcement actions failed to curb irregularities.

699. As regards another street obstruction black spot, the Flower Market in Mongkok, FEHD had conducted much fewer inspections than in Sham Shui Po's Shun Ning Road and Yee Kuk Street between 2018 and 2021. Nonetheless, the numbers of complaints and enforcement actions had surged. In particular, in 2021, the enforcement figure was far beyond that in Shun Ning Road and Yee Kuk Street. The Office's inspections also revealed different degrees of irregularities. The Ombudsman believed that FEHD staff had similar observations during its inspection, hence low inspection frequencies with high figures of enforcement. This reflected the need for FEHD to step up inspections on this black spot for greater deterrent effect of its enforcement actions.

700. Moreover, there was a considerable variation in the intensity of inspection and enforcement by FEHD for different street obstruction black spots. For example, in 2021, the numbers of enforcement actions (including prosecutions and issuance of fixed penalty notices) taken by FEHD in Mong Kok's Flower Market and Tsuen Wan's Ho Pui Street and Chuen Lung Street were the highest, but the numbers of inspections conducted in these two black spots were the lowest. On the contrary, the numbers of inspections conducted in North Point's Chun Yeung Street and Sham Shui Po's Shun Ning Road and Yee Kuk Street remained high, but the numbers of enforcement actions taken were the lowest among the four black spots. The Flower Market in Mong Kok recorded the highest number of enforcement actions, which was nearly seven times more than the lowest

number recorded in Sham Shui Po's Shun Ning Road and Yee Kuk Street. This reflected possible inconsistencies in the intensity of inspection and enforcement by different District Environmental Hygiene Offices of FEHD. If different officers apply inconsistent enforcement standards or the inspection and enforcement work of individual District Environmental Hygiene Offices are constrained by resources, queries of unfair enforcement may arise.

701. Between 2018 and 2021, the numbers of prosecution cases where FEHD invoked the "obstruction to scavenging provision" were the lowest among all applicable legislative provisions, accounting for not more than 3% of the total each year. Even in Sham Shui Po's Yee Kuk Street where FEHD's enforcement claimed to be mainly based on the "obstruction to scavenging provision", the Department actually seldom invoked it to institute prosecutions. The Office also observed from complaint cases previously handled that FEHD was not inclined to take enforcement actions by invoking the "obstruction to scavenging provision" even though goods or miscellaneous articles occupied a large area and obstructed scavenging. This reflected that FEHD should enhance frontline staff's understanding and application of the "obstruction to scavenging provision".

702. In view of the above analysis, The Ombudsman considered that FEHD should use various data (including number/types and distribution of shops, complaint figures and past statistics on inspection and enforcement) as parameters for holistic analysis in order to formulate effective plans for inspection and enforcement. Besides, FEHD should strengthen the training for frontline staff to ensure their proper application of the "obstruction to scavenging provision" in enforcement. FEHD should also step up the monitoring at central level of the arrangements for inspection and enforcement as well as resource utilisation across District Environmental Hygiene Offices, and identify any marked discrepancy requiring adjustment.

703. Between 2018 and 2021, the number of cases where FEHD invoked the "fixed penalty provision" accounted for more than 80% of the total number of enforcement actions taken each year, showing that the provision was the Department's primary enforcement tool. The Office noticed that the majority of cases in which FEHD applied the "fixed penalty provision" were relapse cases, but the number of repeated offenders was far below the number of cases involved. For example, in 2021, there were 13,208 relapse cases involving only 1,760 repeated offenders. In other words, each offender had committed the offence for 7.5 times on average. This was indeed alarming. Obviously, the provision lacks deterrent effect on habitual offenders.

704. FEHD's enforcement guidelines provide that the number of fixed penalty notices to be issued should not be determined by the extent of illegal occupation or obstruction. Under the existing fixed penalty system, the penalty is not linked to the scale or period of obstruction. Hence, FEHD would consider invoking the "street obstruction provision" for prosecution against shops causing serious and persistent street obstruction. FEHD's enforcement figures between 2018 and 2021, however, show that among successful prosecution cases under the "street obstruction provision", each year the average penalty was only about $1,000, which was even lower than the fixed penalty of $1,500. The highest penalty imposed by means of summons was only $5,000, which was the maximum penalty under the relevant legislation. In The Ombudsman's view, the existing penalty was inadequate to deter serious obstruction cases such as large-scale occupation of pavements by goods and miscellaneous articles.

705. With the above findings and observations, The Ombudsman reckons that when instigating prosecutions against flagrant cases under the "street obstruction provision", FEHD should explain to the court the severity of the problem and recommend a heavier penalty for stronger deterrent effect. As a further step to increase the non-compliance cost of street obstruction and for more effective control over repeated and persistent offenders, the Environment and Ecology Bureau (EEB) and FEHD should review comprehensively the existing penalties under the

law, including raising the maximum penalty imposed by means of summons (including the "street obstruction provision") and the level of fixed penalty, and favourably exploring the introduction of a progressive penalty system under the fixed penalty provision.

706. The Ombudsman was pleased to note the announcement in the Chief Executive's 2022 Policy Address that the Government would conduct a comprehensive review on the existing statutory powers and penalties regarding environmental hygiene. The first-stage proposals include raising the fixed penalty for shopfront extension from $1,500 to $6,000 and the maximum penalty of the corresponding summons-based provision (that is the "street obstruction provision") from $5,000 to $25,000. In December 2022, EEB and FEHD consulted the Legislative Council's Panel on Food Safety and Environmental Hygiene on the first-stage proposals, and completed a public consultation subsequently. The Government is reviewing the views collected in order to finalise the proposals. The Government plans to submit the second-stage proposals to the Panel in mid-2023. Among others, the Government would explore the feasibility of introducing a progressive penalty system as mentioned in the preceding paragraph. Factors for consideration include whether the implementation of such a system would increase the possibility of conflict between frontline enforcement officers and members of the public at the scene, whether the development of a real-time database and system would be cost-effective and beneficial to the society as a whole, as well as whether it is more suitable to introduce the system under the relevant summons-based provision.

<u>LandsD</u>

707. According to LandsD, its enforcement actions are mainly for tackling fixed platforms used for extending business areas and scaffolding bamboos on public roads, as its enforcement power conferred under the Land (Miscellaneous Provisions) Ordinance is not suitable for handling unauthorised occupation by high-mobility articles which can easily be moved away to evade the Department's further action before the statutory

notice expires. While acknowledging its constraints on enforcement, the Office considered that LandsD, as the authority responsible for managing unallocated and unleased Government land, should endeavour to prevent and tackle illegal occupation of Government land. Hence, regardless of whether illegal occupation of Government land is caused by fixed articles or scaffolding bamboos, LandsD should actively render practical assistance when other departments encounter difficulties. It was rigid and conservative of LandsD to have merely focused on making referrals to other law enforcement departments.

708. In a case study, LandsD, upon receipt of 1823's referral, was only concerned whether the building materials occupying the pavement constituted shopfront extension and which department should be responsible for enforcement, rather than rendering appropriate assistance to other departments from the perspective of tackling illegal occupation of Government land. Moreover, LandsD and HyD had different views as to whether LandsD's enforcement should target scaffolding bamboos only or all kinds of building materials.

709. The Office considered that LandsD should establish a coordination mechanism enabling other departments, when encountering difficulties in case handling, to seek its assistance or invoking of the Land (Miscellaneous Provisions) Ordinance to tackle articles causing illegal occupation or obstruction of streets. The mechanism can also serve as a communication platform to clarify and resolve departments' disputes on their enforcement responsibilities.

710. Although shopfront platforms are one of LandsD's major enforcement targets, the number of statutory notices issued against extension of business area pursuant to the Land (Miscellaneous Provisions) Ordinance has been decreasing in recent years. Between 2018 and 2021, there were 81 cases where shops failed to rectify irregularities before the deadline for compliance in the statutory notices had passed, but LandsD only instituted prosecutions in two of them. Such a low level of prosecution had in a way encouraged prolonged occupation of Government

land at no cost, and hence no deterrent effect. In fact, as revealed in the Office's inspections on two of the black spots (Ho Pui Street and Chuen Lung Street in Tsuen Wan and Shun Ning Road in Sham Shui Po), unauthorised extension of business area with fixed platforms was very common. The Ombudsman considered that LandsD should step up its enforcement against unauthorised extension of business area with fixed platforms and exercise stringent control over offenders who fail to comply with statutory notices.

HyD

711. Although HyD is mainly responsible for clearance work and takes no part in enforcement, it received more complaints about illegal deposition of construction materials on public roads between 2018 and 2021. Those complaints were mostly related to several districts including Yau Tsim Mong District, Sham Shui Po District, Wan Chai District and Wong Tai Sin District, accounting for a significant proportion of nearly or over 50% of the total number of complaints received each year. In The Ombudsman's view, HyD could pay more attention to any illegal deposition of construction materials when conducting regular inspection and maintenance of public roads (in particular districts with a greater number of complaints) and strengthen its collaboration with District Lands Offices (DLOs) of LandsD for cracking down the problem.

EPD

712. In recent years, EPD has actively implemented various measures, coupled with surprise inspections and enforcement, to combat fly-tipping. Such measures include drawing up and updating regularly a list of "Priority Sites for Tackling Fly-tipping" jointly with other departments, installing surveillance cameras with night-vision function and conducting aerial and remote surveillance. EPD has also launched a district-based pilot scheme on collection and recycling services to tackle fly-tipping at source. The Office noticed that between 2018 and 2021 EPD had conducted more inspections on illegal deposition of construction waste while the number

of complaints continued to decrease, reflecting that its work had a positive outcome.

713. The issue of polyfoam boxes has caused public concerns in recent years. Various bureaux and departments have made concerted efforts at different levels to alleviate the problems of environmental hygiene and street obstruction caused by the piling up of polyfoam boxes. Nevertheless, as reported by the media from time to time, a large number of polyfoam boxes were still piled up in different districts or streets. This showed that the problem remained serious. It was understood that the chain for transporting polyfoam boxes to the Mainland for reuse has recently resumed. However, in the long run, EPD should continue to explore feasible ways in collaboration with relevant departments to further increase the local capacity of recycling polyfoam boxes, so as to resolve the problem completely and address public concerns through multi-pronged measures.

"Tolerated Areas"

714. At present, five locations are designed as "tolerated areas" aiming to constitute distinct characteristics and contribute to the vibrancy of the respective districts. While the arrangement was put in place after deliberations among enforcement departments, district organisations and shop operators, the Office found serious irregularities during its inspections at two of the locations namely Mongkok's Flower Market and Tuen Mun San Hui. The Ombudsman considered that FEHD should step up enforcement against non-compliant shops so as to strike a balance between preserving distinct characteristics and vibrancy of the districts and meeting public expectation on public hygiene and road safety.

Inter-departmental Joint Operations

715. A District Management Committee, chaired by the respective District Officer and comprising members from relevant departments, has been set up in each district. The District Management Committee serves

to facilitate departments' discussion and coordination on district matters, with a view to resolving more complicated cases or those requiring a longer time to follow up. District Offices (DOs) organise inter-departmental joint operations depending on the actual situation and need.

716. The Office noticed that the practices of and the number of joint operations conducted by different DOs varied considerably. While some DOs proactively invited other departments to participate in joint operations on a monthly or quarterly basis, some organised joint operations only upon request of departments. HAD pointed out that as irregularities vary across districts, it is not the most suitable or effective arrangement to formulate a standard guideline on the conduct of joint operations.

717. HAD's statistics reveal notable differences between the numbers of joint operations organised by DOs between 2018 and 2021. The Central and Western District Office and the Eastern District Office recorded the highest number of joint operations, with each more than 100. During the same period, the Wan Chai District Office, the Kowloon City District Office and the North District Office did not organise any joint operations but the number of related complaints in those districts increased. Furthermore, a case study shows that even though the District Office concerned attempted to organise a joint operation to resolve irregularities of the location in question, the situation remained a stalemate when the District Office was unable to resolve expeditiously departments' disputes on their enforcement responsibilities

718. DOs are duty-bound to ensure prompt resolution of district matters through discussion and collaboration among departments. District Officers play an indispensable, active and leading role in this regard. The Ombudsman acknowledged differences among districts in terms of their environment, pedestrian flow and severity of irregularities, and therefore District Offices should be given certain flexibility to determine the need for joint operations. The Office's concern was that the differences in the preceding paragraph reflected that some DOs might not have fully discharged their function of making timely intervention for problem-

solving. In those districts without any standing mechanism for organising joint operations, departments may be hesitant to seek the DO's assistance even if joint operations are warranted in particular cases. As a result, the cases could not be handled in a timely manner. On the other hand, where the disputes between departments still could not be resolved promptly after the DO's intervention but no further action was taken decisively, the case progress would unavoidably be hampered.

719. HAD explained that law enforcement departments may take appropriate actions on their own to tackle shopfront extension without its coordination. However, HAD expressed its clear stance that same as other street management problems, DOs strive to coordinate and mediate between departments to resolve problems. The law enforcement departments could also work together for joint operations through the District Management Committee chaired by the respective District Officer. In case any matters remain unresolved after intervention by the District Management Committee, the Steering Committee on District Administration would continue to play an active role by providing a high-level platform for consensus building among departments.

720. The Ombudsman was pleased that HAD had reiterated DOs' commitment to coordinating and mediating the work of departments. In view of the above observations, the Ombudsman reckoned that HAD should supervise DOs' more active performance of their role in coordinating district affairs and problem-solving among departments, and encourage other departments to make good use of their coordinating role. As for unsettled irregularities or unresolved disputes on enforcement responsibilities after DOs' intervention, HAD should decisively escalate the matter to the Steering Committee on District Administration for early consensus building through high-level negotiation.

721. In addition, every year, there was a considerable number of cases of illegal occupation or obstruction of streets by goods and miscellaneous articles where the performance pledge on processing time could not be met. There is no doubt that each individual case which requires a longer

processing time has its own circumstances, but it could not be ruled out the possibility that the longer processing time may involve systemic issues relating to inter-departmental coordination, in particular fundamental disagreement among departments on the demarcation of responsibilities. No standing centralised mechanism was in place within the Government to review regularly completed inter-departmental cases requiring a longer processing time in different districts for systematic analysis and exploration of necessary improvement measures.

722. The Steering Committee on District Administration provided a high-level discussion and negotiation platform for complicated district management cases requiring inter-departmental collaboration. In view of its role, the Office found the Steering Committee an appropriate platform for the establishment of the centralised mechanism proposed in the preceding paragraph, and hoped that the Steering Committee on District Administration can favourably consider The Ombudsman's recommendation.

723. Since September 2021, FEHD and the Police have been launching a trial scheme on joint operations in individual districts. Apart from prosecuting offenders, they seized and confiscated goods or miscellaneous articles in public places such as roadside and carriageways to strengthen the deterrent effect. During the joint operations, the Police would post time-bound Notices to Remove Obstruction pursuant to section 32(1) of the Summary Offences Ordinance to require offenders to remove from public places the goods or miscellaneous articles causing obstruction. Otherwise, FEHD would seize the articles and, subject to evidence, consider issuing fixed penalty notices or instituting prosecutions against the owners who claim the articles.

724. During its previous inspections at two of the street obstruction black spots, namely Ho Pui Street and Chuen Lung Street in Tsuen Wan and the vicinity of Chun Yeung Street in North Point, which were included in the trial scheme, the Office found that the overall cityscape and street hygiene condition were relatively satisfactory though different degrees of

irregularities were still observed. The Ombudsman was pleased that the District Matters Coordination Task Force decided to progressively extend the joint operations by FEHD and the Police to all 18 districts from October 2022 onwards. The Ombudsman agreed that the new mode of enforcement could strengthen the deterrent effect thereby curbing shopfront extension more effectively.

725. That said, FEHD would inevitably have to allocate more manpower and resources to cope with the additional workload arising from the new arrangements. The Office was aware that District Environmental Hygiene Offices under the Department also participate in joint operations organised by different departments. The Ombudsman considered that FEHD should examine the scope and function of various types of joint operations after regularisation of the trial scheme, in order to identify any overlapping areas and modify such operations as necessary to ensure optimum use of resources.

726. The Police has suggested that legislative amendments be considered in the long run to empower FEHD staff to require removal of articles that cause obstruction pursuant to section 32(1) of the Summary Offences Ordinance. The Ombudsman agreed that this suggestion could facilitate routine enforcement of FEHD staff. At present, FEHD staff are empowered to seize the goods and miscellaneous articles involved only when invoking the "illegal hawking provision" or "obstruction to scavenging provision", provided that the circumstances meet the evidential requirements thereunder. The above suggestion should provide an additional enforcement tool for FEHD, thereby allowing greater flexibility in enforcement planning and better use of the Police's manpower. FEHD's enforcement actions would have a stronger deterrent effect if the Department is empowered to remove, or even seize and detain, the goods and articles causing illegal occupation or obstruction of streets. The Government may carry out a feasibility study on the matter. According to the information from EEB, the Government will explore the feasibility of empowering FEHD staff and other enforcement officers to remove articles

causing street obstruction in the second-stage legislative amendment proposals.

727. The Ombudsman has made the following recommendations to the Steering Committee on District Administration, EEB, FEHD, LandsD, HyD, EPD and HAD –

FEHD

(a) use various data (including number/types and distribution of shops, complaint figures and past statistics on inspection and enforcement) as parameters for holistic analysis in order to formulate effective plans for inspection and enforcement;

(b) strengthen the training for frontline staff to ensure their proper application of the "obstruction to scavenging provision" in enforcement;

(c) step up the monitoring at central level of the arrangements for inspection and enforcement as well as resource utilisation across District Environmental Hygiene Offices and identify any marked discrepancy requiring adjustment;

(d) when instigating prosecutions against flagrant cases under the "street obstruction provision", explain to the Court the severity of the problem and recommend a heavier penalty;

(e) step up enforcement against non-compliant shops in locations designated as "tolerated areas";

(f) examine the scope and function of various types of joint operations after regularisation of the trial scheme with the Police in order to identify any overlapping areas and modify such operations as necessary to ensure optimum use of resources;

EEB and FEHD

(g) review comprehensively the existing penalties under the law, including raising the maximum penalty imposed by means of summons (including the "street obstruction provision") and the level of fixed penalty, and favourably exploring the introduction of a progressive penalty system under the fixed penalty provision;

(h) explore the feasibility of empowering FEHD staff to remove, seize and detain goods or miscellaneous articles causing illegal occupation or obstruction of streets;

LandsD

(i) establish a coordination mechanism enabling other departments, when encountering difficulties in case handling, to seek its assistance or invoking of the Land (Miscellaneous Provisions) Ordinance to tackle articles causing illegal occupation or obstruction of streets. The mechanism can also serve as a communication platform to clarify and resolve departments' disputes on their enforcement responsibilities;

(j) step up enforcement against unauthorised extension of business area with fixed platforms and exercise stringent control over offenders who fail to comply with statutory notices;

HyD

(k) pay more attention to any illegal deposition of construction materials when conducting regular inspection and maintenance of public roads (in particular districts with a greater number of complaints) and strengthen its collaboration with DLOs of LandsD for cracking down the problem;

EPD

(l) continue to explore feasible ways to further increase the local capacity of recycling polyfoam boxes, so as to resolve the problems of environmental hygiene and street obstruction caused by their piling up in the long run;

HAD

(m) supervise DOs' more active performance of their role in coordinating district affairs and problem-solving among departments, and encourage other departments to make good use of their coordinating role. As for unsettled irregularities or unresolved disputes on responsibilities at district level, HAD should decisively escalate the matter to the Steering Committee on District Administration for early consensus building through high-level negotiation; and

Steering Committee on District Administration

(n) favourably consider establishing a standing mechanism at central level to review regularly completed cases requiring a longer processing time in various districts, with a view to ascertaining whether systemic issues are involved and making improvement where necessary.

Government's response

728. The Steering Committee on District Administration, EEB, FEHD, LandsD, HyD, EPD and HAD accepted The Ombudsman's recommendations and have taken the following follow-up actions.

Recommendation (a)

729. In planning enforcement operations, all DEHOs of FEHD will devise the coverage and time of operation, the necessary manpower and vehicle support as well as equipment requirements in accordance with the situations and data of target locations. FEHD will generally accord priority to locations with more complaints, and take appropriate enforcement and follow-up actions, including conducting joint operations with the Police. FEHD will make effective inspection and enforcement arrangements based on the analysis of the number, types and geographical distribution of the shops involved, the area occupied by the goods and/or articles and the time of, duration and reason for their placement, the surroundings of the shops involved as well as their pedestrian flows/traffic conditions. Sufficient manpower, equipment and vehicle support will also be deployed for the relevant officers in enforcement operations to conduct appropriate actions within their purview in the light of the ground situation. FEHD will continue to review if the factors taken into account are comprehensive enough and, where necessary, introduce more data as benchmark to enhance inspection and enforcement efficiency.

Recommendation (b)

730. FEHD has strengthened the training for frontline law enforcement officers on the operation of cleansing services as well as the application and enforcement of law, and arranged experience sharing sessions to ensure their proper application of the "obstruction to scavenging provision" in enforcement.

Recommendation (c)

731. To step up the monitoring of inspection, enforcement as well as resource utilisation across DEHOs, the FEHD Headquarters has issued relevant enforcement guidelines to DEHOs and asked them to timely report their operation arrangements, including their coverage, time, manpower deployment and enforcement efficiency (including enforcement statistics

and photo records). The relevant approach would allow FEHD Headquarters to better understand the enforcement situation in DEHOs and ensure proper use of manpower and resources by districts for taking stringent enforcement against SFEs, thus achieving continuous and significant improvement in enforcement and its efficiency. FEHD will continue to adjust its enforcement strategies to better respond to the actual situation of each district and reduce the discrepancies across districts.

Recommendation (d)

732. Currently when instigating prosecutions under the "street obstruction provision", FEHD will not only provide the Court with the facts of the offence and the scale of obstruction, but also disclose any previous convictions under street obstruction provisions of the defendant to the Court for consideration in sentencing. FEHD will ensure that its prosecution officers continue to follow the above arrangements.

Recommendation (e)

733. FEHD will continue to step up enforcement to ensure the shops in the five existing "tolerated areas" abide by the requirements by not exceeding the specified area and not causing serious obstructions to pedestrians and other road users.

Recommendation (f)

734. FEHD reviews from time to time the function and effect of various types of inter-departmental joint operations, as well as plans and participates in various joint operations according to the actual situation of the obstruction case. This facilitates sharing of resources and manpower in combating SFEs, while avoiding duplication or waste. Take the joint operations of FEHD and the Police in combating SFEs as an example, irregular joint operations have been mounted by the Hawker Control Team of the Kwun Tong DEHO with the Police in Shui Wo Street since early October 2021. In the course of collaboration, FEHD continuously adjusted

the manpower deployment according to the actual situation, with the number of participating staff of FEHD reduced from 70 at the start to about 40 at present. Similar enhancement in manpower deployment is also observed in other districts.

735. Moreover, the Fines and Fixed Penalties (Public Cleanliness and Obstruction) (Miscellaneous Amendments) Ordinance 2023 for raising the level of fixed penalty for SFE and the maximum fine to be imposed by the Court will take effect on 22 October 2023. FEHD will keep in view SFE situation in various districts after the ordinance has come into effect and will liaise with the departments concerned for timely adjustment and consolidation of inter-departmental joint operations to ensure optimum use of resources. The Government is also conducting the second-stage legislative review on environmental hygiene-related legislation, which includes a proposal to empower FEHD to require shops to remove obstructing articles within a specified time, otherwise the department may remove and even confiscate such items, without relying on the power of the Police, thereby enhancing FEHD's effectiveness in handling SFE on its own.

Recommendation (g)

736. The Government has completed the first-stage of legislative review, and proposed to raise the level of fixed penalty for SFE from $1,500 to $6,000, and increase the maximum fine to be imposed by the Court for this offence from $5,000 to $25,000 if prosecution is instigated in accordance with the corresponding legislation. The relevant Bill was passed by LegCo on 12 July 2023, and took effect on 22 October 2023.

737. The Government has also been conducting the second-stage legislative review under which the suggestion of introducing progressive fixed penalty for SFE was deliberated. It is considered inappropriate to implement such progressive fixed penalty at the present stage. The reasons are as follows –

(a) in terms of the legislative intent, the establishment of a fixed penalty system is to provide a simple and effective way to deal with environmental hygiene cases which are straightforward, clear-cut and capable of being easily established, whereas the progressive fixed penalty system may give rise to disputes over the circumstances of individual cases. If the person concerned raises a dispute over the relevant liability, the case will eventually have to be handled by the Court;

(b) in terms of enforcement efficiency, as aforementioned, the level of fixed penalty for SFE offences increased from $1,500 to $6,000 on 22 October 2023. It is believed that, together with the enforcement strategy of issuing multiple FPNs to repeated offenders within a short period of time and the legislative amendment proposals regarding SFE under the second-stage legislative review, the problem can be effectively tackled; and

(c) in terms of the proportionality of penalty, the introduction of a progressive fixed penalty system and the setting up of progressive penalty levels and increments, on top of the future fixed penalty level of $6,000, may result in an excessive maximum fixed penalty level incommensurate with the fine level for other offences of a similar nature. Furthermore, if the amount of fixed penalty is to be raised, the maximum fine level to be imposed by the Court based on relevant ordinances will have to be raised having regard to the progressive penalty levels and increments (as proposed at the first stage of the legislative review, the maximum penalty which may be imposed by the Court will be raised to a maximum fine at level 4 ($25,000) and imprisonment for a maximum period of three months). This may result in an excessive maximum fine to be imposed by the Court.

Recommendation (h)

738. As mentioned above, the Government has also proposed in the second-stage legislative review to empower FEHD to require shops to remove obstructing articles within a specified time. Otherwise, FEHD may remove and even confiscate such items, thereby enhancing FEHD's effectiveness in handling SFE. The Government has consulted the Legislative Council Panel on Food Safety and Environmental Hygiene on 11 July 2023 and plans to consult the public and relevant sectors on the legislative proposals in the second half of 2023. Subject to the progress of law drafting, the Government strives to introduce the Amendment Bill into LegCo in the second half of 2024.

Recommendation (i)

739. LandsD has strengthened the inter-departmental collaboration mechanism. In 2022, LandsD established a coordination mechanism with HyD and FEHD for enabling frontline staff, when encountering disputes over handling cases of abandoned construction wastes mixed with construction materials and/or domestic wastes, to escalate such cases via the mechanism to the senior officers of the relevant districts or further to the headquarters of the departments concerned for resolution as soon as possible. With a view to resolving inter-departmental disputes over cases involving abandoned construction materials more effectively, LandsD also made suggestions to HyD and FEHD in May 2023 to enhance the above mechanism for their consideration. Liaison with HyD and FEHD on the implementation details of the proposed enhancement is underway.

Recommendation (j)

740. LandsD issued internal instructions on 10 March 2023 requesting DLOs to step up enforcement against unauthorised extension of business area with fixed platforms and exercise stringent control actions against shop operators who fail to comply with statutory notices before the expiry

dates. LandsD will also regularly review the enforcement work of the districts in order to achieve deterrent effect.

Recommendation (k)

741. 'HyD has been reminding its road maintenance term contractors during their monthly progress meetings to pay more attention to any illegal deposition of construction materials when they are conducting regular inspection and maintenance of public roads, and to report to HyD when they have noticed such situations, such that HyD can take follow-up actions in a timely manner.

742. In order to strengthen its collaboration with DLOs of LandsD, HyD and LandsD have jointly formulated an inter-departmental mechanism to facilitate early direct communications between supervisors of frontline district staff of the two departments to agree on a solution when disputes arise in handling cases about illegal deposition of construction materials on public roads, and to further escalate unresolved cases at district levels to the headquarters of the two departments for further review and liaison. The inter-departmental mechanism has been implemented since 15 August 2023.

Recommendation (l)

743. The Community Waste Reduction Projects of the Environment and Conservation Fund funded a non-profit-making organisation in 2022 to carry out a local polyfoam recycling project. A total of 166 tonnes of polyfoam were recycled throughout the year, with about 100 recyclers, non-government organisations and private companies participated in the project.

Recommendation (m)

744. While HAD and DOs are not an enforcement department to tackle shopfront extensions, just as other street management problems, DOs have

all along been proactively coordinating departments to conduct joint clearance operations. As the situation of illegal occupation or obstruction of streets by goods and miscellaneous items vary across districts, DOs will coordinate joint operations as necessary, considering the actual situation in their districts and the views of the enforcement departments. From the period between 2019 to May 2023, DOs coordinated more than 850 joint clearance operations. DOs would continue to keep a close watch of the situation of illegal occupation or obstruction of streets by goods and miscellaneous articles in their districts, and coordinate joint operations with relevant departments as and when necessary. Meanwhile, DOs would encourage other departments to make good use of their coordinating role and to seek HAD's assistance in coordinating joint operations whenever needed. In the event that the problem cannot be resolved at district level, DOs would consider escalating the matter to HAD Headquarters or other higher-level platforms.

Recommendation (n)

745. HAD, serving as the secretariat of the Steering Committee on District Administration, has earlier agreed to consider the recommendation to establish a standing mechanism at the central level, with a view to regularly reviewing cross-district cases that require longer processing time.

746. Under the framework of the enhanced district governance structure, the Government has established in July 2023 the "Task Force on District Governance" (TFDG), chaired by the Deputy Chief Secretary (DCS), in place of the existing "Steering Committee on District Administration" and "District Matters Co-ordination Task Force". In handling "long-standing, big and difficult" inter-departmental environmental hygiene issues, TFDG has set up a sub-group on environmental hygiene and cityscape problems. The sub-group will continue to provide steer on improvement measures to address environmental hygiene problems under the leadership of DCS. These issues include individual cases of illegal occupation or obstruction of streets by goods and miscellaneous items which require a longer

processing time, etc. At the district level, District Management Committees, comprising of District Officers and other departments (including FEHD and the Police), have been established in the 18 districts for relevant departments to discuss district issues and the coordination work. District Officers will continue to work hand in hand with relevant departments at district level to closely monitor the situation of illegal occupation or obstruction of streets by goods and miscellaneous items, and will formulate measures as appropriate.

Environmental Protection Department

Case No. DI/444 – Management and Effectiveness of Waste Separation Bins

Background

747. In 1998, the Government promulgated the Waste Reduction Framework Plan, advocating separate collection of recyclable materials to facilitate recovery and reuse. According to the Plan, Government departments would place waste separation bins (commonly known as "three-colour recycling bins" and hereinafter referred to as "recycling bins") at locations under their management for collection of waste paper, aluminium cans and plastic bottles, thereby encouraging the public to participate in waste reduction and recycling. Through the Source Separation of Waste Programme, the Environmental Protection Department (EPD) also distributed recycling bins to participating residential, commercial and industrial buildings for free.

748. Around 18,000 sets of recycling bins are currently provided by various Government departments across the territory. Participating departments, including EPD, the Leisure and Cultural Services Department (LCSD), the Agriculture, Fisheries and Conservation Department (AFCD) and the Housing Department (HD), arrange proper collection and maintenance services according to the situation and need of the locations or venues for effective management of the recycling bins.

749. The provision of recycling bins has been implemented for years. However, there were media reports that recycling bins were often mixed with litter, which contaminated the recyclables inside and affected the recycling effectiveness, and might have caused environmental hygiene problems. The media also reported that some recyclables collection service contractors (the Contractors), for various reasons, disposed of recyclables from recycling bins together with refuse, thus undermining public confidence in the authorities' effective management of the recycling

bins. In this connection, the Office of The Ombudsman (the Office) launched a direct investigation to examine the authorities' management of recycling bins and effectiveness in implementing the relevant programme, with a view to recommending improvement measures where necessary.

The Ombudsman's observations

750. The Office recognised EPD's efforts in improving the management of recycling bins in public places and had the following observations and comments.

Labels on Recycling Bins in Public Places

751. The existing labels on recycling bins in public places were rather simple. Users of recycling bins could obtain recycling information (such as the strategies of "Clean Recycling of Three Types of Paper" and "Priority Recovery of Plastic Bottles", or the clean recycling procedures) by scanning the QR codes on the bins. The Office was of the view that while EPD's idea of adding QR codes to the recycling bins was praise-worthy, it could not be ruled out that some people did not bother to scan the QR codes and read the instructions. The Office reckoned that the overly simple labels on the recycling bins failed to effectively minimise improper use of the bins and contamination of recyclables.

752. For more effective management of recycling bins in public places which are prone to problems, and as part of its publicity and education initiatives, the Office reckoned that EPD should display recycling information in a more straight-forward manner for the public to learn about the proper way of using recycling bins more conveniently and speedily. As EPD expected to gradually install newly designed bins after field trials, the Office recommended that it should review the existing labels on recycling bins in public places in one go, and consider providing more recycling information in textual and graphical forms on the newly designed bins.

Information Available on Mobile Application

753. The Office noted that members of the public could use the "Waste Less" mobile application of EPD to search for the locations of all recycling bins in public places throughout Hong Kong. In the Office's site visits on a random sample of recycling bins, the Office found inconsistencies of several locations indicated by the app with the actual site situation, with no recycling bins at the indicated locations or nearby. In the Office's second round of site visits after three months, the information remained not updated which was unsatisfactory. Besides, photographs of recycling bins shown in the app still displayed former designs of bins in public places under the management of the Food and Environmental Hygiene Department (FEHD) (Note: Since 1 October 2020, EPD has taken over the management of recycling bins in public places from FEHD). Consequently, the public might mistakenly perceive that those bins were still managed by FEHD. The Office was pleased to note that EPD had updated the information on the app in early February 2022. The Office recommended that EPD update information available on the app in a timely manner to ensure its accuracy.

Collaboration with Other Departments

754. The Office noted that, taking reference from the collaboration models with AFCD and LCSD, EPD was liaising with HD to explore further enhancements to the waste separation programme implemented in public housing estates, so as to ensure proper collection of recyclables by downstream recyclers. EPD also continued to promote the Source Separation of Waste Programme to more Government departments and offer necessary support. It strived to strengthen individual departments' existing resource recovery practice, thereby raising and quantifying the recycling effectiveness.

755. At the time of the direct investigation, among the departments responsible for recycling bin management, only EPD maintained statistics on the overall recovery rate of recycling bins. The Office considered the

overall recovery rate of recycling bins highly useful for relevant departments to monitor the effectiveness of recycling bins, review their distribution and management strategies, and come to grips with the public's behaviour in relation to waste recycling. The Office recommended EPD to provide departments responsible for recycling bin management with more technical support and actively encourage them to maintain more recycling data (such as the overall recovery rate of recycling bins), thereby facilitating the monitoring and adjustment of the management strategies of recycling bins.

Release of Data on Operation of Recycling Bins and Sharing of Successful Experience

756. The views that the Office received from members of the public showed that many of them were sceptical about the effectiveness of recycling bins. Such a public perception had apparently taken root over the years. As EPD had taken over the management of recycling bins in public places since October 2020 and introduced a number of improvement measures subsequently, the Office considered that EPD may release data on the operation of those bins regularly, including the total collection quantities, quantities of recyclables, recovery rate, reports of overfilled bins, etc. This would enhance transparency of its services and facilitate objective understanding of the current effectiveness of recycling bins by the public. If relevant data was available from other departments, EPD may consider releasing data on the operation of recycling bins managed by various departments in one go to provide a more comprehensive overview of their usage. More thorough, comprehensive and regular information disclosure should be conducive to boosting public confidence in using recycling bins.

757. Moreover, the Office recommended EPD to continue to step up publicity and education, including sharing via different channels successful cases about how members of the public use recycling bins. The success experience could encourage more people to take part in waste

reduction and recovery, and revive public confidence in the effectiveness of recycling bins.

Long-term Policy on Recycling Bins in Public Places

758. The Office noted that Green@Community, the community recycling network developed by EPD progressively since 2015, was supported by the general public and a key ongoing initiative under the Waste Blueprint for Hong Kong 2035. In view of this development, EPD had removed roadside recycling bins located near Recycling Stores and increased the number of bins in rural areas for more effective use of resources.

759. The Office also noted that in the long run, EPD anticipated a declining demand for roadside recycling bins in urban areas. The role of recycling bins would also gradually transform into providing waste recycling support mainly for remote rural areas and residential premises on scattered sites. Such bins may even be completely replaced by Green@Community. The role played by recycling bins in public places under the Government's overall policy on waste separation and recovery is a policy issue not subject to the Office's comments. Nevertheless, EPD should work out a schedule to review the policy positioning of recycling bins in public places for deciding on the way forward, and explain its decision for the public to understand why recycling bins in the community may be gradually reduced in number.

760. Meanwhile, should EPD decide to retain recycling bins in public places after review, the Office urged it to continue assessing any impact arising from waste charging due to be implemented later, including the usage of bins and the quality of collected recyclables. Corresponding measures should be adopted to ensure that recycling bins in public places continue to achieve efficacy.

761. Overall, the Office recommended EPD to –

(a) review the labels on recycling bins in public places and consider providing more recycling information in textual and graphical forms on the newly designed bins to enable the public to learn about the proper way of using recycling bins more conveniently and speedily;

(b) update the "Waste Less" mobile application in a timely manner to ensure accuracy of information about recycling bins in public places;

(c) continue strengthening collaboration with other departments responsible for recycling bin management and actively encourage them to maintain more recycling data, thereby facilitating the monitoring and adjustment of the management strategies of recycling bins;

(d) release data on the operation of recycling bins in public places regularly to enhance transparency of its services and facilitate objective understanding of the current effectiveness of recycling bins by the public;

(e) continue stepping up publicity and education, including sharing via different channels success cases about how members of the public use recycling bins, thereby encouraging more people to take part in waste reduction and recovery and reviving public confidence in the effectiveness of recycling bins; and

(f) work out a schedule to review the policy positioning of recycling bins in public places for deciding on the way forward, and explain its decision for the public to understand why recycling bins in the community may be gradually reduced in number or even completely replaced; if it is decided that recycling bins in public places be retained, continue assessing any impact arising from waste charging due to be implemented later, and adopt

corresponding measures to ensure that recycling bins in public places will continue to achieve efficacy.

Government's response

762. EPD accepted The Office's six recommendations and has taken the following follow-up actions.

Recommendation (a)

763. EPD has reviewed the labels attached to the existing recycling bins in public places and completed the design of new labels. Simple wording and graphics are adopted for displaying more information about recycling, including the types of recyclables that can be put into the recycling bin and waste items that are unsuitable to do so, as well as information on clean recycling. The new recycling labels have been used on the newly designed recycling bins under field trial.

Recommendation (b)

764. EPD reviews information of kerbside recycling bins in the mobile application "Waste Less" on a monthly basis, and makes necessary updates with a view to ensuring the accuracy and completeness of the information.

Recommendation (c)

765. After discussing with HD, EPD has launched a one-stop reliable recycling service, named GREEN COLLECT, by phases since end-September 2022 in public housing estates in nine districts where the Pilot Scheme on Collection and Recycling Services of Plastic Recyclable Materials (Centralised Waste Plastics Collection Scheme) is implemented i.e. Tai Po, Sai Kung, Central & Western, Eastern, Sham Shui Po, Tsuen Wan, Tuen Mun, Sha Tin and Kwun Tong. Operators of GREEN@COMMUNITY and other EPD contractors of various recyclables collection programmes provide one-stop collection services to

participating housing estates for various low-value recyclables that lack commercial recycling outlets (e.g. plastics, glass bottles, small electrical appliances, etc.), and deliver them to downstream recyclers for proper treatment. As of end 2022, the GREEN COLLECT service has covered all public housing estates managed by the HD in the above nine districts.

766. In addition, EPD has maintained close communications with the AFCD, LCSD and the HD on the management of recycling bins and encouraged them to collect and record the recycling data (including quantity of recyclables, recycling rates, etc.), with a view to enhancing the monitoring of the management of recycling bins and making suitable adjustment on the management strategies and measures when necessary.

Recommendation (d)

767. EPD has regularly updated its Waste Reduction Website to release the operational data of kerbside recycling bins (including recycling rate, quantities of recyclables collected, reports of overfilled bins, collection frequency, the number of ad hoc collections/inspections, etc.) for the public to understand the effectiveness of recycling bins comprehensively and objectively. For more details, please refer to the following webpage: https://www.wastereduction.gov.hk/en-hk/waste-reduction-programme/_kerbside-recycling-bin.

Recommendation (e)

768. EPD has continued to support and facilitate members of the public living in different types of premises to practise source separation and clean recycling through provision of community recycling facilities and outreach services. EPD's outreaching team, the Green Outreach, in collaboration with community stakeholders, encourages residential premises to participate in the "Source Separation of Waste Programme" and assists them in enhancing their recycling programmes through education, publicity and technical support, particularly the securing of reliable downstream recyclers for proper recycling of clean recyclables into

resources so as to revive public confidence in the effectiveness of recycling bins. Apart from recruiting private and public housing estates to participate in the GREEN COLLECT service mentioned above, the Green Outreach also assists the estates in enhancing their existing recycling facilities based on actual needs, strengthening the arrangements and image of their recycling management, and providing education and promotional support so as to boost the confidence of the residents in the recycling system and encourage them to participate in clean recycling more actively.

Recommendation (f)

769. EPD has comprehensively reviewed the operation of kerbside recycling bins and the services data (including the quantity and quality of recyclables collected in different areas), as well as the effectiveness of various enhancement measures (including enhancing recycling bins to achieve "Bigger Capacity, Easy Reporting", adjusting the locations of recycling bins to reduce misplacement of litter by pedestrians, requiring the Contractor to form supervisory teams to increase the efficiency of follow-up action; and promoting "I'm not a litter bin", etc.). Since there are no on-site staff to monitor kerbside recycling bins, the quality of recyclables is directly affected by the behaviour of the public (e.g. recyclables are often contaminated by food residues and beverages). As a result, the quality of recyclables collected is far lower than that of the community recycling network GREEN@COMMUNITY, and the quantity collected is less than 10% of that of the GREEN@COMMUNITY. With the continuous enhancement of GREEN@COMMUNITY and the implementation of various waste reduction and recycling initiatives, the role of kerbside recycling bins in supporting community recycling has been diminishing, especially in urban areas (including new towns). To improve the overall recycling efficiency, EPD has gradually removed kerbside recycling bins in urban areas since June 2022. By end 2022, EPD has completed the removal of all of the about 800 sets of kerbside recycling bins in urban area.

770. EPD has promoted and explained to the public about the community recycling network and recycling facilities, as well as the removal arrangements of kerbside recycling bins in urban areas through various channels, including posting notices on the bins before removal, on-site promotion and distribution of leaflets at different locations, publishing the arrangements on the EPD's waste reduction website, etc. EPD also encourages the public to make good use of nearby GREEN@COMMUNITY facilities.

771. For kerbside recycling bins in rural areas, although the quality and quantity of recyclables collected are generally better than those in urban areas, it is expected that there might still be cases of abuse after the implementation of Municipal Solid Waste Charging. EPD will closely monitor the use of the kerbside recycling bins in rural areas, and proactively explore and provide other effective recycling support.

Food and Environmental Hygiene Department

Case No. DI/446 – Effectiveness of Rodent Prevention and Control by Food and Environmental Hygiene Department

Background

772. Rodent infestation has been an issue of wide public concern as it causes nuisances to the daily life of the general public and may spread different types of serious diseases.

773. Currently, the Pest Control Steering Committee led by the Environment and Ecology Bureau (formerly known as the Food and Health Bureau) formulates anti-rodent policies and action plans for implementation by the Food and Environmental Hygiene Department (FEHD) and other departments. FEHD handles rodent infestation in ordinary public places, and its duties involve three major aspects, namely rodent surveillance, rodent prevention and disinfestation, and handling of rodent-related complaints. FEHD also provides training and technical support for other government departments regarding rodent prevention and control at public venues and premises under the latter's management.

774. There are views that FEHD's rodent control has been ineffective and the results of its rodent infestation surveys (RISs) could not reflect the actual situation of some locations. According to media reports, a number of confirmed rat Hepatitis E cases had been reported since 2018, and there were concerns about the serious rodent infestation in many markets under FEHD's management in 2020.

The Ombudsman's observations

RISs

775. Currently, FEHD conducts RISs in a six-month interval within 50 designated survey locations in 19 administrative districts. The RIS in each

survey location lasts for three days where 40 to 60 census baits (a piece of uncooked sweet potato) would be placed in each location based on its area. The rodent infestation rate (RIR), which is the percentage of baits gnawed by rodents in the survey locations, is aggregated to assess the extensiveness of rodent infestation in the public places within each survey location. RIR is categorised into three levels. An RIR below 10% falls into Level 1 where rodent infestation is not extensive during the survey period. Level 2 ranges from 10% to below 20% reflecting slightly extensive rodent infestation during the survey period. An RIR at or above 20% falls into Level 3 where rodent infestation is extensive during the survey period.

776. While the RIR shows the percentage of rodent activity range within each survey location, it cannot reveal the actual number of rodents or the frequency of their appearances. The Office of The Ombudsman (the Office) noticed that there were occasional media reports about rodent infestation in various districts. The Office also received quite a number of public views about the nuisance caused by rodent infestation in various districts and particular venues. Despite a rising trend on the number of rodent-related complaints and the figures of disinfestation from 2016 to 2020, the overall RIR recorded during the same period had been hovering at relatively low levels of below 5%. Although some administrative districts recorded relatively higher RIR, the highest rate among them was only at Level 2. FEHD explained that due to limitations of RIR, it would consider various factors (including rodent-related complaints, observation of frontline staff and views from members of local community) to make a comprehensive assessment on rodent infestation.

777. As seen from the preceding paragraph, there are limitations on the methodology of RISs, resulting in a possibility for RIR not truly reflecting the extent of rodent infestation. While FEHD publishes other rodent-related data (such as the number of rodent-related complaints, rodents caught and dead rodents found) in addition to RIR where necessary, RIR is undoubtedly the most important indicator of rodent infestation among the general public. In order to enhance its credibility, the Office believed that RIR should be formulated in such a way that it could reflect the

severity of rodent infestation in multiple aspects (including the distribution and number of rodents). Therefore, FEHD should explore whether the methodology of RISs can be modified to reduce the constraints of RIR, and examine further whether it is appropriate to incorporate factors that may help assess the extent of rodent infestation into the calculation of RIR. FEHD may consider engaging local universities and academic institutions in researches to explore the feasibility of formulating a "composite RIR" that incorporates different factors.

778. With RISs being conducted every six months only, it may render the aggregate RIR out-of-date because rodents have high reproduction rates and their breeding grounds are subject to environmental hygiene in the surrounding area. The Office was of the view that FEHD should consider conducting RISs more frequently each year to improve the validity of survey results and exploring appropriate manpower arrangements to cope with the additional workload.

779. When conducting RISs, FEHD will hang census baits with warning notices on supporting objects such as water pipes and pillars and suspend disinfestation of rodents until completion of the survey, so as to prevent interference with RISs. However, officers of the Office noticed in their site inspections that FEHD had failed to attach a warning notice to a census bait and had continued to arrange disinfestation of rodents during the survey period. FEHD should consider introducing administrative measures to ensure that its staff conduct the surveys in an appropriate manner. Such measures may include a comprehensive review of the relevant guidelines to ensure their clarity and accuracy, regular briefings and random surprise checks during survey periods.

780. Starting from mid-2020, additional rodent disinfestation are required to be carried out at survey locations with a "relatively high" RIR of 8% or above, followed by another survey. In August 2021, FEHD revised the Pest Control Technical Circulars (Technical Circulars) to include the additional rodent disinfestation and survey in the follow-up actions for RIR at Level 1. Such work serves as prompt and proactive

rodent control when the RIR is approaching the lower limit of Level 2 (i.e. 10%), thereby preventing rodent infestation from deteriorating into Level 2 or above.

781. The Office reckoned that FEHD's additional disinfestation and survey for an RIR of 8% or above did not correspond with the follow-up actions "to continue with routine rodent disinfestation" specified for an RIR at Level 1. Furthermore, if FEHD considers an RIR of 8% as "relatively high", it should review the need for adjusting the existing three-tier classification of RIR (in particular the suitability of setting Level 1 at below 10%) and the corresponding follow-up actions to ensure effective rodent control on different levels of infestation.

Rodent Prevention and Disinfestation

782. Trapping and poisoning with baits are two major ways adopted by FEHD for rodent control. Based on its knowledge of the rodent species commonly found in Hong Kong and their habits, FEHD makes its professional judgement on the methods and tools to be used for rodent disinfestation. The Office did not intervene. Nevertheless, the Office's investigation revealed that some frontline staff of FEHD did not punch the packets of poisonous baits to allow the smell to emit. Staff of a contractor even said that the rodents would tear the packing and take the poisonous baits. This reflects an apparent lack of understanding about the correct use of the baits, which directly affected their effectiveness. Since April 2020, FEHD has progressively included in new contracts with pest control contractors the requirement that packets of poisonous baits must be punched before use. Violation of such requirement will be deemed as a serious default. Moreover, FEHD has produced and uploaded to its Intranet a series of videos about the skills in rodent disinfestation for its staff and contractors' reference. Despite FEHD's rectification, it is difficult to tell whether such lack of understanding is only the tip of the iceberg. In the Office's view, FEHD should strengthen the training for both frontline and supervisory staff. While frontline staff should be able to correctly use the tools and equipment for rodent disinfestation,

supervisory staff should also acquire the relevant knowledge for identification and rectification of misuse during routine inspections.

783. On rodent prevention, FEHD mainly relies on education, intensive cleansing and enforcement action especially for two potential hotspots of rodent activities, namely public markets and rear lanes.

784. Starting from 2020, FEHD has stepped up cleansing and disinfection in public markets, in particular the communal areas, public passageways and vacant stalls. As for rented stalls and their neighbouring areas, the stall tenants are responsible for cleansing on their own after business hours. FEHD also engages the Market Management Consultative Committees and makes use of the two monthly market cleansing days to remind the tenants to keep their stalls clean and take enforcement actions. In January 2021, FEHD issued instructions to its district offices, requiring them to seek the assistance of the Market Management Consultative Committees to remind stall tenants to properly dispose of their refuse. Inspections and enforcement actions have also been stepped up. Between January and November 2021, FEHD issued 51 verbal warnings to stall tenants for failure to maintain cleanliness inside and outside their stalls.

785. In the opinion of the Office, effective rodent control in public markets relies greatly on the stall tenants' effort to keep clean and maintain good hygiene both inside and outside their stalls for elimination of rodents' food sources. Otherwise, rodent control would remain ineffective however hard FEHD steps up cleansing and disinfection of common areas. Although FEHD indicated that it had stepped up enforcement actions since January 2021, the Office still found different degrees of hygiene problems during its inspections at individual markets later in the same year, including refuse accumulation outside some market stalls, and refuse, articles and seafood residues around sewage drains outside seafood stalls after business hours. Such refuse and articles were most likely left behind and discarded by the stall tenants who, by doing so, had shifted their responsibilities for cleansing the stalls to FEHD's contractors. As regards FEHD's enforcement actions, they were simply verbal warnings issued to

stall tenants who had failed to maintain cleanliness and hygiene. The effectiveness of FEHD's monitoring is, therefore, questionable.

786. The Office reckoned that FEHD should conduct intensive surprise inspections to ensure the effectiveness of its enhanced efforts on cleansing and disinfection. Where irregularities are found, FEHD should strictly enforce the tenancy clauses against the stall tenant concerned and even consider invoking other applicable legislation to compel the tenant to clean the stall and neighbouring area every day. Intensive inspections will definitely require additional manpower. Hence, FEHD should actively explore how to empower the management staff of contractors to enhance the effectiveness of enforcement actions and ensure that inspections can serve their purpose. For districts with more public markets and hence insufficient resources, FEHD should adopt a risk-based approach to focus its inspection and enforcement on those markets in poorer hygiene condition. Besides, FEHD should continue its efforts to educate stall tenants on environmental hygiene and step up cleansing of public markets where necessary. It should also consider such possible ways as establishing guidelines to set objective standards of cleanliness of stalls, so as to enhance stall tenants' understanding of its requirements and facilitate frontline staffs' inspection and monitoring.

787. FEHD mainly relies on its frontline staff's observation and assessment to determine whether there is need for stepping up cleansing and anti-rodent work for particular public markets. However, the assessment criteria and weighting of each criterion may vary among staff from different districts, leading to variations in follow-up actions taken. Given the large number of markets across Hong Kong, it may be difficult for FEHD to grasp accurately the conditions of each public market and perform overall monitoring and management without objective standards and guidelines. Hence, FEHD should consider introducing a review mechanism setting out appropriate factors for consideration and standards under a risk-based approach in order to work out systematically a list of markets requiring stepped-up cleanliness and anti-rodent control. FEHD should in parallel review the effectiveness of a targeted intensive cleansing

programme started at Tai Shing Street Market and the intensive anti-rodent operation being piloted in 73 markets. Subject to the results and resources, it should consider extending the schemes to other markets in need.

788. In combating rodent infestation in rear lanes, FEHD has from time to time launched thematic, special operations in recent years and strengthened enforcement action against irregularities found in the interior and exterior of restaurants during opening hours. The Office has arranged site inspections to three administrative districts, namely Sham Shui Po, Wan Chai and Yuen Long. While acknowledging FEHD's efforts in rodent disinfestation, the Office still observed serious environmental hygiene problems in some rear lanes including disposal of various articles and refuse, as well as outflow of sewage with offensive smell. The Office even found restaurant staff allegedly cleaning utensils and preparing food at rear lanes.

789. Rear lanes as public places are understandably more difficult to monitor than public markets under FEHD's management. Nevertheless, the Office noticed that the environmental hygiene problems were likely related to shops adjoining rear lanes. In this regard, the Office considered that FEHD should first examine whether the existing mechanism for monitoring the cleanliness of shops adjoining rear lanes (especially restaurants) is effective. Where necessary, FEHD should implement enhanced measures, including regularising its special operations, arranging more frequent inspections and taking more stringent enforcement actions.

790. Moreover, while FEHD's special operations focus on restaurants in business, there are plenty of food sources inside food shops. These shops should maintain cleanliness and hygiene at all times to avoid rodent infestation. The Office found FEHD's current practice of monitoring the operation of shops and conducting inspections only during business hours inadequate. FEHD should explore ways to handle the after-hours cleanliness problem that may arise. The Office understood that it would be difficult for FEHD to gain entry to restaurants for inspections and investigations outside their business hours. It may explore other feasible

ways, such as conducting inspections when the restaurants are preparing for business or about to close, thereby ensuring good cleanliness and hygiene outside business hours.

791. To enhance the effectiveness of its anti-rodent work, FEHD should broaden its channels for acquiring pest control knowledge and more proactively engage local universities and academic institutions to conduct researches on, say, the calculation of RIR, habits of active species of rodents in Hong Kong, as well as preventive measures and tools suitable for curbing rodent infestation.

792. There may be room for improvement in the rodent prevention and disinfestation work of FEHD, but the Office considered that its efforts and achievements should not be denied. In responding to the Office's request for information, all the four selected departments, namely the Agriculture and Fisheries Conservation Department, Home Affairs Department, Housing Department (HD) and Leisure and Cultural Services Department (LCSD), made positive comments on the training and technical support provided by FEHD. Besides, FEHD has strengthened inter-departmental coordination in launching territory-wide and district anti-rodent operations, and introduced targeted rodent prevention and control measures at district level. Members of the public would be pleased to see the improvement in overall rodent disinfestation in recent years.

793. Undoubtedly, it is essential for the Government to formulate and implement effective strategies and measures to combat rodent infestation, but the role of the public in maintaining good environmental hygiene is equally important. However hard cleansing and pest control workers maintain cleanliness of public places and combat rodent infestation, if members of the public and shop operators fail to observe the rules and leave the environmental hygiene in poor condition, nuisances arising from rodent infestation will persist, and society as a whole will suffer as a consequence. Therefore, it is incumbent upon the Government and the public to make coordinated efforts for effective rodent prevention and control.

Use of Data on Rodent-related Complaints

794. Information revealed that FEHD has received an average of over 10,000 rodent-related complaints annually in recent years, reflecting great concern of the public on rodent infestation. The Office requested FEHD to provide analyses on the details of and locations involved in rodent-related complaints regarding the three administrative districts with a relatively higher number of complaints (namely Sham Shui Po, Central and Western District and Kowloon City). Yet, FEHD could only give a brief account of the situation. It also indicated that the number of rodent-related complaints was subject to such factors as geographical location and demographics, therefore it would not assess rodent infestation in individual administrative districts by considering complaint figures alone. FEHD is seemingly not well aware of the trend of complaints and the public's concern.

795. In the opinion of the Office, the number of rodent-related complaints is no doubt an important indicator as to whether rodent infestation has generally affected the daily life of the public. Meanwhile, the details of complaints can reflect which locations are hotspots of rodent activities that attract wide public concerns and carry higher risks. Hence, FEHD should allocate more resources to collate and analyse rodent-related complaints for more effective deployment of manpower and resources to venues requiring more intensive cleansing and better planning for rodent prevention and disinfestation. With the introduction of a "composite RIR" as stated above, together with analyses of the details of complaints, FEHD should be able to better understand the extent of rodent infestation and adopt more targeted measures.

796. According to FEHD, it has since October 2021 included analysis of hotspots in its Complaints Management Information System (CMIS) to facilitate more effective deployment of manpower and resources in anti-rodent work. The Office will follow up with FEHD to ensure that the upgraded CMIS will achieve administrative effectiveness to its expectation and be able to address public concerns about rodent infestation.

797. The Ombudsman recommended that FEHD should –

RISs

(a) review the existing methodology of RISs and examine whether factors which may help assess the extent of rodent infestation can be incorporated in the calculation of RIR for formulation of a "composite RIR". Where necessary, FEHD may engage local universities and academic institutions to participate in relevant researches;

(b) consider conducting RISs more frequently each year to improve the validity of survey results in the survey period concerned and exploring appropriate manpower arrangements to cope with the additional workload;

(c) introduce administrative measures, including a comprehensive review of relevant guidelines, regular briefings and random surprise checks during survey periods, to ensure that frontline staff conduct RISs in an appropriate manner;

(d) review the existing classification of RIR and contents of the prevailing Technical Circulars, and make appropriate adjustments and amendments as necessary;

Rodent Prevention and Disinfestation

(e) strengthen the training for frontline and supervisory staff on the correct use of tools and equipment for rodent disinfestation;

(f) conduct intensive surprise inspections, strictly enforce the tenancy clauses and actively explore invoking applicable legislation to step up enforcement actions to urge market stall tenants to properly clean their stalls and the surrounding areas. On manpower deployment, FEHD should explore how to empower

the management staff of contractors to enhance the effectiveness of enforcement actions. For districts without sufficient resources for intensive inspections, FEHD should adopt a risk-based approach and take targeted enforcement actions at public markets in poorer hygiene condition;

(g) strengthen the education for market stall tenants and consider exploring possible ways such as establishing guidelines to set objective standards for cleanliness of stalls;

(h) consider introducing a review mechanism, which sets factors for consideration and standards under a risk-based approach in order to work out systematically a list of markets requiring stepped-up cleanliness and anti-rodent control. FEHD should in parallel review the effectiveness of the district intensive cleansing programme and the intensive anti-rodent operations being piloted. Subject to the results and resources, it should consider extending the schemes to markets in need;

(i) examine whether the existing mechanism for monitoring the cleanliness of shops adjoining rear lanes (especially restaurants) is effective, and explore ways to handle the after-hours cleanliness problem that may arise. Where necessary, FEHD should implement enhanced measures including regularisation of special operations to combat rodent infestation at rear lanes, increasing the frequency of inspections and taking more stringent enforcement actions;

(j) strengthen the cooperation with local universities and academic institutions in conducting researches to enhance the effectiveness of anti-rodent work. Research topics may include the calculation of RIR, habits of active species of rodents in Hong Kong, and preventive measures and tools suitable for curbing rodent infestation; and

Use of Data on Rodent-related Complaints

(k) allocate more resources to collate and analyse rodent-related complaints for more effective deployment of manpower and resources to venues requiring more intensive cleansing and better planning for rodent prevention and disinfestation.

Government's response

798. FEHD accepts all recommendations of The Ombudsman, and has taken follow-up actions as listed below in response to the recommendations.

Recommendations (a) and (b)

799. FEHD agrees with The Ombudsman that the current RIR has limitations, and is thus working with a local university to study ways to improve the current rodent infestation surveillance methods. In particular, thermal imaging camera systems together with artificial intelligence technology are used for monitoring rodent activities in individual survey areas, with a view to formulating a new and more representative RIR for gradual replacement of the existing RIR which is based on ratio of sweet potato gnawed, reflecting the rodent infestation situation of the survey areas more accurately, and assisting FEHD in planning operations against rodent black spots.

800. In the process of formulating the new RIR, FEHD will review the number of surveys conducted each year and the length of each survey, so as to improve the accuracy of the survey results. In addition, as the full use of thermal imaging camera systems to monitor rodent infestation may save manpower, FEHD will deploy manpower resources appropriately for other rodent prevention and control investigations.

Recommendation (c)

801. FEHD revised the operational guidelines in relation to conducting RISs for Pest Control Officers and Pest Control Assistants in June 2021 and November 2022 respectively. Accordingly, investigation staff have to take pictures to record the location of each baiting point, its condition after hanging census baits and the neighbouring environmental hygiene, etc. Furthermore, since July 2022, supervisory staff have started to record all surprise inspections during RISs to ensure the procedures taken by investigation staff are proper and appropriate.

Recommendation (d)

802. In addition to working with a local university to formulate a new RIR and setting up a more appropriate grading under the new index, FEHD has set out clearly in the Technical Circulars concerning the current RIS the preventive measures to be taken when the RIR is at "relatively low" level of Level 1 Rodent Infestation (i.e. 0% to below 8%), and the extra rodent disinfestation and investigation work to be taken when the RIR is at "relatively high" level of Level 1 Rodent Infestation (i.e. 8% to below 10%). This is to ensure that FEHD staff can take appropriate measures at hotspots of rodent activities as early as possible. FEHD will make further appropriate adjustments and amendments to the relevant guidelines as necessary.

Recommendation (e)

803. To ensure that frontline and supervisory staff conduct anti-rodent work in an appropriate manner, FEHD has produced a series of videos about rodent disinfestation (including correct use of tools and equipment for rodent disinfestation) in December 2020, and uploaded the videos to its Intranet in February 2021 for reference of the pest control staff in various districts, who are asked to go through the materials quarterly. FEHD has also distributed the videos to pest control service contractors to facilitate their staff training. Moreover, FEHD has shared the training materials to

relevant government departments/organisations such as HD, LCSD, the Link REIT, the Pest Control Personnel Association of Hong Kong and the Hong Kong Pest Management Association.

804. Besides, FEHD has included a term in all pest control service contracts, requiring contractors to comply with the instruction of punching the packets of poisonous baits, otherwise it will be deemed as a blatant default which may result in deductions of monthly payments of service charges or affect the technical scores in future tendering. Meanwhile, since September 2022, FEHD has set a standard method for punching packets of poisonous baits for FEHD's contractors' staff to make reference to and to follow. The supervisory staff will conduct inspections in accordance with the standard method, so as to enhance the efficiency of contract management.

Recommendation (f)

805. FEHD has been stepping up its inspections and enforcement actions, which include inspecting at least twice a day the operation and hygiene condition of each stall. Where tenants are found to have violated the relevant tenancy clauses on cleanliness and hygiene, FEHD will take follow-up actions under the established mechanism. The tenancy will be terminated if a tenant receives three warning letters within six months during a tenancy period or breaches the Public Health and Municipal Services Ordinance or its subsidiary legislation for four times within 12 months. FEHD will consider instituting prosecution pursuant to the Public Markets Regulation against tenants who fail to place a refuse bin inside the stall or illegally dispose of refuse. FEHD will continue to adopt a risk-based approach and take targeted enforcement action at public markets in poorer hygiene condition.

806. From January 2021 to December 2022, the tenancy of a market stall tenant was terminated as he had breached the Public Markets Regulation four times within 12 months for occupying the passageway

outside his stall that caused obstruction and not properly cleansing his stall and the surrounding area after business hours.

807. In addition, FEHD from time to time provides training and guidance to staff of market management contractors to ensure that they perform their duties properly. Meanwhile, FEHD has required contractors to report individual stall operators in poor hygiene conditions, thereby strengthening the enforcement effectiveness of FEHD.

Recommendation (g)

808. FEHD agrees that health education is of great importance to enhance the overall hygiene condition of public markets. In this regard, FEHD issued letters in November 2022 and July 2023 to all stall operators of public markets, reminding them to move their goods displayed in areas demarcated by yellow lines/display platforms back into their stall areas after close of business, properly dispose of their refuse during and after business hours, and never dump their refuse to the passageways, etc. In addition, FEHD from time to time reminded stall operators to properly handle their own refuse through various channels (e.g. the Market Management Consultative Committee, etc.), so as to maintain the environmental hygiene of the markets.

809. On top, in order to bring in rodent control strategies which fit public markets, FEHD engaged three pest control service contractors to conduct a three-month rodent control program in three public markets in February 2023. FEHD found that the key to the contractors' effective rodent control work lies in promotion and education, which improved the rodent prevention awareness of stall operators and the environmental hygiene conditions of market stalls. FEHD will strengthen work in this regard in other public markets.

810. As for enforcement, FEHD will continue to take appropriate enforcement actions regarding the cleanliness of the stalls, taking into consideration the actual circumstances, including the types of goods and

merchandises sold at stalls, operation modes, overall environment and facilities of the markets, etc.

Recommendation (h)

811. FEHD will continue to adopt a risk-based approach by taking into account such factors as the size of the markets, number of stalls, types of goods and merchandises and previous record of hygiene condition, so as to make appropriate manpower and resource deployment for cleansing, rodent prevention and enforcement actions.

812. Furthermore, apart from continuing deep cleansing in public markets, FEHD has also extended the intensive anti-rodent operations to all markets under its management. To enhance the effectiveness of rodent control and eliminate serious rodent infestation in certain markets, FEHD has conducted trials on alcohol rodent trapping devices and glue traps in different markets. FEHD will continue to adjust relevant measures as necessary.

Recommendation (i)

813. Since June 2019, FEHD has successively set up 24 rear lane cleansing teams, dedicated to cleansing work at rear lanes. The rear lane cleansing team has improved the environmental hygiene of rear lanes and rodent prevention by increasing the use of street washing vehicles and high pressure hot water cleaners and stepping up the clearance of illegally deposited refuse and articles.

814. In July 2022, FEHD issued advisory letters to restaurants (especially those adjoining rear lanes) to remind them to store the food therein and clean the used utensils properly, handle food residues appropriately and adopt pest control measures regularly after close of business every day. FEHD has also reminded its frontline staff to pay extra attention to whether the restaurants comply with the relevant licensing conditions and adopt pest control measures during their inspections.

815. In response to the irregularities of restaurants such as handling food and dumping refuse in rear lanes, FEHD has initiated special operations in rears lanes with more serious rodent infestation in Wan Chai, Kwun Tong, Kowloon City, Sham Shui Po and Yuen Long. Apart from cleansing the rear lanes, working on publicity and education as well as implementing rodent prevention and control work, FEHD also deploys staff to inspect the public areas near the licensed premises after their close of business in order to review their situation of waste disposal and carry out enforcement actions where necessary. In addition, FEHD conducts blitz operations from time to time in the territory against licensed restaurants for irregularities such as preparation or storage of food and washing utensils in open spaces. From June 2022 to April 2023, FEHD instituted 308 prosecutions against offenders in its special operations in various districts.

816. Further, to regulate the handling of refuse generated by licensed restaurants in rear lanes, FEHD has launched a trial scheme in various districts since November 2022 to allow licensed restaurants to place large-size waste containers in rear lanes under specific conditions for temporary storage of waste pending collection. The scheme has been extended to a total of 26 rear lanes in Hong Kong. The Environmental Protection Department has also been trialling the placement of purple food waste recycling bins in some of the aforementioned rear lanes. FEHD notes that the overall environmental hygiene and rodent situation in those rear lanes under the scheme has been significantly improved.

Recommendation (j)

817. FEHD has been striving for collaboration opportunities with local universities and academic institutions on enhancing pest control measures, which include the joint research with the Chinese University of Hong Kong and the City University of Hong Kong on the habits of local rodent species and their resistance to rodenticides. The research has been completed and published in a scientific journal. Also, as aforementioned, FEHD is also

working with a local university to study ways to improve rodent infestation monitoring methods, and to formulate a more representative RIR.

Recommendation (k)

818. FEHD has included the analysis of hotspots in its CMIS to identify complaint hotspots which require priority action according to the distribution of the locations of complaints, so as to facilitate a more systematic and effective deployment of manpower and resources in planning cleansing and anti-rodent work. The system will also automatically generate a monthly analysis return and send it to the management staff at the headquarters and in districts for their monitoring and following up of the complaint hotspots.

Home Affairs Department, Lands Department and Transport Department

Case No. DI/451 – Problem of Abandoned Vehicles on Government Land

Background

819. Unwanted vehicles being left on public parking spaces, public roads or pavements for prolonged periods is a persistent and pervasive problem in Hong Kong. Abandoned vehicles sitting at the roadside for months on end would lead to a waste of public parking spaces and obstruction to road users; while vehicles abandoned on public roads and other government land would also bring street management and hygiene problems.

820. Since 2000 when the Hong Kong Police Force (HKPF) ceased to follow up on abandoned vehicles that pose no danger to traffic or road safety, the Government has been adopting an enforcement strategy that tries to prosecute the registered owners of those vehicles abandoned on government land by invoking the Land (Miscellaneous Provisions) Ordinance (Cap. 28, LMPO). Nevertheless, the Lands Department (LandsD) considered that difficulty of proof had rendered prosecution efforts largely ineffective. The Department thus suspended its work on evidence collection and prosecution for those cases since 2007. The relevant departments have been engaging in rounds of discussions to resolve the issue since 2018. It was not until 2021 when the Home Affairs Department (HAD) intervened that inter-department joint clearance operations were launched to remove abandoned vehicles.

821. The crux of the problem, as The Ombudsman saw it, was that the Government has yet to establish the responsibility of vehicle owners to dispose of their vehicles properly and hold the owners liable for non-compliance. As a result, vehicle owners could wilfully abandon their vehicles. Stepped up efforts by the Government to remove vehicles

abandoned at the roadside in effect helped vehicle owners dispose of their vehicles for free. The removal efforts only addressed the symptoms and offer no long-term solution to the problem.

The Ombudsman's observations

822. Having examined how the relevant Government departments had been handling the problem of abandoned vehicles, the Office of The Ombudsman (the Office) had the following comments and recommendations.

(I) Transport Department (TD) Should Promptly Amend the Legislation to Hold Vehicle Owners Responsible for Proper Disposal of Their Unwanted Vehicles

823. The Audit Commission, in its Report No. 34 published in 2000, had already pointed out the absence of any legislation in Hong Kong to hold the registered owners of vehicles responsible for the proper disposal of their vehicles, and recommended that the current legislation be amended to impose penalties on owners who fail to dispose of their vehicles properly. TD is responsible for vehicle registration and licensing and holds the registration details of all vehicles in Hong Kong. The legislation enforced by the Department also covers the whole life cycle of vehicles in Hong Kong, from their specifications, importation and registration, maintenance and inspection, to their destruction, etc. Each and every phase in the cycle comes under TD's powers and functions. The Office was of the view that the Department should proactively examine ways to make better use of the vehicle registration system so that vehicle owners can be prompted to dispose of their unwanted vehicles properly, and to propose legislative amendments as and when necessary.

824. It had been more than 20 years since the publication of the aforementioned Report. Yet, there was no information showing that TD had been taking proactive actions as recommended. Even after LandsD later pointed out that prosecution actions against those who had abandoned

their vehicles on government land had been largely ineffective and unsuccessful, TD just continued to focus on removing abandoned vehicles, rather than establishing the responsibility of vehicle owners and holding them liable for violations. The Office considered it inappropriate of TD to define occupation of public roads and public parking spaces by abandoned vehicles merely as a land administration problem. In the absence of effective penalties, it would cost vehicle owners extremely little to simply abandon their vehicles on public parking spaces, at the roadside or on government land and the situation would not improve at all.

825. TD has commenced a study to enhance the regulatory regime for vehicle registration and put forward more concrete legislative amendment proposals. In the Office's opinion, this is a step towards rectifying the problem. TD should closely follow up on and press ahead with the legislative amendments, formulate clear objectives and set a timetable for enacting the amended legislation. The amendments should include provisions stating outright the vehicle owners' responsibility for the proper disposal of their unwanted vehicles and their legal liability for non-compliance. The relevant provisions should also confer power on the Government to require vehicle owners to bear the cost incurred by the authorities in disposing of the vehicles on their behalf, and/or impose a fine with sufficient deterrent effect.

(II) TD Should Take Initiative to Remind Vehicle Owners to Renew Vehicle Licence in a Timely Manner and Dispose of Unwanted Vehicles Properly

826. Information shows that each year, quite a number of vehicles have had their registration cancelled by TD pursuant to section 15 of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E, the RLV Regulations) because of non-renewal of licence for two consecutive years. Between 2016 and 2021, a total of 8,540 motorcycles and 68,521 private cars had been so de-registered by TD.

827. The sheer number of unlicensed or de-registered vehicles with status and whereabouts unknown would have latent implications for use of

land (including roads), cityscape and environmental hygiene. As the authority responsible for vehicle registration and licensing, TD should be concerned about the whereabouts of these vehicles. Nevertheless, before cancelling a vehicle's registration, TD would only notify its owner in writing that de-registration would be done after 15 days, but not take the opportunity to enquire about the current status and whereabouts of the vehicle, or in case the owner decides to give up the vehicle, whether the vehicle has been properly disposed of. The Office considered TD's practice unsatisfactory from an administrative perspective.

828. To monitor and prevent the problem of abandoned vehicles before completion of the legislative amendments, TD should proactively remind vehicle owners of their responsibility to properly dispose of their vehicles and to notify the Department after their vehicles have been broken up, destroyed or despatched permanently out of Hong Kong, as required under section 20(1) of the RLV Regulations. In respect of vehicles whose licence has remained unrenewed for a certain period (say, the licence has expired for more than a year), the Office considered that TD should remind their owners to renew the licence in a timely manner and to properly dispose of the vehicles.

(III) TD and LandsD Should Strengthen Collaboration in Evidence Collection to Raise Chance of Successful Prosecution for Greater Deterrent Effect

829. At present, the inter-departmental joint clearance operations to remove abandoned vehicles on public roads, public pavements and public parking spaces, as well as LandsD's enforcement actions against vehicles abandoned on other government land, are largely conducted pursuant to the LMPO. Yet, the number of successful prosecutions was minuscule. LandsD has mentioned the difficulty in tracing the identity of the occupier if the vehicle in question had already been de-registered.

830. Since 2007, LandsD has suspended its work on evidence collection and prosecution for abandoned vehicle cases. The Office's view

was that removals short of prosecution could not help solve the problem. For more effective enforcement, LandsD should consider relaunching its work on evidence collection and prosecution; while TD should proactively assist in providing information about the vehicle owners concerned and modify the procedures for or postpone de-registration of vehicles to facilitate LandsD's tracing the identity of the occupiers.

(IV) There Had Been an Enforcement Vacuum

831. Between December 2018 and December 2019, LandsD had twice revised its internal guidelines to instruct District Lands Offices to refer cases of abandoned vehicles on public roads to HKPF and the Highways Department (HyD) for their follow-up actions. However, records show that HKPF had not accepted LandsD's referral arrangement, while LandsD had failed to directly notify HyD of the arrangement. Under such circumstance, no Government department was actually responsible for handling complaints about abandoned vehicles on public roads since December 2018, resulting in an extremely undesirable enforcement vacuum that lasted for as long as two years. The Office pointed out that even if LandsD considered it ineffective and resource-draining for the Department to follow up on cases of abandoned vehicles, it should not have ceased related efforts unilaterally before some other department took over the matter.

832. Fortunately, with HAD's coordination, the departments concerned eventually agreed to collaborate and adopt the mode of inter-departmental joint operations since early 2021 to handle vehicles abandoned on public roads, public pavements, public parking spaces and public transport interchanges. However, the responsibility for handling certain cases e.g. motorcycles abandoned in public rear lanes (i.e. back alleys) is yet to be confirmed, and as a result, the vehicles concerned are yet to be handled. On this matter, the Office considered that LandsD and TD must take the initiative to engage in substantive discussions with other relevant departments (including HyD and HKPF) to strengthen inter-

departmental cooperation with a view to formulating together the procedures for handling the motorcycles abandoned in rear lanes.

833. Furthermore, the Office considered that HAD, as the department that drives the development of district administration, could be more proactive in organising joint clearance operations in a timelier fashion based on the actual situation of individual districts. It should also explain clearly the relevant follow-up actions to complainants and members of the public.

834. The Ombudsman recommended –

(a) TD to closely follow up on and press ahead with the legislative amendments to stipulate clearly that vehicle owners are responsible for proper disposal of their unwanted vehicles and they are liable for non- compliance;

(b) TD, in the process of legislative amendments, to consider adding provisions that allow the Government to recover from the persons concerned the cost incurred in disposing of the abandoned vehicles on their behalf, and/or impose a fine;

(c) TD to proactively remind owners of vehicles of which vehicle licence have already expired for a certain period to renew the vehicle licences and to dispose of their vehicles properly;

(d) LandsD to consider relaunching its work on evidence collection and prosecution in abandoned vehicle cases, including collaborating with TD to check the information of the last owner of vehicle concerned in order to trace the identity of the occupier;

(e) TD to proactively collaborate with LandsD in evidence collection, including considering modifying the procedures of de-registering a vehicle which has remained unlicensed for more than two years

or postponing its de-registration so as to facilitate LandsD's tracing the identity of the occupier;

(f) LandsD and TD to strengthen cooperation with other relevant departments (including HyD and HKPF) with a view to formulating together the procedures for handling the motorcycles abandoned in public rear lanes; and

(g) HAD to proactively monitor the situation of various districts and organise joint clearance operations in a timelier fashion to remove abandoned vehicles in a district. It should also explain clearly its follow-up actions to complainants and members of the public.

Government's response

835. HAD, LandsD and TD accepted The Ombudsman's recommendations and have taken the following follow-up actions.

836. The Government has all along been proactively conducting inter-departmental joint operations to clear abandoned vehicles on public roads and TD is conducting a legislative amendment exercise with a view to improving the vehicle registration and licensing system. The Government has consulted the LegCo Panel on Transport and the preparation of the legislative amendment is now in progress.

Recommendations (a) to (c)

837. The Government will amend the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E) such that, for vehicle unlicensed for two years, the registered owner will commit an offence if he/she takes no action to renew the vehicle licence; cancel the registration after properly disposing of the vehicle; or obtain an exemption from the Commissioner for Transport. The legislative amendment exercise aims to make vehicle owners fulfil their due responsibility to properly dispose of their unlicensed vehicles. TD proposes to set the penalty of the offence at

a level that is sufficiently high, in order to achieve a strong deterrent effect with due consideration of the highly precious land resources in Hong Kong, which can also reflect the cost that the Government may incur in clearing the abandoned vehicles. TD is consulting the Department of Justice on the legislative amendment exercise.

838. TD expects that the legislative amendment proposal would be ready for submission to the Legislative Council by late 2023 or early 2024. Subject to the passage of the relevant legislative amendment and the completion of system enhancements, the new arrangement can be implemented in 2024. TD will step up publicity to convey to the vehicle owners their obligations as well as the requirements and penalties under the new legislation. Meanwhile, TD will send reminders through e-contact means collected from vehicle owners to notify vehicle owners that their vehicle licences have expired and that they should take proper action on their unlicensed vehicles in a timely manner in accordance with the legal requirements.

Recommendation (d)

839. TD and LandsD discussed the relaunching of evidence collection and prosecution action against abandoned vehicle cases at the Steering Committee on District Administration (SCDA) meeting on 28 October 2022. The departments agreed to take suitable cases of abandoned vehicles confiscated in joint clearance operations for evidence collection and consideration of prosecution. TD had selected one case after the meeting and provided LandsD with the records of the last registered owner of the vehicle concerned and other required information. On the advice of the Department of Justice, LandsD instigated prosecution action against the party concerned by invoking LMPO. The defendant pleaded guilty in the hearing conducted in May 2023 and was fined $1,000. LandsD will continue to handle cases of abandoned vehicles on unleased and unallocated Government land excluding public roads and public back alleys and consider instigating prosecutions if sufficient evidence is collected.

Recommendation (e)

840. TD has been actively collaborating with the LandsD in the evidence collection works, responding to the requests from LandsD for the Certificate of Particulars of Motor Vehicle of the abandoned vehicles with information of the registered owners for individual cases, so as to facilitate LandsD to trace the identity of the owner suspected of abandoning their vehicles. Besides, TD has also provided LandsD with the relevant information as required, such as onsite checking to identify the chassis number of the abandoned vehicles; the particulars of vehicle owners kept in the register of vehicles; photo records and locations of the abandoned vehicles; copy of the notice posted on the abandoned vehicles; and witness statements of TD's officers, etc., in order to facilitate LandsD's prosecution action on the abandoned vehicle cases.

Recommendation (f)

841. To strengthen departmental collaboration and jointly formulate procedures for handling abandoned motorcycles in public rear lanes (i.e. back alleys), the relevant departments (including HAD, LandsD, TD, HyD and HKPF) decided in the "District Matters Co-ordination Task Force" meeting in August 2022 to extend the scope of the inter-departmental joint operations on abandoned vehicles from public roads to public rear lanes (i.e. back alleys). The departments concerned had reached a consensus at the aforesaid SCDA meeting. HAD has promulgated the "Guidelines for conducting joint operations for removal of abandoned vehicles at public roads and public back alleys" in March 2023 for departments to follow on the procedures for handling abandoned vehicles.

842. TD will continue to proactively participate in the inter-departmental joint operations to handle the abandoned vehicles and press ahead with the legislative amendment, so as to address the problem of abandoned vehicles on government land.

Recommendation (g)

843. District Offices (DOs) would continue to monitor the situation of abandoned vehicles from time to time, and coordinate with departments joint operations on a need basis for removal of abandoned vehicles in an expeditious manner. DOs would also explain clearly its follow-up actions to complainants and members of the public as and when necessary. HAD has also reminded DOs to make good use of existing platforms, including District Management Committees comprised of District Officers and other government departments, to discuss and prioritise the handling of abandoned vehicle issues within their districts. In cases where the problem cannot be resolved at district level, DOs could escalate the case to HAD HQ or other higher-level platforms for deliberation as needed.

844. Regarding abandoned vehicles at public back alleys, as mentioned above, relevant departments reached consensus in August 2022 to extend the joint clearance operations from public roads to public back alleys. DOs have continued to provide assistance in coordinating the said joint operations. From August 2022 to June 2023, DOs have coordinated relevant departments to remove around 530 abandoned vehicles.

Leisure and Cultural Services Department

Case No. DI/460 – E-book Lending Service of Public Libraries under Leisure and Cultural Services Department

Background

845. In 2001, the Hong Kong Public Libraries under the Leisure and Cultural Services Department (LCSD) launched the first e-book collection. Currently, the number of e-book collections offered by public libraries has increased to 14, providing more than 490,000 e-books (including extra copies). Subsequent to the outbreak of the COVID-19 epidemic in 2020, LCSD had temporarily closed its public libraries at intervals and adjusted their services (such as shortening opening hours and limiting number of library visitors). Public demand for e-books of public libraries surged. With some popular e-book titles having a long waiting list, there could be months-long or even year-long wait for patrons.

846. Advancement in technology has given impetus to increased popularity in e-books publishing and reading. The Office of The Ombudsman (the Office) considers that LCSD should attach greater importance to its work relating to e-book collections and continue to enhance the e-book lending service of public libraries.

847. Since the commencement of the Office's preliminary inquiry, LCSD has been working on improving the e-book lending service with reference to the Office's views and observations. LCSD's proactive approach in this regard was considered commendable. Nevertheless, the Office's findings of this direct investigation showed that LCSD should reconsider the loan periods of e-books and make more efforts to learn about public demand so as to ensure optimal utilisation of resources. LCSD should also make good use of the advantages of e-books to enhance the services of public libraries and promote a reading culture among the public.

The Ombudsman's observations

(I) Insufficient Grounds for Shorter Loan Periods of Some E-books in Comparison to Printed Books

848. LCSD considered that it was easier to read, borrow and return e-books. Hence, it had set a loan period of five or seven days for most e-books, which was shorter than the 14-day loan period for printed books, to avoid affecting circulation of e-book loan items. While the Office understood that LCSD, when deciding the loan periods, took into consideration various factors such as the scales of e-book collections, usage rate, the function of and quota for online reading and the impact on waiting time for requested items, the Office considered that LCSD should also take into account the length of e-books' content and assess how much time patrons would need for reading them. Otherwise, it might discourage patrons from borrowing e-books, which would be against the principle of promoting a reading culture advocated by LCSD.

849. Having perused the information the Office provided about the loan periods offered by libraries in other cities (ranging from 14 to 21 days), LCSD slightly extended the loan period of Chinese e-books from 5 days to 7 days and maintained the loan period of English e-books at 7 days. The Office recommended that LCSD continue to review whether the loan periods of e-books should be further extended to allow patrons reasonable time for reading the borrowed items.

(II) To Systemically Collect, Analyse and Record Information about E-book Lending and Waiting Time

850. As LCSD's e-book lending service is provided through the platform of service providers, LCSD can only grasp the usage of e-book service of the Hong Kong Public Libraries with reference to the data provided by the service providers. Nonetheless, the types of data so provided would be limited. For example, the service providers could not provide the number of patrons on the waiting list and the waiting time for

reserved items. LCSD, on its part, did not make any steps to collect information and keep records about the highest number of reservation and the waiting time for popular e-books. Without a comprehensive set of data, it would be difficult for LCSD to accurately understand the usage of the e-book collections and individual e-book titles. Notwithstanding the fact that LCSD regularly reviewed the usage of e-books and understood the reservation situation through information about the reservation counts, the Office considered that the waiting time and the number of reservation of an e-book at a specific period of time could hardly be reflected merely by the accumulative reservation counts. Nevertheless, the Office agreed that it might not be cost effective for LCSD to collect and maintain the number of patrons on the waiting list and the waiting time for tens of thousands of e-books on its own. As such, LCSD could consider other approaches, such as sorting out and recording the reservation data of some particularly popular e-books. On the other hand, LCSD did not maintain data and records on the e-books replaced due to low usage within the subscription period of the relevant e-book collection, showing that it did not take such data and records as important information.

851. The Office considered that LCSD should strengthen the current mechanism for regularly collecting, analysing and recording information about the usage of e-books. By doing so, LCSD could better understand patrons' demand for e-books and acquire or subscribe suitable types and quantities of e-books to cater for public demand and shorten the waiting time for popular e-books.

(III) Inconsistent Approving Procedure for Previous Acquisition of E-books

852. All printed books to be acquired for public libraries under LCSD must be approved in the Collection Development Meeting. Nevertheless, prior to July 2021, LCSD had not followed this procedure when selecting titles for some of the e-book collections, resulting in inconsistency in the practice of acquisition of books. After the Office's preliminary inquiry had commenced, LCSD required that all e-book titles shortlisted for

acquisition be submitted to the Collection Development Meeting for approval.

(IV) To Review Acquisition of Extra Copies and New Editions

853. While it was LCSD's usual practice to acquire multiple copies of printed books, nearly all e-books of public libraries had only one copy. Unlike the public libraries in other cities where popular e-books have dozens of extra copies, LCSD would only acquire one copy for popular e-books, which was unsatisfactory. Also, in the Office's opinion, LCSD could not simply rely on the online reading quota to tackle the problem of long waiting time for e-books, and it would be necessary for LCSD to implement other effective measures at the same time. LCSD took the Office's advice in the course of this direct investigation and acquired more than 11,000 extra copies and new editions of some e-books. The circulation of some e-books with more extra copies or new editions acquired seemed to have slightly improved. Nonetheless, the Office considered it would be unwise for LCSD to acquire a large number of extra copies simply to shorten the waiting time for certain items. Therefore, the Office recommended that LCSD regularly examine the data on usage and waiting time for popular e-books and where appropriate, acquire reasonable quantity of extra copies or new editions of titles involving a longer waiting time.

(V) Ineffective Readers Opinion Survey on E-booking Lending Service

854. In readers opinion survey, LCSD combined the 14 e-book collections and more than 80 e-Databases together as "e-books/e-databases" and asked patrons to rate their levels of satisfaction. Neither did LCSD's survey focus on the e-book lending service, nor did it specifically set the quantity, types, waiting time and user interface of e-books as individual items to allow patrons to rate their levels of satisfaction and give comments separately.

855. In the Office's view, LCSD's survey could not gauge patrons' opinion on the e-book lending service accurately. Hence, the surveys would be ineffective in assisting LCSD to analyse the situation and formulate appropriate measures to enhance or publicise such service.

(VI) To Strengthen Promotion of E-books

856. The Office recommended that LCSD consider strengthening the promotion of e-book collections of the Hong Kong Public Libraries on its website and social media platforms. For instance, LCSD might inform the public of the availability of e-book collections with e-books in various languages, announce the top ten most-read e-books in each collection, publicise the new editions of popular e-books acquired as well as give advice on e-book devices that could be compatible with the e-books lending services of the Hong Kong Public Libraries.

857. The Ombudsman recommended LCSD to –

(a) continue to review the situation and consider whether the loan periods of e-books should be extended to allow patrons reasonable time for reading the items borrowed;

(b) strengthen the current mechanism for reviewing regularly the usage and lending service of e-book collections and their e-book titles (such as the number of patrons on the waiting lists and estimated waiting time for the reserved items) in a systematic manner;

(c) continue to monitor the acquisition of e-books in public libraries to ensure that all e-books suggested for acquisition must go through the Collection Development Meeting for approval;

(d) regularly evaluate the arrangement for acquisition of e-books and consider acquiring more extra copies and/or new editions of popular e-books taking into account their usage and waiting time;

(e) set specific questions on e-book service of public libraries in future readers opinion surveys to obtain substantive comments from patrons about e-book service; and

(f) make good use of the websites and social media accounts of the Hong Kong Public Libraries to promote e-book titles, for instance, providing relevant information on the availability of e-books in other foreign languages, top ten most-read e-books, new editions of popular e-books and compatible e-book devices.

Government's response

858. LCSD accepted The Ombudsman's recommendations and has taken or will take the following follow-up actions.

Recommendation (a)

859. After careful consideration of the growth of the Hong Kong Public Libraries' e-book collections, usage and the impact of extending the loan period of e-books on waiting time for requested items, LCSD has planned to extend the loan period of English and Chinese e-books to 14 days by Q4 2023 and Q2 2024 respectively, which is the same as the loan period for printed books.

Recommendation (b)

860. To better monitor the reservation situation of popular e-books, LCSD has adopted a new mechanism for systematic sorting and recording the waiting time and number of reservation of popular e-books, instead of relying solely on accumulative reservation counts. For example, LCSD has identified 45 popular titles from SUEP and Joy Read Club e-book collections during the period from April to June 2023 and acquired additional 269 copies for shortening the waiting time of these titles from six to seven months to less than two to three weeks. Besides, LCSD has put in place a regular practice of maintaining data and records on those e-

books that were replaced due to low usage within the subscription period of the Joy Read Club e-book collection. LCSD will continue to apply the same mechanism and practice in other applicable e-book collections as a regular measure. LCSD will continue to review relevant measures in response to public demand for e-books.

Recommendation (c)

861. Since July 2021, LCSD has strictly adhered to the procedure of requiring all e-book titles shortlisted for acquisition be submitted to the Collection Development Meeting for approval. LCSD will continue this practice with a view to ensuring consistency in the approving procedure for the acquisition of e-books.

Recommendation (d)

862. As explained in the response to Recommendation (b) above, LCSD has proactively conducted analyses on the reservation situation of popular e-books and arranged to acquire additional copies to address the demand. For some popular e-book titles, LCSD has arranged to procure almost 50 additional copies for reducing the waiting time from six to seven months to two to three weeks. LCSD will continue this practice on different e-book collections and review relevant measures to address public demand for popular e-books.

Recommendation (e)

863. To accurately gauge patrons' opinion on e-book lending service, LCSD added the e-book category in annual Reader Opinion Survey held in October 2023, and introduced concrete and specific questions for rating patrons' levels of satisfaction in different aspects of e-books, including patrons' needs, variety, quantity, currency and timeliness, borrowing service, reservation service and user-interface. LCSD will continue to review relevant measures to better respond to public expectations for e-book lending services.

Recommendation (f)

864. Through the library website and the Hong Kong Public Libraries' stall at the Hong Kong Book Fair 2023, LCSD has publicised the availability of foreign language e-books in some e-book databases, such as ProQuest Ebook Central, highlighting its foreign language e-book collection. Furthermore, selected classic works in foreign language such as those written by Victor Hugo will be further publicised through the library website and social media accounts of the Hong Kong Public Libraries. Starting from Q4 2023, LCSD is going to make information on top ten most-read e-books, new editions of popular e-books and compatible e-book devices available on the website and social media accounts of the Hong Kong Public Libraries. LCSD will continue to review relevant measures and strengthen the promotion of e-book collections.

Marine Department and Transport Department

Case No. DI/453 – Problem of Alleged Illegal Operation of Kaito Ferry Service

Background

865. In recent years, excursions to the outlying islands and remote local spots have become popular pastimes of the public, and kaito is the major mode of marine transport for passengers commuting to and from remote coastal destinations. Kaito service operators are required to obtain kaito ferry service licences from the Transport Department (TD). Nevertheless, the media has reported on the problem of unlicensed kaito from time to time. The site visits of the Office of The Ombudsman (the Office) also revealed the prevalence of illegal kaito service operated by local vessels.

866. The Marine Department (MD) is responsible for the licensing of local vessels and ensuring marine safety, while TD is empowered by relevant legislation to regulate licensed kaito ferry services. Given the thriving demand for kaito service, it is incumbent upon the authorities to step up monitoring this form of marine transport and curbing illegal carriage of passengers, so as to ensure public safety.

867. After examining the authorities' enforcement against illegal operation of kaito service, the Office has the following observations and recommendations.

The Ombudsman's observations

(I) MD's Patrols Ineffective to Deter Illegal Carriage of Passengers by Local Vessels

Frequency of Special Patrols Relatively Low

868. Between 2017 and 2020, the average number of special operation conducted by MD targeting illegal carriage of passengers by local vessels was 45.5 per year, or less than once per week across the territory. They were mostly conducted on weekends. MD's decoy operations to collect evidence during the same period were even more sporadic at less than once per year. The Office considered the frequency of MD's patrols against illegal carriage of passengers too low in the past.

869. The Office was pleased to note that MD significantly intensified its patrols and decoy operations against illegal carriage of passengers in the second half of 2021. With the prevalence of illegal kaito service in recent years, MD needs to further increase the frequency of special patrols and decoy operations (especially at the waterfronts and piers where more kaito routes or popular recreation spots are located), as part of its measures to combat illegal carriage of passengers. Not only will such action lead to better regulatory results, it can also clearly convey to the public MD's determination of enforcement against illegal carriage of passengers by local vessels.

Inspections and Investigation Work of Vessels Need Improvement

870. The Office's investigation revealed that in a case even when a vessel inspected was suspected of violating marine legislation and the persons on the vessel only gave simple explanations, MD officers did not follow up or make further enquiries to verify their justifications. MD officers should improve the investigation process and stringently enforce the statutory provisions and MD's licensing requirements so as to enhance the effectiveness of patrols and deter illegal carriage of passengers.

871. Admittedly, upon detecting a suspected breach, whether a patrol officer should accept the justification given by the persons concerned depends on the actual circumstances on board and the officer's own judgement. The Office suggested MD to consolidate its experience of

patrols, decoy operations and prosecutions, and draw up guidelines on inspection of vessels for detecting common irregularities found in the carriage of passengers associated with kaito service for reference and compliance by patrol officers. It should also remind the operators and the public to adhere to the relevant safety standards.

(II) MD Failing to Clarify Meaning of Using Class IV Vessel Exclusively "for Pleasure Purposes by Owner/Charterer"

872. MD asserted that Class IV vessels are not allowed to be used for the provision of kaito ferry service. Nevertheless, based on media reports and the observation of site visits of the Office, Class IV open cruisers are often used for unauthorised kaito service. The situation was also confirmed by the outcomes of MD's decoy operations in the second half of 2021. The potential risks to public safety are of concern.

873. Pursuant to marine legislation, a Class IV vessel shall only be used by the owner or the person to whom it is let exclusively for pleasure purposes. However, the Office noted that some operators used Class IV pleasure vessels for unauthorised kaito service. They used the pretext of operating sightseeing tours as a cover when in fact they had been providing point-to-point passenger service and charging a fare per head. In the two inspection cases observed during site visits of the Office, the coxswains of the pleasure vessels claimed the purpose of their journey to be "sightseeing" and "rock viewing" respectively. In both cases, MD officers did not query whether there was any breach of the provision of using a vessel "exclusively for pleasure purposes" by the owner or charterer. Meanwhile, the law stipulates that a Class IV vessel should only be used to carry the owner or charterer of the vessel and their relatives and friends for pleasure purposes. If a charterer carries his/her customers (who are not the company's members/employees or their relatives and friends) for reward, it is unclear whether such activities comply with the statutory provision. The general public may not be entirely sure on the meaning of pleasure purposes as permitted for Class IV vessels. There is also

ambiguity regarding whether such passengers are covered by the third party risks insurance of the vessels.

874. At present, the meaning of using Class IV vessels exclusively "for private pleasure purposes" is not defined by the laws. The Office considered that MD had the responsibility to explain clearly how to comprehend and comply with the statutory provision of "using exclusively for pleasure purposes" by owner or charterer. In particular, MD should provide owners, agents and coxswains of Class IV vessels with examples to illustrate the carriage of passengers permitted or not permitted under the legislation. This will not only facilitate the compliance by owners, agents and coxswains, but also provide frontline MD officers with further guidelines for more effective enforcement.

(III) TD Lacking Effective Measures to Assist the Public to Identify Unlicensed or Illegal Kaito Service

875. There is no definition of "kaito" or "kaito service" under the legislation. To tackle the existing problem of illegal kaito service, TD should provide the public with clear and explicit information about which modes of marine transport service are regarded as kaito service requiring a TD licence, and in what circumstances kaito service or passenger service is regarded as illegal. The information would help local vessel owners and prospective marine transport operators better understand the laws and the authorities' requirements, so as to avoid illegal carriage of passengers. More importantly, it will assist the public to distinguish between legal and illegal kaito or passenger service and urge them not to opt for illegal service for their own safety.

876. In the past, TD only required kaito service licensees to display the service details conspicuously on the vessels, but did not require them to affix any prominent label on the hulls of vessels. As such, the public could hardly recognise from the exterior look whether a vessel was the one specified on the kaito service licence. Following the launch of this direct investigation, TD has listed on its website the vessel numbers of vessels

approved under respective licenses. Meanwhile, all kaito service licensees are required to display a label relatively large in size in the format prescribed by TD on the specified vessels conspicuously. The Office believes that with adequate publicity, the vessel number and the designated label will facilitate the public's easy identification of kaito ferries approved by the Government.

(IV) Overlooking Problem of Unlicensed Kaito Service

877. While TD's contractors would conduct surveys at the berthing points of licensed kaito routes, vessels without a kaito service licence are not under their surveillance. Based on the existing surveillance, TD can hardly come to grips with the operation of unlicensed kaito service and the severity of the problem.

878. The Office was of the view that TD, which is responsible for granting kaito service licences and monitoring the service of licensed operators, should take the initiative to understand whether there are vessels providing unlicensed kaito service at various locations or routes and how such service is operated. If there is a serious problem of unlicensed kaito service at certain locations or routes, it indicates a high demand for public transport and that the levels of existing service approved by the Government are insufficient. When processing applications for kaito ferry service licence, TD can assess the supply and demand of the proposed kaito routes based on its survey results. If a licensed operator is found to have illegally used unspecified vessels to provide the relevant kaito service, TD should consider whether the licensee has in fact maintained a proper and efficient ferry service. Accordingly, TD should decide whether to revoke or renew the licence to ensure public safety.

879. Besides, the Hong Kong Police Force (HKPF) stated that while its major duties are to maintain law and order and combat crimes at sea, the routine enforcement against illegal operation of kaito service is led by MD. Nevertheless, in monitoring the carriage of passengers by local vessels, MD will not focus on whether the vessels are granted with any

kaito ferry service licences. In other words, no department is currently dedicated to monitoring the issue of unlicensed kaito service.

880. TD, as the licensing authority of ferry service (including kaito service), should have monitored the situation of unlicensed kaito service. Upon detecting suspected illegal operation of kaito service, TD should make referrals promptly to HKPF to prevent the irregularities from persisting. On the other hand, unlicensed kaito service often involves other irregularities posing a potential threat to passenger safety. MD, when carrying out regular patrols, should keep watch for any vessels suspectedly engaging in unlicensed kaito service, and promptly refer those suspected cases to TD and HKPF for further action.

(V) Need to Step up Publicity and Education to Raise Public Awareness of Safety in Using Kaito Service

881. In choosing a kaito service, members of the public generally only consider the fares, route and timetable of the service. They may be unaware that kaito routes should obtain prior approval from TD as well as satisfy the conditions and restrictions on vessel operation and carriage of passengers prescribed by MD, and may overlook the safety of the journey. TD and MD, therefore, should step up publicity on kaito service provided by local vessels. Moreover, MD should raise public awareness of safety in using kaito service, drawing their attention to which classes of vessels are permitted to operate kaito service, the location of life jackets on board and the proper way to don a life jacket.

882. The Ombudsman recommended –

<u>For enhancing deterrence against illegal carriage of passengers</u>

(a) MD to conduct more frequent patrols and decoy operations targeting illegal carriage of passengers (especially at the waterfronts and piers where more kaito routes or popular recreation spots are located);

(b) MD to draw up guidelines for frontline patrol officers on inspection of vessels for detecting the common irregularities found in carriage of passengers;

(c) when carrying out regular patrols, MD to keep watch for any vessels suspectedly engaging in unlicensed kaito service and promptly refer those cases to TD and HKPF for further action;

(d) MD to step up enforcement and draw up clear guidelines on tackling cases of breach of the statutory provisions for carriage of passengers and safety standards for life-saving appliances on board; and to remind the operators and the public to adhere to the requirements;

<u>For strengthening dissemination of information to assist the public identification of illegal carriage of passengers on vessel</u>

(e) MD to explain clearly to the public how to comprehend and comply with the requirement that a vessel is to be used "exclusively for pleasure purposes" by its owner or charterer as specified in section 6 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation, with specific examples to illustrate the carriage of passengers permitted or not permitted under the legislation;

(f) TD to provide public with information about the elements of marine transport that constitute kaito service requiring such a licence from TD;

(g) TD to step up publicity about the label of licensed kaito ferries and the operation of licensed kaito routes with specified vessels so as to assist the public's easy identification of kaito ferries approved by the Government;

For proactively addressing the problem of unlicensed kaito service

(h) TD to assess the supply and demand of kaito service, evaluate the problem of illegal kaito service (including operation of kaito routes with vessels not specified on the licences), and review the standard of the services of licensed kaito routes, so as to alleviate the situation of insufficient supply;

(i) TD to implement measures for monitoring illegal kaito service to ensure prompt referral of suspected violations of the Ferry Services Ordinance to HKPF for further action; and

For further protection of vessel passengers

(j) MD to step up publicity to raise awareness of passenger safety on chartered pleasure vessels and kaito ferries, including paying attention to which classes of vessels are permitted for kaito service, the location of life jackets on board and the proper way to don a life jacket.

Government's response

883. MD and TD accepted The Ombudsman's recommendations and has taken the following follow-up actions.

Recommendation (a)

884. MD has increased inspections and decoy operations against illegal carriage of passengers on vessels. In 2021, 2022 and 2023 (January to June), MD conducted 78, 136 and 58 inspections, and six, nine and five decoy operations respectively.

Recommendation (b)

885. In order to facilitate frontline colleagues to perform relevant duties, MD has prepared new working guidelines for detecting illegal carriage of passengers on vessels. The new guidelines have been implemented since July 2023.

Recommendation (c)

886. MD has promptly referred cases of suspected vessels engaged in kaito services without a licence to TD and HKPF for follow-up. MD has referred three, 18 and 23 cases to TD and HKPF for follow-up in 2021, 2022 and 2023 (January to June) respectively.

Recommendation (d)

887. To enhance public awareness of safety and ensure that Class IV vessels approved to be let for hire or reward will properly display lifejacket donning instructions and QR codes on board, as well as clearly mark storage location of lifejackets, MD has imposed two new licence conditions in the Operating Licences of these vessels since December 2022. Relevant vessels should display a lifejacket user guides sticker at each of the lifejacket storage location, and QR Code posters for passengers to check and confirm that this vessel is permitted to be let for hire or reward.

888. In addition, MD has produced publicity and educational pamphlets to remind the industry and the public of the requirements and regulations on life-saving appliances, their storage locations and the need to wear life jackets as stipulated in relevant legislation. The pamphlets have been distributed to the public (including the industry) free of charge since May 2023.

Recommendation (e)

889. MD has produced pamphlets to help the public understand the requirement that a vessel is to be "used exclusively for pleasure purpose" as stipulated in the law. The pamphlets have been distributed to the public free of charge since August 2023.

Recommendations (f) and (g)

890. Regarding the Office's recommendations to TD to step up publicity to enhance the public's understanding of kaito ferry services, actions taken by TD are listed below –

(a) in order to assist members of the public in identifying kaito ferry services that are approved by TD, apart from continuing to require the operators to display the service details and the A2-size labels provided by TD at prominent locations of each kaito vessel, TD has also printed a flag (size: 96 cm width x 64 cm height) with "Approved Kaito Service" in October 2022 for the kaito ferry operators to hang on their vessels for public's easy identification;

(b) TD has also enhanced publicity and education to the public on the need to use approved kaito ferry services, including putting up posters at major public piers served by kaito ferry routes and providing more detailed information on kaito ferry services on the TD's website, including how to check the A2-size labels and flags provided by TD on the vessels;

(c) TD has provided information on the features and elements of maritime transport that require a kaito ferry service licence approved by TD on its website. Members of the public and persons interested in applying for the relevant licence can also obtain the link of the webpage concerned through the QR code on the posters and leaflets produced by the Government. In addition, to facilitate those who wish to apply for a kaito ferry service

licence, apart from the application form available on TD's website, TD has also introduced an online application platform for kaito ferry service licence with effect from 1 November 2022; and

(d) to enhance publicity, MD, TD and HKPF have produced Announcements in the Public Interest, which have been launched on TV, radio and social media platforms from 26 August 2023, to remind the public of the need to use approved marine services. In addition, TD will continue to conduct joint leaflet distribution campaigns with MD and the HKPF to provide information on kaito ferry services and promote marine safety from time to time. For example, further to the joint campaign in August 2022, TD, MD and the HKPF distributed leaflets at the Sai Kung pier area on 5 February 2023 again.

Recommendation (h)

891. To encourage interested parties to submit applications for operating kaito ferry services, TD publishes gazettes on a regular basis and has set up an online application platform to facilitate the submission of applications. TD will also invite operators to consider applying for the operation of kaito ferry routes if there is an increase in passenger demand at certain locations. For example, in early 2022, TD was aware of the increasing demand from travellers to Tai Mei Tuk and took the initiative to invite the operator to operate a kaito ferry service between Tai Shui Hang and Ma Liu Shui/Tai Mei Tuk, which commenced operation on 9 July 2022.

892. In addition, in view of the development and demand in Sai Kung and Tseung Kwan O, TD intends to introduce two new kaito ferry routes, namely the "Sai Kung – High Island - Kau Sai Tsuen" and "Tseung Kwan O (South) - Sai Wan Ho" routes, and has already invited interested parties to submit Expressions of Interest (EOI) in March 2023. TD has received submissions from interested kaito ferry operators of the above two new

kaito ferry routes, and is evaluating and vetting the submissions according to the established mechanism.

Recommendation (i)

893. To assist law enforcement agencies in combating illegal carriage of passengers by sea, TD will continue to record information on suspected illegal operation of maritime transport services through the biennial public pier utilization surveys and other individual surveys conducted on a need basis, and provide the information to HKPF and MD for follow-up action, with a view to stepping up efforts in combating illegal carriage of passengers and vessels in breach of marine legislation. Depending on the actual situation and effectiveness, TD will consider increasing the number of surveys to assist and facilitate the operations of law enforcement agencies.

Recommendation (j)

894. The relevant publicity work of MD is summarised as follows –

(a) July 2021: MD and TD jointly produced the pamphlet "Do you want a secure or risky vessel ride" to convey to the public information about kaito ferry services approved by TD, and to remind the public of the risks of hiring vessels not approved by TD or pleasure vessels not approved to be let for hire or reward by MD;

(b) January 2022: MD uploaded a list of local pleasure vessels approved by the Director of Marine for hire or reward onto the website of MD. The list is updated on continuous basis for public reference;

(c) January 2022: MD produced a QR code and printed it on the "Notes for Local Pleasure Vessels (Class IV Vessels)" pamphlets and posters which are displayed in popular marine tourist areas.

Passengers only need to scan the QR code using their mobile phones to check instantly whether the relevant local pleasure vessel has been approved by MD for hiring or carrying passengers for reward;

(d) from June to August 2022: MD, TD and HKPF jointly produced a government publicity video and a radio publicity tape, reminding the public to confirm that the vessel has been approved by MD for hiring or carrying passengers for reward before using it, and to verify that the relevant service has been approved by TD before taking a kaito ferry, so as to protect their safety. The relevant promotional video has been broadcast on television, at different government venues and shared on social media; and

(e) other ongoing measures –

i. MD also requires local pleasure vessels that have been approved by MD to be let for hire or reward, to display a QR code where it can best be seen in the vessel. Passengers only need to scan the QR code using their mobile phones to check instantly whether the local pleasure vessel has received MD's approval for hiring or carrying passengers for reward (please also refer to recommendation (d));

ii. for the publicity work in relation to the recommendation (d) above, MD has printed additional stickers for the storage location of common lifejackets and donning instruction posters, and distributed them free of charge to vessel owners; and

iii. the publicity work of recommendation (e) has also been implemented since August 2023.