

**For discussion  
on 10 April 2007**

**LegCo Panel on Food Safety and Environmental Hygiene**

**Improvements to the Procedures and Practices of the  
Food and Environmental Hygiene Department  
for Handling Cases for Prosecution**

**PURPOSE**

This paper briefs Members on the improvement measures adopted by the Food and Environmental Hygiene Department (FEHD) for monitoring cases with statutory time limit for prosecution and the follow-up actions to be taken in response to the Direct Investigation conducted by The Ombudsman.

**BACKGROUND**

2. The FEHD is responsible for enforcing a number of ordinances and regulations concerning food safety and environmental hygiene. On average, FEHD handles 17 000 summons cases per year, apart from 11 000 arrest cases and 24 000 anti-litter fixed penalty tickets issued. As required by the Magistrates Ordinance (Cap. 227), laying of information to court in respect of an offence under these FEHD legislations shall be made within six months from the time when the matter of such information arose. This statutory six-month limit is known as the “time-bar”.

3. In the course of handling some complaints, The Ombudsman noted that FEHD had been debarred from prosecuting offenders because the “time-bar” had expired. On 14 September 2006, The Ombudsman announced her decision to initiate a Direct Investigation on summons cases with statutory time limit for prosecution under section 7(1)(a)(ii) of The Ombudsman Ordinance (Cap. 397). The ambit of her investigation is to examine:

- (a) procedures and practices for processing cases with statutory time limit for prosecution (but not the decisions to prosecute or note); and

- (b) system, if any, for monitoring progress of cases for prosecution to ensure timely action.

## **THE DIRECT INVESTIGATION REPORT**

4. On 22 March 2007, The Ombudsman released the Direct Investigation Report, in which she noted that over the past three years from April 2003 to March 2006, FEHD had handled over 50 000 summons cases of prosecution. Among them, 33 cases, or 0.07% of the total, could not proceed. She also made a number of recommendations to the FEHD.

## **IMPLEMENTATION OF RECOMMENDATIONS BY THE OMBUDSMAN AND OTHER IMPROVEMENT MEASURES TAKEN**

5. FEHD has considered and accepted all the recommendations made by The Ombudsman (the full list is at Annex) and has already implemented many of them. The Director of Food and Environmental Hygiene will report to the Secretary for Health, Welfare and Food on the progress of the actions taken (including disciplinary proceedings). In fact, prior to the release of the Direct Investigation Report, FEHD had taken the initiative to conduct a review on the prosecution cases concerned with a view to improving the relevant established procedures and practices. Major improvement measures to be implemented and those which have already been implemented are given below.

### **Strengthened Internal Communication and Case Monitoring**

6. To supervise the processing and monitoring of prosecution cases, FEHD has already put in place a manual system for tracking the development of prosecution cases by the District Offices, Prosecution Sections and Headquarters. FEHD will further enhance the existing manual monitoring mechanism through a computerized platform to be ready in 3 months for on-line updating and sharing of summons details, including key milestones dates, case progress and action parties. With this system, case progress will be tracked more efficiently and in a timely manner, and performance of action officers will be monitored effectively. FEHD has also planned to develop in the longer-term a comprehensive on-line information-cum-tracking system for maintaining summons data and monitoring the progress of laying of information to the court.

7. FEHD has also reviewed the working procedures for handling prosecution cases and the following improvement measures have been implemented:

- (a) withdrawal of prosecution and “time-barred” cases are personally reviewed and handled by a directorate staff, including the replies to complainants of “time-barred” cases; and
- (b) for cases still within the “time-bar” but which cannot be proceeded due to reasons such as insufficient evidence or complainant’s refusal to testify in court at a later stage, the approval level has been escalated to the Superintendent/Senior Superintendent level.

### **Enhanced Training for and Reminders to Staff**

8. The subject of “time-bar” has been added to the training course for new recruits as well as refresher courses for serving health inspectors to deepen their knowledge in this regard.

9. The existing FEHD guidelines and procedures on handling of prosecution cases have been reviewed and refined. Staff at all levels have been reminded to strictly adhere to such guidelines and procedures.

### **Improved Liaison with Other Departments**

10. FEHD has strengthened communication with the Government Laboratory (GL) to ensure close monitoring of the progress of food tests for prosecution cases. Weekly reminders will be sent to the GL for outstanding cases with time-bar expiring in three months’ time. FEHD will continue to review with the Judiciary on a regular basis the adequacy of the court hearing quota having regard to the actual number of prosecution cases taken out by the Department. Ad hoc court sessions may also be arranged where necessary to clear outstanding cases.

### **Cases Involving Unauthorised Alteration to Approved Layout of Licensed Premises**

11. As for cases involving unauthorised alteration to approved layout of licensed premises, FEHD has already reminded its staff how to calculate “time-bar” correctly. Action is being taken by FEHD to propose amendment to the relevant legislation to remove the deficiency.

## **DISCIPLINARY INVESTIGATIONS**

12. On the criticisms relating to departmental staff as made in the Direct Investigation Report, FEHD has already commenced in-depth investigations into all the involved cases. Disciplinary actions would be taken in accordance with the established procedures and the Civil Service

Regulations as appropriate. For those FEHD staff who have been implicated into the alleged covering-up cases as reported by The Ombudsman, they have been transferred out of their existing posts pending the outcome of the investigation.

**Health, Welfare and Food Bureau**  
**Food and Environmental Hygiene Department**  
**April 2007**

## **Recommendations Made by The Ombudsman**

### **District Operations**

- (1) to review the coordination between the District operations and the Prosecution Section to ensure close and direct liaison;
- (2) to review despatch procedures;
- (3) to instil among Senior Health Inspectors (District) the concept of good case management; and
- (4) to review the procedures for handling food samples, particularly those subject to easy deterioration to ensure timely analysis.

### **Prosecution Section**

- (5) to review the procedures for checking evidence and handling cases for prosecution in the light of one of the cases quoted;
- (6) to impress upon staff that reliance on the clerical staff should not absolve the Senior Health Inspectors (Prosecution) from their responsibility;
- (7) to remind staff of the importance to be conscious of the time limit;
- (8) to remind staff to take prompt action; and
- (9) to assess regularly the Judiciary's quota for different prosecution units and to review its adequacy where appropriate.

### **Extension of Time Limit**

- (10) to consider amending the law for prosecuting offences in relation to unauthorised alteration.

### **Withdrawal of Prosecution**

- (11) to devise a system for involving directorate staff for approval to withdraw cases for prosecution;
- (12) to involve directorate staff for scrutinising replies to complainants on withdrawal of prosecution; and
- (13) to submit regular returns on prosecution cases which did not proceed (for whatever reason) for scrutiny by the directorate staff.

### **Communication with the Public**

- (14) to remind staff to attend to accuracy as well as transparency in communicating with the public;
- (15) to disclose full and frank information to the public, wherever appropriate; and
- (16) to warn staff against covering up mistakes by giving knowingly false information.

### **Classification of Cases**

- (17) to set up guidelines on classifying cases dropped.

### **Co-ordination with Government Laboratory**

- (18) alert the Government Laboratory to urgent cases and check progress to keep abreast of the time-bar date.

### **Monitoring by Headquarters**

- (19) to submit regular returns on completed cases to headquarters for scrutiny.

### **Legal Advice**

- (20) to review the current arrangement for disseminating important information (e.g. legal advice) to staff concerned; and
- (21) to review the procedures for seeking timely legal advice.

### **Operational Manual**

- (22) to consolidate and incorporate the supplementary instructions into the Operational Manual.