

**THE GOVERNMENT MINUTE**  
**IN RESPONSE TO**

**THE ANNUAL REPORT OF  
THE OMBUDSMAN 2024**

**Government Secretariat**  
**18 December 2024**

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# **THE GOVERNMENT MINUTE IN RESPONSE TO THE ANNUAL REPORT OF THE OMBUDSMAN 2024**

## **Introduction**

The Chief Secretary for Administration presented the Annual Report of The Ombudsman 2024 (the Annual Report) to the Legislative Council at its sitting on 3 July 2024. 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 Introduction* 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 ten direct investigation and 95 full investigation cases in the Annual Report. This Government Minute responds to the ten direct investigation and 37 full investigation cases for which recommendations were made by The Ombudsman. The vast majority of the 186 recommendations made by The Ombudsman were accepted and have been or are being implemented by the government departments and public bodies concerned.

2. The Ombudsman highlighted that the number of incoming complaints in 2023/24 was the lowest in the recent five years. In particular, there was a big drop in pandemic-related complaints: from 766 in the previous year to 33 in 2023/24. The Government will continue to foster a result-oriented governance, address pressing community concerns with dedication.

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

**Administration Wing under the Chief Secretary for Administration's  
Office, 1823 under then Efficiency Office and Home Affairs  
Department**

**Case No. 2023/0135A (Home Affairs Department) – Failing to take follow-up action at the district level regarding a complaint about flying faded and damaged national flags and regional flags**

**Case No. 2023/0135B (Administration Wing under the Chief Secretary for Administration's Office) – Failing to follow up on a complaint about flying faded and damaged national and regional flags in accordance with the Stipulations for the Display and Use of the National Flag and National Emblem and the Regional Flag and Regional Emblem**

**Case No. 2023/0135C (1823 under then Efficiency Office) – Failing to refer a complaint about flying faded and damaged national flags and regional flags to the relevant department(s)**

**Background**

In February 2023, the complainant lodged a complaint against the Home Affairs Department (HAD), the Administration Wing (AW) under the Chief Secretary for Administration's Office, and 1823 under then Efficiency Office (EffO) to The Office of The Ombudsman (the Office).

2. Upon finding that some faded and damaged national flags and regional flags were flown on the external walls of some private buildings and no action had been taken (the Problem), the complainant lodged a complaint about the Problem with 1823 on 6 October 2022 (Case I). 1823 referred Case I to HAD, AW, the Food and Environmental Hygiene Department (FEHD) and the Buildings Department (BD). In its reply to

the complainant, FEHD stated that the Problem was not within its purview. HAD and AW gave the same reply via 1823. The complainant did not receive any response from BD.

3. Since the Problem persisted, the complainant lodged another complaint with 1823 on 30 November 2022 (Case II). 1823 referred Case II to AW, HAD and BD. On 20 December, 1823 replied to the complainant that HAD, AW and BD had all stated that the Problem was not within their purview.

4. In light of the above, the complainant was dissatisfied that –

- (a) 1823 had not appropriately referred his complaints to the relevant department(s);
- (b) HAD, as the channel of communication between the Government and the public, and as the authority for district affairs, had failed to take follow-up actions on the Problem at the district level; and
- (c) AW had failed to follow up on the Problem in accordance with the Stipulations for the Display and Use of the National Flag and National Emblem and the Regional Flag and Regional Emblem (the Stipulations) made by the Chief Executive under the National Flag and National Emblem Ordinance and the Regional Flag and Regional Emblem Ordinance (collectively, the two Ordinances).

## **The Ombudsman's observations**

### *Complaint against 1823*

5. The Office pointed out that EffO had explained 1823's reasons for referring Case I to HAD, AW, BD and FEHD, and why 1823 believed that the Police and FEHD had followed up or would follow up on the case. The Office considered its explanation not unreasonable.

6. On the other hand, EffO had admitted 1823's failure to relay BD's reply regarding Case I to the complainant and found it unsatisfactory.

7. The Office is aware that 1823 receives a huge number of calls every day, and as the complainant did not mention Case I when he lodged a complaint with 1823 again on 30 November 2022, it was not unreasonable that 1823 had treated Case II as a new one and made referrals afresh. It was also understandable that 1823 thought the Police would handle Case II upon learning that DO referred the case to the Police on 21 December. However, it would have been better if 1823 had reminded DO to notify the complainant of the referral. This case reveals that while 1823 had handled the case in accordance with the established mechanism, there might be inadequacies in the mechanism. While it was procedurally correct for 1823 to refer cases to departments for follow-up, the department(s) receiving the referrals in fact had not taken up the cases and 1823 was left in the dark and did not follow up on the cases further. This case calls into question whether 1823, under the present mechanism, can fully discharge its function as a "one-stop agent" for the Government in handling public enquiries and complaints.

8. Based on the analysis set out above, The Ombudsman considered the complaint against 1823 unsubstantiated but other inadequacies found.

#### *Complaint against HAD*

9. The Office considered that if the actions in March 2023 (including deploying staff to the private buildings involved at the locations concerned to post and distribute leaflets relating to the Stipulations, calling for the building management organisations and residents of the buildings to comply with the Stipulations and advising them to have the used national flags and regional flags returned to the collection boxes at the designated collection points) had been taken by the Sham Shui Po District Office under HAD (the DO) earlier, it probably would have helped the person(s) who had flown the national flags or regional flags better understand the Stipulations and the Problem would have been properly dealt with.



10. However, the Office noted that HAD did not have the statutory power to follow up on the Problem and the Government had not formulated any guidelines requiring HAD to take actions on the flying of national flags and regional flags at private buildings with irregularities detected. Hence, it was not unreasonable for the DO to refer Case I and Case II to the Police on 28 October and 21 December 2022 respectively for an investigation of the matter according to the two Ordinances. Nevertheless, when the DO referred Case I to the Police on 28 October, it neither stated clearly that the Police should reply to the complainant nor provided the Police with the contact details of the complainant. Yet, the DO told the complainant that the Police would reply to him. When the DO referred Case II to the Police in December, it did not inform the complainant of the referral arrangement and did not follow up on the outcome of the investigation with the Police. The DO's handling of the two cases was unsatisfactory.

11. Based on the analysis set out above, The Ombudsman considered the complaint against HAD unsubstantiated but other inadequacies found.

#### *Complaint against AW*

12. AW had clarified that the two Ordinances and the Stipulations did not require prior application for displaying the national flag or regional flag in private places. Neither did the two Ordinances empower government departments to remove damaged, defiled, faded or substandard national flags or regional flags displayed at private buildings. However, AW confirmed that if it was aware of similar situations in the future, it would refer the cases to the relevant departments for follow-up first and, when necessary, collate the details of their follow-up actions for replying to the complainants.

13. AW once asked 1823 to refer Case I to BD and HAD. As far as this complaint was concerned, the national flags and regional flags in question were flown at private buildings and activities held by the local communities might be involved. It was, therefore, reasonable for AW to

assume that the Problem should be handled by BD and HAD, and to ask 1823 to refer it to the two departments.

14. The national flag and national emblem, the regional flag and regional emblem are solemn symbols and signs of the country and the Hong Kong Special Administrative Region. Given that the Stipulations were drafted by AW, AW should implement measures to ensure that the relevant departments fully understand the division of their labour for proper execution of the Stipulations. AW has confirmed that if it had been aware that defiled or faded national flags and regional flags were being displayed at private buildings, it would have referred such cases to the relevant departments for follow-up. When both BD and HAD indicated to 1823 that the Problem was not within their purview, AW should have directly contacted the “relevant department(s)” which it thought to be capable of following up on the Problem and asked those “relevant department(s)” to take necessary actions. Alternatively, it should have escalated the case to the relevant bureau(x) for resolving the Problem, so that the issues of damaged and faded national flags and regional flags not involving criminality could be dealt with properly. However, AW just kept passing the responsibility of case referral to 1823 and stating simply that the Problem should be tackled by BD, HAD or other relevant departments. It had made no efforts to find out whether those departments were willing to take up the case or follow up on the case progress with them. Furthermore, it did not even know that HAD had further referred Case I to the Police for follow up and the Police considered that no criminality was involved. As a result, the Problem remained unresolved. The handling of the matter by AW was indeed inappropriate.

15. This case reveals that the Government has been relying on event organisers to consciously observe the Stipulations and recover the used national flags and national emblems after an event. When drafting the Stipulations, AW did not include a handling mechanism and delineate the responsibilities for handling the damaged, defiled, faded or substandard national flags or regional flags flown at private buildings when they were not related to any local activities or criminality. This is indeed undesirable.

The case also reveals that members of the public/organisations may lack thorough understanding of the ways to handle the aforementioned issues.

16. Based on the analysis set out above, The Ombudsman considered the complaint against AW partially substantiated.

17. The Ombudsman recommended –

- (a) 1823 to use this case as an example to strengthen training for hotline staff. In addition to reminding them to relay departments' replies to complainants, 1823 should enhance their awareness in handling issues arising from the display of damaged, defiled, faded or substandard national flags or national emblems at private places;
- (b) 1823 to remind departments that upon receipt of referrals that are not within their purview, they should inform 1823 (regardless of whether direct replies have been issued to the complainants), such that 1823 can take follow up actions;
- (c) HAD to learn from this case and remind its staff to ascertain whether the information is exhaustive in scope when making a referral, with a view to ensuring that the department receiving the referral can reply to the complainant direct. The complainant should also be informed of the referral arrangement;
- (d) AW to escalate the issue of displaying damaged, defiled, faded or substandard national flags and national emblems at private places not related to any events to the relevant bureau(x) for resolution at the policy bureau level. AW should also coordinate the relevant departments for formulating guidelines and division of responsibilities, which should be extended to cover the display of the regional flag and regional emblem; and

- (e) AW to collaborate with the Constitutional and Mainland Affairs Bureau (CMAB) to step up public education and publicise the requirements pertaining to the display of the national flag and national emblem, the regional flag and the regional emblem, as well as the correct ways to dispose of damaged, defiled, faded or substandard national flags, national emblems, regional flags and regional emblems.

### **Government's response**

18. 1823, HAD and AW accepted The Ombudsman's recommendations and has taken the following follow-up actions.

#### *Recommendation (a)*

19. 1823 has reminded all its staff of the need to relay departments' replies to complainants. In addition, the Knowledge Base for dealing with problems concerning fade/damaged national and regional flags and emblems displayed at private area has been updated.

#### *Recommendation (b)*

20. 1823 has reminded the departments that if a referred case does not fall within its purview, the department should notify 1823 in accordance with the established mechanism so that 1823 can follow up the case, regardless whether the department has replied to the complainant direct.

#### *Recommendation (c)*

21. Having learnt from this case, HAD has reminded the relevant staff that when a complaint is received, it should be dealt with in accordance with the established mechanism for handling complaints. Staff should follow the guidelines and procedures set out in the relevant circulars and take proper follow-up actions. Among them, if the complaint is not within HAD's purview, it should be referred to the relevant bureau/department

for further follow-up as soon as possible. When making a referral of a complaint, the staff concerned will ascertain whether the information is exhaustive in scope, and advise 1823 to liaise with the bureau/department receiving the referral, with a view to ensuring that the bureau/department can reply to the complainant direct. At the same time, the staff will inform the complainant of the referral and reply arrangements.

22. In addition, HAD has arranged to re-circulate the relevant circulars to its staff, and will continue to arrange for re-circulation at regular intervals to remind staff to exercise caution in handling related matters.

*Recommendation (d)*

23. AW is finalising the draft guidelines setting out the division of responsibilities among relevant B/Ds in handling damaged, defiled, faded or substandard national flags/regional flags displayed at private places in consultation with CMAB and relevant bureaux. The guidelines will be promulgated upon its finalisation.

*Recommendation (e)*

24. AW has collaborated closely with CMAB and HAD to step up public education and publicity since 2023. As a result, CMAB issues posts on social media platform before the National Day and the HKSAR Establishment Day to remind the general public of the correct display of the national flag/regional flag, and proper disposal of damaged, defiled, faded or substandard national flag/regional flag. HAD re-posts the publicity materials on the social media platforms of HAD and Committee on the Promotion of Civic Education.

25. In addition, CMAB has produced announcements in the public interest (API), and other publicity materials to publicise the background, symbolic meaning as well as the related rules of usage and etiquette, etc, in relation to the national flag and regional flag to educate members of the

public to respect and use the national flag/regional flag properly. The APIs have been broadcasted on local television and radio channels, as well as social media platforms. AW has also uploaded the material to the website of the Protocol Division. AW will continue to work with CMAB and relevant B/Ds in strengthening the publicity of correct display and disposal of the national flag and regional flag.

## **Buildings Department**

### **Case No. 2022/3740 – Failing to handle the complainant’s report of numerous unauthorised building works and reply to his queries**

#### **Background**

26. The complainant alleged that he had made several reports with the Buildings Department (BD) about numerous unauthorised building works (UBWs) in a private housing estate (the Estate) over the past few years, but the problem had persisted. On 20 January 2022, the complainant made another report with BD (the Letter) about a number of UBWs in the Estate and requested BD to account for what it would do. Although BD responded to the complainant on 24 June 2022, addressing some of the queries the complainant had raised, most of his concerns remained unanswered. Despite the complainant’s follow-up letters to BD dated 21 September and 21 October 2022, the complainant had not received BD’s substantive reply by the time he lodged the current complaint. The complainant considered that BD had failed to handle his reports of UBWs and reply to his queries.

#### **The Ombudsman’s observations**

27. BD had explained to The Office of The Ombudsman (the Office) why it had taken a longer time to respond to the Letter and address the queries raised. The Office agreed that the epidemic situation had affected BD’s work and operation to a certain extent and that it might need to reprioritise its work after resumption of normal public services, including clearing the backlog of outstanding public reports on UBWs. As an expedient measure, the Office considered it not unreasonable for BD to first deal with the complainant’s reports of two UBWs and respond to him in its reply of 24 June 2022. Nonetheless, after examining BD’s substantive reply on 11 November 2022, the Office found that part of BD’s response to the complainant’s concerns was similar to its previous responses and that the reply did not contain any updated information

regarding the status of the UBWs concerned or BD's follow-up actions taken against them. It was not until 16 January 2023 that BD provided a more comprehensive reply to the complainant. Having considered the above, the Office found the time taken by BD (i.e. almost 10 months) to provide a reply to the Letter limited content not well justified.

28. Regarding BD's decision not to disclose information on the progress and details of the prosecution, the Office noted that the requested information might involve third parties and details of legal proceedings. Such information was indeed not intended for disclosure to any third party. While BD's decision of non-disclosure of information might fall short of the complainant's expectation, the Office did not see the public interest in disclosing such information to the complainant outweighing the harm of doing so. Therefore, there was no impropriety on the part of the Department. Furthermore, whether and when (including the intervals between prosecutions) to instigate prosecution proceedings against owners who had failed to comply with removal orders involved BD's prosecution decision, which was not subject to the Office's investigation.

29. Regarding the complainant's queries on the justifications for BD to serve removal orders and advisory letters on the owners of certain premises, the Office noted that BD had explained how it handled reports of UBWs and the factors it took into account before determining the actions to be taken. In response to the complainant's reports and enquiries, BD had from time to time provided him with its inspection findings and the updated status of follow-up/enforcement action against the UBWs concerned. Having studied the correspondence between the complainant and BD and the case details, the Office did not find sufficient evidence suggesting unreasonableness on the part of BD in tackling the UBWs concerned. The Office considered that the complainant's queries mainly stemmed from his disagreement with BD's apparently different approaches (i.e. the issuance of removal orders or advisory letters) in handling the UBWs concerned. As far as this case was concerned, the Office considered BD's account of events and explanations reasonable.



30. On the other hand, the Office noted that BD had not responded to the complainant's concern about when the Estate would be selected as one of the target buildings under large scale operations (LSOs). On this score, the Office understood that while BD had a mechanism in place that outlined the prioritisation criteria for selecting target buildings under LSOs, it did not have a specific timeframe for implementing LSOs. Therefore, the Office considered it not inexplicable that BD could not provide an exact answer to the complainant's concern, but BD should have explained the situation in its replies to the complainant.

31. Except the inadequacy in the preceding paragraph, the Office, having examined the relevant information including the correspondence between BD and the complainant, considered that BD had by and large addressed the complainant's queries, explained its stance and provided information about the latest status of the cases as far as it could, albeit not to the complainant's satisfaction.

32. The Office took note of the complainant's dissatisfaction and disappointment regarding BD's existing enforcement policy against UBWs, namely to handle actionable UBWs primarily through LSOs except for new and works-in-progress UBWs and those with obvious danger to life and property. Given the substantial number of UBWs in Hong Kong and the resource constraint of BD, the Office reckoned that BD's approach of taking enforcement action against UBWs according to their order of priority a pragmatic one. This was indeed a high-level policy decision already endorsed by the Legislative Council after public consultation. Hence, the Office had no basis to intervene.

33. Having said that, the Office shared the complainant's concern about the persistence of actionable UBWs, particularly those with outstanding removal orders for years. The Office had examined BD's work records on UBWs with outstanding removal orders, and found that the follow-up actions taken on certain cases appeared to be inadequate for ensuring compliance. While the Office appreciated BD's efforts in making some owners comply with the removal orders through enforcement action

and acknowledged the need for BD to handle UBWs cases in an orderly manner, it was imperative for BD to take rigorous and expeditious enforcement action to ensure compliance of removal orders issued, as the relevant UBWs were considered actionable and warranted immediate enforcement action under the current regime. This was essential to achieving a stronger deterrent effect and maintaining public confidence in BD's determination to tackle the problem of UBWs.

34. Based on the above, The Ombudsman considered this complaint partially substantiated and recommended BD to –

- (a) remind its staff to provide timely and specific responses to enquiries/complaints; and
- (b) closely and rigorously follow up on the UBWs concerned by taking stringent enforcement action against the owners who have failed to comply with the removal orders, so as to increase the deterrent effect.

### **Government's response**

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

#### *Recommendation (a)*

36. BD had shared and discussed this case at its internal meetings, and staff had been reminded to provide timely and specific responses to enquiries/complaints according to the performance pledge and departmental guidelines.

#### *Recommendation (b)*

37. Through the rigorous efforts of BD, three out of the six outstanding removal orders were complied with in the third quarter of

2023. For the remaining three removal orders still pending compliance, BD had instigated prosecution proceedings against the owners of two orders and issued a superseding order for the remaining one in accordance with the departmental guidelines. BD would continue to take enforcement action against the owners concerned to ensure compliance of orders.

## **Buildings Department**

### **Case No. 2022/4011 – Delay in following up on a removal order issued against unauthorised buildings works**

#### **Background**

38. The complainant alleged that there were unauthorised building works (UBWs) on the flat roof of a particular flat (the subject flat) in the building (the subject building) where he resided. The UBWs enclosed the fresh water pipes connecting to individual units, making it impossible for the complainant to repair the defective water pipe of his own flat. According to the complainant, BD had issued a removal order as early as 2013, requiring the owner of the subject flat to demolish the subject UBWs, but the UBWs was still in existence to date. The complainant lodged a complaint with BD through 1823 in July 2022 and received a response from BD stating that a removal order had been issued to the owner of the subject flat. However, the response did not specify when the subject UBWs would be demolished.

39. The complainant was dissatisfied with BD's delay in following up on the removal order and lodged a complaint with The Office of The Ombudsman (the Office).

#### **The Ombudsman's observations**

40. BD pointed out that a large number of UBWs were handled by BD annually, and it could only deal with outstanding removal orders progressively in some cases based on manpower considerations. The Office was also aware of BD's heavy workload in relation to removal of UBWs, and that whether the removal orders issued would be timely complied with was influenced by various factors. However, in this case, BD issued the removal order against the subject UBWs in November 2013, requiring the owner to demolish the UBWs within 60 days after the issuance of the order. The order had not been complied with since then,

but BD did not take follow up actions until September 2020, when it conducted a follow-up inspection to review the compliance of the order. It issued a warning letter and instigated prosecution proceedings in October of the same year. During this period of almost seven years, no follow-up action was taken. The Office considered it highly unsatisfactory and questioned the efficiency and determination of BD in handling UBWs.

41. Since BD had selected the subject building as a target building under large scale operations (LSOs) under prevailing enforcement policy, it should actively take enforcement action as planned and in accordance with the order of priority. For years, BD had failed to follow up on the outstanding removal orders of the subject building, falling short of the objective of demolishing external UBWs of target buildings in an orderly manner under LSOs. As the problem arising from the subject UBWs had persisted for years, it would easily give the public the impression that BD had not taken stringent enforcement action. This not only might undermine BD's enforcement credibility, but also weaken the deterrent effect of the legislation regulating UBWs.

42. As regards whether the complainant could repair the fresh water pipe in his own flat, BD had clarified that the key lay in whether the owner of the subject flat would allow the complainant or the maintenance staff to enter the flat roof of his flat to conduct the repair works, rather than whether the subject UBWs existed or not. Without the owner's consent, the repair works could not be carried out regardless of whether the UBWs had been demolished. The Office was therefore of the view that the complainant might consider BD's suggestion that he should try to communicate and negotiate with the owner of the subject flat either directly or through the management office. If needed, the complainant might consider seeking independent legal advice so as to consider further follow-up action to be taken.

43. Based on the above, The Ombudsman considered this complaint substantiated.

44. The Ombudsman recommended that in addition to closely following up on the prosecution work and taking follow-up action (if necessary) such as removal of the subject UBWs in respect of this case, BD should also closely follow up on the remaining outstanding removal orders against the owners of the subject building (if any) under LSOs in 2013, in order to fulfil the objective of LSOs.

### **Government's response**

45. BD accepted The Ombudsman's recommendation and instigated prosecution proceedings against the owner of the subject flat again, with the owner convicted and fined by the court in August 2023. Regarding the outstanding removal orders, BD had also engaged a consultant and arranged for a government contractor to carry out the removal works in default of the owners of the remaining flat roof structures in the subject building. The costs of the removal works, the supervision charges and the surcharges would be recovered from the owners concerned upon completion of the works.

**Buildings Department, Environmental Protection Department, Food and Environmental Hygiene Department and Lands Department**

**Case No. 2022/1619A (Food and Environmental Hygiene Department) – Arranging inspections on an allegedly unlicensed food premises by uniformed staff and staff arriving in government vehicles, but failing to arrange night time inspections and reply to the complainant about the issue of piling of refuse**

**Case No. 2022/1619B (Lands Department) – Failing to take prompt land enforcement action against illegal occupation of Government land by a village house and reply to the complainant about the operation of food business at the village house without payment of regrant premium**

**Case No. 2022/1619E (Buildings Department) – Failing to properly follow up on the unauthorised building works of a village house**

**Case No. 2022/1619F (Environmental Protection Department) – Failing to take further enforcement action after giving advice to the person in charge of a premises suspected of discharging effluent**

**Background**

46. The complainant alleged that two premises (Premises I and Premises II) in a village were suspected of having the following irregularities –

- (a) connecting a septic tank to the nearby stormwater drain (the stormwater drain concerned), resulting in blockage and obnoxious odour issues of the drain (the effluent issues);
- (b) operating unlicensed food business and accumulation of refuse;

- (c) illegal installation of unauthorised canopies and neon signs (the unauthorised building works issues); and
- (d) illegal occupation of government land for alfresco dining and operating food business at a village house without payment of regrant premium.

47. The complainant had lodged complaints about the above irregularities via 1823 and/or with the Environmental Protection Department (EPD), the Food and Environmental Hygiene Department (FEHD), the Buildings Department (BD) and the Lands Department (LandsD) direct, but to no avail. The complainant lodged a complaint with The Office of The Ombudsman (the Office) about the following –

- (a) regarding the effluent problem, EPD deployed staff to conduct a site inspection who merely gave advice to the person(s)-in-charge without taking further enforcement actions;
- (b) FEHD arranged inspections by uniformed staff arriving in government vehicles, the person(s)-in-charge of Premise I and Premise II thus had sufficient time for preparation, resulting in the failure of FEHD to discover unlicensed food business at the two premises. In addition, FEHD failed to arrange night time inspections at the complainant's request and did not provide a reply about the accumulation of refuse;
- (c) regarding the UBWs problem, BD reported to the complainant about its follow-up actions in respect of another location. The complainant queried whether BD had followed up on his/her complaint; and
- (d) regarding the above issue of unlawful occupation of government land, LandsD failed to take prompt land enforcement action and reply to the complainant about the operation of food business at the village house without payment of regrant premium.



## **The Ombudsman's observations**

### *Complaint against EPD*

48. After investigation, the Office considered that EPD had followed up on the effluent issues in accordance with its purview, including deploying staff to conduct multiple inspections, reminding the person-in-charge of Premises II to carry out regular desludging for the septic tank and provide suitable effluent treatment facilities, requesting the person-in-charge of Premises II to desludge the septic tank as soon as possible through verbal warning, and issuing two warning letters to the person-in-charge of Premises II in March 2023 requesting immediate action upon discovering the septic tank of Premises II was overflowing again and the water quality in the concerned stormwater drain had become turbid.

49. Apart from deploying staff for inspection, EPD had invited the FEHD to conduct joint inspection(s). After the Office launched an investigation, EPD further arranged a joint inspection with FEHD, LandsD, BD and the Home Affairs Department in March 2023. The septic tank of Premises II was found no longer connected to the stormwater drain in April 2023, and the problem was finally resolved.

50. As for EPD's view that there was insufficient evidence to initiate prosecution due to the fact that it was unable to collect sufficient water samples, it involved EPD's judgement on the evidence and decision on whether to initiate prosecution and the Office would not intervene. However, EPD may consider using other technologies and investigation approaches to explore how to follow up similar complaints more effectively. Besides, in hindsight, if EPD had provided FEHD with the inspection findings and test results in addition to inviting them to conduct joint inspection, it may help FEHD in considering whether to take enforcement actions under the Public Health and Municipal Services Ordinance.

51. Based on the above analysis, The Ombudsman considered the complaint against EPD unsubstantiated.

*Complaint against FEHD*

52. FEHD has clarified that the respective District Environmental Hygiene Office (DEHO) did conduct night time inspections to Premise I and Premise II to follow up on the complaints about operation of unlicensed food business in respect of Premise II and about environmental hygiene nuisance (including accumulation of refuse) in respect of the two premises. Upon assessment of the case, FEHD considered it unnecessary to arrange inspections by plain-clothes officers. The Office will not intervene with FEHD's professional judgement on its way of investigation, but as far as the outcome is concerned, DEHO officers have initiated prosecution against Premise II for operating an unlicensed food business.

53. Regarding the complainant's allegation that FEHD failed to provide a reply to the complaint about the accumulation of refuse at the two premises, FEHD said that DEHO had kept the complainant verbally informed of the results of the investigation on various irregularities (including environmental hygiene nuisance) in respect of the two premises. In the absence of independent evidence (FEHD has not provided the relevant reply records to the Office as evidence in respect of its claim), the Office has no way to know the truth and thus will not comment. The Office considers that for complaint cases of a simple nature, unless the complainant requests a written reply, it is justifiable for FEHD to reply to the complainant by phone. However, given that the repeated complaints of the complainant involve different irregularities of the two food premises which are of a more complicated nature, the fact that DEHO only replied to the complainant by phone without any written reply, apart from the email reply in July 2022, may hinder the complainant from grasping a comprehensive understanding of DEHO's follow-up actions, which could potentially led to misunderstandings.

54. According to the records provided by FEHD, during the inspections conducted by DEHO in October and November 2022, no blockage of manhole or leakage of effluent was found at the septic tanks of Premise I and Premise II. Moreover, since 1823 had not referred to FEHD the allegations of illegal discharge of effluent mentioned in the complaints received in November 2022, and the various irregularities in respect of Premise II mainly related to the operations of its food business, it is understandable that FEHD did not inspect Premise II jointly with EPD regarding the allegations. Nevertheless, in retrospect, if FEHD had maintained communication with EPD and conducted the said joint site inspection earlier from the perspective of the Public Health and Municipal Services Ordinance, the said septic tank improvement works might have been completed sooner.

55. As FEHD has issued a provisional licence to Premise II, it should keep a close eye on the operation of Premise II and take resolute enforcement actions against any irregularities found, so as to maintain environmental hygiene and cleanliness of food premises.

56. Based on the above analysis, The Ombudsman considered the complaint against FEHD unsubstantiated, but there are other inadequacies found on the part of FEHD.

#### *Complaint against BD*

57. BD had explained that the standalone structure on the ground (i.e. the subject cafe) at Premises I and the two structures on the ground (the subject canopies) at Premises II did not contravene the provisions of the Buildings Ordinance (Application to the New Territories) Ordinance. Therefore, BD referred the cases to LandsD for follow-up action in accordance with its jurisdiction and did not issue a removal order. In this connection, the Office accepted BD's explanation.

58. BD had also explained that as the neon signboard on the roof (the subject signboard) at Premises II was an existing UBW built on or before

28 June 2011. It constituted less serious contravention of the law and imposed lower potential risks. Thus, the case was put on record for reference and progressive enforcement in the future according to the prevailing mechanism. The Office considered the explanation reasonable.

59. In addition, BD had explained the reason for not issuing a removal order immediately for the structure erected on the ground (Structure I) at Premises I. The Office considered that, given the large number of backlog cases involving New Territories Exempted Houses (NTEHs), BD's implementation of enhanced measures in September 2022 to strengthen enforcement efficiency should be recognised. However, the fact that BD confirmed the requirement to remove Structure I in November 2022 but did not issue the removal order until March 2023 (four months later) without implementing the enhanced measures far from satisfactory.

60. On the other hand, BD had admitted that a reply related to another case was erroneously provided to the complainant via 1823 on 21 October 2022. In this connection, BD apologised for the mistake and reminded the staff concerned to be cautious when providing replies, which could be regarded as a remedy.

61. Based on the above analysis, The Ombudsman considered the complaint against BD partially substantiated.

#### *Complaint against LandsD*

62. The records of LandsD showed that the District Lands Office, Sha Tin (DLO) replied to the complainant on 15 September 2022, indicating that the operation of restaurants at Premises I and Premises II was not in breach of the building license. LandsD also explained the reasons why DLO did not take any enforcement action against the cafe at Premises I and two canopies at Premises II. The Office considered that DLO had followed the established guidelines in discharging its duties. However, the Office noted that DLO at that time did not explain to the complainant the

reasons for not taking any control actions against the subject cafe and the subject canopies, which revealed an inadequacy in explanations.

63. The Office also noted that the relevant land lease conditions of Premises I and Premises II required the land owners to handle effluent properly. Therefore, DLO could have, in accordance with the land lease conditions, followed up on the effluent issues caused by the suspected improper connection of the septic tanks for Premises II to stormwater drains. However, the complaint referred by 1823 and received by DLO on 27 September 2022 only stated that part of the stormwater drain was covered and there was no mention of any effluent issues. As such, it was reasonable for DLO to take follow-up actions on the complaint only from the perspective of unauthorised structures and illegal occupation of government land. In addition, although 1823 had provided LandsD with the contents of the “Complaint made in November 2022”, it did not request LandsD to follow up on the effluent issues, and EPD, which is primarily responsible for handling effluent complaints, did not contact LandsD either. Therefore, the Office considered it understandable that DLO did not proactively take any follow-up action on the effluent issues.

64. Based on the above analysis, The Ombudsman was of the view that the complainant’s complaint against LandsD was unsubstantiated, but there were other inadequacies found in LandsD.

65. To conclude, this case involves complaints about various alleged irregularities of village houses in the New Territories, which include operation of unlicensed food business and accumulation of refuse, unlawful occupation of government land, installation of UBWs and the resulting effluent problem, which fall under the purviews of multiple departments. FEHD, EPD, BD and LandsD have been receiving the complaints concerned since May 2022 and had taken follow-up actions under their respective purviews. However, the results were ineffective, with the irregularities yet to be satisfactorily solved. The Office considers that had there been enhanced collaboration among EPD, FEHD, BD and LandsD to jointly address the irregularities at an early stage, it could have

facilitated early rectification by relevant persons. Taking the effluent problem as an example, apart from conducting joint inspections, explaining the relevant requirements to the person-in-charge of Premise II/owner of village house II and requesting rectification, EPD, FEHD and LandsD could also identify solutions through inter-departmental meetings/collaboration and exchange of information obtained from their inspections/tests to enhance the effectiveness and efficiency in following up on the case.

66. The Ombudsman recommended that –

- (a) EPD should explore effective means of evidence collection to follow up on effluent issues similar to this case;
- (b) EPD, FEHD and LandsD should look into how they could collaborate with each other in accordance with their respective functions to effectively follow up on the suspected misconnection of septic tanks of village houses to public drains;
- (c) FEHD should review the procedures for providing replies to complainants. For complicated cases, written replies should be given to the complainants in order to explain clearly the follow-up work of the Department;
- (d) FEHD should keep a close eye on the operation of Premise II after the grant of provisional licence and take resolute enforcement actions should irregularities be detected, with a view to maintaining environmental hygiene and cleanliness of food premises;
- (e) BD should pay attention to its internal procedures and staffing arrangements to ensure that the enhanced enforcement strategy of issuing removal orders against UBWs in NTEHs is effectively implemented;

- (f) BD should remind staff to be cautious when replying to complainants to ensure accuracy of replies; and
- (g) LandsD should remind its staff to provide clear replies to complainants in respect of complaint cases.

### **Government's response**

67. EPD, FEHD, BD and LandsD accepted The Ombudsman's recommendations and has taken the following follow-up actions.

#### *Recommendation (a)*

68. In this case, EPD found that there was an underground pipe in the septic tank system of Premises II connected to the concerned stormwater drain. As the underground pipe was covered by concrete, the EPD officers could only discover the overflow pipe outlet through a small hole on the ground. Besides, Premises II shared the same septic tank system with other units of the same village house. Therefore, in addition to the difficulty in collecting water samples, it was also technically difficult to collect sufficient evidence under the Water Pollution Control Ordinance to prove that Premises II was the single/only source of effluent discharge and there was no other source of pollution. Nevertheless, in order to follow up similar cases more effectively and overcome the limitations in collecting water samples from pollution sources in concealed, dark and narrow environments, EPD has developed a compact water sampling system with real-time video recording function. Equipped with a compact pump, a borescope inspection camera, lighting, Wi-Fi connectivity and a USB rechargeable battery, the system allows EPD officers to collect water samples in dark and narrow environments for investigation and prosecution purposes. EPD has tested the water sampler and the preliminary test results have been satisfactory. Moreover, EPD has procured a more compact borescope inspection camera system that is equipped with lighting function, lenses of only 5.5 millimetres in diameter and 30-metre long signal cable. The system facilitates deeper and more

effective inspection of underground or concealed pipes or drains in narrow environments to check for any connection to other sewage pipes or water sources, so as to help prove the source of the water samples.

*Recommendation (b)*

69. To enhance inter-departmental communication and collaboration, FEHD has set up an inter-departmental working group with EPD and LandsD since August 2023 to gain a deeper understanding of the scope of work, constraints and complaint handling procedures of one another, and discuss solutions for complicated cases.

70. In November 2023, LandsD, upon discussion with EPD and FEHD, preliminarily drew up a set of draft operational guidelines for frontline staff in relation to the workflow and referral mechanism for handling complaints about sewage works, which included, amongst others, a workflow chart, referral procedures for follow-up by departments and an information exchange mechanism. The draft was further revised at the meeting of the inter-departmental working group held on 4 December 2023. Taking into account departments' views and subsequent discussions, LandsD will finalise the workflow with a view to implementing the relevant operational guidelines by the end of 2024.

71. LandsD has also invited EPD and FEHD to share their work experience, including how to conduct colour dye tests for detecting septic tank leakage or overflow, suspected cases of unauthorised connection of septic tanks to public stormwater manholes, and the procedures for handling complaints related to septic tanks, so that relevant irregularities could be identified more effectively. LandsD has passed the relevant information to all District Lands Offices in the New Territories and uploaded the same onto LandsD's intranet in July 2024 for training and reference.

72. In addition, in its letter to The Ombudsman dated 7 March 2024, EPD reported the progress of implementing the recommendations made by



The Ombudsman in the Direct Investigation Report on “Government’s Enforcement against Defective Sewage Works of New Territories Exempted Houses” released in August 2023.

*Recommendation (c)*

73. FEHD has clear guidelines for handling complaints. Specifically, if a substantive reply cannot be made within 10 calendar days upon receipt of a complaint, an interim reply would be given to the complainant. For complicated cases which require longer processing time, the case officer will inform the complainant of the case progress within 30 calendar days upon receipt of the complaint. In addition, the case officer must review the case progress at least once a month and provide the complainant with an additional interim reply when necessary. After the completion of investigation, the case officer should provide the information required as far as possible in the substantive reply.

74. In general, verbal replies are usually given to verbal complaints. For complicated cases, FEHD will provide a substantive written reply to ensure that the complainants fully understand that their complaints have been properly addressed. The Department has reminded its staff to strictly comply with the above guidelines.

*Recommendation (d)*

75. FEHD has been closely monitoring the environmental hygiene condition of Premise II and has conducted spot checks. Since July 2023, no illegal extension of business area, unlicensed food businesses or other irregularities have been detected at the site, and the environmental hygiene condition of the site is generally in order. FEHD will continue to conduct inspections and take resolute enforcement actions against any irregularities.

*Recommendation (e)*

76. BD would keep reviewing the internal procedures and staffing arrangements and continue implementing the enhanced enforcement strategy of issuing removal orders against UBWs in NTEHs in a timely manner.

*Recommendation (f)*

77. BD had reminded its staff, through internal meetings, to be cautious when replying to complainants to ensure accuracy of replies.

*Recommendation (g)*

78. DLO issued an email to the frontline staff on 1 December 2023, reminding them to provide necessary information in their responses to complaints, especially when the outcome falls short of the complainant's expectations, so as to explain how the case has been properly handled or why LandsD could not take any control action immediately. The email has been distributed every three months to remind frontline staff to follow the guidelines mentioned above.

## **Department of Health**

**Case No. 2022/0792 – (1) Delay in issuing a correct isolation document to the complainant; and (2) Extremely unorganised handling of the complainant’s case in that the Department had repeatedly issued isolation documents each bearing a different isolation period**

### **Background**

79. Allegedly, the complainant did a nucleic acid test for COVID-19 in a Community Testing Centre on 3 March 2022 and was confirmed positive on 5 March. She reported to Department of Health (DH) online on 7 March. On 16 March, she called the StayHomeSafe Hotline (Tel: 1833 019) to make enquiries about her isolation order (IO) and a staff (Staff A) from DH reverted to her on the same day. On 23, 26 and 30 March, the complainant sent emails to DH. On 26, 27 and 30 March, she called DH’s hotline (Tel: 2125 1122). On 27 March, she downloaded her first Isolation Record (IR) with an isolation period of 5 to 18 March. On 1 April, she called 2125 1122 to follow up her case as she considered the isolation dates wrong. On 6 April, another staff (Staff B) from DH (Tel: 2826 3100) called the complainant regarding her email of 23 March. Staff B obtained the complainant’s personal details and said she would process the case. On 9 April, the complainant received an email from the Centre for Health Protection (CHP) under DH asking for her personal details again. She replied the next day. She was dissatisfied that DH should have the information but the Department repeatedly asked for her personal details.

80. On 11 April 2022, the complainant received a phone call (Tel: 2463 7144) and an email from a staff (Staff C) of DH enclosing a second IR with an isolation period from 4 to 17 March. On 13 April, she received an SMS message with a link for her to download her third IR, but the contents were wrong again, i.e. the isolation period was from 3 to 16 March. She found this strange as she thought the matter was resolved as DH had already emailed her a correct IR two days ago and the isolation

periods were different on the two IRs. On 14 April, she received a phone call (Tel: 2857 3075) from a staff (Staff D) of the Contact Tracing Office (CTO) of DH. Staff D referred to the IR of 27 March (i.e. the first IR) and asked whether the complainant had asked to amend the date of isolation period. The complainant found Staff D's call weird as she was checking with her on something that had already been resolved. Moreover, Staff D's calculating method of isolation period was different from government announcements. On 21 April, the complainant received an SMS message with a link to download the fourth IR with an isolation period from 4 to 17 March.

81. The complainant was dissatisfied that DH delayed in issuing a correct IO/IR (Allegation (a)); and DH was extremely unorganised and repeatedly issued IOs/IRs with different isolation periods to the complainant (Allegation (b)) and thus lodged a complaint to The Office of The Ombudsman (the Office).

### **The Ombudsman's observations**

#### *Allegation (a)*

82. DH had explained the reasons for not processing the complainant's case in a timely fashion, including the change of the entire arrangement and workflow for issuing IOs on and after 7 March 2022 with the implementation of the "home isolation" policy, the upsurge of positive cases at the peak of the fifth wave and the numerous mistakes made by members of the public when declaring their positive cases on the "Online Submission of Information to Centre for Health Protection for COVID-19 Patients" platform (CDPI) and the "Declaration System for individuals tested positive for COVID-19 using Rapid Antigen Test" (the System).

83. After the complainant received her positive test result on 5 March 2022, she promptly reported her case on CDPI on 7 March with the correct and accurate information.

84. However, DH spent 35 days to issue a correct IR (the second IR) to the complainant. While the Office of The Ombudsman (the Office) appreciates the heavy workload and immense pressure facing DH at that time, the Office considered the delay substantial and undesirable. The delay not only caused inconvenience to the complainant but also generated additional and unnecessary workload for the Department.

85. The Office noted that DH had subsequently created a centralised masterlist in mid-April 2022 for cross checking of information, and a new system in July 2022 for sending emails to speed up the process for and increase the accuracy of IR generation in response to the challenges brought about by the fifth wave. While these systems were useful, regrettably they came into operation only after the complainant's case. The Office urged DH to conduct a review on the internal workflow and procedure of issuing isolation-related documents with a view to improving the overall operational efficiency.

86. In view of the above, the Office considered Allegation (a) substantiated.

*Allegation (b)*

87. The complainant received a total of four IRs with three different isolation periods because two staff responsible for issuing IOs/IRs counted the commencement date of isolation period wrongly and there was no centralised database available at the time for them to cross check before replying to the complainant's repeated requests for amendment of IR. For documents with legal effect, the Office considered the mistakes quite unacceptable. The Office noted that DH was facing significant difficulties in March 2022 due to the upsurge of cases. The Office also noted that staff from other departments had been redeployed for around two weeks to assist DH to issue IRs to the public. DH admitted that the rapid staff turnover, the differences in background, ability and experience of the staff, their unfamiliarity with anti-pandemic work and the continually heavy workload in the fifth wave of COVID-19 might have contributed to making

those mistakes on IRs for the complainant. To prevent recurring of similar incidents, the Office considered it important for DH to provide sufficient training and readily available Frequently Asked Questions (“FAQ”) to the newly deployed staff, especially for those who are responsible for issuing legal documents such as IOs, Quarantine Orders (“QOs”) and IRs and for answering public enquiries.

88. In addition, the Office noted a lot of manual operation was still needed to handle the requests for IOs, QOs and IRs from emails or telephone calls. While the Office understood that complete accuracy is not possible if manual operation is involved, taking into consideration the large workload and high pressure faced by handling officers especially at times of policy change, the Office urged DH to arrange adequate cross checking to ensure data accuracy.

89. CTO was unaware of CHP’s action in issuing the correct IR to the complainant and that the matter had already been resolved before the issuing of the third IR. This shows a lack of coordination among different units of the Department.

90. The Office noted that DH had later reminded its staff to check the masterlist before issuing IR and the case would be closed once IR was issued. DH had also taken actions to minimise typographical mistakes by reminding the staff to seek instructions from senior officers where and when they have doubt on the data.

91. The Office noted DH’s view that it was unrealistic for it to have the capacity in terms of staff employment and IT development to cope with the fifth wave of the pandemic and that it had decided to issue IR quickly at the expense of cross-checking to ensure accuracy. The Office urged DH to learn from the experience of this pandemic and try to devise workflows and IT systems which are much more scalable and versatile to cope with future unprecedented challenges. In view of the above, the Office considered Allegation (b) substantiated.

92. Overall, The Ombudsman considered the complaint substantiated and recommended DH to –

- (a) review the internal workflow and streamline the procedure of issuing IOs, QOs and IRs as well as devise more scalable and versatile systems;
- (b) note the importance of sufficient staff training and readily available FAQs to facilitate the issuance of IOs, QOs and IRs and for answering public enquiries; and
- (c) note the importance of cross-checking of the data input to the IR Robot for minimising human error.

### **Government's response**

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

#### *Recommendation (a)*

94. DH had been continuously streamlining the procedure as well as devising more scalable and versatile systems. An email add-on function was developed and deployed in August 2022 to streamline the processing of email enquiries requesting IRs. An auto-reply was sent to the enquirer to ask for missing information that was essential for generation of IRs. This could expedite the process and prevent input errors made by DH staff. In September 2022, the online reporting systems were further enhanced to direct cases to report to the correct platform by providing cases with relevant pop-up messages and information on the weblink or URL of the correct platform when patients used the wrong platform. The online platforms were also enhanced on 9 November 2022 such that patients were able to use the reference number provided after submission to check and (i) amend the contact telephone numbers of their own and their household contacts; and (ii) add new household contacts to their previous reports.

Furthermore, in order to simplify the procedures for handling the requests for IOs, QOs and IRs to CHP from different hotlines through different channels, the Communicable Disease Branch (“CDB”) of CHP had designated a single email account as a central hub to receive such referrals since December 2022.

*Recommendation (b)*

95. Newly deployed staff had been provided with readily available FAQs, particularly those who were responsible for issuing legal documents such as IOs, QOs and IRs. The set of standard replies to the frequently encountered questions was compiled and updated by CDB when certain enquiries were raised repeatedly. This has aided frontline staff in responding to public enquiries, especially those related to IOs and IRs. Continuous coaching had also been provided by experienced staff so as to enhance the handling of public enquiries by newly deployed staff. Moreover, in the event of complex enquires, frontline staff were encouraged to seek immediate advice from their seniors to ensure that enquiries would be handled properly, carefully, appropriately and timely. These messages had been reinforced repeatedly especially during the fifth wave of the pandemic in 2022.

*Recommendation (c)*

96. DH had explained that as information obtained through emails or telephone calls could not be automatically captured by the IR Robot, data must be input manually. Data validation and data exchange had been implemented since May 2022 to enhance the accuracy of information in IRs. Personal particulars provided from cases reported in CDPI and the System have been directly interfaced with the centralised case portal. A system interface between the CDPI/System and the Smart Identity Card database of the Immigration Department (“ImmD”) was also developed to cross check reported personal particulars against the ImmD data via the Hong Kong Identity Card number. The validation process alerted any data mismatch and minimised human error. In September 2022, CDPI and the



System were enhanced to require the public to enter their mobile telephone number twice to mitigate human error. Experienced staff would also double check processed requests before sending them to the IR Robot. Since August 2022, team members had received regular reminders to cross check information with the Government's database to ensure accuracy. Senior staff would also regularly remind handling staff of the importance of data input accuracy and the need for extra caution when entering data.

97. 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 2023, COVID-19 has been managed as a type of upper respiratory tract infection. Our society has resumed normalcy in full. 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 actual circumstances in devising the workflow.

## **Department of Health**

### **Case No. 2023/0201 – Mistakenly issuing the COVID-19 Compulsory Testing Order and relevant follow-up letters to a foreign domestic helper despite her clarification and DH's confirmation of her compliance with the testing requirement**

#### **Background**

98. The complainants, a foreign domestic helper and her employer, complained to the Office of The Ombudsman (the Office) against the Department of Health (DH) on 22 February 2023.

99. The helper received a Compulsory Testing Order (CTO) served by the Compulsory Testing Prosecution Office (CTPO) of DH on 30 June 2022, despite her taking the required test on 29 May 2022. In response to the complainants' complaint of 1 July, the case handler of CTPO emailed them on 6 July to confirm that the helper had complied with the testing requirement with test record found and the CTO could be ignored. On 24 October, a letter titled Enquiries for Fixed Penalty Notice (the 2nd Letter) was served to her by CTPO for failing to comply with the testing requirement. The complainants complained to CTPO, and the case handler replied on 4 November to confirm again that the helper had complied with the requirement, she would not be fined and could ignore the 2nd Letter. However, she received another letter (the 3rd Letter) dated 19 January 2023 from CTPO claiming that she had not complied with the testing requirement. The repeated mistakes by CTPO had caused her enormous stress and anxiety.

100. The complainants were dissatisfied that CTPO had repeatedly issued the above three order/letters to the helper mistakenly despite CTPO's confirmations of her compliance with the testing requirement.

## **The Ombudsman's observations**

101. Imposing compulsory testing requirements on inbound person was an important anti-pandemic measure and not complying with the CTO is an offence and is liable to a fine and imprisonment. The public expects CTPO to take the enforcement work seriously. The helper's case reflected that there was a gap between what actually happened and public expectation. According to DH, her case was mishandled due to two main reasons: the input of wrong passport number at the test centre and the case status not being updated in CTPO's Excel database. The whole incident was caused by a series of human errors in the test centre and CTPO, and the Office considered the errors serious.

102. In particular, the concerned CTPO case officer's repeated inaction to update the Excel file is unacceptable. According to DH, the officer had found anomalies in the case status on two occasions on 6 July and 4 November 2022 but did not update the case status in the Excel file. As CTPO relied on the case information and status in the Excel file to determine its actions to be taken, such omissions unfortunately resulted in the issuing of the 2nd Letter and the 3rd Letter despite the paper record made. The Office could not ascertain the reason why the concerned CTPO case officer did not update the Excel file but only updated the paper file. This may be due to unclear guideline provided for staff or insufficient staff training on updating the case status, or it may be due to the officer's carelessness or negligence, or a combination of them. Taking into consideration the prolonged stress and anxiety the complainants have endured since the issuing of the CTO on 28 June 2022, their grievance is understandable.

103. In addition, according to the established practice, CTPO should have checked the helper's compliance of the CTO issued on 28 June 2022 around five days after the deadline of 5 July. From the information provided by DH, the Office did not see any mechanism in CTPO to confirm compliance. Instead, CTPO had delayed taking follow-up action on the CTO and issued the 2nd Letter on 19 October, i.e., more than three months

after the deadline. Also, the Office noted that while the helper's test record was found on 6 July 2022, her case was only closed on 2 February 2023, together with a backlog of other cases upon clearance operation. The delay reflects that there was no mechanism in CTPO to monitor and oversee the progress of follow-up on outstanding cases.

104. DH completed the development of an automated system named Post-arrival Compliance Monitoring System (PCMS) in February 2023 to replace the Excel file to enhance efficiency and accuracy. With hindsight, in view of the limitation of the manual Excel record system and the possible upsurge of the number of CTOs and the resulting follow-ups, the Office considered that DH should have started the development of PCMS soon after the Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (the Regulation) was enacted in November 2020 and compressed the time of development, so that the upsurge could have been promptly and properly coped with. Now that compulsory testing requirements for inbound persons have been lifted and CTPO has been closed down, PCMS might be left idle. The Office considered that DH have appropriately formulated user manual and system installation manual to ensure that staff could easily revive and use PCMS in future whenever necessary.

105. Overall, The Ombudsman considered the complaint substantiated and recommended DH to –

- (a) provide the written confirmation for the conclusion of the helper's case as requested by the employer which was previously overlooked by CTPO;
- (b) review the guideline and strengthen staff training on properly updating test records and case status; and
- (c) review and enhance the mechanism of monitoring progress of similar enforcement action in future.

## **Government's response**

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

- (a) Written confirmation to the employer for the conclusion of the case was issued on 28 July 2023;
- (b) This case highlighted the importance of timely updating of records. CTPO set up under the Emergency Response and Programme Management Branch (ER&PMB), Centre for Health Protection, DH, had all along reminded colleagues through their guidelines and supervisors to properly update their case records in the master list to ensure cases are handled based on all available and up-to-date information. Apart from the now disbanded CTPO, ER&PMB highly recognises the importance of accurate and up-to-date records in the daily operation. In the day-to-day operations, colleagues are reminded through operational manuals, guidelines and regular training to update the records in a timely manner to ensure that they are accurate and up to date. DH will continue to remind colleagues from time to time; and
- (c) Noting the many manual processes in the enforcement actions in CTPO, ER&PMB developed the PCMS to replace the manual Excel record system. The PCMS serves as a useful tool to integrate data, record case updates and decisions of case officers in a timely manner and monitor the progress of enforcement actions. The User Manual for PCMS has reminded users to update case records in a timely manner and to make use of it for monitoring case progress. DH trusts that with the use of the PCMS, manual errors would be minimised and situations similar to this complaint could be avoided.

107. 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 2023, COVID-19 has been managed as a type of upper respiratory tract infection. Our society has resumed normalcy in full. 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 actual circumstances in devising the workflow.

## **Electrical and Mechanical Services Department**

### **Case No. 2022/3578 – Repeatedly requiring the complainant to submit information to prove that the products concerned met the safety requirements**

#### **Background**

108. The complainant made a complaint to The Office of The Ombudsman (the Office) against the Electrical and Mechanical Services Department (EMSD) in October 2022.

109. The complainant was a company selling Japanese smart toilet seats. In June 2021, the complainant participated in an exhibition, displaying its products at an exhibition centre in Hong Kong, during which EMSD conducted an inspection (Operation A) and required the complainant to produce the certificates of safety compliance of two models of smart toilet seats. In August, the complainant submitted the information to Staff A of EMSD by email. In September, Staff B of EMSD required that the complainant submit the information again because Staff A, who then retired, had not communicated with Staff B in detail regarding the complainant's previous submission.

110. Regarding a marketing research report on electronic toilet seats to be issued in the Consumer Council's Choice Magazine, EMSD launched an enforcement operation (Operation B) in September 2022 to examine whether the suppliers of the electronic toilet seats mentioned in the research report had fulfilled the requirements under the Ordinance and the Regulation.

111. In October 2022, EMSD required the complainant to submit the certificates of safety compliance of four models of smart toilet seats for Operation B. Nonetheless, the complainant was told by EMSD staff during the investigation in 2021 that the certificates submitted in July 2021 for two of those models already met the statutory requirements. Moreover,

except for the measurement, two of those models had the same specifications as the other two, and the relevant information had been included in the complainant's submission in 2021.

112. Based on the above, the complainant considered that the handover of work and communication among EMSD staff had been ineffective and insufficient and that the staff had failed to check work records, resulting in EMSD's repeated requests for submission of the information already provided by the complainant. Such handling had wasted the complainant's time.

### **The Ombudsman's observations**

113. According to the information provided to the Office, the complainant was mainly dissatisfied that after the company's submission to Staff A of EMSD in August 2021, Staff B called in September 2021 to require re-submission of the documents on the grounds that Staff A had retired from his post without explaining the details of information that the complainant had already submitted. The complainant found such handling of EMSD unreasonable and that the handover of work among staff had been ineffective. The subsequent development of the case shows that there was indeed inadequacy in the complainant's submission. Nevertheless, the crux is whether EMSD staff had, during the tele-conversation, required the complainant to re-submit the information that the latter had already provided to another staff. In the absence of objective evidence, the Office could not know what had actually been communicated between the complainant and Staff B, but the Office noticed that in the email sent to Staff B on 14 September 2021, the complainant's representative indicated that the complainant had learned about Staff A's retirement during the tele-conversation with Staff B and therefore re-submitted the document which had already been sent to Staff A. This shows that what the complainant perceived from the tele-conversation tallied with the complaint subsequently filed. The Office have examined EMSD's written record about the tele-conversation on 13 September 2021 (it was 14 September in the complainant's account) and found that Staff B only made a brief record



about having called the complainant's representative and that the representative would provide information. There were no details about the purpose of calling the complainant, the main points discussed during the tele-conversation and what information the complainant had to resubmit. In handling this complaint, EMSD had asked Staff B about his conversation with the complainant's representative, but he could not recall the details.

114. EMSD explained that Staff B contacted the complainant on 13 September 2021 because the latter's submission to Staff A could not prove that the two models of smart toilet seats in question had been issued certificates of safety compliance before 12 June. Hence, EMSD was actually requiring the complainant to submit supplementary information, not repeatedly demanding the same information from the complainant. Nevertheless, EMSD emphasised that its staff could not disclose the details of irregularities to the supplier during the process of collecting evidence for prosecution purposes. Hence, Staff B did not make it clear during the tele-conversation that the complainant must submit certificates of safety compliance issued before 12 June 2021. Under such circumstances, the Office has doubts as to how EMSD staff conveyed to the complainant the message that the certificates of safety compliance previously submitted were not valid and what supplementary documents the complainant should provide. Besides, the Office has examined the correspondence between EMSD and the complainant regarding Operation A and found that EMSD had already informed the complainant in the "request-for-information" letter dated 12 June 2021 that supplementary information was required because the complainant had failed to produce certificates of safety compliance on the day EMSD conducted the inspection. The letter also stated that any person who supplies electrical products without the issuance of a certificate of safety compliance commits an offence. Therefore, the complainant should have known that EMSD was requiring the company to prove that the certificates of safety compliance of the two models of smart toilet seats were issued before 12 June 2021. Under such circumstances, the Office finds it hard to comprehend why EMSD still emphasised that its staff could not make it clear to the complainant during

the tele-conversation on 13 or 14 September 2021 that the complainant must submit the certificates of safety compliance issued before 12 June 2021 because neither the interview under caution nor the caution statement had been conducted or taken.

115. While the Office agrees that suppliers have the responsibility to understand and act according to the applicable regulatory mechanism, it is not unreasonable that the complainant could not understand that what EMSD staff required it to submit in mid-September 2021 were the valid certificates of safety compliance issued before 12 June 2021, and misunderstood that EMSD had repeatedly required submission of the same information given the above circumstances. In the Office's opinion, the communication between EMSD and the complainant had been deficient.

116. EMSD explained that none of the safety test reports that the complainant submitted in August 2021 for the four models of products concerned under Operation B were in accordance with the latest edition (i.e. 2019 edition) of IEC60335-2-84. Instead, the tests were conducted according to the safety standards of the 2013 edition. Staff C, therefore, followed up the complainant's case in October 2022 and requested updates on the products in question. EMSD also explained that apart from the new requirements of the international safety standards, manufacturers would update the user guide of products from time to time to ensure safe and effective use of their products by consumers. Regardless of the reason to modify their products, manufacturers must obtain an updated certificate of safety compliance for the products. The Office has examined Staff C's email to the complainant, in which the staff had not clearly indicated that the latest information on the products in question should be submitted. In the Office's opinion, one of the purposes of Operation B was to obtain the latest information about the products in question. If Staff C had specified the purpose to the complainant, the latter would not have thought that Staff C failed to check the certificates previously submitted and repeatedly required submission of the same information. In this regard, EMSD reviewed the case and considered that its staff should have clearly

explained in detail the inadequacy of the complainant's submission in 2021 to avoid misunderstanding.

117. The Ombudsman considered the complaint partially substantiated and recommended that EMSD remind its staff to explain clearly the information being asked for when requiring industry practitioners to provide information, so as to avoid creating an impression that EMSD keeps requiring the same information.

### **Government's response**

118. EMSD accepted The Ombudsman's recommendation and held work sharing session on 14 September 2023. Relevant staff were reminded to explain clearly the information being asked for when requiring the trades to provide information, so as to avoid creating an impression that the same information was repeatedly requested.

## **Food and Environmental Hygiene Department**

**Case No. 2022/2602 – (1) Improper management of a public market; (2) Failing to follow up on and respond to the complainant’s complaints; and (3) Failing to regulate the irregularities and terminate the tenancies of the stall tenants who breached the tenancy agreements and then put up those stalls for public auction**

### **Background**

119. The complainant alleged that he had anonymously complained to the Food and Environmental Hygiene Department (FEHD) via 1823 in September 2020 (should be July 2020), August 2021 and June 2022 respectively about the following irregularities at its Kwu Tung Market.

- (a) A certain stall selling frozen meat (Stall A) gave off stench when handling meat, affecting environmental hygiene (environmental hygiene problem);
- (b) Many stall tenants had changed the use of their stalls, including using the stalls for keeping chilled foods, storing miscellaneous items, offices, food processing plants etc. Some stalls, although displaying commodities (such as vegetables and fish), the quantity was so few that it was suspected that the tenants were pretending to sell the commodities specified in the tenancy agreements and some of the stalls were even left unattended (change of use of stalls);
- (c) Most of the stalls were not in operation for a long time, with their shutters often closed or half closed (inadequate business hours);
- (d) The tenants of Stall A, Stall B, Stall C and Stall D (collectively termed as “the four stalls involved”) breached the tenancy agreements by leasing multiple stalls from other stall tenants for

operating frozen meat, poultry, grocery and hardware businesses (subletting of stalls); and

- (e) Stall A and Stall B still had staff working after the market closed every night, while Stall B did not operate during the day and only conducted poultry wholesale activities late at night (night-time operation).

120. The complainant complained to the Office of The Ombudsman (the Office) against FEHD for –

- (a) failing to manage Kwu Tung Market properly in allowing the continued occurrence of the aforementioned irregularities (Allegation (a));
- (b) failing to follow up and respond to his three complaints mentioned above (Allegation (b)); and
- (c) failing to fulfill its duty to take enforcement actions against stall tenants who breached the tenancy agreements and terminate their tenancies, resulting in prolonged unavailability of vacant stalls in Kwu Tung Market for open auction, which is unfair to those interested in bidding for stalls in the market (Allegation (c)).

## **The Ombudsman's observations**

### *Allegation (a)*

#### Environmental hygiene problem

121. According to its inspection records, FEHD deployed staff to carry out inspections on many occasions in the past two years. The department did not find any improper handling of meat by stall tenants causing stench. There was only a brief period (29 July to 5 August 2021) when refuse could not be promptly removed owing to a lift failure which might have

temporarily affected the environmental hygiene of the market. Upon learning of the lift failure, FEHD immediately arranged for repairs and deployed additional manpower to handle the refuse and step up cleansing. When the Office staff inspected the market, the overall environmental hygiene condition thereat was fair and no stench was detected. The Office considered that there is no evidence to suggest that FEHD has failed to properly follow up on the environmental hygiene problem alleged by the complainant.

#### Change of use of stalls, inadequate business hours and subletting of stalls

122. Having reviewed the information provided by FEHD, including the relevant inspection and enforcement records, the Office considered that FEHD has taken enforcement actions against tenants of Kwu Tung Market who breached the tenancies under the prevailing mechanism and sought legal advice on suspected subletting cases. While the number of verbal warnings and warning letters issued by FEHD for the abovementioned irregularities in the past two years was not high, the Office understood that the staff of FEHD and the contractor have to collect evidence based on actual ground situation and circumstantial factors to determine whether there has been a breach of the law or the tenancy before taking action. The number of warnings alone may not be sufficient to judge whether the staff of FEHD and the contractor have performed their enforcement duties dutifully. However, during the two visits to Kwu Tung Market, staff of the Office found that a large number of stalls were not in operation and many stalls were indeed suspected to be pretending to sell the commodities specified in the tenancy agreements. If members of the public were to make similar observations in their daily life, they will think that FEHD is not managing the market and taking enforcement actions against irregularities well.

123. In view of this, the Office urged FEHD to step up its monitoring of stall tenants and take enforcement actions decisively if there is sufficient evidence of breach of law or the leases, so as to curb irregularities and manage the market more effectively.

### Night-time operation

124. FEHD has clarified that it had received requests from stall tenants to work outside the market's business hours during a Market Management Consultative Committee (MMCC) meeting, and it was after negotiation that FEHD decided to allow stall tenants in need and their staff to enter the market to work. The Office considered that whether to allow night-time operation is a market management decision by FEHD. The Office will not interfere with FEHD's decision in the absence of information showing that the decision was manifestly unreasonable or contrary to common sense. The key is that FEHD should ensure that there is accurate information of the registered persons and only authorised persons are allowed to work in the market during non-business hours to avoid security problems.

125. In light of the above analysis, The Ombudsman considers Allegation (a) is unsubstantiated.

### *Allegation (b)*

126. Upon receipt of each of the complainant's complaints, FEHD took follow-up actions, including deploying staff to conduct on-site inspections, taking enforcement actions against non-compliant stall tenants, arranging timely lift maintenance by the Electrical and Mechanical Services Department (EMSD)'s contractor, deploying additional manpower to handle refuse and cleanse the refuse room, requesting contractors to step up cleansing and pest control, giving hygiene education for persons-in-charge of the relevant stalls, distributing advisory letters to market stall tenants as well as reminding tenants to comply with the tenancy terms. The Office considered that FEHD has taken appropriate actions in following up on three complaints by the complainant.

127. However, for the complaint filed by the complainant in July 2020, the North District Environmental Hygiene Office (DEHO) of FEHD issued an interim reply on 13 July 2020, but did not issue a substantive reply to the complainant until 20 October 2020. During this period, FEHD did not

provide the complainant with the case progress according to the established procedures.

128. FEHD admitted that DEHO had not given any reply, case progress or investigation results to the complainant on the complaint he filed in August 2021, and apologised to the complainant. FEHD has instructed the staff concerned to make improvements.

129. In light of the above analysis, The Ombudsman considered Allegation (b) partially substantiated.

#### *Allegation (c)*

130. Having reviewed the relevant inspection and enforcement records provided by FEHD, the Office considered that the DEHO and the contractor have taken corresponding enforcement actions against non-compliant stall tenants in accordance with relevant regulations and tenancy clauses in the past two years. As to whether DEHO should terminate the tenancy, it has to be handled in accordance with the established mechanism. According to FEHD's records, most of the non-compliant tenants who had received verbal warnings have rectified the irregularities during the review inspections of DEHO and the contractor staff. As for those who have not, DEHO has issued warning letters to them and most of them have rectified the irregularities afterwards. In fact, in the past two years, DEHO has taken enforcement action according to warning letter systems against two non-compliant stalls that had received three warning letters within six months and terminated their tenancies. There were also three other stall tenants who voluntarily terminated their tenancies for suspected breach of tenancy clauses.

131. FEHD has explained that subsequent to the resumption of open auction, three stalls in Kwu Tung Market were let out between June 2021 and August 2022 by open auction. The department would review whether vacant stalls are suitable for putting to open auction based on the operation of Kwu Tung Market, in order to tie in with the overall development of



public markets and the policy of allocation of public market stalls, and it has nothing to do with whether the stalls have breached the tenancy clauses or have their tenancies terminated. Whether FEHD would put up vacant stalls for open auction is a policy consideration of the overall development of its public markets but not a general administrative matter, and the Office would not intervene.

132. In the light of the above analysis, the Office considered allegation (c) unsubstantiated.

### *Other Issues*

#### Tenancy Clauses

133. In general, the Office considered that FEHD has taken appropriate follow-up actions in response to the complaints, and the enforcement actions taken against non-compliant stalls are in line with its existing mechanisms. Nevertheless, the Office's inspection found that there were indeed stalls in Kwu Tung Market with insufficient business hours, and some stall tenants were suspected of pretending to retail the goods specified in the tenancy agreement but in fact using their stalls for storage or wholesale business. The root of the problem lies in the current tenancy agreement, which poses no restriction on the daily business hours of stalls, the number of stalls that a tenant can rent in the same market, the number of stalls that a registered assistant can serve at the same time and the situations abovementioned. Therefore, the relevant problems do not constitute a breach of tenancy clause and FEHD could not take enforcement actions.

134. According to FEHD, in the past five years, five markets and three cooked food markets under old tenancies were closed. The overhaul works of one market has been completed while that for another is in progress under the Market Modernisation Programme (MMP). FEHD is carrying out the preparatory and consultation work for the proposed overhaul or redevelopment works for four other markets under the MMP. Upon

completion of the works, the market stalls will be let out under a new tenancy scheme. As at 31 July 2023, there were a total of 11 505 market stalls let out under valid tenancies, of which 429 stalls were let out under the new tenancies after the resumption of open auction in June 2021. FEHD will announce in due course when there are suitable vacant stalls available for open auction and continue to replace the old tenancies with the new ones.

135. The Office noted that unless serious issues are involved (e.g. food safety), when renewing a tenancy, FEHD would sign a new three-year tenancy agreement with the market stall tenant based on the original tenancy agreement (Note) with additional clauses and conditions. (Note: FEHD generally allows a tenant to renew his stall's tenancy before its expiry if he so wishes, normally for a period of three years.) In recent years, FEHD has tried to phase out long-standing tenancy agreement and sign new ones with new tenants through the MMP, open auctions for vacant stalls and establishment of new markets. By doing so, the above-mentioned problem could be solved.

136. The Office hoped that FEHD could review the situation of Kwu Tung Market in a timely manner and consider whether to include it in the MMP, so that new tenancy agreement can be signed with tenants to close the loopholes in the old tenancy agreement.

#### Future Planning of Kwu Tung Market

137. According to FEHD, Kwu Tung Market was established in 1985 primarily to relocate the stalls and shops at the old Kwu Tung bazaar, which was demolished due to the construction of the New Territories Circular Road. The market has 98 stalls in total. Tenants may apply to FEHD if they wish to change the class of commodity sold at the stall. FEHD will carefully consider each application for change of stall category, including whether the change is compatible with commodities being sold in the immediate vicinity of the stall concerned and whether it is in the public interests, so as not to affect the competitiveness of the existing stall

trades. On receipt of an application, FEHD will consult the MMCC (members include local district council members and representatives of each trade) and heed its views and the opinions of stall tenants, as well as distribute questionnaires to other stalls of the related category. FEHD will consider each application on a case-by-case basis, such as whether the location of the stall is compatible with the layout of the market (e.g. the need to separate wet and dry goods).

138. The Office does not rule out the possibility that the change of use of stalls by stall tenants is related to changes in demography and demand for market services in the local community. The Office staff noticed during inspections that Kwu Tung Market is not easily accessible by public transport, there are very few residential buildings nearby and the patronage of the market is low. Retail trading activities were quiet, and there were no retail sale of food related wet goods (vegetables and fruits, fresh meat, seafood, etc.). Kwu Tung Market was built in the late 1980s, and the planning at the time may not be able to cope with the current development of the community. While the demand for food related wet/dry goods has declined, only three out of a total of 98 market stalls have been approved by FEHD to change their uses to sell other types of commodities. This shows that FEHD has been adopting the planning of the market at the time of its construction.

139. Information reveals that in the past two years, two stalls rented by Stall A were issued verbal warning(s) and warning letter(s) by FEHD for unauthorised change of use of stalls (with barber and haberdashery as their original trades), and one stall rented by Stall C was issued verbal warning(s) and warning letter(s) by FEHD for selling/displaying unauthorised commodities (with vegetables as its original trade). Tenants of the above stalls had applied to FEHD for change of use of stalls (proposed trade categories are frozen meat and haberdashery respectively) but their applications were rejected. The Office staff noticed in the two inspections that (tenants) of the aforementioned stalls pretended to be operating the trades specified in the tenancy agreement but were in fact operating a business they intended to switch to.

140. The Office was of the view that the existing mode of business of many stalls in Kwu Tung Market may have deviated from the market planning and tenancy requirements. If the existing planning of the market can no longer meet the needs of the local community and FEHD fails to take enforcement actions against stalls that are faking, it is advisable that FEHD should consider appropriately adjusting the business types of market stalls and regularise the business operation of the stalls mentioned above, thereby enabling the market to achieve its purpose of serving the community.

141. The Office noted that in the Hong Kong 2030: Planning Vision and Strategy promulgated in 2007, the Government recommended proceeding with the Kwu Tung North, Fanling North and Peng Che/Ta Kwu Ling New Development Areas as well as the development of the Hung Shui Kiu New Development Area to address the long-term housing demand and provide employment opportunities. Subsequently, the Government formulated the “Kwu Tung North Outline Development Plan” for Kwu Tung North New Development Area (NDA) and planned to construct a new public market in the NDA. Although the future development of the existing Kwu Tung Market remains unknown, the Office would like to take this opportunity to urge FEHD to proactively approach the relevant departments to complete the planning for the public markets in the district at an early date to make optimal use of land resources.

#### Handling of vacant stalls

142. On whether the vacant stalls in Kwu Tung Market will be rented out by way of short-term tenancy or converted for community facility use, FEHD stated that the tenancy of stalls in public markets should be allocated on an impartial basis. It will, after consideration, put up suitable vacant stalls for public auction for a fixed tenancy term of three years.

143. While FEHD stated that it would rent out the vacant stalls in Kwu Tung Market on a three-year fixed-term tenancy, if it could consider

renting out the stalls in a flexible manner (e.g. short-term tenancy) where feasible, it will achieve the goal of making optimal use of land resources on one hand and increasing government revenue on the other.

#### Alteration of stall structure

144. In its reply to the Office dated 31 May 2023, FEHD stated that Barber Shop 1, Barber Shop 2 and Barber Shop 3 did apply to it for alteration of stall structure, no objections were received from the relevant departments and the applicants were informed that their applications had been approved in principle. However, upon further enquiry by the Office, FEHD stated that the applicant applied for altering the structure of Barber Shop 2 in early 2020. After consulting the Architectural Services Department (ArchSD), it issued a letter of approval-in-principle to the applicant in September 2020, requiring him/her to carry out renovation work according to the application requirements and conditions. However, the applicant did not submit the required documents to FEHD to confirm his/her compliance with the relevant requirements and conditions. As for Barber Shop 1 and Barber Shop 3, it was not until April 2023 (i.e. after the Office wrote to FEHD on 24 March 2023 for further enquiry) that the tenant concerned submitted the application.

145. The Office was of the view that as FEHD staff carry out daily inspection at the market and the Contractor staff even station there every day, they should have noticed whether alteration to the structure of the stalls were carried out and whether such works had been approved. However, it is only after the Office made enquiry with FEHD that Barber Shop 1 and Barber Shop 3 submitted their late applications (the relevant renovation works had been completed) and no enforcement actions have been taken by the Department against the irregularities. The Office opined that the staff of FEHD and the Contractor did not properly perform their inspection duties, leading to their failure to notice/report unauthorised alterations to the structure of the stalls. The Office urged FEHD to strengthen training for its staff and the Contractors and require them to manage the stalls strictly in accordance with the terms of the leases and the

Public Markets Regulations (the Regulation), and seek help from their superiors in a timely manner when encountering difficulties.

146. While FEHD has approved in principle the application by Barber Shop 2, it failed to set a time frame for Barber Shop 2 to comply with the relevant requirements/conditions. In addition, the Department has no record showing that Barber Shop 2 has been renovated in accordance with the relevant requirements/conditions. Although there are established application procedures for alteration of stall structure, FEHD failed to address such issues as whether the renovation works were carried out in accordance with the approved conditions and whether such alterations were in compliance with the requirements/conditions. Alteration works involve safety issues and non-compliant works may result in casualties. FEHD should draw up specific and clear procedural guidelines for its staff to observe when following up on stall alteration works.

### *Conclusion*

147. Based on its inspection findings, the Office doubted whether the existing mode of business of the market could tie in with the development of the local community. Given the limitations of the existing tenancy conditions for market stalls, it is a matter of concern that the current market operation inevitably gives rise to a public perception of improper market management by FEHD, despite the enforcement actions taken by frontline staff under the existing mechanism. The Office was of the view that FEHD should actively consider the future development direction of the market and make corresponding arrangements to dovetail with the new development area.

148. To sum up the above analysis, the Ombudsman considered the complaint partially substantiated with other inadequacies found.

149. The Ombudsman recommended FEHD to –

- (a) step up the monitoring of stall operations and take enforcement actions decisively if there is sufficient evidence of breaching of the law or the leases;
- (b) remind staff to handle complaint cases in accordance with guidelines and provide complainants with interim replies and case progress in a timely manner, and issue substantive replies to complainants upon concluding complaint cases;
- (c) review in a timely manner the operation of Kwu Tung Market, and consider adjusting the business types of market stalls in light of the community's current needs, and rent out vacant stalls in a flexible manner where feasible. For the future development of the market, complete the planning for the public markets in Kwu Tung at an early date to make optimal use of resources;
- (d) strengthen training for staff and contractors and require them to manage the stalls strictly in accordance with the terms of the leases and the Regulations and seek timely help from their superiors when encountering difficulties; and
- (e) draw up specific and clear procedural guidelines on renovation works for alteration of stall structure for staff to observe when following up on stall alteration/renovation works.

### **Government's response**

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

#### *Recommendation (a)*

151. The staff of FEHD and market management services contractor (the Contractor) have strengthened the monitoring of stall operations. In response to the Office's recommendations on the complaint cases, FEHD

will continue to organise routine inspections and blitz enforcement actions, and will also take stricter enforcement actions against stalls with irregularities.

*Recommendation (b)*

152. FEHD has reminded its staff to handle complaint cases in accordance with departmental guidelines, provide complainants with interim replies and case progress in a timely manner as well as give substantive replies to complainants upon concluding complaint cases. In addition, FEHD supervisory staff have stepped up monitoring of frontline staff in handling complaints, including random checks on a regular basis to ensure that all complaints are properly handled.

*Recommendation (c)*

153. FEHD will keep the operation of its public markets under review and adjust the business types of stalls and the like where necessary, with a view to enhancing the overall competitiveness of the markets. On renting out vacant stalls, past experience shows that stall tenants generally prefer a longer tenancy period to allow sufficient time for them to recoup their investments on the stalls. When renting out vacant stalls, FEHD will take into account stall tenants' views, the Office's recommendations and other relevant factors.

154. The Government has planned to build a new public market in Kwu Tung North New Development Area. FEHD plans to submit the proposed project to the Public Works Subcommittee (PWSC) of the Legislative Council for deliberation in 2024 and seek funding approval from the Finance Committee of the Legislative Council upon PWSC's endorsement. Regarding future arrangements for the existing Kwu Tung Market, FEHD maintains an open attitude. If there is any plan for market closure or consolidation, the department will consult the District Council and the affected stall tenants in a timely manner.



*Recommendation (d)*

155. FEHD has strengthened supervision and training of frontline staff, including arranging for them to attend market management-related training courses organised by the Department, reminding them to strictly follow the tenancy terms and relevant legislation in taking enforcement actions against non-compliant stalls as well as regularly reviewing their work and providing appropriate guidance. Meanwhile, the Contractor's staff will manage the market in accordance with the relevant contractual requirements, including daily inspection on the day-to-day operation of market stalls and performing cleansing work daily etc. FEHD will deploy staff to conduct surprise checks to monitor the Contractor's compliance with contractual requirements. If irregularities are found, FEHD staff will issue verbal warnings or default notices to the Contractor and demand rectification.

*Recommendation (e)*

156. FEHD has reviewed and revised the procedural guidelines on alteration of stall structure and the revision exercise was completed in the third quarter of 2024.

## **Food and Environmental Hygiene Department**

### **Case No. 2022/2840 – Improper management of a public market**

#### **Background**

157. The complainant alleged that in July (should be August) 2021, he complained to the Food and Environmental Hygiene Department (FEHD) via 1823 that a stall selling frozen meat (Stall A) in Kwu Tung Market gave off a stench when handling meat. The problem was slightly alleviated as the weather turned cool later and the complainant did not pursue the matter further. The stench reappeared in the summer and the complainant lodged a complaint via 1823 again in July (should be June) 2022. Although the situation improved after follow-up action taken by FEHD, the problem of poor environmental hygiene in the market remained unresolved (environmental hygiene problem).

158. In August 2022, the complainant complained to FEHD via the 1823 mobile app that the lights of the market were still on after business hours, the lifts and escalators, etc. were still in operation, the market's main gate was not closed and the staff of Stall A and another stall (Stall B) continued to work in the market and enter and exit it without authorisation (night-time operation). On 23 August, FEHD staff inspected the market, during which one of the staff told the complainant that the management of the market had been outsourced to a market management service contractor (the Contractor), and that he was unaware of the late-night work carried out by the staff of the two stalls mentioned above, which might be "beyond the control" of the Contractor staff.

159. The complainant found that many stalls in Kwu Tung Market were used for keeping chilled foods, storage, office, food processing plant etc. (change of use of stalls), which was in breach of the use stipulated in the tenancy agreements. However, FEHD took no enforcement actions.

160. The complainant took the view that FEHD had failed to properly follow up on the aforesaid irregularities in the market and therefore lodged a complaint with the Office of The Ombudsman (the Office).

### **The Ombudsman's observations**

#### *Environmental hygiene problem*

161. According to its inspection records, FEHD deployed staff to carry out inspections on many occasions in the past two years. The department did not find any improper handling of meat by stall tenants causing stench. There was only a brief period (29 July to 5 August 2021) when refuse could not be promptly removed owing to a lift failure which might have temporarily affected the environmental hygiene of the market. Upon learning of the lift failure, FEHD immediately arranged for repairs and deployed additional manpower to handle the refuse and step up cleansing. When the Office staff inspected the market, the overall environmental hygiene condition thereat was fair and no stench was detected. The Office considered that there is no evidence to suggest that FEHD has failed to properly follow up on the environmental hygiene problem alleged by the complainant.

#### *Night-time operation*

162. FEHD has clarified that it had received requests from stall tenants to work outside the market's business hours during a Market Management Consultative Committee (MMCC) meeting, and it was after negotiation that FEHD decided to allow stall tenants in need and their staff to enter the market to work. The Office considered that whether to allow night-time operation is a market management decision by FEHD. The Office will not interfere with FEHD's decision in the absence of information showing that the decision was manifestly unreasonable or contrary to common sense. The key is that FEHD should ensure that there is accurate information of the registered persons and only authorised persons are allowed to work in the market during non-business hours to avoid security problems.

### *Change of use of stalls*

163. Having reviewed the information provided by FEHD, including the relevant inspection and enforcement action records, the Office considered that FEHD has taken enforcement actions against tenants of Kwu Tung Market for breaches of tenancies under the prevailing mechanism and sought legal advice on suspected subletting cases. While the number of verbal warnings and warning letters issued by FEHD for the above irregularities in the past two years was not high, the Office understood that the staff of FEHD and the contractor cannot take action until they have collected evidence based on the ground situation and circumstantial factors to determine whether there has been a breach of the law or the tenancy. The number of warnings alone may not be sufficient to judge whether the staff of FEHD and the contractor have carried out enforcement work dutifully. However, during the two visits to Kwu Tung Market, staff of the Office found that most of the stalls were not in operation and many stalls were indeed suspected to be pretending to sell the commodities specified in the tenancy agreements. If members of the public found the same in their daily life, they will think that FEHD is ineffective in managing the market and taking enforcement actions against irregularities.

164. In view of this, the Office urged FEHD to step up the monitoring of stall operators and take enforcement actions decisively if there is sufficient evidence of breaching of the law or the leases, so as to curb the irregularities and manage the market more effectively.

165. In light of the above analysis, The Ombudsman considers the complaint unsubstantiated.

### *Other Issues*

#### Handling of Complaint Cases

166. Upon receipt of each of the complainants' complaints, FEHD took follow-up actions, including deploying staff to conduct on-site inspections, taking enforcement actions against non-compliant stall tenants, arranging timely lift maintenance by EMSD's contractor, enhancing cleansing and pest control and giving hygiene education for person-in-charge of the related stalls. The Office considered that FEHD has taken appropriate actions in following up on the three complaints lodged by the complainant.

167. However, for the complaint filed by the complainant in August 2021 and June 2022, the DEHO gave substantive replies to the complainant on 20 October 2021 and 8 August 2022 respectively but failed to update the complainant on the case progress in the intervening time according to the established procedures (Note 1), which was unsatisfactory. (Note 1: FEHD will provide an interim reply within 10 calendar days upon receipt of the complaint. If a substantive reply cannot be made within 30 calendar days upon receipt of the complaint, FEHD will update the complainant on the progress.)

### Tenancy Clauses

168. In general, the Office considered that FEHD has taken appropriate follow-up actions in response to the complaint, and the enforcement actions taken against non-compliant stalls are in line with its existing mechanisms. Nevertheless, the Office's inspection found that there were indeed stalls in Kwu Tung Market with insufficient business hours, and some stall tenants were suspected of pretending to retail the goods specified in the tenancy agreement but in fact using their stalls for storage or wholesale business. The root of the problem lies in the the current tenancy agreement, which poses no restriction on the daily business hours of stalls, the number of stalls that a tenant can rent in the same market, the number of stalls that a registered assistant can serve at the same time and the situations abovementioned. Therefore, the relevant problems do not constitute a breach of tenancy clause and FEHD could not take enforcement actions.

169. According to FEHD, in the past five years, five markets and three cooked food markets under old tenancies were closed. The overhaul works of one market has been completed while that for another is in progress under the Market Modernisation Programme (MMP). FEHD is carrying out the preparatory and consultation work for the proposed overhaul or redevelopment works for four other markets under the MMP. Upon completion of the works, the market stalls will be let out under a new tenancy scheme. As at 31 July 2023, there were a total of 11 505 market stalls let out under valid tenancies, of which 429 stalls were let out under the new tenancies after the resumption of open auction in June 2021. FEHD will announce in due course when there are suitable vacant stalls available for open auction and continue to replace the old tenancies with the new ones.

170. The Office noted that unless serious issues (e.g. food safety) are involved, when renewing a tenancy, FEHD would sign a three-year new tenancy agreement with the market stall tenant based on the original tenancy agreement (Note 2) with additional clauses and conditions. (Note 2: FEHD generally allows a tenant to renew his stall's tenancy before its expiry if he so wishes, normally for a period of three years.) In recent years, FEHD has tried to phase out the tenancy agreement that has all along been in use and sign a new one with new tenants through the MMP, open auctions for vacant stalls and establishment of new markets. By doing so, the above-mentioned problem could be solved.

171. The Office hoped that FEHD could review the situation of Kwu Tung Market in a timely manner and consider whether to include it in the MMP, so that new tenancy agreement can be signed with tenants to close the loopholes in the old tenancy agreement.

#### Future Planning of Kwu Tung Market

172. According to FEHD, Kwu Tung Market was established in 1985 primarily to relocate the stalls and shops at the old Kwu Tung bazaar, which was demolished due to the construction of the New Territories

Circular Road. The market has 98 stalls in total. Tenants may apply to FEHD if they wish to change the class of commodity sold at the stall. FEHD will carefully consider each application for change of stall category, including whether the change is compatible with commodities being sold in the immediate vicinity of the stall concerned and whether it is in the public interests, so as not to affect the competitiveness of the existing stall trades. On receipt of an application, FEHD will consult the MMCC (members include local district council members and representatives of each trade) and heed its views and the opinions of stall tenants, as well as distribute questionnaires to other stalls of the related category. FEHD will consider each application on a case-by-case basis, such as whether the location of the stall is compatible with the layout of the market (e.g. the need to separate wet and dry goods).

173. The Office does not rule out the possibility that the change of use of stalls by stall tenants is related to changes in demography and demand for market services in the local community. The Office staff noticed during inspections that Kwu Tung Market is not easily accessible by public transport, there are very few residential buildings nearby and the patronage of the market is low. Retail trading activities were quiet, and there were no retail sale of food related wet goods (vegetables and fruits, fresh meat, seafood, etc.). Kwu Tung Market was built in the late 1980s, and the planning at the time may not be able to cope with the current development of the community. While the demand for food related wet/dry goods has declined, only three out of a total of 98 market stalls have been approved by FEHD to change their uses to sell other types of commodities. This shows that FEHD has been adopting the planning of the market at the time of its construction.

174. Information reveals that in the past two years, two stalls rented by Stall A were issued verbal warning(s) and warning letter(s) by FEHD for unauthorised change of use of stalls (with barber and haberdashery as their original trades), and one stall rented by Stall C was issued verbal warning(s) and warning letter(s) by FEHD for selling/displaying unauthorised commodities (with vegetables as its original trade). Tenants

of the above stalls had applied to FEHD for change of use of stalls (proposed trade categories are frozen meat and haberdashery respectively) but their applications were rejected. The Office staff noticed in the two inspections that (tenants) of the aforementioned stalls pretended to be operating the trades specified in the tenancy agreement but were in fact operating a business they intended to switch to.

175. The Office was of the view that the existing mode of business of many stalls in Kwu Tung Market may have deviated from the market planning and tenancy requirements. If the existing planning of the market can no longer meet the needs of the local community and FEHD fails to take enforcement actions against stalls that are faking, it is advisable that FEHD should consider appropriately adjusting the business types of market stalls and regularise the business operation of the stalls mentioned above, thereby enabling the market to achieve its purpose of serving the community.

176. The Office noted that in the Hong Kong 2030: Planning Vision and Strategy promulgated in 2007, the Government recommended proceeding with the Kwu Tung North, Fanling North and Peng Che/Ta Kwu Ling New Development Areas as well as the development of the Hung Shui Kiu New Development Area to address the long-term housing demand and provide employment opportunities. Subsequently, the Government formulated the “Kwu Tung North Outline Development Plan” for Kwu Tung North New Development Area (NDA) and planned to construct a new public market in the NDA. Although the future development of the existing Kwu Tung Market remains unknown, the Office would like to take this opportunity to urge FEHD to proactively approach the relevant departments to complete the planning for the public markets in the district at an early date to make optimal use of land resources.



### Handling of vacant stalls

177. On whether the vacant stalls in Kwu Tung Market will be rented out by way of short-term tenancy or converted for community facility use, FEHD stated that the tenancy of stalls in public markets should be allocated on an impartial basis. It will, after consideration, put up suitable vacant stalls for public auction for a fixed tenancy term of three years.

178. While FEHD stated that it would rent out the vacant stalls in Kwu Tung Market on a three-year fixed-term tenancy, if it could consider renting out the stalls in a flexible manner (e.g. short-term tenancy) where feasible, it will achieve the goal of making optimal use of land resources on one hand and increasing government revenue on the other.

### Alteration of stall structure

179. In its reply to the Office dated 31 May 2023, FEHD stated that Barber Shop 1, Barber Shop 2 and Barber Shop 3 did apply to it for alteration of stall structure, no objections were received from the relevant departments and the applicants were informed that their applications had been approved in principle. However, upon further enquiry by the Office, FEHD stated that the applicant applied for altering the structure of Barber Shop 2 in early 2020. After consulting the Architectural Services Department (ArchSD), it issued a letter of approval-in-principle to the applicant in September 2020, requiring him/her to carry out renovation work according to the application requirements and conditions. However, the applicant did not submit the required documents to FEHD to confirm his/her compliance with the relevant requirements and conditions. As for Barber Shop 1 and Barber Shop 3, it was not until April 2023 (i.e. after the Office wrote to FEHD on 24 March 2023 for further enquiry) that the tenant concerned submitted the application.

180. The Office was of the view that as FEHD staff carry out daily inspection at the market and the Contractor staff even station there every day, they should have noticed whether alteration to the structure of the

stalls were carried out and whether such works had been approved. However, it is only after the Office made enquiry with FEHD that Barber Shop 1 and Barber Shop 3 submitted their late applications (the relevant renovation works had been completed) and no enforcement actions have been taken by the Department against the irregularities. The Office opined that the staff of FEHD and the Contractor did not properly perform their inspection duties, leading to their failure to notice/report unauthorised alterations to the structure of the stalls. The Office urged FEHD to strengthen training for its staff and the Contractors and require them to manage the stalls strictly in accordance with the terms of the leases and the Public Markets Regulations (the Regulation), and seek help from their superiors in a timely manner when encountering difficulties.

181. While FEHD has approved in principle the application by Barber Shop 2, it failed to set a time frame for Barber Shop 2 to comply with the relevant requirements/conditions. In addition, the Department has no record showing that Barber Shop 2 has been renovated in accordance with the relevant requirements/conditions. Although there are established application procedures for alteration of stall structure, FEHD failed to address such issues as whether the renovation works were carried out in accordance with the approved conditions and whether such alterations were in compliance with the requirements/conditions. Alteration works involve safety issues and non-compliant works may result in casualties. FEHD should draw up specific and clear procedural guidelines for its staff to observe when following up on stall alteration works.

### *Conclusion*

182. Based on its inspection findings, the Office doubted whether the existing mode of business of the market could tie in with the development of the local community. Given the limitations of the existing tenancy conditions for market stalls, it is a matter of concern that the current market operation inevitably gives rise to a public perception of improper market management by FEHD, despite the enforcement actions taken by frontline staff under the existing mechanism. The Office was of the view that FEHD

should actively consider the future development direction of the market and make corresponding arrangements to dovetail with the new development area.

183. To sum up the above analysis, the Ombudsman considered the complaint unsubstantiated but with other inadequacies found.

184. The Ombudsman recommended FEHD to –

- (a) step up the monitoring of stall operations and take enforcement actions decisively if there is sufficient evidence of breaching of the law or the leases;
- (b) remind staff to handle complaint cases in accordance with guidelines and provide complainants with interim replies and case progress in a timely manner, and issue substantive replies to complainants upon concluding complaint cases;
- (c) review in a timely manner the operation of Kwu Tung Market, and consider adjusting the business types of market stalls in light of the community's current needs, and rent out vacant stalls in a flexible manner where feasible. For the future development of the market, complete the planning for the public markets in Kwu Tung at an early date to make optimal use of resources;
- (d) strengthen training for staff and contractors and require them to manage the stalls strictly in accordance with the terms of the leases and the Regulations and seek timely help from their superiors when encountering difficulties; and
- (e) draw up specific and clear procedural guidelines on renovation works for alteration of stall structure for staff to observe when following up on stall alteration/renovation works.

## **Government's response**

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

### *Recommendation (a)*

186. The staff of FEHD and market management services contractor (the Contractor) have strengthened the monitoring of stall operations. In response to the Office's recommendations on the complaint cases, FEHD will continue to organise routine inspections and blitz enforcement actions, and will also take stricter enforcement actions against stalls with irregularities.

### *Recommendation (b)*

187. FEHD has reminded its staff to handle complaint cases in accordance with departmental guidelines, provide complainants with interim replies and case progress in a timely manner as well as give substantive replies to complainants upon concluding complaint cases. In addition, FEHD supervisory staff have stepped up monitoring of frontline staff in handling complaints, including random checks on a regular basis to ensure that all complaints are properly handled.

### *Recommendation (c)*

188. FEHD will keep the operation of its public markets under review and adjust the business types of stalls and the like where necessary, with a view to enhancing the overall competitiveness of the markets. On renting out vacant stalls, past experience shows that stall tenants generally prefer a longer tenancy period to allow sufficient time for them to recoup their investments on the stalls. When renting out vacant stalls, FEHD will take into account stall tenants' views, the Office's recommendations and other relevant factors.

189. The Government has planned to build a new public market in Kwu Tung North New Development Area. FEHD plans to submit the proposed project to the Public Works Subcommittee (PWSC) of the Legislative Council for deliberation in 2024 and seek funding approval from the Finance Committee of the Legislative Council upon PWSC's endorsement. Regarding future arrangements for the existing Kwu Tung Market, FEHD maintains an open attitude. If there is any plan for market closure or consolidation, the department will consult the District Council and the affected stall tenants in a timely manner.

*Recommendation (d)*

190. FEHD has strengthened supervision and training of frontline staff, including arranging for them to attend market management-related training courses organised by the Department, reminding them to strictly follow the tenancy terms and relevant legislation in taking enforcement actions against non-compliant stalls as well as regularly reviewing their work and providing appropriate guidance. Meanwhile, the Contractor's staff will manage the market in accordance with the relevant contractual requirements, including daily inspection on the day-to-day operation of market stalls and performing cleansing work daily etc. FEHD will deploy staff to conduct surprise checks to monitor the Contractor's compliance with contractual requirements. If irregularities are found, FEHD staff will issue verbal warnings or default notices to the Contractor and demand rectification.

*Recommendation (e)*

191. FEHD has reviewed and revised the procedural guidelines on alteration of stall structure and the revision exercise was completed in the third quarter of 2024.

## **Fire Services Department and Government Logistics Department**

### **Case No. 2023/0403A and 2023/0403B – Lack of positive response to the complainant's request for return of Bank Guarantees**

#### **Background**

192. On 9 February 2023, the complainant complained to The Office of The Ombudsman (the Office) against the Government Logistics Department (GLD). On 21 February and 6 March, The Ombudsman received supplementary information and the signed Reply Form for Lodging a Complaint respectively from the complainant.

193. The Complainant arranged to issue two Banker's Guarantees (the BGs) to the Government according to the terms of a contract awarded to the complainant by GLD for the supply of equipment to the Fire Services Department (FSD). Upon completion of the contract, the complainant requested FSD and GLD to return the BGs to the complainant for cancellation or to issue a letter to the complainant confirming the loss of the BGs if that was the case. However, the complainant had not received a positive response from GLD and FSD. Having examined relevant information, the Office decided to conduct a full investigation and include FSD as a department under investigation.

#### **The Ombudsman's observations**

194. The crux of the complaint was the lack of positive response to the complainant by GLD and FSD regarding the complainant's request for getting back the BGs or some sort of certification issued by the Government so that the complainant could prove to its bank that the BGs were no longer required thereby releasing the complainant from its obligation of making payment to its bank.

195. As both FSD and the complainant did not have any record of FSD's email or verbal reply in response to the complainant's emails of 12

March, 6 June and 4 July 2018, the Office could not rule out the possibility of unrecorded exchanges between the two parties. Giving FSD the benefit of the doubt, the Office would not comment on FSD's response to the complainant back in 2018. Further, there was no record of any exchanges between FSD and the complainant from 2019 to 2021.

196. In April 2022, the complainant revived its request to FSD to get back the BGs for cancellation, through verbal enquiries or phone messages. Since then, the complainant had sent emails to FSD and GLD. On receipt of such emails, FSD and GLD had some discussions, but apparently there might be miscommunication between the two departments on the action party to reply to the complainant. The Complainant was repeatedly told by FSD to contact GLD, and the complainant was also told by GLD to contact FSD. These continued until October 2022 and no actual progress had ever been made. It was understandable that the complainant felt a lack of positive response from the two departments.

197. In November 2022, the complainant requested FSD for a written document to serve the purpose of releasing the complainant from its obligations in the BGs. However, no concrete action was taken by FSD until March 2023 when the letter was drafted with advice from DoJ sought.

### *FSD*

198. On the part of FSD, having considered the whole process and records of communication, the Office noted that FSD had spent way too long in their search without other concrete action taken until March 2023 when it finally drafted and issued a letter to the complainant. FSD might have overly focused on locating the BGs before taking other action, and there might be a lack of monitoring of the progress as well. The Office considered that it could have drafted and issued the letter soon after the complainant requested so in November 2022. Besides, if there were proper record and storage of the BGs, the search should have taken shorter time. Either way, FSD could have responded to the complainant positively much earlier, but FSD did not. To avoid recurrence of the same issue, the Office

recommended that FSD step up the monitoring of handling progress so that concrete action, such as issuing the requested letter, could be taken without any undue delay.

199. Between the two departments, the Office noted that there might be miscommunication repeatedly on the action party to reply to the complainant. Without corroborative evidence, the Office could not know how the two departments communicated verbally on who to reply to the complainant and the Office could not comment on what actually transpired during their conversations. However, to avoid recurrence of similar incidents, the Office suggested that the two departments confirm in writing the action party after verbal communication.

200. In view of the analysis above, The Ombudsman considered the complaint against FSD substantiated.

201. The Office was pleased to note that FSD had reminded its staff regarding the proper way of handling incoming enquiries/requests and set up a bring-up system to remind their staff in this regard.

#### *Other Observations on FSD*

##### Failure to follow the Stores and Procurement Regulations (SPRs)

202. The SPRs of the Government read, “the above-mentioned original documents should not be kept in files required for working purposes or with working copies, but should instead be stored in a safe or strongroom if available, or a locked cabinet or cupboard”. In other words, unless safe or strongroom was unavailable at FSD, the BGs should not be stored in a locked cabinet. Furthermore, as revealed by FSD, the BGs were found in the working files (all the information/documents about the fire service equipment in question were kept there). The Office considered FSD to have failed to keep the BGs in accordance with the relevant requirement under the SPRs. The Office recommended that FSD consider reviewing



its current practices to ensure its compliance with the SPRs in similar circumstances.

Lack of departmental guidelines governing the handling of advance payment bond (APB)

203. The Office noted that FSD previously did not have guidelines governing the handling of APB.

204. The Office was pleased to note that FSD had promulgated new guidelines in this regard, including, inter alia, requiring staff to issue an acknowledgement receipt to the contractor upon receipt of the original of the APB, to safekeep the APB in the safe of the Finance Section as far as possible, to conduct periodic checks on the APB under their custody and to perform periodical reviews to check if there is any APB that is not yet released to the contractors after the acceptance of goods/services.

Poor records management

205. FSD did not have any records documenting the receipt of the BGs from the complainant back in 2015, the whereabouts of the BGs or the payment to the complainant.

206. FSD failed to locate the BGs for extended periods of time. This might be due to negligence, or FSD's poor records management, or a combination of both. The Office considered it remiss of FSD not to have a proper administrative mechanism required for its handling of BG in general.

*GLD*

207. On the part of GLD, as BGs were not with GLD, GLD was not in a position to provide a positive response to the complainant's request. The Office also noted that GLD did make it clear to FSD from the outset that BGs were not received or kept by GLD. The Office noted that GLD

provided information to the complainant when the latter called the former. That said, GLD had not replied to the complainant's various emails in writing. To be more prudent, GLD could have sent email replies to the complainant in response to its various emails and liaised with FSD on its position earlier.

208. The Office noted that there might be miscommunication repeatedly for the two departments on the action party to reply to the complainant. To avoid recurrence of similar incidents, the Office suggested that the two departments should confirm in writing on the action party after verbal communication.

209. In view of the above, The Ombudsman considered the complaint against GLD unsubstantiated but GLD had other inadequacies.

210. The Office was pleased to note that GLD had reminded its staff regarding the proper way of handling incoming enquiries/requests and set up a bring-up system to remind them in this regard.

#### *Other Observations on GLD*

211. The Office was given to understand that while the contracts between the Government and its contractors were silent on whether the Government needed to return the expired BG to the contractors, FSD's usual practice was to return BGs to the contractors.

212. While noting that GLD had issued guidelines to remind bureaux/departments (B/Ds) of the proper handling of cash or BG serving as contract deposit or advance payment bond and ensure the officers concerned are well aware of such procedures, the Office suggested GLD to consider fleshing out the guidelines with detailed procedures from the receipt to the return of such documents. GLD might also review its guidelines so as to clearly demarcate the responsibilities between GLD and the user department related to a government contract.

213. The Ombudsman recommended –

- (a) FSD to consider reviewing its current practices in relation to the handling and storage of BGs or similar documents to ensure total adherence to the SPRs and proper records management; and
- (b) GLD to consider fleshing out its guidelines with detailed procedures from the receipt to the return of BGs or similar documents, with clear demarcation of responsibilities between GLD and the user department related to a government contract when handling such documents.

### **Government's response**

#### *FSD*

214. FSD accepted The Ombudsman's recommendation and added that the following improvement measures were implemented in the course of the investigation –

- (a) reminded subject officers to respond to enquiries/requests from outside organisations/individuals promptly and proactively, to issue interim replies and substantive replies in writing in response to written enquiries/requests and to keep a proper record of the correspondence;
- (b) set up a bring-up system to remind officers handling enquiries/requests;
- (c) reviewed the existing mechanism and promulgated new guideline on 25 May 2023 for handling of APB which would be recirculated to all units responsible for handling supplies matters on a half-yearly basis for their compliance; and

- (d) conducted a mandatory online training seminar on “Common Irregularities of Procurement and Stores Management” for all Unit Commanders and staff responsible for handling supplies matters on 19 and 20 July 2023.

### *GLD*

215. GLD accepted The Ombudsman’s recommendation and issued new guidelines on 19 May 2023 to B/Ds covering detailed procedures on the handling of contract deposits/performance bonds, BGs and advance payment bonds, with clear demarcation of responsibilities for handling such documents between GLD and the user B/D. In addition to setting out the key steps for handling contract deposits/BGs or similar documents received under contracts for procuring goods and/or services (collectively the relevant documents), the new guidelines also advise B/Ds to –

- (a) ensure that they have put in place their own procedures to specify clearly the required steps and responsible officers for handling the relevant documents, taking into account their operational needs and circumstances;
- (b) keep proper records on the receipt, movement, custody and return of the relevant documents;
- (c) establish a bring-up system to handle the relevant documents timely; and
- (d) conduct periodical checking of the relevant documents under B/Ds’ custody so that appropriate action can be taken promptly.

## **Government Secretariat – Health Bureau**

**Case No. 2022/3659C – (1) The transparency of the follow-up actions taken after the occurrence of adverse events following COVID-19 immunisation of the complainant’s late father was extremely low, and that there was no channel for family members to learn the follow-up actions taken by the authorities; and (2) Refusal to provide the causality assessment by the Expert Committee**

### **Background**

216. The complainant alleged that her father received the first dose of COVID-19 vaccine on 16 July 2021, suffered an acute heart attack on 19 July and passed away on 6 August. The hospital concerned informed her that the case had been reported to relevant department. The complainant wanted to know about the causal relationship between her father’s condition and the vaccination, as well as the Government’s follow-up actions. The hospital provided her with the Hospital Authority (HA) general enquiry hotline. On 11 August, the complainant called the hotline to enquire about how the reported cases were followed up, and the answering staff provided her with the telephone numbers of the Centre for Health Protection (CHP) and the Patient Relations Officer of the hospital concerned. When the complainant called the CHP, its staff said that he did not have the relevant information, and would pass her details to the relevant department, which would call her back. The staff was unable to provide the telephone number of the relevant department, and could only provide the telephone number of the Indemnity Fund for Adverse Events Following Immunisation with Coronavirus Disease-2019 (COVID-19) Vaccines (AEFI Fund). The complainant provided the staff with her father’s information and her contact details, and expressed her wish to follow up on the case. On 12 August, the Health Bureau (HHB) called back the complainant and advised her to call the Patient Relations Office (PRO) of the hospital concerned for enquiries. On 13 August, the complainant called the PRO of the hospital concerned. Its staff replied that the PRO was unable to follow up and investigate adverse events following

immunisation (AEFIs), and could only provide her the telephone number of the AEFI Fund. The complainant called the AEFI Fund. The answering staff said that the company was the third-party Administrator (Administrator) of the AEFI Fund appointed by the Government and could not provide information about investigation of adverse events. On 16 August, the complainant tried to follow up the case through the medical social worker of the hospital concerned, but to no avail. On 18 August, the complainant called the HHB staff who had contacted her by phone previously, and told the staff that the PRO of the hospital concerned was unable to provide assistance. The HHB staff replied that they were only responsible for administrative work, and advised the complainant to contact the hospital concerned again, given that the hospital possessed the most comprehensive information about the event. On 20 August, the complainant called the PRO of the hospital concerned, but the PRO staff was still unable to provide assistance.

217. On 31 January 2022, the complainant submitted an application for the AEFI Fund. Several weeks later, the Administrator replied that she was not entitled to any compensation according to the report of the Expert Committee on Clinical Events Assessment Following COVID-19 Immunisation (Expert Committee). In response to her enquiry on how the Expert Committee had ruled out the causality between the event and COVID-19 immunisation, the staff of the Administrator said that he was unable to provide the relevant information. The complainant did not accept his explanation, and the staff said that he would follow up on the case. Since then, the same staff had called her once every one to two months, but all along could not provide relevant information or contact details of the department concerned. In a telephone conversation with the complainant in early October, the staff said that the only telephone number he could provide was 1823.

218. The complainant complained to The Office of The Ombudsman (the Office) that the Government for the extremely low transparency in handling serious AEFIs with COVID-19 vaccines. Apart from failing to provide any channels for family members to understand its course of

actions (Allegation (a)), the Government also refused to provide the assessment report or summary on serious AEFIs prepared by the Expert Committee (Allegation (b)). Such handling was extremely unfair to the public.

## **The Ombudsman's observations**

### *Allegation (a)*

219. HHB, the Department of Health (DH) and HA had explained the roles of various parties and their procedures for handling cases of AEFIs with COVID-19 vaccines. As explained by HHB and DH, the reporting system for AEFIs was established for safety monitoring of COVID-19 vaccines, and DH would disseminate and update regularly the data and summary reports of clinical events received to press release and thematic website. The Office considered that DH's regular release of information on vaccine safety, which could enhance the transparency of vaccine information and help boost public confidence in the vaccines and vaccination coverage, was commendable.

220. In this case, after HA reported the case of the complainant's father to DH on 20 July 2021, DH notified HA of the causality assessment result on 13 August in accordance with the mechanism for handling AEFIs with COVID-19 vaccines in place at the time. HA did not contact the vaccine recipient's family in respect of the reported case thereafter. The mechanism at that time had not put in place any procedures to inform individual affected persons or their families of the assessment results. No one would proactively approach and inform the individual affected persons and their families who had not applied for the AEFI Fund of the follow-up actions, including the assessment results, after HA had reported their cases. Apparently, HHB assumed that all affected persons or their families would definitely apply for the AEFI Fund and receive the assessment results via the Administrator, without even considering that the affected persons or their families would like to know the results, or intend to decide whether or not to apply for the AEFI Fund after obtaining the results. No

explanation about the relevant mechanism and procedures was available on the thematic website or in public domain. There was no way for the individual affected persons or their families to know the channels for obtaining the contact information of the departments responsible for monitoring of vaccines, and how to check on the progress of follow-up actions and the Expert Committee's assessment results.

221. The Office was of the view that the authorities' follow-up actions on the AEFIs focused on the consideration of detecting the side effects of vaccines and processing applications for the AEFI Fund submitted by the affected persons or their families, and the information disseminated was comprised mainly of aggregate data. There was indeed insufficient transparency in the communication with individual affected persons or their families and the release of information. It was not an unreasonable expectation of the affected persons and their families to be notified of the assessment results after knowing that their cases had been reported. Moreover, the processing and assessment results of reported cases might affect the confidence in vaccines of the persons concerned and their families, as well as that of their relatives and friends. From the perspective of promoting vaccination, it was particularly essential for the Government to enhance the communication with the persons concerned and the transparency of relevant information. The Office accepted the authorities' explanation for not proactively approaching and informing the persons concerned or their families (including those who had not applied for the AEFI Fund) of the Expert Committee's causality assessment results. Nevertheless, the Office considered that the authorities should have explained to the public how to obtain the assessment results and the procedures for handling such enquiries. The Office recommended that HHB and DH provide on the relevant websites an estimated time frame for handling reported cases, and clarify that individual affected persons or their families who had not applied for the AEFI Fund but would like to obtain the causality assessment results of their reported cases may contact the healthcare professionals for enquiries. HHB should also enhance the relevant guidelines, thereby instructing staff or healthcare professionals to clearly explain the operational procedures of existing mechanism when



answering such enquiries. Information about the mechanism for handling AEFIs with COVID-19 vaccines should also be available on the thematic website for public reference.

222. Regarding the complainant's allegations against DH and HA, the Office considered both DH and HA had reported the relevant case in accordance with the mechanism and there was no impropriety.

223. Based on the above-said, The Ombudsman considered Allegation (a) substantiated on the part of HHB, and unsubstantiated on the part of DH and HA.

*Allegation (b)*

224. Regarding the complainant's allegation that the Expert Committee refused to provide assessment report or summary, the Administrator had explained why the report could not be provided at that time. DH explained that the Expert Committee was not required to compile assessment reports when conducting causality assessment, but in this case no one had ever informed the complainant of this. It was not until more than one year after the implementation of the Vaccination Programme did DH, HHB and the Administrator set up relevant mechanism, and the complainant was only informed in June 2022 that the authorities had standardised the procedures for applicants to obtain assessment reports prepared by the Expert Committee on request with a fee payable to DH. The Office considered that the authorities were too slow in handling requests from applicants for assessment reports, nor had they ever explained that the Expert Committee did not have such reports. This could have given applicants the impression that the departments refused to release information. In any case, HHB and DH had now incorporated the procedures for obtaining assessment reports into the mechanism. The Office urged HHB and DH to inform the persons concerned or their families of how to obtain the assessment reports from the Expert Committee (including the fee charging criteria, etc.), and the

information should also be available on the thematic website for public reference.

225. Based on the above-said, The Ombudsman considered Allegation (b) unsubstantiated.

226. Overall, The Ombudsman considered the complaint partially substantiated against HHB, and unsubstantiated against DH and HA.

227. The Ombudsman recommended HHB to explain on the relevant websites about the information regarding enquiries on the causality assessment results in respect of AEFIs related to COVID-19 vaccines (especially for those who had not applied for the AEFI Fund), and update the relevant guidelines, thereby instructing staff or healthcare professionals to clearly explain the operational procedures of existing mechanism to enquirers.

### **Government's response**

228. As recommended by the Ombudsman, HHB and DH have uploaded the following information<sup>1</sup> on the thematic website of the COVID-19 Vaccination Programme for public reference –

- (a) procedures and estimated time frame for handling cases of AEFIs with COVID-19 vaccines, and that the persons concerned or their families may enquire about the causality assessment results relevant to their cases from healthcare professionals reporting the AEFIs; and
- (b) how the persons concerned or their families can apply for the relevant assessment reports from the Expert Committee, along with the fee charging criteria and estimated time required.

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<sup>1</sup> The relevant information can be found at <https://www.chp.gov.hk/en/features/106959.html> and <https://www.axa.com.hk/en/ae-fi-fund>.

229. In addition, HHB had already requested DH and HA to remind staff or healthcare professionals regularly to clearly explain the operational procedures of the existing mechanism to enquirers.

230. 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 2023, COVID-19 has been managed as a type of upper respiratory tract infection. Our society has resumed normalcy in full.

231. Following the cessation of the arrangement for emergency use of COVID-19 vaccines by midnight on 23 December 2023 and the normal use of COVID-19 vaccines in Hong Kong under the regular regulatory system for pharmaceutical products, the AEFI Fund arrangement ended at the same time. The AEFI Fund ceased accepting new applications involving COVID-19 vaccines administrated on or after 24 December 2023. The AEFI Fund is an administrative arrangement and ending such an arrangement will not affect the right of relevant individuals in seeking legal recourse for damages or losses against the vaccine manufacturer. Affected individuals can still undertake civil action for claims against any person responsible for their bodily injury.

## **Home Affairs Department**

### **Case No. 2022/1972A – Improper handling of five graves built outside a permitted burial ground**

#### **Background**

232. Between 21 June and 15 July 2022, the complainant lodged a complaint with the Office of the Ombudsman (the Office) against the Sha Tin District Office (DO) under the Home Affairs Department (HAD), and the Lands Department (LandsD).

233. The complainant alleged that five graves were built outside permitted burial grounds (PBGs) (the five graves) near the section of Shui Chuen Au Street leading to Fo Dau Ping in Sha Tin. He reported the situation to the relevant departments in 2021 and was informed that DO had written to the relevant persons in June 2021, demanding the relocation of the graves to PBGs by the end of September 2021. However, the situation remained unchanged after the deadline.

234. The complainant was dissatisfied that DO and LandsD had not properly handled the five graves in that the former had failed to revoke the relevant Burial Certificates (the Certificates) timely and notify the relevant departments for enforcement while the latter, as a law enforcement department, had failed to take enforcement actions in accordance with the law.

#### **The Ombudsman's observations**

235. The Office pointed out that given the unique historical background of hillside burials in the New Territories and its special nature of involving human remains, cases of illegal burials might not be handled in the same way as those general cases of illegal occupation of Government land. While DO's approach of tackling the issue by communication and persuasion first was pragmatic, it was obliged to take actions in accordance

with the mechanism for handling illegal burials established by the departments concerned or to seek alternative solutions.

236. The Office opined that HAD should discuss with the departments concerned (including LandsD and the Food and Environmental Hygiene Department (FEHD)) to work out alternative solutions as soon as possible if there were practical difficulties in implementing the existing mechanism. Where necessary, HAD should consider formulating reasonable and pragmatic enforcement guidelines for handling found cases of burials of deceased indigenous inhabitants outside PBG boundaries, which should then be published for general information and strict compliance.

237. Overall, The Ombudsman considered the complaint substantiated and recommended HAD to –

- (a) remind staff to follow up on complaint cases in a timely manner to avoid delay;
- (b) work out specific plans and timetables for the proper handling of the five graves in the present case, such as taking the follow-up actions previously explained and providing Certificate holders with suggestions on grave relocation, and put them in place as soon as possible; and
- (c) consider reviewing the relevant enforcement arrangements of handling found cases of burials of deceased indigenous inhabitants outside PBG boundaries under the existing hillside burial policy, and discuss with the departments concerned to formulate reasonable and pragmatic enforcement guidelines if necessary. The guidelines should then be published for general information and strict compliance.

## **Government's response**

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

### *Recommendation (a)*

239. HAD had reminded the staff concerned to take timely follow-up actions as appropriate upon receipt of complaints to avoid delay.

### *Recommendation (b)*

240. As mentioned by the Office in the investigation report, hillside burial in the New Territories had a unique historical background and was of a special nature as human remains were involved. As the sensitive issue of traditional rights and interests of indigenous inhabitants are involved in hillside burial, HAD, with respect for the traditional customs of the New Territories and the deceased buried, would handle the case in a prudent and pragmatic manner, including continuing to actively communicate with and persuade the descendants of the deceased buried in the graves, the Rural Committees and village representatives concerned for early relocation of the graves to PBGs, with a view to reaching an agreed solution as soon as possible. DO would provide the Certificate holders with appropriate assistance according to their needs.

### *Recommendation (c)*

241. At present, PBGs are jointly managed by a number of government departments, including HAD, LandsD, FEHD, the Agriculture, Fisheries and Conservation Department and the Water Supplies Department. A working group was formed by HAD and the relevant departments in 2016 to run a pilot scheme in the designated PBGs to improve the management and enforcement arrangements of PBGs. The measures concerned included conducting freezing surveys, setting boundary markers, assisting applicants in identifying the location of the deceased buried in the PBGs

with the aid of technology, amending the Certificates and the undertakings by applicants, requesting applicants to undertake and sign a declaration to observe the requirement that the deceased should be buried within the PBG concerned, and expediting the handling of suspected illegal burials in the PBGs covered by the pilot scheme with the concerted efforts of HAD, LandsD and FEHD. HAD would maintain liaison with the relevant departments and make the best endeavour to sustain its efforts in improving the management and enforcement arrangements of PBGs in the light of resources available.

## **Home Affairs Department and Lands Department**

**Case No. 2022/3692A (Lands Department) – Failing to reply to the complainant’s enquiry or report about an urn suspected to be illegal hillside burial in a timely and appropriate manner**

**Case No. 2022/3692B (Home Affairs Department) – Delay in providing information to the Lands Department regarding an urn suspected to be illegal hillside burial**

### **Background**

242. On 25 October 2022, the complainant lodged a complaint with the Office of the Ombudsman (the Office) against the Sha Tin District Lands Office (DLO) under the Lands Department (LandsD), and the Sha Tin District Office (DO) under the Home Affairs Department (HAD).

243. The complainant alleged that he had sent an email to DLO on 17 October 2021, stating that after cross comparison of the aerial photos available on Government’s websites, he found that a covered urn numbered S5 (Urn S5) near the hill behind Shui Chuen O Estate in Sha Tin (the site) appeared only after 1995 and was located outside a permitted burial ground (PBG), thus constituting a suspected case of illegal burial. As he did not receive any response from DLO, the complainant sent another email to DLO on 4 August 2022 for follow-up actions. In its reply dated 24 August 2022, DLO stated that relevant information was being sought from DO.

244. The complainant was dissatisfied that –

- (a) DLO had failed to give a substantive reply after more than a year as to whether Urn S5 had been built illegally; and



- (b) DO had delayed in providing relevant information to DLO, resulting in the latter's failure to confirm whether the urn was illegal and take enforcement actions against it.

## **The Ombudsman's observations**

### *Complaint against LandsD*

245. The complainant indicated in October 2021 that Urn S5 was a suspected illegal burial case. The District Survey Office, Sha Tin (DSO) advised DLO in the following month that the urn was built after 1983. But it was not until June and August 2022 that DLO took further action by conducting site inspections and enquiring DO whether Urn S5 was a permitted burial. The Office considered it was not desirable that DLO did not follow up on the case and give a substantive reply to the complainant in a timely manner. Even though DLO explained that it was unable to conduct site inspections due to the epidemic at that time, DLO should have given interim replies regularly so as not to arouse concerns from the complainant or give him the impression that the Department had ignored his enquiry.

246. In addition, DLO's reply to the complainant in April 2021 indicated that, in respect of the various graves/covered urns without displaying the certificate number found at the site, the aerial photographs and some inscriptions showed that there were signs of existence of graves at their respective sites before 1983. The said reply from DLO gave an impression that those graves/urns without displaying the certificate number existed approximately before 1983 based on aerial photographs. However, it was not factually correct.

247. According to DLO's email reply of 16 March 2020 to DO attached with aerial photographs, not all sites of the various graves/urns without displaying the certificate number mentioned above showed signs of existence of graves before 1983. In fact, information revealed that there were no graves at the site where Urn S5 was located before 1983. The

complainant subsequently compared the aerial photographs himself. Both the complainant's findings and the investigation result of DSO confirmed that Urn S5 was built between 1996 and 1997.

248. Although DLO stated in its reply of April 2021 that they would continue to look into whether the various graves/urns without displaying the certificate number mentioned above existed before 1983, no information showed that DLO had made any further investigation into the matter afterwards. DLO re-examined Urn S5 case only when the complainant raised queries to DLO in October 2021, and it was found that Urn S5 was built after 1983. The Office considered that the information provided in DLO's reply to the complainant in April 2021 was vague and misleading, and there were inadequacies in the subsequent follow-up actions. If the complainant did not investigate the matter himself and request follow-up from DLO, the said suspected illegal burial case might have been left unresolved.

249. Based on the above, The Ombudsman was of the view that the complainant's complaint against LandsD was substantiated.

#### *Complaint against HAD*

250. The Office was of the view that there is no evidence to substantiate DO's delay in providing information about Urn S5 to DLO, and that DLO's failure to follow up the case or reply to the complainant timely is not attributable to DO's delay in providing the information. However, the Office finds that DLO has stated in its reply to DO dated March 2020 that a grave-like structure was built near the site before 1983, but it did not include Urn S5 as evidenced by the information and aerial photos provided. The case of suspected illegal burial was not further followed up by DO until August 2022 when it was asked by DLO, in response to an enquiry made by the complainant, to confirm whether a Burial Certificate was issued to Urn S5. It was until then that DO indicated its plan to check with the relevant village representatives.

251. The Ombudsman considered the complaint against HAD unsubstantiated with other inadequacies found.

252. The Ombudsman recommended that LandsD and HAD should continue to closely follow up on Urn S5 case and clarify whether this would be allowed to remain at the original location as soon as possible so as to take further action.

### **Government's response**

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

#### *LandsD*

254. DLO and DO are actively following up on the case. Having examined the information provided by the family members of the deceased to whom Urn S5 belonged (the Family) and the aerial photographs of the location concerned, DLO informed DO that it was found that there was no existence of covered urns at the site before 1983, and it was reasonably believed that Urn S5 was built between 1996 and 1997 and thus in violation of the hillside burial policy.

255. On 22 August 2023, DO informed the Family of the above investigation result, and requested the Family to relocate Urn S5 to PBG. Subsequently, the Family told DLO that he was willing to remove the urn structure, but requested permission for the urn to remain at the original location. Under the existing hillside burial policy, DLO did not accept the above suggestion and requested the Family to apply to DO for relocation of Urn S5 to PBG.

256. The Family has not removed the subject urn up to the present, nor has he applied to DO for relocation of the subject urn to PBG. Should voluntary relocation of the urn become infeasible, DO and DLO will

discuss the enforcement action and detailed arrangements for removing the human remains and the urn structure.

#### *HAD*

257. The Government had been implementing the hillside burial policy since 1983 and PBGs on various pieces of Government land were designated for burial of deceased indigenous inhabitants or their wives (eligible persons). Hillside graves that had been in existence before the implementation of the policy were tolerated on site, irrespective of whether they belonged to indigenous inhabitants, until there was a need for the Government to resume the land or when the hillside graves were deemed to constitute a public health or safety risk. Serial numbers of Burial Certificates were not found on the graves. When handling cases in which serial numbers of Burial Certificates were not shown, the District Office concerned in the New Territories would contact the indigenous inhabitant representatives concerned to check if the hillside grave/urn belonged to a deceased inhabitant, contact the descendants concerned, and confirm with the District Lands Office of the respective district whether the hillside grave/urn in the case had been in existence before 1983 and if it was located in the PBG. For hillside grave/urn built after 1983 that was located outside the PBG and belonged to eligible persons, the District Office would urge the descendants of the deceased buried to apply for a Burial Certificate for relocation of the grave/urn to the PBG and show the serial number of the Burial Certificate on the grave/urn. If the grave/urn did not belong to eligible persons, the District Office would consider taking enforcement actions in accordance with the relevant legislation after consulting the District Lands Office of the respective district and the Food and Environmental Hygiene Department.

258. DO has followed up the case in accordance with the above arrangement, including meeting the descendants of the deceased (the descendants), together with staff of the DLO and the village representatives concerned (the VR) on 14 February 2023 to explain the prevailing hillside burial policy in the New Territories, and requested the

descendants, in writing for multiple times, to voluntarily relocate the urn. On 10 May 2024, DO had a meeting with the Chairman of the Sha Tin Rural Committee and the VR, seeking their assistance in persuading the descendants. Subsequently, as advised by the VR, the descendants agreed in principle to relocate the urn to the permitted burial ground. Nevertheless, the descendants pointed out that the rugged landscape of the hiking trail concerned rendered the urn relocation difficult. In light of this, HAD is actively liaising with the Agriculture, Fisheries and Conservation Department (AFCD) to enhance the condition of the hiking trail. DO would closely follow up with the descendants, the VR and AFCD to facilitate the urn relocation. If voluntary relocation becomes infeasible, DO will consult the relevant departments on taking enforcement actions.

## **Housing Department**

**Case No. 2022/2920 – (1) Failing to properly follow up on the noise complaints lodged by the complainant; (2) Lack of a written reply to or acknowledgement of receipt of reports made by the complainant using the Tenancy Abuse Report Aerogramme; and (3) Failing to properly follow up on the complainant’s reports of tenancy abuse**

### **Background**

259. On 29 August 2022, the complainant lodged a complaint with The Office of The Ombudsman (the Office) against the Housing Department (HD). Between 12 October 2022 and 22 January 2024, the complainant repeatedly furnished the Office with supplementary information through phone calls, emails and letters.

260. The complainant alleged that there were repeated pounding and other sounds all day long from the household of the unit on the upper floor of her public rental housing (PRH) unit, causing noise nuisance. The complainant had repeatedly complained to HD’s Estate Office (the Estate Office) about the noise from the household of the upper floor since October 2020, but no improvements had been observed. In sum, the complainant had the following complaints against HD.

### *Allegation (a)*

261. As far as the complainant was aware, the household of the upper floor had all along refused to co-operate with the Estate Office in the investigation, including refusing to answer calls from HD and the Estate Office and refusing requests for home visits, but HD condoned their behaviour and did not take any further action against them. On the contrary, even though the complainant kept providing evidences of noise nuisance (including audio recordings), HD and the Estate Office maintained the same stance that there was insufficient evidence and noise had not been identified, which made her feel unfair and helpless.

### *Allegation (b)*

262. The complainant had repeatedly witnessed the household of the upper floor transporting items such as meal boxes and drinks with trolleys to other districts for unlicensed hawking. Between January 2021 and April 2022, the complainant lodged complaints with HD four times using a Tenancy Abuse Report Aerogramme (report aerogramme) against the household of the unit for suspected tenancy abuse, non-domestic usage, food processing, and producing noise during the process. However, HD had not given any replies in writing to the complainant on the reports made. The complainant only received a call in early February 2021 from a staff member (Staff A) of the District Tenancy Management Office (DTMO) who said that she would follow up on the case, yet nothing had been heard from her thereafter.

### *Allegation (c)*

263. Since no one ever informed the complainant of the progress of following up on the reports, the complainant called Staff A to enquire about it, but every time Staff A gave her the same response, saying that the case was handled by other units so she had no idea about the progress. The complainant had requested Staff A to ask other units about the progress, and expressed her wish to contact the supervisor of Staff A to learn more about the situation, but was rejected both times. On one occasion, the complainant questioned Staff A whether HD had received her letters (i.e. her report aerogrammes) and launched investigation eventually, Staff A even hung up on her after replying that she did not have the information. The complainant opined that Staff A had not proactively followed up on her reports for investigation, and Staff A's attitude had been very rude.

### *Allegation (d)*

264. At noon on 28 December 2021, at noon the complainant heard some like "object dismantling" sound coming from the household of the upper floor. After making enquiry to the Estate Office, she learned that

the concerned residents had a home visit appointment in that afternoon. The complainant questioned why HD made an appointed home visit instead of a surprise visit, as this would give the household time to destroy evidence of tenancy abuse.

#### *Allegation (e)*

265. The complainant alleged that another two households had told her in October 2020 and September 2022 respectively that they had also heard such sound. In addition, the complainant had called the Estate Office at around 5 p.m. of 16 June 2022 to complain about drilling and pounding noises from the household of the upper floor. Staff of the Estate Office had conducted on site investigation and visited the neighbour of the concerned household of the upper floor. The complainant claimed that the neighbour told the staff the noises were from the household of the upper floor, hence she was discontented about HD's saying that no evidence was found proving the noise came from the household of the upper floor.

### **The Ombudsman's observations**

#### *Allegation (a)*

266. The Office recognised that HD's practice to ascertain a noise nuisance based on objective criteria before allotting penalty points or taking tenancy management action was a robust approach. According to HD's records, the security guard did hear short and soft pounding sound at the complainant's unit during the investigation. Although the security guard considered the sound could not be regarded as nuisance and the source of sound could not be identified, it was evident that the complainant's allegation of hearing pounding sounds from her unit was substantiated. Given the high population density of public housing estates, residents inevitably would hear sounds from their neighbours' daily activities, but if a tenant always made pounding sounds at different times of the day, it is understandable that other tenants would get annoyed. It was indeed incumbent upon HD to intervene proactively in dealing with



the noise complaints lodged by the complainant and the neighbouring tenants.

267. Before the Office launched a full investigation, HD had all along claimed that apart from the complainant, no other neighbouring residents reported that they were suffered from the noise nuisance in question. However, after the Office had commenced the full investigation, the results of questionnaires and telephone surveys in 2023 from HD revealed that three of the 18 interviewed households (including Unit A) indicated that they had experienced noise nuisance (including pounding sounds as alleged by the complainant) during previous visits conducted by the Estate Office on 18 December 2020, 4 March 2021 and 26 April 2022 respectively. In particular, the residents of Unit A indicated that they had been subject to noise nuisance during the Estate Office's visit in the night of March 2021, and that they had heard pounding sounds throughout the day during the period of the aforesaid questionnaires and telephone surveys, with the nuisance being particularly serious from Fridays to Sundays and on public holidays. According to the visit records provided by HD in the early stage of the Office's investigation, the household of Unit A said that they had not experienced noise nuisance during the Estate Office's visit in March 2021.

268. Regarding the above, HD explained that the household of Unit A had complained to the Estate Office about the noise they heard at their unit on multiple occasions between February 2022 and February 2023. On each occasion, the staff of the Estate Office immediately attended the scene to follow up on the case, but neither was noise nuisance detected, nor was there any information suggesting that the complaints were related to this case. In another telephone interview conducted by the Estate Office with the household of Unit A in November 2023, the household said that household sounds could be heard intermittently but the situation had been improved, and they believed that the sounds were from other households of the upper floor (instead of the unit in question). Taking into account the aforementioned investigation findings and the fact that there was a corridor separating Unit A from the household of the upper floor, HD considered

that the noise complaint lodged by the household of Unit A could not be ascertained with this case.

269. As for the other two households which indicated in the questionnaires and telephone surveys conducted in 2023 that they had suffered from noise nuisance when HD contacted them between November and December 2023, they both said that only household sounds were heard intermittently but not constituting a nuisance.

270. The Office did not know the reasons for the discrepancy between the visit records of the Estate Office provided by HD to the Office during the investigation stage and the noise nuisance situation as described by some of the interviewed households in the questionnaires and telephone surveys conducted subsequently in 2023. Although the discrepancies in the relevant visit records might not have any implication to the investigation findings of the noise complaints, HD in fact had been following up the noise complaints lodged by the complainant against the household of the upper floor through various means, the findings of the questionnaires and the telephone surveys conducted in 2023 evidently reflected HD's saying before commencement of the Office's investigation of no other residents informing that they had been affected by noise nuisance, might not be accurate. Upon completion of the questionnaires in April 2023, HD had not followed up on the findings in a timely manner, and had not enquired into the reasons for the discrepancy between the statements on noise nuisance made by the three households in the questionnaires and telephone surveys of 2023 and the Estate Office's records from 2020 to 2022. The Office considered that there was inadequacy in HD's handling in this regards.

271. On the whole, the Office considered that it was not unreasonable for HD not to allot penalty points to any households when the noise nuisance could not be substantiated; and that there was no information suggesting that HD and the Estate Office had condoned the behaviour of the concerned tenants, or ignored the information and evidence repeatedly provided by the complainant on noise nuisance, without taking follow up

action. However, there were inadequacies in HD's follow-up on the 2023 questionnaire and telephone survey results.

272. In view of the above, The Ombudsman opined that Allegation (a) was partially substantiated.

*Allegation (b)*

273. Although HD had not expressly stipulated in which form should an interim reply or an acknowledgement of receipt for complaints/reports received be issued, the Office was of the view that tenancy abuse was a serious allegation from an administrative perspective. Moreover, as the complainant made a report in writing using a report aerogramme, a more robust approach that could meet expectations of the public was to acknowledge receipt in writing. Furthermore, due to the unique nature of the reports on tenancy abuse, the complainant would not be informed of the investigation results after HD has completed the investigation. As such, HD should have acknowledged receipt of the reports in writing, informed the complainant that HD would follow up on the reports and at the same time explained that the investigation results and details would not be disclosed to the complainant since the case might involve the privacy of third parties.

274. Regarding HD's claim that DTMO had acknowledged receipt of the complainant's report aerogrammes in a timely manner by phone and through home visits, the Office could hardly agree that the approach was sound. When the Public Housing Resources Management Sub-section (PHRM) forwarded Aerogramme 1 (received on 11 January 2021) and Aerogramme 2 (received on 16 February 2021) to DTMO on 22 January and 24 February 2021 respectively, the time frame of 10 days for receipt acknowledgment laid down in HD's internal guidelines had already lapsed. Even if Staff A had, as claimed by HD, acknowledged receipt verbally by phone and through home visits on the day after receiving Aerogramme 1 and Aerogramme 2, it was still not in compliance with the relevant guidelines.

275. As for Aerogramme 3 (received on 5 October 2021) and Aerogramme 4 (received on 21 April 2022), PHRM's registration records showed that they were handled together with Aerogrammes 1 and 2, and the investigation was completed on 18 January 2022. However, there were no records suggesting whether and when HD staff had acknowledged receipt of the complainant's two aerogrammes. In addition, it was not mentioned in Staff A's statement or HD's response whether Staff A had also acknowledged receipt of Aerogramme 3 during her telephone conversations with the complainant about the noise complaints between November and December 2021.

276. The complainant repeatedly reported the same subject using report aerogrammes, probably because she had not received any replies in writing from HD and hence doubted if HD would actually follow up on her reports.

277. In view of the above, The Ombudsman opined that Allegation (b) was substantiated.

#### *Allegation (c)*

278. If a prima facie evidence was established after the initial investigation, the estate management staff would refer the case of tenancy abuse to PHRM for an in-depth investigation. As far as this case was concerned, although DTMO had not found evidence suggesting the household of the upper floor was using the unit as a food factory, they had all along refused home visits, so DTMO subsequently referred the case to PHRM for an in-depth investigation on 27 August 2021 (i.e. nearly seven months later). Even though the Office agreed with DTMO's decision to refer the case, he was of the view that since the household of the upper floor had all along refused to communicate and co-operate in the investigation, and there was nothing DTMO could do about it, DTMO should have promptly considered reporting the case and passing it to PHRM to decide on how to follow up further, so as to avoid impeding the progress of the case. Although HD explained that carrying out home visits

during the epidemic was not easy, according to HD's information, the household of the upper floor repeatedly hung up calls from the Estate Office. Furthermore, when the family members met the staff of the Estate Office outside their unit, they only denied making any noise, refused home visits and demanded not to be disturbed. Apparently, they have not cited concern about the epidemic as the reason for their refusal to facilitate HD's investigation by accepting home visits.

279. HD claimed that PHRM usually completes an investigation within three months. However, with regard to this case, DTMO had received Aerogramme 1 from PHRM on 1 February 2021, but it was not until 27 August 2021 (i.e. nearly seven months later) that the case was referred to PHRM for follow-up, and eventually the investigation was completed by PHRM on 18 January 2022 (i.e. more than a year after HD received the initial report from the complainant). While the Office understood that the COVID-19 epidemic had affected departmental operation, it was still unsatisfactory in terms of the overall investigation progress of this suspected case of tenancy abuse, and HD's response and follow up actions upon the tenants' refusal to co-operate.

280. As for the complainant's allegation that Staff A was rude to her during the telephone conversation, the Office was unable to comment on this matter due to lack of independent corroborating evidence regarding the actual conversation at the time.

281. In view of the above, The Ombudsman opined that Allegation (c) was partially substantiated.

#### *Allegation (d)*

282. In the Office's view, PRH is precious social resource and home visit is a crucial part of tenancy abuse investigation, so the most ideal practice was, of course, to arrange surprise home visit as far as possible. As regards this case, prior to carrying out an appointed home visit, the investigator had already made a surprise home visit, during which no

suspicious interior furnishings were observed from outside the unit. Besides, the investigator had also confirmed that there were no abnormalities in the water and electricity consumption of the unit. Given such circumstances, the investigator considered that it was appropriate to arrange scheduled home visit with the residents, which could hardly be deemed unreasonable.

283. Having vetted PHRM's investigation report, the Office reckoned that based on the information, PHRM had already made observations and conducted investigations in various aspects before drawing the conclusion that the unit did not involve tenancy abuse. Although it was not a surprise home visit, there was no information suggesting that the objectivity of the investigation findings have been affected. Hence, The Ombudsman opined that Allegation (d) was unsubstantiated.

#### *Allegation (e)*

284. As explained by HD, the Estate Office had no records of complaints received from the other two tenants about noise nuisance and the Office had no grounds for questioning the authenticity of such records. The Office could not exclude the possibility that those two tenants might have said to the complainant that they also heard the noise. However, if those two tenants had not informed the Estate Office about such case or lodged any complaints with the Estate Office, HD's claim that the Estate Office had not received any complaints from them about noise nuisance should be deemed a statement of facts. As for the complaint about noise nuisance lodged by the neighbours of the household of the upper floor with the Estate Office on 16 June 2022, HD has explained that the staff of the Estate Office and security guards had immediately rushed to the scene for an investigation and to learn about the situation from the tenants, but the noise had stopped by the time they arrived, so the staff could not identify its source or take further action.

285. Before the Office commenced a full investigation, HD had all along claimed that apart from the complainant, no other neighbouring

residents had said that they had been subject to the noise nuisance. Even though the results of the 2023 questionnaires and telephone surveys showed that this statement might not be entirely accurate, the Office understood that before HD could allot any penalty points, the noise nuisance must be substantiated by two management staff and two households based on objective criteria under the Marking Scheme for Estate Management Enforcement in Public Housing Estates. Therefore, HD could not take enforcement and management action merely based on the audio recordings provided by the complainant or hearsay from other tenants claiming to have heard the noise.

286. In view of the above, The Ombudsman opined that Allegation (e) was unsubstantiated.

### *Conclusion*

287. The Office understood that tracing the source of noise was no easy task. As noise might emerge in an instant, HD might not necessarily be able to identify its source in every noise complaint case. In addition, given that PRH estates were densely populated, household sound from neighbours were unavoidable. The key was whether the frequency and volume of such sounds, and the time periods at which the sounds arise were beyond a reasonable scope. However, HD was responsible for ensuring that PRH residents could enjoy a reasonably comfortable living environment. In this case, although HD had no evidence in its investigation to confirm the complainant's allegation of incessant noise from the alleged household, various information indicated that the complainant's allegation of repeated pounding sounds from some units was not made for no reason. The Office urged HD to continue to closely monitor the situation. In case HD received further complaints from the complainant or other neighbouring tenants about noise nuisance (including the pounding sounds alleged by the complainant), HD should conduct an in-depth investigation by analysing the case from various aspects and take appropriate action based on the findings.

288. In conclusion, The Ombudsman considered the complaint partially substantiated and recommended HD to –

- (a) remind the staff of estate offices/DTMOs to refer the relevant cases of tenancy abuse to PHRM for in-depth investigations as soon as possible if deemed necessary upon initial follow-up, or when encountering difficulties in investigations;
- (b) review the arrangement for acknowledgement of receipt of report aerogrammes, and consider making it mandatory to acknowledge receipt in writing and having PHRM acknowledge receipt directly to save time and avoid delay;
- (c) when acknowledging receipt of a report of tenancy abuse, it should be clearly pointed out to the complainant that when handling complaints involving the personal information of tenants, HD would generally not disclose the information on and results of the investigation to the reporter or any third parties to protect personal privacy, and to prevent any misunderstandings that may arise subsequently;
- (d) strengthen the training of staff by enhancing their response skills in handling enquiries from reporters concerning their reports of tenancy abuse; and
- (e) continue to follow up noise complaints from the complainant or other neighbouring tenants (if any).

### **Government's response**

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



*Recommendation (a)*

290. In February 2024, HD sent an email again to all estate offices and DTMOs to remind frontline staff that for suspected cases of tenancy abuse detected through day-to-day management, regular home visits, complaints/reports received or other means, the management staff of the respective estates are required to carry out preliminary investigations and, where a prima facie case has been established, the management staff are required to refer the case to PHRM as soon as practicable for an in-depth investigation. PHRM will collect evidence from multiple sources through various channels to combat tenancy abuse on all fronts.

291. The aforesaid email will be sent half-yearly to remind frontline staff of the need to take prompt action against tenancy abuse.

*Recommendation (b)*

292. PHRM has optimised the procedures for acknowledging receipt of report aerogrammes. Upon receipt of a report aerogramme from an informant, PHRM will acknowledge receipt in writing before forwarding it to the respective estate office/DTMO for follow-up.

*Recommendation (c)*

293. To avoid misunderstandings, when acknowledging receipt of a report of tenancy abuse, PHRM would inform the complainant in its reply that HD would handle the case in accordance with the established policies, guidelines and procedures. As the investigation process and results involve others' personal information and privacy, the details of the case cannot be disclosed to the complainant.

294. In addition, HD has included the above information in the website of the Hong Kong Housing Authority and the relevant Abuse Report Form so that reporters understand the arrangements clearly.

*Recommendation (d)*

295. HD has included “Response Skills in Handling Enquiries about Reports from Reporters of Tenancy Abuse” in the training course organised on 9 April 2024 to enhance the communication between its staff and relevant parties when handling reports of suspected tenancy abuse. HD will also include such content in other relevant courses in the future to strengthen staff training.

*Recommendation (e)*

296. In April 2024, the staff of the Estate Office contacted three tenants by phone and they all said that there was no noise nuisance. The staff of the Estate Office contacted the complainant by phone on 5 April to follow up the case. The complainant claimed to have heard the sound of an electric drill in the afternoon of 4 April, but did not inform the Estate Office at that time; she visited the Estate Office on 6 June and said that she had heard the noise earlier but did not promptly notify the Estate Office. So far, the complainant has refused to let the staff of the Estate Office, security guards or Special Operation Teams visit the unit for investigation.

297. In addition, according to the records, the Estate Office has not received any reports of noise nuisance from other tenants on the adjacent floors of the complainant’s unit since 2 February 2024.

298. If complaints about noise nuisance are received from the complainant or other tenants in the future, the Estate Office would certainly continue its efforts to follow up through various measures.

## **Housing Department**

**Case No. 2022/3706 – (1) Mistakenly disqualified the complainant from bidding for the rental of a shop in a housing estate; and (2) Failing to make available to tenderers the criteria for approving tenders and factors in determining priority, which was in contrary to the principles of transparency and fairness**

### **Background**

299. The complainant ran an electrical and plumbing repairs shop in one of the housing estates of the Housing Department (HD). In June 2022, he submitted a rental tender for another shop designated as “electrical and plumbing repairs” (the Shop) in the housing estate. On 7 July, HD wrote to inform him that his tender did not succeed because he was already running a shop providing the same services in that housing estate.

300. According to the complainant, HD would lay down in the Special Conditions of Tender of some shops that tenders from tenderers operating the same trade as the designated trade of the shop being put out to tender may not be considered. Since the Special Conditions of Tender of the Shop did not include such condition, he had not breached the conditions of tender. Moreover, three business operators in the same housing estate were each operating two or three shops. HD should not reject his tender on the grounds that he was already running an electrical and plumbing repairs shop in the housing estate. Besides, HD had set a much lower “Reference Rent” for the Shop compared with that of his shop in the same housing estate.

301. In sum, the complainant was dissatisfied with HD mainly because –

- (a) HD had not specified in the Special Conditions of Tender of the Shop that tenders from tenderers operating the same trade in the same housing estate concerned may be rejected. HD then

mistakenly considered his tender to have violated tender conditions and disqualified him from bidding for the lease of the Shop and rejected his tender (Allegation (a));

- (b) While the Special Conditions of Tender of the Shop did not stipulate that tenders from tenderers operating the same trade in the same housing estate concerned may not be considered, the complainant noticed that the Special Conditions of Tender of other shops had included this condition. Nevertheless, tenderers would not be able to tell from the vague meaning of the condition HD's criteria for approving tenders and the factors to be considered in determining priority. That was in contrary to the principles of transparency and fairness (Allegation (b)); and
- (c) HD had set a much lower "Reference Rent" for the Shop, which was unfair to him (Allegation (c)).

### **The Ombudsman's observations**

#### *Allegation (a)*

302. The Office of The Ombudsman (the Office) has scrutinised the information provided by HD, including the principles of and procedures for the leasing of the Hong Kong Housing Authority (HKHA)'s shops, the tendering documents of the Shop and HD's relevant work records. HD clarified that the complainant's tender satisfied the conditions of tender and relevant information showed that the complainant was shortlisted as an eligible tenderer, which means he was not rejected from the tender exercise for leasing the Shop. In other words, HD had not disqualified him from bidding. Moreover, the complainant's tender had in no way been affected by HD's inclusion, or lack thereof, of the Condition in the Special Conditions of Tender of the Shop. After examining all shortlisted tenders (including the complainant's), HD did not award the tender to the complainant because it intended to bring in other service providers of electrical and plumbing repair. In the Office's view, that was a policy and

commercial consideration, which is in line with HKHA's principles and guidelines to prevent monopoly.

303. Nevertheless, the Office found that HD had not accurately described the facts when informing the complainant of the tender result on 7 July 2022, which might have caused the complainant to misunderstand that he had been disqualified from the tender exercise. In the Office's opinion, HD should review the way it informs tenderers of the tender results so as to avoid misunderstanding.

*Allegation (b)*

304. The Office considered that the meaning of "may not be considered" in the Condition is not absolute and confusing as it could be interpreted in different ways. The Office had reservations about HD's considerations in determining whether the Condition should be included in the Special Conditions of Tender (such as the need to remind prospective tenderers to consider whether to bid for the lease, and whether this would undermine competition by discouraging existing tenants from submitting tenders). Moreover, needless to say, not all tenders will succeed. Instead of predicting whether prospective tenderers will be discouraged by the Condition, the primary task for HD is to enable prospective tenderers to make informed decisions (including whether to submit a tender).

305. In the Office's opinion, how HD ensures that a tender exercise is processed in an open, transparent and fair manner is more important than the Condition itself. While HD would consider commercial factors relating to the leasing of shops, as the executive arm providing public rental housing and ancillary facilities including shops in public housing estates, from the perspective of public administration, HD should at the same time ensure transparency of the assessment criteria for tender exercises. That is to enable prospective tenderers to make informed decisions. The procedures for processing tenders should also be fair, open and specific to attract more tenders that are competitive and meet the conditions, so that the most suitable operator can be selected.

306. Moreover, the Office noticed from the information provided by HD that one of HD's principles for the leasing of commercial premises is to facilitate open and effective competition, which includes making transparent rental arrangements as far as practicable. As regards the complainant's allegation that HD had failed to make available to tenderers the criteria adopted in scrutinising tenders and factors in determining priority, the Office had studied the tender documents of the Shop and found no mention of such criteria and factors, which was in contrary to the aforesaid principles. In the Office's view, the fact that HD did not make available to tenderers the principles for approving tenders is against its intention to enable reasonable, fair and transparent tender exercises.

307. The Office had made reference to the Government's arrangements for other types of tenders and noticed that those tendering documents usually contained a brief account of what factors the department concerned would consider in approving tenders and the related process, such as the previous and current performance of a tenderer, the technical assessment and the fee assessment. Although different types of tenders vary in their conditions and content, they share common principles of openness and transparency. Regarding the shops under HKHA, considering that the principle and practice of prevention of monopoly is overarching, and that the tendered rent is not the only consideration in assessing tenders, HD should consider explaining its general principle of prevention of monopoly and relevant considerations to tenderers through proper channels (irrespective of whether such information would be set out in the conditions of tender). The purpose is to ensure transparency of information for prospective tenderers to make informed decisions and to avoid similar disputes with tenderers. Besides, it can also help members of the public and tenderers monitor the tender process so as to prevent impropriety. In fact, a Legislative Council paper reveals that HD had previously explained the letting and rent policies on HKHA's shops, stating concisely the criteria and practice for prevention of monopoly, which means such information could be made public. The Office considered that such criteria are rather straightforward, and inclusion of the information in the tendering documents will allow prospective tenderers to understand the requirement.

### *Allegation (c)*

308. HD had already explained what factors it would consider when setting the “Reference Rent”. As the setting of the “Reference Rent” is HD’s professional judgement, not an administrative matter subject to the Office’s investigation, the Office would not comment on this.

309. Overall, The Ombudsman considered the complaint partially substantiated and recommended HD to –

- (a) review the description of tender results in the notification letter to tenderers to avoid misunderstanding; and
- (b) consider explaining to tenderers through proper channels the general principle of prevention of monopoly and considerations pertinent to the vetting of tenders for leasing shops.

### **Government’s response**

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

#### *Recommendation (a)*

311. HD has reviewed the previous arrangements for the notification of tender results. In addition to amending the phrasing of the original notification letter for tenderers whose tenders were rejected due to invalidity, HD has also revised the notification letter for tenderers whose tenders were unsuccessful despite being eligible. This arrangement will help tenderers better understand the reasons for their unsuccessful tenders.

#### *Recommendation (b)*

312. To let tenderers make informed decisions and at the same time safeguard HKHA’s interests, HD has explained its general principle of

prevention of monopoly and the general considerations pertinent to the vetting of tenders for the leasing of shops to tenderers through the Conditions of Tender and the HKHA/HD website.

313. The aforementioned revised notification letters, Conditions of Tender and information on the HKHA/HD website have been in use since 1 April 2024.



## **Immigration Department**

**Case No. 2023/2469 – (1) Failing to inform the complainants that the photographs they uploaded for applying for Hong Kong Special Administrative Region (HKSAR) passports did not meet the specifications despite that such photographs were successfully submitted through the internet; (2) Allowing the complainants to make appointment bookings for collection of their HKSAR passports despite that their uploaded photographs did not meet the specifications; and (3) Informing the complainants that their uploaded photographs did not meet the specifications by email only, without calling them as well**

### **Background**

314. The two complainants respectively submitted applications for an Hong Kong Special Administrative Region (HKSAR) passport online on 13 May 2023 after having successfully uploaded the information and photographs as required by the Immigration Department (ImmD), and have received an application reference number issued by ImmD. They subsequently learnt from ImmD's online system that their passports would be ready for collection during the period of mid-July to September thus had made appointments for passport collection on 5 August. On 3 August, they had received reminder calls from ImmD for passport collection.

315. The two complainants attended ImmD's office on 5 August for passport collection, and were advised by the staff that their applications have yet been approved given the uploaded photographs did not meet the specifications as per ImmD's earlier email notifications to them in May and July respectively. While the two complainants claimed that they had never received such emails, they took and submitted the photographs right away at ImmD's office on 5 August, and thereafter received emails from ImmD on the even day respectively informing them that their passports would be ready for collection on 11 August and 14 August which had caused confusion on them.

316. The two complainants considered that ImmD had the following improprieties –

- (a) Despite that the photographs have been successfully uploaded through the online system on 13 May, ImmD subsequently informed the two applicants that their uploaded photographs did not meet the specifications (Allegation (a));
- (b) Despite that the photographs uploaded did not meet the specifications, the two complainants were still able to proceed to make appointment bookings for passport collection and had received phone call notifications from ImmD (Allegation (b)); and
- (c) ImmD notified the complainants of passport collection by phone but only informed them by email that their uploaded photographs did not meet the specifications (Allegation (c)).

### **The Ombudsman's observations**

#### *Allegation (a)*

317. The HKSAR passport is an important identification and travel document. ImmD has all along been assessing application for HKSAR passport in a rigorous manner in order to ensure the wide recognition of the HKSAR passport is maintained and the compliance of HKSAR passport photographs with international standards to avoid causing inconvenience to their holders. Regarding the dissatisfaction expressed by the two complainants who had successfully uploaded their substandard photographs, ImmD explained that the computer system would conduct a preliminary screening of the uploaded photographs upon which the staff would further review the photographs one by one to ensure their compliance with the standards of the International Civil Aviation Organisation (ICAO). According to the statistics provided by ImmD, among the HKSAR passport applications submitted online from January to July 2023, about 17% of the uploaded photographs did not meet the

specifications, reflecting the necessity for conducting manual inspection. The Office of The Ombudsman (the Office) considered that in view of the stringent passport photographs standards laid down by ICAO, it would be prudent and secure for ImmD to conduct a preliminary screening using the computer system, followed by manual review on each photograph successfully uploaded to assure compliance. In conclusion, the Office considered Allegation (a) unsubstantiated. That said, in view of the rapid technological development, it would be more desirable if ImmD could in future enhance its system's automatic screening function of applicants' photographs. In addition, ImmD may also consider adding reminders on the system webpage and website as appropriate to remind applicants that a successful application submission through the online system does not imply an application approval, in particular when the successfully uploaded photograph's compliance with the standards is still subject to confirmation. Upon receipt of an application, ImmD will conduct further checking and when necessary, request the applicant to submit another photograph or supplementary documents.

*Allegation (b)*

318. Generally speaking, applicants would only proceed to make appointment bookings for collection of HKSAR passports upon receipt of the Collection Notices issued by ImmD. However, in the present case, the two complainants were able to make appointment bookings for passport collection through the appointment system by phone even though they have yet received the Collection Notices. This had revealed the existing loophole in the appointment system at that time and ImmD had acknowledged its inadequacies in this regard. In light of the above, the Office considered Allegation (b) substantiated, and was pleased to learn that ImmD had taken remedial measures promptly by updating the system to plug the loophole after having been made aware of the situation.

*Allegation (c)*

319. ImmD explained why it had reminded the two complainants for passport collection by phone but had only informed them that the uploaded photographs did not meet the specifications by email. The Office considered it sensible for ImmD to notify the applicants, who had made their HKSAR passport applications online, by email such that clear and detailed explanations could be provided on why the photographs did not meet the standards. Given that ImmD had already informed the two complainants on the photograph issue by emails, it was indeed unnecessary for ImmD to notify them again by phone. Regarding the complainant's claim that he had never received email notifications from ImmD, having thoroughly examined the relevant email records provided by ImmD, the Office was satisfied that ImmD had in fact sent two emails in May and July respectively to the two complainants notifying them that their photographs submitted for their HKSAR passport applications did not meet the specifications, and requesting resubmission of photographs by the specified deadlines. Based on the above, the Office considered Allegation (c) unsubstantiated.

320. Regarding why ImmD respectively issued to the two complainants two Collection Notices on 5 August 2023 with different dates, ImmD explained that due to the complainants' request for early passport collection, ImmD had to issue a revised Collection Notice with an advance collection date. The Office considered that there existed no malpractice on the part of ImmD. As for the two complainants' views that the two Collection Notices issued by ImmD were confusing, ImmD stated that its staff had already explained the situation to the complainants on 7 August. However, one of the complainants indicated to the Office that the staff of ImmD had never explained to him the reasons for issuing two Collection Notices. In the absence of independent evidence (such as phone recordings), the Office was not privy to the actual conversation at that time and was therefore not in a position to comment on the matter.

321. Overall, The Ombudsman considered this complaint partially substantiated and recommended ImmD to –

- (a) continue the enhancement of the automatic photo screening function of the online application system, and to add a note on the application page and website to remind applicants that successful submission of application does not mean its approval; and
- (b) complete the connection of the system of online application for HKSAR passport and the online appointment booking system as soon as possible.

### **Government's response**

322. ImmD has accepted and taken the following follow-up actions to implement The Ombudsman's recommendations for further enhancements of its services.

#### *Recommendation (a)*

323. In accordance with The Ombudsman's recommendation, ImmD had in December 2023 added relevant reminders on the HKSAR passport application webpage and website to remind applicants that successful submission of an application through the online system does not imply an application approval with a view to reducing possible misunderstandings. On the other hand, ImmD will continue enhancing the system's automatic photo screening function in future system enhancement/upgrade, with a view to reducing the need for follow-up upon manual review of photographs.

#### *Recommendation (b)*

324. On passport collection, to reduce waiting time, ImmD used to encourage applicants to make appointments in advance in the past. Members of the public may also opt for direct walk-in passport collection

at their selected office during office hours without making any appointments. To meet the service need for passport collection, ImmD would provide collection services to all applicants on the day of their visit.

325. Given the recent number of HKSAR passport application has dropped from the peak in 2023, the waiting time for passport collection of passport applicants who have not made appointments is similar to those who have made appointments. To further enhance its service level and streamline the passport collection procedures, ImmD has reviewed its actual operation. With effect from 11 March 2024, Collection Notices issued by ImmD no longer remind members of the public to make appointments prior to HKSAR passport collection and applicants may simply attend their selected office direct in accordance with the prescribed details set out in the Collection Notice, thus the time spent on making appointments could be saved. Under the universal appointment-free arrangement, members of the public no longer have to worry about passport collection without appointments. The appointment booking system for passport collection has accordingly suspended its services.

326. Should the operation circumstances in future warrant reintroduction of appointment booking service for passport collection, ImmD will, in accordance with The Ombudsman's recommendation, ensure that the systems of the HKSAR passport online application and online appointment booking would have already linked further; and that prior to the issue of a reminder to make a passport collection appointment, confirm that all the required documents, fees and photographs for passport application are confirmed have been received, otherwise, the case officer would be notified by the system to take follow-up actions in a timely manner.

## **Lands Department**

### **Case No. 2023/2289B – Failing to properly handle unlawful occupation of government land by village houses in a village, resulting in shirking responsibilities**

#### **Background**

327. The complainants were the owners of House 1 (House 1) of a village (the subject village). The complainants alleged that the owners and former owners of three adjacent village houses (hereafter known as House 2, House 3 and House 4) had been occupying nearby government land by placing potted plants and sundries therein. In March 2021, the staff of the District Office (DO) under the Home Affairs Department (HAD), the District Lands Office, Tsuen Wan and Kwai Tsing (DLO) of the Lands Department (LandsD) and the Food and Environmental Hygiene Department (FEHD) arrived at the scene and requested the complainants to cease occupying government land as it was reported that the complainants' potted plants caused obstruction. At that time, the complainants asked the staff, for sake of fairness, to take enforcement action against the same irregularity at Houses 2 to 4. The staff agreed and promised to follow it up. Later, the complainants removed the potted plants, which had previously occupied government land, but they found that the owners of the other three houses kept placing their items on government land. Therefore, the complainants lodged repeated complaints with the DO and DLO in the past two years. However, DO pointed out that the enforcement action against unlawful occupation of government land fell within the responsibilities of DLO; DLO opined that a joint operation had to be coordinated by DO and suggested that they should contact FEHD; and FEHD indicated that its staff would participate in a joint operation only upon the request of DO.

328. Regarding the above matter, the complainants lodged a complaint to The Office of The Ombudsman (the Office) that DO and DLO, shirking

their responsibilities, did not properly deal with the unlawful occupation of government land at Houses 2 to 4.

### **The Ombudsman's observations**

329. The Office noticed that this case had nothing to do with unclear delineation of responsibilities. Regarding the unlawful occupation of government land and the problem of environmental hygiene derived from it, DLO and FEHD should carry out enforcement and clearance action respectively according to their terms of reference.

330. With numerous complaints about unlawful occupation of government land, DLO has established a system to prioritise different cases according to their categories/nature. The Office considered the practice as justifiable. Hence, after receiving a complaint from the complainants about Houses 3 and 4, DLO considered that the case was not a priority (i.e. no severe sanitary nuisances or imminent danger) and put it on record for future follow-up action, which conformed to the its enforcement strategies. The Office acknowledged that DLO had also explained to the complainants why the way it handled the complaints about Houses 1 and 2 was different from the way about Houses 3 and 4. The explanation of the differences was considered not unreasonable.

331. According to Technical Circular (Works) No. 3/2019 (the Technical Circular) of the Development Bureau, LandsD is responsible for coordinating the management and maintenance of resited villages (including the subject village), and carrying out enforcement action against unlawful occupation of government land. As such, regarding the case of unlawful occupation of government land in the subject village, DLO should have led/coordinated the follow-up action if the case could not be handled by a particular department independently given its nature and required follow-up through a joint operation by various departments. LandsD confirmed the above as well.



332. Nevertheless, in the course of handling the case, as DO, at the village representative's request, had arranged a site inspection for the relevant parties in 2021, DLO, at the request of the complainants in late 2022, referred the case to DO for follow-up action and coordination of a joint operation. Although LandsD explained that DLO's referring the case to DO was one of the follow-up actions in response to the complainants' request, and DLO did not intend to shirk its responsibilities or to pass the coordination of land enforcement action to DO, the staff of DLO did not immediately clarify with the complainants its responsibilities (i.e. DLO should be responsible for coordinating joint operations of this type of cases). Furthermore, the fact that DLO referred the case to DO without elaborating its roles/authorities and responsibilities might have misled the complainants into thinking that DO had the responsibility to/might proactively follow up on the case or coordinate a joint operation. But nothing happened, which eventually resulted in the complainants' dissatisfaction and misunderstanding. Moreover, from the communication records between DLO and DO, the Office found that, when DLO was reiterating that the case was not a priority and no enforcement action would be carried out immediately, it suggested on several occasions that DO should consider coordinating a joint operation, in which DLO was willing to deploy its staff to participate. DLO's way of handling obviously did not conform to its authorities and responsibilities in dealing with the management of resited villages.

333. To sum up the case, the Office considered that it was not inappropriate for DLO to handle the case based on its priority under the enforcement guidelines, i.e. merely recording the complainants' complaint about Houses 3 and 4 at the very beginning without taking any immediate follow-up or enforcement action. However, DLO did not follow up on the case under the Technical Circular but referred it to DO for coordinating a joint operation, which did not conform to the Technical Circular and was likely to arouse suspicion of shirking responsibilities.

334. The Office was pleased to know that LandsD, after reviewing the case, had already reminded the staff of DLO about the Department's terms

of reference stipulated in the Technical Circular. The staff was also reminded to properly explain to the complainants DLO's duties and responsibilities, including its responsibility to coordinate joint operations of this type of cases. In addition, the Office considered that LandsD should enhance its staff training to ensure that the staff of DLO could be thoroughly mindful of the Department's duties and responsibilities, and should consider cases carefully before referring them to other departments, so as to avoid giving stakeholders an impression of unclear delineation of duties or shirking responsibilities.

335. Based on the above, The Ombudsman was of the view that the complainant's complaint against LandsD was partially substantiated; the complaint against HAD was unsubstantiated.

336. The Ombudsman recommended that LandsD should enhance its staff training and learn from this case to ensure that the relevant officers could fully understand LandsD/DLO's authorities and responsibilities regarding the management and maintenance of resited villages under the Technical Circular so that officers could be able to follow up on similar cases in the future according to their terms of reference, and communicate/coordinate with the complainants and other relevant departments effectively.

### **Government's response**

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

338. To enhance the knowledge of the staff regarding the Department's responsibilities for coordinating the management and maintenance of resited villages and village expansion areas, as well as enforcement action against unlawful occupation of government land, as designated in the Technical Circular, LandsD conducted training seminars for its staff on 3 May 2024 and provided training materials to them. To remind the staff about the content of the Technical Circular, particularly DLO's

responsibility for the resited villages and village expansion areas in the districts, LandsD has also arranged the training materials and the Technical Circular to be circulated by email every six months.

## **Leisure and Cultural Services Department**

**Case No. 2022/3487 – (1) Ineffective patrol at a swimming pool, causing the complainant to be hit at the head by other swimmers under coaching while swimming in one of the coaching lanes; and (2) Failing to follow the procedures for confining coaching activities to the designated public coaching area to separate different types of pool users**

### **Background**

339. The complainant complained to The Office of The Ombudsman (The Office) against the Leisure and Cultural Services Department (LCSD) for poor management of the Lai Chi Kok Park Swimming Pool (LCKPSP).

340. According to the complainant, she was hit at the head by two young swimmers competing against each other under coaching while swimming backstroke in one of the coaching lanes of the indoor secondary pool of LCKPSP on 29 September 2022 (the Incident Day). Similar accidents happened to her at LCKPSP and other swimming pools in the past. The complainant complained to the manager of LCKPSP many times, only to be told that it would step up its patrolling on the pool, which was considered by the complainant to be ineffective in preventing accidents (Allegation (a)).

341. The complainant also alleged that the public swimming area of the indoor secondary pool was occupied mostly by coaching activities, especially during summer, making it difficult for her to enjoy swimming. On the understanding that she could swim within the public coaching area, she did so but came across the aforementioned accidents (Allegation (b)).

## **The Ombudsman's observations**

### *Allegation (a)*

342. Unlike lap lanes where swimmers could only swim in one direction in circulation within the lane, there was no regulation over the swimming direction in public swimming area and public coaching area. Swimmers swimming in different directions needed to exercise extra caution to minimise the risk of collision.

343. The complainant was allowed to swim in the public coaching area under the conditions of use for coaching lanes. While a lane was wide enough to let two swimmers swim side by side at the same time, according to the complainant's recollection and LCSD's record, two boys swimming at speed were occupying the entire width of one coaching lane. It was unlikely that anybody, swimming in backstroke, would be able to give way in order to avoid the collision as envisaged by LCSD. In the lack of independent corroborative evidence, the Office was unable to ascertain if patrolling was properly conducted on the Incident Day to an extent that could have prevented the accident effectively. Issuing verbal advice to the coach concerned after the accident was an appropriate follow-up.

344. In light of the above, The Ombudsman considered Allegation (a) unsubstantiated.

### *Allegation (b)*

345. The way LCKPSP was managed showed that no matter whether the patronage was high or low, coaching activities were allowed in the public coaching area and not confined within the public coaching areas. LCSD's replies also reflected that coaching activities in the public swimming area would not be intervened so long as such activities did not disturb or annoy other swimmers. However, this goes against, in letter and spirit, the relevant guidelines, the relevant conditions of use, and the relevant recommendations of the Office's Direct Investigation Report on

“LCSD’s Regulation of Public Coaching Activities at Public Swimming Pools”, which were all geared towards separating swimmers engaged in coaching and swimming activities at all times, regardless of whether such activities are disturbing others.

346. According to the relevant guidelines, swimmers engaged in coaching activities in the public swimming area should be advised to move to the public coaching area, and if such advice was ignored or such behavior repeated during the day, such behavior might be followed up under the Public Swimming Pools Regulation (the Regulation). The swimmers engaged in coaching activities should be intervened more proactively to achieve separation of activities, not when or after their activities disturb others, which could sometimes be too late.

347. The Office appreciated the difficulty in managing a crowded pool in peak seasons. However, when the patronage was high, effective and proper pool management became even more important to safeguard the safety and interests of different kinds of swimmers. All swimmers, whether swimming in the public coaching, public swimming, lap swimming and group hiring areas, were bound by the Regulation not to endanger, obstruct, inconvenience or annoy other swimmers. Patrolling played a role in seeing it through. It was unclear why records regarding the numbers of occasions on which verbal advice had been given when coaching activities were noted in the public swimming area had not been kept before 4 December 2022, given the guidelines had always been in force for LCKPSP. It was also unclear whether records had been kept for verbal advice given to activities that had disturbed other swimmers within the coaching area, which was part and parcel of proper enforcement of the relevant Regulation. While the management of LCKPSP had been emphasising that it had stepped up patrolling since the accident, there were no details of how patrolling was stepped up and relevant records.

348. The Office noted that LCSD had planned to review the lap lane and coaching area arrangement and to consult the District Council and the stakeholders. Even if such procedures were to be followed, interim

measures for separating swimming and coaching activities when the swimming season resumes might be considered as trial runs for such measures to collect more information such that stakeholders could be better informed during consultation.

349. In light of the above, The Ombudsman considered Allegation (b) substantiated.

350. Overall, The Ombudsman considered this complaint partially substantiated and made the following recommendations –

- (a) interim pragmatic measures be introduced in the swimming season in 2023 to effectively separate swimming and coaching activities in the indoor secondary pool;
- (b) regulation over coaching activities in the public swimming area be tightened in accordance with the guidelines; and
- (c) records of complaints and verbal warning issued regarding coaching activities in the public swimming area and the public coaching area be kept properly.

### **Government's response**

351. LCSD accepted The Ombudsman's recommendations and took pragmatic measures in the swimming season in 2023 to effectively separate swimming and coaching activities in the indoor secondary pool. Pool supervisors have increased the frequency of patrol in the indoor secondary pool of the LCKPSP to tighten the regulation over coaching activities in the public swimming area, and employed swimming pool ambassadors to remind swimmers to comply with the rules and regulations of the swimming pool. Pool supervisors have been reminded to clearly record all verbal warnings issued and complaints regarding coaching activities in the public swimming area and the public coaching area. The record will be checked regularly by venue manager.

## **Leisure and Cultural Services Department**

### **Case No. 2023/0522A – Delay in repairing the hot water supply system for shower cubicles of a swimming pool**

#### **Background**

352. The complainant lodged a complaint to The Office of The Ombudsman (the Office) on 17 February 2023 about the unstable supply of hot water in the shower cubicles of Siu Sai Wan Swimming Pool (SSWSP) under the Leisure and Cultural Services Department (LCSD). The water in the shower cubicles first heated up, but then turned cold. It would take 10 to 15 minutes before the hot water supply resumed. This situation had occurred since the annual maintenance of the swimming pool in June 2022. Other swimmers had also made numerous reports of the issue to the staff, but were given replies that insufficient water pressure would occur when many people were using the shower cubicles concurrently, and that the hot water supply system was in normal operation. The situation had not improved, and it was not until early December of the same year after swimmers had lodged vehement complaints that notices such as “Closed for maintenance”, “Unstable hot water supply at this cubicle” and “Only cold water is available at this cubicle” were displayed at some shower cubicles. The works progress was also slow as the replacement of faucet parts was only scheduled to be carried out by only one worker during the weekly cleansing operation of the pool on Thursdays. On 8 December 2022, the complainant filed a complaint against the LCSD through 1823. The complainant was informed that the works staff previously deployed to inspect the hot water system considered that the system had been functioning normally, and therefore no further action was taken at the time. The complainant accused the works staff and LCSD staff of being sloppy with the inspection and follow-up actions, resulting in delays in the repair works and bringing inconvenience to swimmers. Hence, the complainant lodged a complaint to the Office.



## **The Ombudsman's observations**

353. Having examined the replies, documents and records submitted by LCSD, the Architectural Services Department (ArchSD) and the Electrical and Mechanical Services Department (EMSD) in detail, the Office observed that when LCSD discovered problems with the hot water supply system during routine inspections, it proactively requested relevant works departments to conduct on-site inspections, instead of following up only upon receipt of verbal complaints or those lodged through 1823. This showed that LCSD had indeed fulfilled its responsibility in venue management.

354. As for the issue that it had taken three months to complete the “additional replacement works”, the ArchSD explained that equipment procurement took time, and that the works could only be conducted on the rest days of the swimming pool, both of which were understandable. Furthermore, LCSD also explained the reasons that the relevant works could only be carried out during the weekly rest days of the pool. Therefore, there was insufficient evidence to show that there had been a delay in the works. Nevertheless, LCSD did fail to comply with its internal guidelines (i.e. Guidelines on Repair and Maintenance of Leisure Facilities by the Works Departments (the Guidelines)) which stipulated that the Assistant Director had to be notified of cases which their repair works could not be completed within one month after the problem was reported. The failure to notify the management was undesirable as it might have hindered intervention at an early stage.

355. In addition, the Office found that the completion dates recorded by LCSD and ArchSD on the sets of works completion certificates (the originals and copies) that they had respectively kept did not match. The date on LCSD's copy of the works completion certificate was the date on which LCSD deemed the works satisfactorily completed, instead of the actual date on which the ArchSD's contractor carried out the repair works. This affected the investigation by the Office. Since the work completion record is a tool used by ArchSD to monitor the performance of its

contractors, the Office was of the view that LCSD and ArchSD should further communicate with each other on the design, use and record of works completion certificates, and made improvements where necessary.

356. The follow-up actions taken by LCSD regarding the unstable supply of hot water in the shower cubicles of the SSWSP showed that there was no delay in action on the part of LCSD. Meanwhile, both ArchSD and EMSD managed to provide the repair services in accordance with the Guidelines without delay. There was also insufficient evidence showing that LCSD had been sloppy during the inspection and acceptance stage, save for its shortcomings regarding record-keeping and case-reporting. That said, the fact that the shower cubicles could not come into full and stable operation for a prolonged period of time had indeed caused inconvenience to members of the public, and the situation was not desirable.

357. In view of the above, The Ombudsman considered the complaint against LCSD unsubstantiated but other inadequacies were. The Ombudsman recommended LCSD to strengthen its supervision over the repair works progress and strictly adhere to the Guidelines. If the repair works were expected to take longer time to complete, LCSD should actively consider alternative solutions to minimise the inconvenience caused to the public.

### **Government's response**

358. LCSD accepted The Ombudsman's recommendation. When handling repair works of venue facilities, LCSD would strictly implement the Guidelines, enhance communication and coordination with the works departments, and adopt appropriate measures to address the progress issue related to repair works arising from damaged facilities. In addition, venue management staff had been reminded to strictly adhere to relevant arrangements and procedures in accordance with the Guidelines. If the repair works were expected to take longer time to complete, LCSD should actively explore alternative solutions with works departments, such as

arranging the works to be conducted during late-night hours in order to expedite the progress and shorten the works period. LCSD would also adopt suitable options based on actual circumstances to ensure that the works could proceed smoothly and complete on time. Moreover, LCSD had contacted ArchSD to further discuss and improve the design, use and record of the works completion certificates.

## **Planning Department**

**Case No. 2022/4287 – (1) Inaccurate contents in a written reply to the complainant; (2) Failing to upload the supplementary information of an application for planning permission to the website in accordance with the procedures and properly reply to the complainant’s related enquiries; (3) Unfair procedures for consultation on the application for planning permission, including that the public were not given sufficient opportunity and time to give comments; (4) Failing to properly handle and publish the views from the District Council and members of the public on the application for planning permission; (5) Submitting or referring the application for planning permission to the Town Planning Board for approval without giving due consideration to whether the application was appropriate; and (6) Providing only an English version or a Chinese summary but not a full Chinese version of the application form and discussion paper, posing an obstacle to public understanding**

### **Background**

359. Between 16 December 2022 and 4 January 2023, the complainant complained to The Office of The Ombudsman (the Office) against the Planning Department (PlanD).

360. The complainant alleged that there were multiple irregularities when PlanD handled a planning application submitted by the Hong Kong Housing Authority (the subject applicant) to the Town Planning Board (TPB) for increasing building height (the subject application) and responded to the relevant enquiries from the complainant.

361. The alleged irregularities put forward by the complainant can be summarised as follows –

*Failing to reply to her email dated 10 November 2022 properly*

- (a) On 10 November 2022, the complainant sent an email to PlanD, pointing out that the subject applicant did not provide a softcopy/online version of the further information and amended information submitted subsequently. Paragraph 1 of PlanD's reply to the complainant on 11 November 2022 indicated that her earlier comments in relation to the subject application had been referred to TPB for consideration. The complainant was dissatisfied with this response as it was irrelevant to her queries mentioned above (Allegation (a));
- (b) It was shown on the TPB's website that the further information and amended information submitted by the subject applicant was "response to the departmental and public comments". However, it was stated in PlanD's reply to the complainant dated 11 November 2022 that the above information involved "technical clarification on/response to comments of relevant government departments". The complainant queried the inconsistency between the two descriptions, and considered that one of them should be wrong (Allegation (b));
- (c) It was shown on the TPB's website that the subject applicant provided no softcopy of the further information submitted, and such information was exempted from publication. In the email addressed to PlanD on 10 November 2022, the complainant queried the above arrangement. PlanD replied the complainant on 11 November that the relevant softcopy had been received and uploaded to the TPB's website.

The complainant was dissatisfied that PlanD had neither specified in the above reply when the softcopy was submitted by the subject applicant and when it was uploaded to the TPB's website, nor explained the reason for allowing the subject applicant not to provide a softcopy earlier on (Allegation (c));

*Improper procedures for handling the subject application*

- (d) It was unfair that the subject applicant was given the opportunity to respond to the views of government departments and the public and to submit further information before the application was submitted to TPB for approval, while members of the public did not have the opportunity to respond to the further information submitted by the subject applicant (Allegation (d));
- (e) PlanD prepared and submitted a paper on the subject application (Paper 1) to TPB, which was uploaded to the TPB's website. Some samples of public comments were included in Paper 1.

The complainant doubted that PlanD had not uploaded all the public comments to the TPB's website and had not provided the ratio of supportive to adverse comments, thus depriving the public of a full picture of the public comments received (Allegation (e));

- (f) PlanD had incorporated some parts of the minutes of the Wong Tai Sin District Council (WTSDC) meeting held on 7 December 2021 as a sample comment in Paper 1. The complainant pointed out that WTSDC also discussed the relevant issues and raised adverse comments at the meetings held on 12 February 2019 and 9 August 2022. PlanD, however, did not mention the minutes of the two meetings in Paper 1. Failing to include such information was considered biased (Allegation (f));
- (g) Before submitting/recommending the subject application to TPB for approval, PlanD had not taken into full consideration of various aspects, including the views expressed by the public; whether the application for building height relaxation was permitted by law; whether TPB had acted ultra vires; whether there was any actual demand for welfare facilities; whether there was any alternative scheme; whether height relaxation was

necessary; whether there was any substantive justifications for the approval, etc. (Allegation (g));

- (h) The Social Welfare Department (SWD) had a vested interest in the subject application. Inviting SWD to provide comments would potentially lead to a conflict of interest/role (Allegation (h));
- (i) The subject applicant was allowed to submit the application in English only. The submission was uploaded to the website with a Chinese summary only without a full Chinese version, while Paper 1 was also available in English only. This would hinder stakeholders who used Chinese as their main language of communication from understanding the relevant details and giving their comments (Allegation (i));
- (j) The subject applicant was still allowed to submit further information and to provide responses multiple times after the public consultation period. However, when the complainant submitted her comments two days after the consultation period, PlanD stated that the comments would not be submitted to TPB for consideration as the specified period had lapsed. The complainant considered the above practice partial and unfair (Allegation (j));
- (k) Not all public comments were provided to TPB members for information before the TPB meeting. The complainant queried that the TPB members did not have sufficient time to carefully review and consider the public comments which were only presented to TPB at the meeting (Allegation (k));
- (l) Though the complainant submitted her comments on the subject application to TPB, no response was received (Allegation (l));

- (m) PlanD set out the views of WTSDC in paragraph 9.1.9 of Paper 1 but unfairly omitted an important comment, i.e. mere adjustment of the building design would unlikely address the concerns of the nearby residents (Allegation (m)); and
- (n) PlanD submitted the subject application to TPB for approval without requesting or requiring the subject applicant to conduct proper consultation (Allegation (n)).

### **The Ombudsman's observations**

#### *Allegation (a)*

362. In PlanD's reply, apart from responding to the original enquiries from the complainant, it was also explained how the comments raised by the complainant earlier on the subject application was handled. The Office did not see how this would give rise to unfairness or the complainant would be aggrieved by this. As for the complainant, it did not appear that her rights would be jeopardised by receiving additional information through the reply. As such, Allegation (a) was considered unsubstantiated.

#### *Allegation (b)*

363. On the TPB's website and in PlanD's reply to the complainant, the descriptions on the same piece of information was indeed different. According to PlanD, it was merely a different choice of words. The Office considered that the crux of the matter lay in whether PlanD provided false information and caused misinterpretation. Although the description given in PlanD's reply to the complainant was not a precise and careful choice of words, it was a statement of fact which would not affect the messages conveyed in that piece of information nor render it impossible to comprehend which piece of information PlanD was specifying. As such, the Office considered that while there was room for improvement in terms of PlanD's choice of words, as for the nature and consequences of the



matter, it was far from an act of maladministration. Therefore, Allegation (b) was considered unsubstantiated.

*Allegation (c)*

364. PlanD clarified that when the subject applicant submitted further information, a soft copy was indeed attached. However, PlanD did not upload the soft copy to the TPB's website properly, but remedial measures were subsequently taken. PlanD also admitted that in the reply to the complainant's enquiry on the lack of soft copy on the website concerned, it was not complete and detailed enough. As such, Allegation (c) was considered substantiated.

*Allegations (d), (j) and (n)*

365. These three allegations are related to the public consultation procedures of application for planning permission, including whether there was sufficient opportunity/time for the public to submit their comments (Allegation (d)), whether the public was able to make further comments on the further information provided by the subject applicant after the consultation period (Allegation (j)), and how to ensure that the subject applicant had already carried out public consultation properly (Allegation (n)).

366. As explained by PlanD, the procedures and arrangements made by TPB/the Secretariat for public consultation on planning applications are in accordance with the requirements stipulated in the Town Planning Ordinance (the Ordinance) and the relevant guidelines. In particular, the expiry date for the public to make comments on an application and for the applicant to submit further information, including responses to public comments, have been specified under sections 16(2H) and 16(2J) of the Ordinance respectively. Besides, it is required under section 16(2F) of the Ordinance that TPB should set a public consultation period on the application for planning permission received. However, it is not required

under the Ordinance that the applicant should conduct another public consultation on its own.

367. As PlanD/the Secretariat acted as required under the above legislation, Allegations (d), (j) and (n) were considered unsubstantiated.

*Allegations (e), (k) and (l)*

368. These three allegations are related to the handling and publication of the public comments by TPB/the Secretariat, i.e. whether all public comments and the supportive-to-adverse ratio were uploaded to the website (Allegation (e)), the arrangement for TPB members to view the public comments (Allegation (k)), and whether replies were given to the public comments (Allegation (l)).

369. PlanD had explained each of the above arrangements and provided respective justifications, including all public comments were made available for public inspection according to section 16(2I) of the Ordinance and TPB PG-No. 30B; the ratio of supportive to adverse public comments was set out in Paper 1, which was uploaded to the TPB's website; a summary covering the main points of all public comments and samples of comments were included in Paper 1 submitted to TPB by PlanD, and TPB could review all the public comments if needed; and TPB would not respond individually to every public comment received.

370. Having considered the explanation and the relevant information provided by PlanD, the Office was of the view that the above handling and arrangements by PlanD were generally appropriate. It was worth noting that TPB would publish public comments received on planning applications for public inspection as required by the Ordinance. Therefore, both TPB members and the general public would have direct access to all public comments, and their rights to view all public comments would not be impeded by the above arrangements by PlanD/the Secretariat.

371. It was the practice and decision of TPB not to give reply to each public comment received. As TPB is not an organisation subject to investigation by the Office, the Office would not comment on that.

372. In view of the above, the Office considered Allegations (e), (k) and (l) unsubstantiated.

*Allegations (f) and (m)*

373. PlanD provided explanation for incorporating certain parts of the minutes of District Council (DC) meetings and views from DC into Paper 1. The Office accepted PlanD's explanation and considered that there was no evidence showing that injustice was caused by PlanD's deliberate screening of views from DC. Therefore, Allegations (f) and (m) were considered unsubstantiated.

*Allegation (g)*

374. As required by section 16(3) of the Ordinance, TPB should consider an application within two months upon receipt of the application, meaning that the Secretariat should submit all applications for planning permission received to TPB. Moreover, whether to approve the subject application would be considered and decided by TPB, and PlanD/the Secretariat had never made such "referral". The complainant's allegation that PlanD/the Secretariat had improperly submitted or referred the subject application to TPB was considered unsubstantiated.

375. On the other hand, PlanD was responsible for preparing papers and consolidating all relevant information of the applications for planning permission for consideration by TPB. In other words, the target of Paper 1 was TPB. In addition to general information, analysis and assessment, Paper 1 also contained a number of points raised by the complainant. Metro Planning Committee (MPC) of TPB had not subsequently requested PlanD to provide further information or analysis regarding Paper 1, which indicated that MPC considered the paper adequate. As such, the Office

opined that there was no evidence showing PlanD had failed to properly discharge its duties in preparing Paper 1.

376. In light of the above, the Office considered Allegation (g) unsubstantiated.

*Allegation (h)*

377. The subject application involved the provision of additional social welfare facilities. It was not considered unreasonable for PlanD to invite SWD, being the government department responsible for providing social welfare services, to provide comments. Furthermore, the complainant's allegation against SWD in relation to a conflict of interest/role was purely her personal opinion which had no concrete and objective evidence showing that SWD's comments were not impartial. Therefore, Allegation (h) was considered unsubstantiated.

*Allegation (i)*

378. Both Chinese and English are the official languages of Hong Kong. The subject applicant had also provided a summary of the application in both Chinese and English in compliance with the requirements of the relevant guidelines. That said, Chinese is after all the usual language of the major population in Hong Kong. Based on the principle of open and transparent public administration, it would indeed be more desirable if full Chinese version of the relevant documents were available to facilitate public understanding of the application content.

379. PlanD had already explained the reason why it was currently unable to provide full Chinese version of the relevant documents for each application, but PlanD could provide assistance if members of the public had queries or difficulties in understanding the documents concerned. The Office considered that this arrangement could be accepted as an alternative under resources constraints. Noting that PlanD would regularly review the procedures for processing applications, the Office hoped that PlanD would

consider providing Chinese version of relevant documents where feasible in the future. In view of the above, Allegation (i) was considered unsubstantiated.

380. To sum up, regarding the 14 allegations raised by the complainant, the Office was of the view that no obvious maladministration on the part of PlanD was found in the procedures for processing planning applications. However, for Allegation (c), as there were inadequacies in certain areas on the part of PlanD when performing its duties, The Ombudsman was of the view that the complaint was partially substantiated.

381. The Ombudsman recommended that PlanD should learn from the case and remind its staff to give a full account of the details when responding to public enquiries in the future.

### **Government's response**

382. PlanD accepted The Ombudsman's recommendation and sent an email to relevant staff reminding them to provide a full and detailed account of the matters concerned in their reply when handling public enquiries. Besides, PlanD has arranged relevant training courses for its staff, so as to enhance their skills in handling public enquiries.

## **Social Welfare Department**

**Case No. 2023/0291 – (1) Delay in giving a reply to the complainant; and (2) Failing to properly handle the complainant’s complaint against a residential care home for the elderly**

### **Background**

383. The complainant claimed that the following incidents occurred while his mother was residing in a residential care home for the elderly (RCHE) from October 2018 to November 2021: (1) the RCHE staff lost her dentures (the lost denture incident); (2) the RCHE staff dispensed the wrong medicine to her (the misdispensing incident); (3) the complainant found scratches on his mother’s skin on 31 August 2021 (the skin scratch incident); and (4) in September 2021, the complainant’s mother fell in the RCHE, causing cerebral hemorrhage (the fall incident). The complainant was dissatisfied that the RCHE did not inform him of the skin scratch incident and failed to follow up. The complainant suspected that the RCHE’s negligence caused the fall incident. The complainant’s mother passed away in November 2021. In December of the same year, the complainant lodged a complaint with the Social Welfare Department (SWD) regarding the above four incidents. On 21 March 2022, SWD sent a letter to the complainant regarding the investigation results. Between May 11 and October 17 of the same year, the complainant wrote to SWD to express his opinions and raise questions. On 17 February 2023, SWD responded to the complainant.

384. The complainant’s allegations can be summarised as follows –

- (a) SWD only responded to the complainant’s letters from May to October 2022 on 17 February 2023 (the letters), which appeared to be an undue delay (Allegation (a)).
- (b) SWD improperly handled his complaints (Allegation (b)), including –

- i. unreasonably refusing to consider the audio evidence possessed by the complainant when accepting the RCHE's claim that the misdispensing incident did not occur and failing to interview him regarding the incident;
  - ii. failing to question the RCHE's staff or request written statements therefrom regarding the above four incidents;
  - iii. accepting the RCHE's statements and records regarding the four incidents without questioning whether they were reasonable, accurate and credible, and without considering the causes and consequences of the matters; and
  - iv. merely advising the RCHE to improve communication with family members regarding the fall incident, without imposing any penalties or issuing warnings to the RCHE
- (c) when the complainant reported the skin scratch incident to SWD in December 2021, he stated that there was a photo showing his mother's skin injury, but the staff refused to accept this photo and unilaterally decided to limit the scope of the investigation to August 2021 and to close the case without reviewing the relevant records of the RCHE after that month (Allegation (c)); and
- (d) SWD has not investigated when and how the complainant's mother's bed monitoring alarm (the alarm) malfunctioned in relation to the fall incident, and whether, when and how the RCHE sent the alarm for repairs, among other relevant details (Allegation (d)).

## **The Ombudsman's observations**

### *Allegation (a)*

385. Since the complainant had provided detailed feedback and additional information after receiving investigation results from the Licensing Office of Residential Care Homes for the Elderly (LORCHE) of the SWD on 21 March 2022, it was understandable that LORCHE needed time to process and prepare a response.

386. Nevertheless, the content of the letters in question primarily concerned the complainant's disagreement with LORCHE's acceptance of the RCHE's explanations, and therefore questioned LORCHE's investigation results of the lost denture incident, the misdispensing incident, the skin scratch incident and the fall incident, which were not directly related to the inspection of the RCHE. As such, the Office of The Ombudsman (the Office) considered that it was not necessary for LORCHE to wait until the completion of an inspection of the RCHE in December 2022 to reply to the complainant on 17 February 2023.

387. SWD stated that the reason for it to take a longer time to respond to the complainant was partly due to the volatile pandemic situation. However, the pandemic broke out in early 2019 and events related to Allegation (a) took place at a later stage of the pandemic since its outbreak. The public would expect government departments to have accumulated certain extent of experience in responding to the pandemic while deploying manpower to handle different tasks. As SWD was unable to justify the inevitability for LORCHE in taking a longer response time despite countermeasures in place, the Office could not accept SWD's explanation.

388. In addition, LORCHE, after its initial call to the complainant on 18 October 2022, only provided the complainant with progress updates in mid-January and late January 2023 respectively after the latter had called and emailed to inquire about the progress in the same month. The Office considered this undesirable.



389. The Ombudsman considered Allegation (a) partially substantiated.

*Allegation (b)*

390. The Office agreed in principle that SWD should remain neutral and objective during the investigation process. Nonetheless, unless the information submitted by the complainant was clearly irrelevant to the investigation and/or unreasonably voluminous, the Office considered that SWD should have taken into account all information submitted by the complainant upon receiving a complaint, including audio or video recordings, before deciding whether the information was conducive to the complaint handling process/investigation. If the subject individual in a complaint against a RCHE is an elderly person residing therein, he/she may not be able to fully reflect his/her experience in the RCHE or produce evidence meeting SWD's standard. SWD's refusal to accept the audio recordings provided by the complainant on the ground that the recordings might potentially be illegal and unreliable could result in missing of information crucial to its investigation. This was imprudent and might have raised doubts about SWD's due diligence in handling the complaint.

391. The Office considered that misdispensing medication was a serious allegation. SWD shall handle relevant complaints in a more discreet manner with a view to safeguarding the well-being/safety of RCHE residents.

392. SWD's investigation reports on the above four incidents showed that LORCHE staff had reviewed relevant records of the RCHE and made inquiries with the relevant staff. SWD explained that LORCHE would only take witness statements from the persons concerned if the case might involve criminal prosecution. Since LORCHE did not consider it necessary to initiate criminal prosecution in relation to the four incidents, the staff had not taken witness statements, which was not in violation of SWD's guidelines.

393. In addition, while LORCHE had identified irregularities at the RCHE and issued advisory letters, it did not file copies of documents obtained from the RCHE. If these documents were needed in the future, LORCHE would not be able to refer to them immediately, which would hinder its follow-up work. The Office considered it advisable for LORCHE to consider retaining these documents for a suitable period of time before disposal. Regarding SWD's concern that these documents might carry personal data of the staff and residents of RCHEs, SWD could consider redacting the relevant personal data and/or refer to the relevant advice of the Office of the Privacy Commissioner for Personal Data, Hong Kong on feasible practices.

394. The Office also considered that when writing investigation reports, LORCHE should clearly distinguish the identities of interviewees having regard to the circumstances of the case so as to avoid confusion. This would also facilitate subsequent follow-up with the RCHE/relevant staff, and responding to the complainant when necessary.

395. The Ombudsman considered Allegation (b) partially substantiated.

*Allegation (c)*

396. The complainant did not take the initiative to provide relevant photo to LORCHE when filing his complaint regarding the skin scratch incident in December 2021. He pointed out that during the complaint process, he mentioned having photographic evidence but the inspector did not proactively ask for it. In addition, since the inspector had previously refused to accept his audio recordings regarding the misdispensing incident, he did not provide LORCHE with the photo related to the skin scratch incident. In the absence of objective information to verify whether the complainant had mentioned the photo to the inspector, the Office would not comment on this matter.

397. In retrospect, the Office considered that if the LORCHE had obtained the relevant photo of the complainant's mother earlier, it might have helped LORCHE to develop a more comprehensive understanding of the RCHE's records and follow up on the skin condition of the complainant's mother. In addition, according to the inspector's understanding, the complainant lodged his complaint against the RCHE for neglecting his mother's care because he found scratches on her skin on 31 August 2021. The inspector, therefore, investigated the RCHE's monitoring of the complainant's mother's skin condition prior to the date of the complainant's discovery of the scratches (i.e. 31 August 2021). The Office found this arrangement reasonable.

398. Based on the information provided by the Office, LORCHE reinvestigated the RCHE's provision of care for the complainant's mother's skin after 31 August 2021, and found deficiencies in the RCHE's practices. The Office considered LORCHE's follow-up actions appropriate.

399. The Ombudsman considered Allegation (c) unsubstantiated.

#### *Allegation (d)*

400. The Office noted that according to LORCHE's investigation report, after reviewing the relevant documents of the RCHE and interviewing its relevant staff, it was found that the RCHE had installed and been using the alarm purchased by the complainant at his own expense since 8 September 2021. On the 10th of the same month, the RCHE discovered that the alarm was inoperative. However, the RCHE did not install and use their own alarm because they did not offer an alarm lending service. While waiting for the alarm to be repaired, the nurse and occupational therapist of the RCHE discussed whether bed rails were necessary for the complainant's mother, and concluded that it was not necessary. On the evening of the 15th of the same month, the RCHE's staff found the complainant's mother lying on her right side at the door of

her room and sent her to the hospital for examination. The alarm was repaired the following day.

401. The Office understood that the complainant believed that the fall incident was caused by the alarm's failure, and therefore wanted to know the causes and consequences of the failure and the RCHE's arrangements for repairing the alarm. However, LORCHE's investigation into the fall incidents aimed to determine whether the RCHE had violated the Residential Care Homes (Elderly Persons) Ordinance, the Residential Care Homes (Elderly Persons) Regulations, or the Code of Practice for Residential Care Homes (Elderly Persons)/Code of Practice for Residential Care Homes (Nursing Homes) for the Elderly. LORCHE had inquired with the RCHE about the circumstances of the discovery of the alarm's malfunction and the reasons for not installing another alarm or using bed rails after the alarm was found to be inoperative. Details such as the causes for the alarm's malfunction, as well as when and how the RCHE arranged for the repair of the alarm were not directly related to whether the RCHE had violated any regulations, thus not being investigated in-depth by LORCHE. The Office did not consider this to be evidence of maladministration on the part of SWD.

402. The Ombudsman considered Allegation (d) unsubstantiated.

403. Overall, The Ombudsman considered this complaint partially substantiated and recommended SWD to –

- (a) remind staff to handle complaints in a timely manner and inform complainants of progress regularly;
- (b) review complaint handling procedures and collect photos, audio and video recordings submitted by complainants as far as practicable;

- (c) listen to the audio recordings related to the misdispensing incident furnished by the complainant before deciding whether and how to follow-up on the incident;
- (d) consider setting a time limit for retaining the documents and information obtained by investigations for reference purposes. If necessary, SWD should refer to the relevant opinions of the Office of the Privacy Commissioner for Personal Data, Hong Kong; and
- (e) remind staff to prepare investigation reports clearly to avoid confusion.

### **Government's response**

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

#### *Recommendation (a)*

405. LORCHE of the SWD has a set of "Internal Work Procedure Guidelines" (Procedural Guidelines) for staff to refer to when handling complaints against RCHEs. SWD has reminded LORCHE inspectors to handle complaints in a timely manner in accordance with the procedural guidelines and maintain contact with complainants via phone, email and/or letters, informing them of the progress of investigation. At the "Workshop on Handling Complaints against RCHEs" held for inspectors on 6 October 2023 and 12 July 2024, LORCHE reiterated that inspectors must follow the Procedural Guidelines and provide an interim reply within 10 calendar days upon receipt of a complaint, and strive to respond with the investigation results within 30 calendar days. If a complaint case requires a longer time to process, the inspector should promptly inform the complainant of the progress and the reasons for the extended processing time. During the investigation process, the inspector should proactively and timely inform the complainant of the progress of investigation.

### *Recommendations (b) and (c)*

406. LORCHE has reviewed its complaint handling procedures, and has reminded inspectors to collect, whenever possible, multimedia evidence (such as photos, audio or video recordings, etc.) provided by complainants and relevant parties for investigative purposes.

### *Recommendation (d)*

407. Starting from December 2023, LORCHE has specified a retention period of two years in general for copies of documents obtained from RCHEs during complaint investigations. LORCHE will dispose of these documents following the established mechanism upon expiration of the retention period.

### *Recommendation (e)*

408. At the “Workshop on Handling Complaints against RCHEs” held for inspectors on 6 October 2023 and 12 July 2024, LORCHE reminded inspectors of the key points to consider when writing investigation reports clearly to avoid confusion.

### *Other comments*

409. Regarding Recommendation (c), LORCHE’s staff phoned the complainant on 24 October 2023, proposing to listen to the audio recordings in his possession regarding the misdispensing incident for further follow-up actions. However, the complainant stated that since the relevant audio files had been handed over to the police for processing, he would not provide the files to LORCHE. LORCHE confirmed such arrangement with the complainant via email on 25 October 2023. As mentioned above, LORCHE has reviewed its complaint handling procedures. Whenever necessary, inspectors will collect multimedia evidences (including audio recordings) for investigative purposes.

## **Transport Department**

**Case No. 2022/2992 – (1) Improper handling of the complainant’s application for postponement of driving test for compliance with a quarantine order; and (2) Its reply to the complainant had error and omission**

### **Background**

410. A complainant complained to the Office of The Ombudsman (the Office) against the Transport Department (TD) for mishandling her application for postponing her driving test which she could not attend since she had to comply with the quarantine order (QO) issued by the Department of Health (DH).

411. According to the complainant, she was originally scheduled to take the driving test on 4 March 2022. Affected by the outbreak of the fifth wave of COVID-19 and the issue of Tropical Cyclone Warning Signal no. 8, her driving test was postponed by TD twice to 30 July 2022. The complainant knew that she became a close contact of a confirmed case on 29 July and was obliged to comply with the QO issued by DH to undergo home quarantine. She called TD on the same day, and was informed that she did not need to notify the Department but needed to be absent from the test on 30 July. The complainant mailed the postponement application and the relevant documents (including the QO) to TD on 7 August. TD replied to the complainant on 25 August (Letter 1) that, according to its practice, it would allocate end-of-list appointments to candidates after accepting their applications. Since the end-of-list appointment at that time was already 21 July 2023 or beyond, and the complainant’s Private Car driving test form would expire on 9 October 2022, TD could not accept the complainant’s postponement application as the complainant could not attend a test scheduled for 9 October 2022 or thereafter by using the same test form.

412. After the complainant contacted TD, the Department replied to the complainant again on 9 September 2022 (Letter 2) that considering her absence from the driving test and submission of postponement application was due to compliance with the QO, TD approved her application and allocated an earlier appointment (30 January 2023) to her on a discretionary basis. However, the complainant had to purchase a new test form for attending the scheduled test.

413. The main points of complaint of this case can be summarised as follows –

- (a) the complainant knew that she became a close contact of a confirmed case on 29 July 2022 and could not attend the test as she had to comply with the QO. The complainant had informed TD on the same day and mailed the postponement application to TD on 7 August. However, TD unreasonably rejected her application in Letter 1 (Allegation(a)); and
- (b) the complainant alleged that TD's reply in Letter 2 was improper, including failure to provide the important information of the earlier appointment allocated (30 January 2023) e.g. test route and time, and wrongly stated in the reply letter that the complainant had purchased a "Light Goods Vehicle driving test form" (Allegation(b)).

## **The Ombudsman's observations**

### *Allegation (a)*

414. TD has categorised the applications for test postponement<sup>2</sup> and formulated ways of handling based on the stipulations about the validity

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<sup>2</sup> Based on the Regulations, TD has categorised the arrangements for postponement of driving tests into three types: candidates apply for postponement at least seven days before the original test date (Type 1 Applications); candidates, who are through circumstances beyond their control unable to attend for the tests and cannot apply for postponement seven days in advance (Type 2 Applications); and TD is unable to conduct a driving test as scheduled due to inclement weather, or if the candidate



period of Test Form in the Road Traffic (Driving Licences) Regulations (the Regulations). Pursuant to the Regulations, a Test Form will cease to be valid if its holder fails to attend the test as notified, unless the Commissioner has been given not less than seven days' notice or is satisfied that the holder was unable to attend through circumstances beyond his control.

415. The Office considers that candidates being barred from going out on the test date due to QO are in circumstances beyond their control. During the Initial Period, TD's approach of handling applications for postponement due to QO as if they were Type 2 Applications was justified and reasonable.

416. Regarding the complainant's application for postponement due to QO, TD explained in Letter 1 that since the end-of-list appointment at that time was already 21 July 2023 or beyond, and the complainant's Private Car driving test form would expire on 9 October 2022, TD could not accept the complainant's postponement application as the complainant could not use the same test form for tests scheduled on or after 9 October. The Office considers TD's handling of the complainant's application proper as its way of handling was same as that for other Type 2 Applications.

417. However, the Office identified other inadequacies in the handling of applications for postponement due to QO or isolation orders (IO) by TD –

- (a) the Office noted that TD regarded applications for postponement due to QO or IO as applications for postponement on medical grounds. However, the key point for the handling of such applications under the Regulations is on whether the holder “was through circumstances beyond his control unable to attend for

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has already shown up for the test but the test is cancelled due to special reasons (such as traffic accident not caused by the candidate after the candidate started to drive) (Type 3 Postponement).

such test”. There was no need for TD to define whether the candidate “had applied for postponement on medical grounds”;

- (b) in addition, the description “application for postponement on medical grounds” (e.g. as stated in Letter 1) could not accurately apply to the circumstances of different candidates (such as those under QO), which had thus caused unnecessary misunderstanding or disputes; and
- (c) after reviewing applications for postponement due to QO, TD asserted that the “special arrangements” were made to address the exceptional circumstances of the epidemic as the candidates concerned were not ill but were barred from attending their tests to comply with QO. In the Office’s view, despite that there was a clear distinction between illness and the need to comply with QO, both circumstances were beyond the control of the candidates. TD made the “special arrangements” on the grounds that the candidates under QO were not ill. However, it could not explain clearly why the candidates under QO deserved the “special arrangements” more than those who were ill, those under IO included, and so it could deviate from its usual practice for processing Type 2 Applications in its handling of applications for postponement by candidates under QO. The Office notes TD’s response that it had adhered to uniform and fair approaches in handling applications for postponement from the candidates under IO or QO respectively. But the Office considers that this is not the point. The point is TD has failed to clearly account for the discrepancy in its handling of applications from the two groups of candidates. TD told the Office that it would learn from the experience and make appropriate arrangements to safeguard the interests of candidates as a whole in case similar situations arise in future. It would also exercise care and properly explain to candidates its arrangements and the results of the candidates’ applications for postponement in future.

418. Had the complainant been allocated an early appointment for her new test appointment, she might have been able to take the test before the expiry of her Test Form. TD explained that early appointments are very limited and will not be allocated to applicants for postponement at present. The Office considers that under the current circumstances, it is pragmatic for TD to allocate end-of-list appointments to candidates of both Type 1 and Type 2 Applications. Nevertheless, the waiting time for an end-of-list appointment is rather long at present (for example, when the complainant applied for postponement in August 2022, the end-of-list appointment at that time was nearly one year later in July 2023). As a result, candidates are not only required to wait for a long time, but also aggrieved for having to purchase Test Forms again because the new test dates will likely fall beyond the expiry dates of the Test Forms. The issue involves the overall waiting time for driving tests, how to allocate different types of test appointments effectively and fairly, etc., which are outside the scope of this investigation. The Office will keep a close watch on whether the issue should be further examined.

419. The Office considered Allegation (a) unsubstantiated but there were other inadequacies on the part of TD.

*Allegation (b)*

420. As for the complainant's query that the important information of the earlier appointment allocated e.g. test route and time was not provided in Letter 2, TD had made clarifications.

421. TD admitted that there was a typographical error in Letter 2 regarding the complainant's test form information and apologised to the complainant.

422. The Office considered Allegation (b) partially substantiated.

423. Overall, The Ombudsman considered this complaint partially substantiated. The Ombudsman recommended TD to –

- (a) review the current approval criteria for Type 2 Applications to ensure that such applications will be handled in a fair manner; and
- (b) review the content of its written reply to Type 2 Applications to avoid misunderstanding and provide proper explanation.

### **Government's response**

424. TD accepted all recommendations of The Ombudsman, and has implemented the following measures –

- (a) TD would learn from the experience and make appropriate arrangements to safeguard the interests of candidates as a whole in case similar situations arise in future. In addition, TD has already updated the template of “Application for Postponement/Temporary Cancellation of Driving Test/Change in Test Region”, specifying that applications for postponement due to medical reasons or special circumstances belong to the same type of postponement applications (i.e. Type 2 Applications); and
- (b) TD has reminded the staff to provide adequate explanations when responding to applicants' enquiries regarding postponement arrangements and application results in future.

## **Transport Department**

### **Case No. 2022/3119 – Improper disclosure of the Certificate of Particulars of Vehicle of a vehicle registered in the complainant's name**

#### **Background**

425. On 13 September 2022, the complainant lodged a complaint by online complaint form with The Office of The Ombudsman (the Office) against the Transport Department (TD). He provided supplementary information from 28 September to 26 October via email and phone.

426. The complainant said that TD had previously issued a Certificate of Particulars of Vehicle (Certificate) in respect of a vehicle registered under his name to an unknown person. The complainant considered that TD had recklessly issued the Certificate, which contained his highly sensitive personal information, including his Identity (ID) Card number, residential address and phone number, without verifying the applicant's purpose for requesting the information, thus failing to protect his personal information from illegal use. The complainant previously lodged a complaint with TD via 1823 in September 2022, requesting details of the applicant. While TD responded on 14 and 17 September through 1823, the complainant was dissatisfied with the explanation.

#### **The Ombudsman's observations**

427. TD had provided a detailed explanation on the mechanism and procedures for issuing Certificates at the time of the incident, as well as the arrangements for handling complaints related to privacy concerns stemming from the issuance of Certificates. TD had also explained the handling of the case and addressed the complainant's allegations. Upon reviewing the relevant records, the Office considered that TD had followed the relevant mechanism and procedures in issuing the Certificate in question, notifying the complainant about the situation and addressing his

complaint. In the two initial responses to the complainant's representative, TD failed to directly address her requests for the applicant's personal information, leading to misunderstandings, which was unsatisfactory. However, TD had addressed the issue and apologised to the complainant in its subsequent response.

428. TD has established the mechanism for issuing Certificates to fulfill obligations under regulation 4(2) of the Road Traffic (Registration and Licensing of Vehicles) Regulations (the Regulations) by issuing Certificates to any applicants who request the vehicle particulars for traffic and transport purposes. Since October 2019, in addition to paying the required fee as usual, applicants must select at least one from the three traffic and transport related matters specified on the application form as the application purpose. TD considered that the addition of this administrative requirement had adequately enabled the Commissioner for Transport (the Commissioner) to suitably understand and ascertain that the applicants were requesting vehicle particulars for traffic and transport related purpose(s). The Office has expressed reservations about this, and the relevant comments, recommendations and rationales have been detailed in two previous investigation reports<sup>3 4</sup> published by the Office. As these are not the focus of this case, details are not further elaborated here.

429. The Office acknowledged that there was room for improvement of the mechanism for issuing Certificates. However, even if TD verified the stated purposes of 100% of all applicants, it would not be able to fully meet the expectations for privacy protection of all affected vehicle owners. This is because strangers can still legally and unilaterally access the sensitive personal information of vehicle owners by merely stating that the application is for traffic and transport related purposes (e.g. intending to purchase a vehicle); regardless of the motive, this is sufficient to cause dissatisfaction and concerns among vehicle owners. Moreover, taking

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<sup>3</sup> [https://www.ombudsman.hk/wp-content/uploads/2022/07/TD\\_IR\\_EN202203.pdf](https://www.ombudsman.hk/wp-content/uploads/2022/07/TD_IR_EN202203.pdf)

<sup>4</sup> [https://www.ombudsman.hk/wp-content/uploads/2022/07/TD\\_code\\_EN202203.pdf](https://www.ombudsman.hk/wp-content/uploads/2022/07/TD_code_EN202203.pdf)

2022 as an example, the total number of applications reached 23,047, of which 11,496 were for other traffic and transport related matters, making it practically difficult for TD to verify each and every application.

430. In addition, once applicants have legally obtained vehicle particulars, TD cannot completely prevent them from using the information for illegal purposes or purposes other than those specified in the applications. Since the misuse of the obtained information is not an offence under the Road Traffic Ordinance (the Ordinance), should such activities arise, investigations on whether there were violations of other laws (such as the Personal Data (Privacy) Ordinance (the Privacy Ordinance) or making false and untrue statement) would typically rely on other law enforcement agencies (such as the Police or the Office of the Privacy Commissioner for Personal Data), upon receiving reports from victims or when the incidents are uncovered. Although the Ordinance prescribes penalties for providing untrue information, TD is not a law enforcement agency and can only assist in the investigations.

431. In view of the privacy concerns arising from the issuance of Certificates, TD has put in place administrative measures, such as incorporating statements and reminders about the Privacy Ordinance in the application form and launching a subscription for the email notification service to notify affected vehicle owners afterwards. The Office opined that these mechanism and arrangements are insufficient to alleviate the concerns of vehicle owners. Therefore, TD should further enhance the privacy protection for vehicle owners and consider addressing the underlying conflicts through legislative amendments.

432. Based on the preceding analysis, the Office noted that while TD had issued the Certificates containing the complainant's information, notifying the complainant about the situation and addressing his complaint according to the mechanism and procedures at the material time, such mechanism had failed to adequately address the vehicle owners' privacy concerns, leaving room for improvement. Consequently, The Ombudsman considered this complaint unsubstantiated, but other inadequacies were

found. The Office acknowledged that the responses from TD in this report only reflect the situation before June 2023. With the ongoing internal review being conducted by the Government, the Office hopes that the Administration would also take into account its recommendations during the review.

433. The Ombudsman first recommended that TD should expedite the implementation of recommendations made in the previous three reports<sup>3 4 5</sup>, which include but are not limited to –

- (a) showing only part of the vehicle owner's ID Card number on the Certificates;
- (b) drawing up relevant procedures for allowing Certificate applications to request for partial vehicle particular in accordance with regulation 4(2) of the Regulations;

In addition, The Ombudsman recommended TD to –

- (c) verify the stated purposes of applications in cases where complaints and reports are received;
- (d) conduct random checks on the stated purposes of applications in other cases to deter applications that do not meet the intended purposes; and
- (e) review regulation 4(2) of the Regulations, which requires the Commissioner to provide any person with any vehicle particular for which an application has been made, and consider whether amendments are necessary.

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<sup>5</sup> [https://www.ombudsman.hk/wp-content/uploads/2022/07/TD\\_IR\\_EN202005.pdf](https://www.ombudsman.hk/wp-content/uploads/2022/07/TD_IR_EN202005.pdf)



## **Government's response**

434. TD accepted Recommendations (c) to (e) and has taken the following follow-up actions.

### *Recommendations (c) to (e)*

435. In June 2023, the Court of Final Appeal (CFA) handed down the judgment for a criminal appeal involving knowingly making a false statement for the purpose of obtaining a Certificate (the Judgment). The CFA clearly pointed out that, with respect to the requirements stipulated in regulation 4(2) of the Regulations for accessing the vehicle particulars, the Commissioner may limit the purposes for which vehicle particulars may be required to be supplied, and is entitled to ask an applicant to provide his own identification details, and the purpose and reason for application for making a decision on whether to issue the Certificate or not. In light of the Judgment, the Government conducted a review on the process of issuing the Certificate. TD has since implemented the refined arrangements for issuing the Certificate on 8 January 2024.

436. The refined arrangements aim to state clearly the purposes of establishing the register of vehicles (the Register) and specify the conditions for issuing the certificate to ensure the purpose of application conforms with the purposes of establishing the Register and is lawful and legitimate, and the relevant information will only be used for the purposes as specified in the application, and will not be misused or abused. Under the refined arrangements, TD may conduct checks on applications as necessary or conduct random checks on approved applications to step up the protection of vehicle owners' privacy.

### *Recommendations (a) and (b)*

437. TD accepted part of Recommendation (b) and did not accept Recommendation (a) as explained below.

438. The Ombudsman recommended TD to consider issuing Certificates in which information not requested by the applicant is masked and only part of the vehicle owner's ID Card number is displayed. In response, TD acknowledges that members of the public have legitimate needs to access the information of registered vehicle owner from the Certificates in various situations. Moreover, under the refined arrangements, additional measures to protect vehicle owners' privacy have also been implemented. Therefore, for general applications submitted either by form or online, TD will continue its current practice of issuing Certificates containing all particulars to the applicants.

439. In addition, under the refined arrangements, TD introduced an application avenue for "exceptional circumstances". In case the applicant considers that the application does not meet the conditions specified in the application form but there is a need to ascertain the registered particulars of a vehicle due to other circumstances that involve the ownership or uses of the vehicle and significant public interest, and wishes the Commissioner to give special consideration for issuance of the Certificate, the applicant may make an application under exceptional circumstances through a written submission to the Commissioner. If the applicant requests only part of the vehicle particulars, upon approval of the application under exceptional circumstances, TD will issue a Certificate in which both unrequested information and any requested particulars that do not meet the corresponding conditions of approval (if applicable) are masked.

440. On 29 February 2024, TD conveyed the above position in a letter to The Ombudsman. The Ombudsman responded on 23 May 2024 that the Office was pleased to learn that TD had implemented the refined arrangements for issuing the Certificates since 8 January 2024, accepting and implementing most of the Office's recommendations.

441. Regarding Recommendations (a) and (b), the Office considered that it is difficult for TD to determine whether the tens of thousands of Certificate applicants each year need to know all the information on the Certificates. In fact, the legislation requires the Commissioner to provide

those who apply for partial particulars with such particulars. Furthermore, as public expectations for protection of personal data grow, offering an additional option to the public to apply for partial information could effectively prevent TD from providing excessive or unnecessary personal information of vehicle owners to Certificate applicants. TD would further explore the Office's additional comments; as mentioned above, when handling applications under exceptional circumstances, TD has built in a mechanism to consider giving out partial vehicle particulars.

## **Transport Department**

**Case No. 2022/3263 – (1) Improper handling of the complainant’s application for postponement of driving test for compliance with an isolation order; and (2) Inconsistent handling of applications for postponement of driving test submitted by candidates under isolation and quarantine orders**

### **Background**

442. A complainant complained to the Office of The Ombudsman (the Office) against the Transport Department (TD) for mishandling his application for postponing his driving test which he could not attend since he had to comply with the isolation order (IO) issued by the Department of Health (DH).

443. According to the complainant, his driving test was scheduled for 12 August 2022. He was unable to attend the test as he was diagnosed with COVID-19 and issued with an IO by DH on 11 August. On 16 August, he applied to TD for postponement of his test. On 18 August and 21 September, TD wrote to inform him that according to its practice, it would allocate end-of-list appointments to candidates after accepting their applications for postponement on medical grounds, but it could not process their applications if their driving test forms would have expired by the new test dates. TD considered the complainant’s application to have been made on medical grounds. As test appointments had been scheduled for 7 July 2023 or beyond at the time the complainant submitted his application and that his driving test form would have expired on 23 February 2023, TD could not accept his application.

444. The main points of complaint of this case can be summarised as follows –

- (a) the complainant alleged that TD had unreasonably rejected his application for postponement even he had made it explicit that he

was under an IO issued by DH and that he was asymptomatic on the test day. He disagreed with TD's view that his application for postponement was made on medical grounds (Allegation (a)); and

- (b) the complainant alleged that his wife was also unable to attend her driving test scheduled for 12 August 2022 as she was under a quarantine order (QO). However, TD accepted his wife's application for postponement and rescheduled her driving test for 9 February 2023. The complainant queried that TD's handling of applications for postponement by candidates under IO and QO was inconsistent and unreasonable (Allegation (b)).

### **The Ombudsman's observations**

#### *Allegation (a): Unreasonably Rejecting the Complainant's Application for Postponement and Considering that His Application Was Made on Medical Grounds*

445. TD has categorised the applications for test postponement and formulated ways of handling based on the stipulations about the validity period of Test Form in Road Traffic (Driving Licences) Regulations (the Regulations). Pursuant to the Regulations, a Test Form will cease to be valid if its holder fails to attend the test as notified, unless the Commissioner has been given not less than seven days' notice or is satisfied that the holder was unable to attend through circumstances beyond his control.

446. Regarding the complainant's application for postponement due to IO, TD explained that it could not accept his application because end-of-list appointments had been scheduled for 7 July 2023 or beyond at the time his application was made, and the complainant's light goods vehicle Test Form would have expired on 23 February 2023, i.e. he was not allowed to use the Test Form to take driving test on or after 23 February 2023. The

Office considered TD's handling of the complainant's application proper as its way of handling was same as that for other Type 2 Applications<sup>6</sup>.

447. The complainant was dissatisfied with TD for considering that his application for postponement was made on medical grounds. Having examined TD's explanation, the Office considered TD not entirely unreasonable to have done so given that the complainant was confirmed to have been infected. However, the Office noted that the key point for the handling of such applications under the Regulations is on whether the holder "was through circumstances beyond his control unable to attend for such test". There was no need for TD to define whether the candidate "had applied for postponement on medical grounds". Moreover, the description "application for postponement on medical grounds" could not accurately apply to the circumstances of different candidates (such as those under QO), which had thus caused unnecessary misunderstanding or disputes.

448. Had the complainant been allocated an early appointment for his new test appointment, he might have been able to take the test before the expiry of his Test Form. TD explained that early appointments are very limited and will not be allocated to applicants for postponement at present. The Office considered that under the current circumstances, it is pragmatic for TD to allocate end-of-list appointments to candidates of both Type 1 and Type 2 Applications. Nevertheless, the waiting time for an end-of-list appointment is rather long at present (for example, when the complainant applied for postponement in August 2022, the end-of-list appointment at that time was nearly one year later in July 2023). As a result, candidates are not only required to wait for a long time, but also aggrieved for having to purchase Test Forms again because the new test dates will likely fall beyond the expiry dates of the Test Forms. The issue involves the overall waiting time for driving tests, how to allocate different types of test

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<sup>6</sup> Based on the Regulations, TD has categorised the arrangements for postponement of driving tests into three types: candidates apply for postponement at least seven days before the original test date (Type 1 Applications); candidates, who are through circumstances beyond their control unable to attend for the tests and cannot apply for postponement seven days in advance (Type 2 Applications); and TD is unable to conduct a driving test as scheduled due to inclement weather, or if the candidate has already shown up for the test but the test is cancelled due to special reasons (such as traffic accident not caused by the candidate after the candidate started to drive) (Type 3 Postponement).

appointments effectively and fairly, etc., which are outside the scope of this investigation. The Office will keep a close watch on whether the issue should be further examined.

449. The Office considered Allegation (a) unsubstantiated but there were other inadequacies on the part of TD.

*Allegation (b): Being Inconsistent and Unreasonable in Handling Applications for Postponement from Candidates under IO and QO*

450. The Office considered that candidates being barred from going out on the test date due to IO or QO are in circumstances beyond their control. During the Initial Period, TD's uniform approach of handling applications for postponement due to IO and QO as if both of them were Type 2 Applications was justified and reasonable.

451. TD subsequently reviewed the applications for postponement due to QO. It asserted that the "special arrangements" were made to address the exceptional circumstances of the epidemic as the candidates concerned were not ill but were barred from attending their tests to comply with QO. In the Office's view, despite that there was a clear distinction between illness and the need to comply with QO, both circumstances were beyond the control of the candidates. TD made the "special arrangements" on the grounds that the candidates under QO were not ill. However, it could not explain clearly why the candidates under QO deserved the "special arrangements" more than those who were ill, those under IO included, and so it could deviate from its usual practice for processing Type 2 Applications in its handling of applications for postponement by candidates under QO. The Office noted TD's response that it had adhered to uniform and fair approaches in handling applications for postponement from the candidates under IO or QO respectively. But the Office considered that this is not the point. The point is TD has failed to clearly account for the discrepancy in its handling of applications from the two groups of candidates.

452. The Office considered Allegation (b) substantiated.

453. Overall, The Ombudsman considered this complaint partially substantiated and recommended TD to –

- (a) review the current approval criteria for Type 2 Applications to ensure that such applications will be handled in a fair manner; and
- (b) review the content of its written reply to Type 2 Applications to avoid misunderstanding and provide proper explanation.

### **Government's response**

454. TD accepted The Ombudsman's recommendations and has implemented the following measures –

- (a) TD would learn from the experience and make appropriate arrangements to safeguard the interests of candidates as a whole in case similar situations arise in future. In addition, TD has already updated the template of "Application for Postponement/Temporary Cancellation of Driving Test/Change in Test Region", specifying that applications for postponement due to medical reasons or special circumstances belong to the same type of postponement applications (i.e. Type 2 Applications); and
- (b) TD has reminded the staff to provide adequate explanations when responding to applicants' enquiries regarding postponement arrangements and application results in future.



## **Transport Department**

### **Case No. 2022/3547 – Improper handling of the complainant’s application for postponement of driving test for compliance with quarantine and isolation orders**

#### **Background**

455. A complainant complained to the Office of The Ombudsman (the Office) against the Transport Department (TD) for mishandling her application for postponing her driving test which she could not attend since she had to comply with the quarantine order (QO) and the isolation order (IO) issued by the Department of Health (DH).

456. According to the complainant, she was originally scheduled to take the driving test on 9 September 2022 at the driving school she attended (the School). On the test date, since she was obliged to comply with the QO and IO issued by DH, she could not attend the test. On 16 September, she submitted an application for postponement to TD via the School, requesting TD to arrange an earlier appointment for her and exempt her from payment of the test form fee. On 10 October, the School informed the complainant that TD rejected her application for postponement on the ground that it was made due to normal sick leave. On 13 October, the complainant told TD that she was dissatisfied with its decision and queried that TD had allocated earlier appointments to candidates under QO but did not do so in her case, which was unfair to her. On 11 November, TD replied to the complainant, explaining TD’s ways of handling applications for postponement due to QO and IO and that since the complainant was infected with COVID-19 on the test date, the Department considered her application on the basis that the application was made due to IO (and not QO) and approved the School to allocate an end-of-list appointment to her.

457. The complainant was of the view that the nature of her application was different from that of other candidates who applied for postponement on medical/illness grounds, as she was subject to both IO and QO on the

test date. However, TD overlooked the above circumstances and did not regard her application for postponement as an application made due to a QO and did not allocate an earlier appointment to her, which was unfair and unreasonable.

### **The Ombudsman's observations**

458. TD has categorised the applications for test postponement<sup>7</sup> and formulated ways of handling based on the stipulations about the validity period of Test Form in the Road Traffic (Driving Licences) Regulations (the Regulations). Pursuant to the Regulations, a Test Form will cease to be valid if its holder fails to attend the test as notified, unless the Commissioner has been given not less than seven days' notice or is satisfied that the holder was unable to attend through circumstances beyond his control.

459. The complainant was dissatisfied that TD had not treated her application as an application for postponement made due to a QO. After examining TD's explanation, the Office considered TD's ways of handling (i.e. considering the latest status of the complainant on the test date (the complainant confirmed to be infected) and that the IO issued to her was still valid on that day, TD regarded her application as an application made due to an IO, thereby processing it in the same way as that for Type 2 Applications, and approving the School to allocate an end-of-list appointment to the applicant) proper. However, the Office considered that the key point for the handling of such applications under the Regulations is on whether the holder "was through circumstances beyond his control unable to attend for such test". There was no need for TD to define whether the candidate "had applied for postponement on medical grounds". In addition, the description "application for postponement on medical

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<sup>7</sup> Based on the Regulations, TD has categorised the arrangements for postponement of driving tests into three types: candidates apply for postponement at least seven days before the original test date (Type 1 Applications); candidates, who are through circumstances beyond their control unable to attend for the tests and cannot apply for postponement seven days in advance (Type 2 Applications); and TD is unable to conduct a driving test as scheduled due to inclement weather, or if the candidate has already shown up for the test but the test is cancelled due to special reasons (such as traffic accident not caused by the candidate after the candidate started to drive) (Type 3 Postponement).

grounds” could not accurately apply to the circumstances of different candidates (such as those under QO), which had thus caused unnecessary misunderstanding or disputes.

460. The Office considered that candidates being barred from going out on the test date due to IO or QO are in circumstances beyond their control. During the Initial Period, TD’s uniform approach of handling applications for postponement due to IO and QO as if both of them were Type 2 Applications was justified and reasonable.

461. TD subsequently reviewed the applications for postponement due to QO. It asserted that the “special arrangements” were made to address the exceptional circumstances of the epidemic as the candidates concerned were not ill but were barred from attending their tests to comply with QO. In the Office’s view, despite that there was a clear distinction between illness and the need to comply with QO, both circumstances were beyond the control of the candidates. TD made the “special arrangements” on the grounds that the candidates under QO were not ill. However, it could not explain clearly why the candidates under QO deserved the “special arrangements” more than those who were ill, those under IO included, and so it could deviate from its usual practice for processing Type 2 Applications in its handling of applications for postponement by candidates under QO. The Office noted TD’s response that it had adhered to uniform and fair approaches in handling applications for postponement from the candidates under IO or QO respectively. But the Office considered that this is not the point. The point is TD has failed to clearly account for the discrepancy in its handling of applications from the two groups of candidates. For the complainant’s allegation that TD’s ways of handling were unfair, TD explained that it adopted a uniform approach in handling all applications from candidates who submitted both QO and IO. Although it was not improper for TD to treat the complainant’s application as an application for postponement made due to an IO, as mentioned above, the fact that TD only made “special arrangements” for candidates under QO and failed to provide a clear explanation would easily make candidates subject to an IO feel unfair. TD told the Office that it would learn from

the experience and make appropriate arrangements to safeguard the interests of candidates as a whole in case similar situations arise in future. It would also exercise care and properly explain to candidates its arrangements and the results of the candidates' applications for postponement in future.

462. Had the complainant been allocated an earlier test appointment, she might have been able to take the test before the expiry of her Test Form. The Office considered that under the current circumstances, it is pragmatic for TD to allocate end-of-list appointments to candidates of both Type 1 and Type 2 Applications. Nevertheless, the waiting time for an end-of-list appointment is rather long at present (for example, when the complainant applied for postponement in September 2022, the end-of-list appointment at that time was a whole year later in September 2023). As a result, candidates are not only required to wait for a long time, but also aggrieved for having to purchase Test Forms again because the new test dates will likely fall beyond the expiry dates of the Test Forms. The issue involves the overall waiting time for driving tests, how to allocate different types of test appointments effectively and fairly, etc., which are outside the scope of this investigation. The Office will keep a close watch on whether the issue should be further examined.

463. Overall, The Ombudsman considered this complaint partially substantiated and recommended TD to –

- (a) review the current approval criteria for Type 2 Applications to ensure that such applications will be handled in a fair manner; and
- (b) review the content of its written reply to Type 2 Applications to avoid misunderstanding and provide proper explanation.

### **Government's response**

464. TD accepted The Ombudsman's recommendations and has implemented the following measures –

- (a) TD would learn from the experience and make appropriate arrangements to safeguard the interests of candidates as a whole in case similar situations arise in future. In addition, TD has already updated the template of “Application for Postponement/Temporary Cancellation of Driving Test/Change in Test Region”, specifying that applications for postponement due to medical reasons or special circumstances belong to the same type of postponement applications (i.e. Type 2 Applications); and
- (b) TD has reminded the staff to provide adequate explanations when responding to applicants’ enquiries regarding postponement arrangements and application results in future.

## **Transport Department**

**Case No. 2023/0696 – (1) Unreasonably refusing to accept the complainant’s new application for Hong Kong-Macao cross-boundary private car quota which was made in February 2023 despite that his existing quota would expire in April 2023 while the new quota could only be used starting from May 2023 the earliest, and giving inconsistent responses to the complainant’s inquiries; (2) Being rigid and inflexible in processing quota applications for not automatically renewing the quotas for another three years in view of the pandemic; and (3) Failing to require applicants to provide relevant information for screening purpose before balloting, resulting in having many ineligible applicants getting the ballots, and hence reducing administrative efficiency**

### **Background**

465. The complainant was a quota holder of the Regular Quotas for Hong Kong Private Cars to Macao (the Quotas), which was valid until April 2023. In February 2023, the Transport Department (TD) conducted a new round of balloting for the Quotas, which would be effective from May 2023 the earliest. However, TD’s system did not accept his application because he got the ballot from the previous round. TD updated the application system upon receiving his enquiry and invited him to re-submit his application, but then his application was still not accepted by the system. He made a subsequent inquiry to TD, but was told that he was not eligible for making the application since he was still holding a Quota.

466. The complainant expressed dissatisfaction with the following –

- (a) the Quota he was holding would expire in April 2023, while the new Quota would only be available for use in May the earliest. As such, TD should not have rejected his application. Moreover, TD’s responses to his inquiries were inconsistent and confusing (Allegation (a));

- (b) unlike the approach adopted by the Macao government, TD did not automatically renew the Quotas for another three years in view of the impacts of the pandemic, which was lack of flexibility (Allegation (b)); and
- (c) although TD required applicants to be employed with remunerations in Macao or to have established a registered company in Macao, TD did not require applicants to submit documentary proof for screening before the balloting, which resulted in many ineligible applicants getting the ballots, and hence reducing administrative efficiency (Allegation (c)).

### **The Ombudsman's observations**

#### *Allegation (a)*

467. Given the high demand for the Quotas, TD only allows each person to only hold one Quota at any given time such that more people could benefit. The Office of The Ombudsman (the Office) considered it reasonable.

468. Nevertheless, the Quota held by the complainant would expire on 5 April 2023 while the new batch of Quotas would only be used from May 2023 the earliest, by then he would no longer be a Quota holder, thus it would not violate the principle of being allocated only one Quota. The Office considered it unreasonable for TD's rejection of the complainant's application on the grounds that his quota was still valid at the time of application in February 2023.

469. TD had reviewed the situation and decided to implement improvement measure by changing the date of assessing whether an applicant was a current Quota holder from the application deadline to the expected effective date of the new Quotas. The Office trusted that such improvement measure could avoid similar unreasonable situations.

470. As for the complainant's claim of inconsistent responses from TD, TD had already clarified the matter. In summary, The Ombudsman considered that Allegation (a) was partially substantiated.

*Allegation (b)*

471. The Office understood that many Quota holders might have less desire or need to travel to Macao due to quarantine restrictions or changes in their lives and business operations during the pandemic, and expressed understanding towards the complainant's request. However, the arrangement of quota reallocation involved transport policy, and unless TD's decision was clearly unreasonable, The Ombudsman had no comment, and considered Allegation (b) unsubstantiated.

*Allegation (c)*

472. TD had explained the rationale behind its current application review process, and based on daily operational situations and the principle of making good use of resources, the current practice was adopted. The actual situation showed that this approach did not result in many ineligible applicants getting the ballot. The Ombudsman considered that there was no evidence showing TD's inappropriate act, and that Allegation (c) was unsubstantiated.

473. Overall, The Ombudsman considered this complaint partially substantiated and recommended TD to implement the improvement measure as soon as possible by revising the date for assessing whether an applicant was a current Quota holder from the application deadline to the expected effective date of the new Quota.

**Government's response**

474. TD accepted The Ombudsman's recommendation and has adopted the expected effective date of the new Quota as the basis for



determining whether the applicants are eligible for enrolling in the ballot registration since August 2023.

## **Transport Department**

### **Case No. 2023/1631 – Sending letters to the complainant’s previous address despite that he had already updated his address**

#### **Background**

475. The complainant claimed that he had submitted application to update his address record at the Transport Department (TD) and the application was confirmed by a “Notice of Change of Address Record” (Change of Address Notice) issued by TD. However, TD still sent a letter regarding the auction of vehicle registration marks to his old address. After making inquiries with TD, the complainant learnt that his previous change of address application was not applicable to matters concerning vehicle registration mark auction, and that he had to separately change his address with the Vehicle Registration Marks Unit (VRMU) of TD.

476. The complainant was dissatisfied with the above-mentioned change of address arrangements of TD and believed that TD had not notified him of the relevant arrangements in advance, including not reminding him on the GovHK website and the Change of Address Notice that his application for change of address did not apply to the address record at VRMU. In addition, he also alleged that TD’s mailing letters to his old address might leak his personal information.

#### **The Ombudsman’s observations**

477. TD had explained the current address change arrangements and the related reasons for the Department’s different services. Having regard to the nature, service targets and operational needs of different services, and the technical and resource issues involved in unifying the current computer systems of various units, TD decided to allow some units/sections independently manage (including collecting, using or changing) the information of their service targets. The Office of The Ombudsman (the Office) accepted TD’s explanation. In addition, TD also

provided an account of the case and explained that since VRMU did not receive the notice on the change of address from the complainant, the letter for notifying the complainant of the auction details was sent to the address he filled in the application form for auction. The Office considered that as VRMU acted in accordance with the current arrangements, it cannot be regarded as misconduct. TD also clarified that the registered mail to the complainant's original address was returned intact.

478. However, at the Change of Address service at GovHK platform and its frequently asked questions, TD only mentioned that the service is applicable to "Driving Licence Holders and/or Registered Vehicle Owners" instead of detailing the related services or units/sections, such as Licensing Section/general licensing services, thereby might lead to confusion. In the Change of Address Notice received by the complainant, while "Licensing Office" was named as the issuer, the text of the notice reads "Your updated residential/business address and correspondence address record in this Department are appended below for your reference.", and "this Department" was used instead of "this Office", which further confirmed the complainant's impression when using the Change of Address service at GovHK platform. Therefore, the Office considered that TD should improve the explanation of address change arrangements on the Change of Address service at GovHK platform, TD559 form and Change of Address Notice so as to remind the public in a clearer manner.

479. In addition, this case reflects that the current address change service provided by TD on the Change of Address service at GovHK platform is only applicable to driving licence holders and/or registered vehicle owners for changing their particulars related to their vehicle or driving licence. The Office considered that it might not meet the public's expectation for one-stop service, and that TD should expand the Change of Address service at GovHK platform to cover other services under the Department and provide the public with the option to choose whether their change of address applications would apply to other services of TD so as to bring convenience to the public.

480. The Office considered that TD had followed the existing arrangements in sending the letter to the complainant's address provided in the application form for auction, in which the relevant arrangements had been set out. However, there is still room for improvement in respect of TD's explanation of the address change arrangements and its services on the Change of Address service at GovHK platform.

481. Overall, The Ombudsman considered this complaint unsubstantiated but there were other inadequacies found in TD. The Ombudsman recommended TD to –

- (a) clearly remind the public on the Change of Address service at GovHK platform and TD559 form that different units/sections of TD have different change of address arrangements, and revise the text of the Change of Address Notice to make it more accurate and easy to understand; and
- (b) review the change of address service provided by TD at GovHK platform, and consider extending the service to cover more services under the department so as to provide the public with options to choose whether their change of address applications would apply to other services of TD.

### **Government's response**

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

#### *Recommendation (a)*

483. TD considers that it would be difficult to list all applicable and inapplicable services having regard to the numerous types of services provided by the Department and the frequent updates involved. In order to remind applicants who update the address record of "Driving Licence Holder and/or Registered Vehicle Owner" to pay attention to the change

of address arrangements of other units/sections of the department, TD had updated the TD559 form and Change of Address Notice in the fourth quarter of 2023 with the addition of the following notes: “The above address change only applies to the records of “driving licence holders and/or registered vehicle owners” of the Licensing Office of the Transport Department. Please notify the relevant team if you need to change your address record for other services.”

*Recommendation (b)*

484. Upon review, TD decided to make use of the Change of Address service at GovHK platform to cover the following services of the department –

- (a) Vehicle Registration Mark Scheme;
- (b) parking certificate for drivers who carry people with mobility disabilities; and
- (c) restricted zone/Prohibited zone/Bus lane/Closed road permits.

485. TD had submitted the above proposed arrangements to the Office of the Government Chief Information Officer and formulated the relevant work procedures. Depending on the process of system development and testing, it is expected that the relevant services will be implemented in phase in end 2024.

486. TD will also further update the notes in the TD559 form and the Change of Address Notice after the implementation of this recommendation, so as to remind applicants that they can use the Change of Address service at GovHK platform to update their address records of other applicable services of TD.

## **Transport Department**

**Case No. 2023/2873(I) – (1) Refusing to provide information about driving instructors in breach of traffic regulations or involving misconduct; and (2) Failing to update the name list of driving instructors in a timely manner**

### **Background**

487. On 12 and 15 September 2023, the Office of The Ombudsman (the Office) received a complaint from the complainant against the Transport Department (TD). Between October 2023 and January 2024, the complainant provided supplementary information on the case for several times.

488. On 8 June 2023, the complainant requested TD, under the Code on Access to Information (the Code), to provide information on all driving instructors who had committed traffic offences or proven misconduct in the past five years. TD responded that since the requested information was personal data of the driving instructors, and the consent of the subject of the information (i.e. the driving instructors) was not obtained, TD refused to disclose the requested information, citing paragraph 2.15 of the Code.

489. Moreover, the complainant said it is TD's current practice to revoke the qualifications of driving instructors convicted of certain offences under the Road Traffic Ordinance. However, TD failed to update the information of the Name Lists of driving instructors (the Name Lists) on its website in a timely manner. The complainant considered that since the public could only receive driving training provided by driving instructors and mainly rely on TD's Name Lists to obtain driving instructors' information, such information is of public interest. Therefore, the complainant complained that it was unreasonable for TD to refuse to disclose the requested information to him.

490. To sum up, the complainant raised two points of complaint against TD as follows –

- (a) the refusal of disclosing the requested information breached the Code; and
- (b) failure to timely update the information of the Name Lists on TD's website.

### **The Ombudsman's observations**

#### *Allegation (a)*

491. In response to the Office's investigation, TD explained in detail the background of TD's recording and follow-up of traffic offences committed by driving instructors and complaints against their misconduct, the purpose of TD keeping such records, the impact of disclosing the requested information on the subject of the requested information and the public interest involved, etc.

492. After examining the information provided by TD and the relevant provisions of the Code and the Guidelines on Interpretation and Application, the Office was of the view that TD had provided a concrete and reasonable explanation. After considering TD's current arrangement regarding the Name Lists of driving instructors, the Office agreed that there was no information showing that there was an overriding public interest that would justify the disclosure of the requested information. The Office accepted that TD had reason to refuse to provide the requested information by citing paragraph 2.15 of the Code. Thus, the Office considered Allegation (a) unsubstantiated.

#### *Allegation (b)*

493. According to the information provided by TD, there had been nearly a four-year delay in the removal of the information of the driving

instructors, whose driving instructors' licences had been cancelled, from the Name Lists. Furthermore, TD took action to formulate and implement the enhanced arrangements for updating the Name Lists only after the Office started investigating into the case.

494. The Office considered that although TD has already formulated enhanced arrangements for updating the Name Lists, admitted the inadequacies in updating the Name Lists, and apologised to the complainant, it was by no means ideal for TD to update the Name Lists on an irregular basis at the time when the complainant lodged the complaint. Therefore, Allegation (b) was considered substantiated.

495. Overall, The Ombudsman considered the complaint against TD partially substantiated and recommended TD to learn from this case and ensure that the staff will timely review and update the content of the Name Lists according to the newly formulated internal guidelines in future.

### **Government's response**

496. TD accepted The Ombudsman's recommendation and has reviewed and updated the Name Lists in a timely manner in accordance with the newly formulated guidelines. A progress report was submitted by TD on 8 May 2024 and was accepted by the Office.



## **Urban Renewal Authority**

**Case No. 2023/1886A – (1) Unreasonably refusing to disclose the actual amount and the computation of a grant for a maintenance works project under the Building Maintenance Grant Scheme for Needy Owners and (2) Offering a grant amount too small for a maintenance works project**

### **Background**

497. On 13 June 2023, The Office of The Ombudsman (the Office) received a complaint from the complainant against the Urban Renewal Authority (URA).

498. The complainant alleged that, in February 2023, he assisted his mother in applying to URA for the “Building Maintenance Grant Scheme for Needy Owners” (the Grant Scheme), and the total cost of works was \$82,100, with the works item of painting and plastering (the subject works) quoted at \$15,000. In May of the same year, URA issued a “Letter of Approval in Principle” (the Letter) to the applicant, giving an approval in principle to grant a subsidy of \$55,050. The complainant made several phone inquiries with URA about the subsidy amount approved for the subject works. A staff member of URA said that it would be approximately 20% of the quoted price. The complainant considered that the subsidy amount for the subject works was lower than the market price and requested URA to provide the criteria for calculating the subsidy amount. The staff member of URA said it was unnecessary to reply to the complainant and the actual subsidy amount for each works item would not be disclosed to applicants.

499. The complainant lodged a complaint against URA for –

- (a) unreasonably refusing to disclose the actual subsidy amount and calculation method for the subject works (Allegation (a)); and

- (b) the subsidy amount approved for the subject works was too low (Allegation (b)).

### **The Ombudsman's observations**

#### *Allegation (a)*

500. The complainant alleged that a staff member of URA had disclosed an approximate percentage of the subsidy amount for the subject works, but he could not provide details such as the staff member's name or the date of conversation. Upon investigation, URA stated that no staff member had disclosed the subsidy amount, but the approval criteria under the Grant Scheme had been explained. In the absence of independent corroborating evidence, the Office could not verify the conversation between the staff member and the complainant and it was thus difficult to judge who was in the right and who was in the wrong. However, the Office considered that, in general, even if the staff of URA disclosed to applicants that the approved subsidy amount would be significantly lower than the quoted price of a works item, it not only could assist applicants with insufficient funds in shortlisting the necessary repair works items, as well as obtaining a more targeted new quotation. This is in line with URA's principle of not disclosing the actual subsidy amount so as to avoid affecting market competition. This practice was considered acceptable.

501. Upon thorough review of URA's explanation and the Competition Commission's advice regarding the possible implications of disclosing such information, the Office accepted that URA should not reveal the subsidy amount of each repair works item to applicants. Hence, Allegation (a) was unsubstantiated.

502. Although this allegation was unsubstantiated, the Office took note of the Grant Scheme's objective to provide financial assistance for needy persons to repair their self-occupied properties. Applicants needing financial assistance might have to decide whether to carry out particular works item(s) in light of the subsidy amount granted, especially in cases

where there is a substantial difference between the granted amounts of subsidy and the quoted price. While the Office was aware of URA's need to consider the impact of information disclosure on market operation in order to avoid anti-competitive behaviour, under the URA's current practice, applicants could only make decisions based on the overall granted amount of subsidy without additional useful information. This might hinder them from making the best possible decision in shortlisting repair works items.

*Allegation (b)*

503. Property owners are responsible for maintaining their properties to ensure that buildings meet the basic safety and hygiene standards. As for the complainant's allegation that the subsidy amount for the subject works was too low, the objective of the Grant Scheme was to assist those in need in carrying out the necessary repair works, rather than covering the repair cost in full. Therefore, the key point was that URA had evaluated the subsidy amount for the subject works in accordance with the established principles, and had reviewed the amount in the wake of the complainant's dissatisfaction. URA explained that when evaluating the subsidy amount, wages were just one of the considerations. URA had also taken into account the scale of works. These principles were applicable to all applicants. After scrutinising information and explanation provided by URA, the Office found that there was no evidence showing that the subsidy amount evaluated for the subject works had gone against the established principles of URA. Even if URA's estimation fell short of the complainant's expectation, this could not constitute evidence of maladministration on the part of URA in making the estimation. As for URA's assessment regarding the eligibility of the works item under the Grant Scheme and the determination of subsidy amount made based on professional inspections and assessments, both fell under the scope of URA's professional judgment and were not administrative issues that the Office had the jurisdiction to investigate.

504. Finally, the Office concluded that, as URA had established a mechanism for review and appeal for the Grant Scheme, relevant information should be disseminated to the public. However, the Office's investigation revealed that while URA's letter of cancellation indicated that applicants could raise objections before a specified date, it did not specify that the grounds had to be submitted in writing. Nor did it explain the appeal procedure. Furthermore, it was considered inappropriate that information about the review and appeal channels for the Grant Scheme were not disseminated in the application documents, the Letter, URA's website, or other channels of information.

505. Based on the above analysis, the Office was of the view that Allegation (b) was unsubstantiated but there were other inadequacies found in URA.

506. In conclusion, The Ombudsman considered this complaint unsubstantiated but there were other inadequacies found in URA. The Ombudsman recommended that URA should suitably provide information regarding the review and appeal channels for the Grant Scheme.

### **Government's response**

507. URA accepted The Ombudsman's recommendation to suitably provide information regarding the review and appeal channels for the Grant Scheme.

508. Upon accepting The Ombudsman's advice, URA began drafting an updated application notes for the Grant Scheme, adding information about case review channels. The latest version of the application notes was published in July 2024 on the website of the Grant Scheme. The notes specifies that URA determines the approved amount of subsidy based on the estimates of its independent professional consultants. If applicants dispute the approved subsidy amount, they can submit a written review request to URA regarding the comprehensive evaluation of the repair works' approved subsidy amount within one month from the date of issue

of the approval letter. URA will review the case to examine if there are any human errors in the approval process.

509. The updated application notes also specifies that if there is a dispute regarding the eligibility of the applicant as approved by URA, the applicant may submit a written request for review to URA. In special circumstances, the review will be further examined by an assessment committee composed of representatives from the Development Bureau, partnering organisation and the Buildings Department.

## **Vocational Training Council**

### **Case No. 2023/2455(R) – Failing to handle a request for information regarding a film footage in accordance with the Code on Access to Information adopted by the Vocational Training Council**

#### **Background**

The complainant alleged that the Vocational Training Council (VTC) had violated VTC's "Code on Access to Information" (the Code) in handling his request for information regarding a certain video (the Video), in the following aspects:

- (a) The reasons provided by VTC for refusing to provide the Video to the complainant did not fall under the categories of information which may be refused as specified in the Code;
- (b) The Video did not constitute any third-party information;
- (c) VTC failed to cite reasons as specified in the Code as grounds for refusal, and did not inform the complainant of his right to ask for a review on the case; and
- (d) VTC failed to provide the name and rank of the issuers of the three responses to the complainant, making it impossible for him to determine whether his case had been reviewed by a higher-ranked official. VTC also did not inform the complainant of his right to put forward his case to The Ombudsman (the Office).

510. Furthermore, the complainant questioned VTC's claim that the Video was not provided to him due to copyright issues.

## **The Ombudsman's observations**

511. The Office was of the view that the reasons provided by VTC for refusing to disclose the information to the complainant did not fall under the categories of information which may be refused as specified in the Code. In addition, the Office identified the following inadequacies of VTC in applying the Code –

- (a) VTC claimed that authorisation was not obtained from the relevant music creator of the Video for disclosure of the information. The Office considered that if copyright issues were involved, VTC could have cited Paragraph 27.3(b) of the Code as a valid reason for refusal; but VTC did not;
- (b) The participants signed the consent form and agreed to provide the Video with the understanding that VTC would keep the information confidential. If the provision of the information would violate such an understanding and constitute a breach of any legal obligation, VTC could have cited Paragraph 27.3(b) of the Code as a valid reason for refusal; but VTC did not; and
- (c) According to the Code, VTC should consider whether to disclose the information provided by a third party taking into account the public interest factors as outlined in Paragraph 26, and, if deemed necessary, proceed with the procedures as specified in Paragraph 19. As such, VTC's rejection to the request solely based on the practical difficulties in obtaining third party's consent may lead to unalignment with the Code. The Office reminded VTC to take note that if any information should be disclosed due to prevailing public interest, the request should be handled in accordance with Paragraph 19 of the Code.

512. Nevertheless, the Office concluded that VTC's refusal to provide the Video did not violate the Code. The Video primarily consisted of information provided by a third party (i.e. the participants), and the consent

form signed by the participants did not include consent for providing the Video with the complainant. It was also VTC's responsibility to protect the privacy of the participants. The Office did not find any prevailing public interest obliging VTC to seek additional consent for disclosing the Video. Therefore, the Office considered that subsequent to the Office's intervention, VTC's decision to uphold the refusal to provide the Video according to Paragraph 27.9 of the Code did not violate the Code.

513. Furthermore, the Code did not specify the procedures for a review, or obliged VTC to highlight in the responses that the complainant may put forward the case to The Office. In this connection, VTC did not violate the Code by omitting such mentioning. However, the Office agreed that providing the information of the rank of relevant VTC staff and contact correspondences of the Office could help enhance transparency and suggested that VTC may consider.

514. Overall, The Ombudsman considered this complaint partially substantiated and recommended VTC to enhance the staff's understanding of VTC's Code on Access to Information and be more cautious in handling requests for information.

### **Government's response**

515. VTC accepted The Ombudsman's recommendation and has provided staff with appropriate training, including regular briefing sessions and reference materials, to enhance staff's understanding of VTC's Code on Access to Information and their cautiousness in handling requests for information from the public, and will continue to do so on a regular basis. Details as specified below –

- (a) organising quarterly briefing sessions aimed at reminding and explaining the procedures for handling requests under the Code for related staff;



- (b) conducting discussions with relevant staff to provide an overview of the key points and major provisions outlined in the Code;
- (c) holding regular sharing sessions to discuss previous cases related to request handling with relevant staff;
- (d) sharing effective practices in handling the Code, along with the recommendations from the Office, with staff members for the purpose of continuous improvement;
- (e) arranging individual discussions for staff members requiring further assistance or clarification on specific aspects of the Code; and
- (f) arranging regular feedback discussions for relevant staff members to share their thoughts, challenges, and suggestions regarding the implementation of the Code.

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

**Then Efficiency Office**

**Case No. DI/461 – Effectiveness of 1823 in Handling Complaints and Enquiries**

**Background**

516. 1823, established in 2001, is managed by the Efficiency Office (EffO) under the Innovation, Technology and Industry Bureau. It provides a one-stop service round the clock to answer public enquiries in respect of the services of 23 participating Government departments and receive complaints lodged by members of the public against all Government services.

517. Between 2018 and 2023, 1823 handled an average of about 1.95 million enquiries and 550,000 complaints each year. As more members of the public use its service, 1823 may be regarded as one of the Government's major platforms for contact with the public. If 1823 is not operating effectively or the complaints and enquiries it handled are not properly followed through, it will not only impede departments' daily handling of complaints and enquiries, but also directly impact the public's impression of and confidence in the Government. Moreover, by collecting public views on its services through 1823, the Government can understand people's concern and keep tabs on the pulse of community. Hence, the effectiveness of 1823 is conducive to good governance and enhancing the efficiency and quality of public administration.

**The Ombudsman's observations**

518. The Office of The Ombudsman (the Office)'s investigation reveals that over the past six years, 1823 handled an average of around 1.95 million enquiries annually. In the case of telephone enquiries, 1823

achieved first call resolution at 99%, which is in line with its aim of providing one-stop enquiry service. The Office has also examined the daily operations of 1823, including its handling of calls, cooperation arrangements with participating departments and use of data. The Office has studied relevant complaint cases as well to understand how 1823 handles cross-departmental cases or cases involving unclear delineation of responsibilities. Consolidating the findings, the Ombudsman has the following comments and recommendations.

*(I) Unable to effectively handle cross-departmental complaints and complaints with unclear delineation of responsibilities*

519. According to 1823's existing complaint handling mechanism, departments rejecting a case referred by 1823 are required to give reasons and suggest which department should be assigned the case; where a complaint involving multiple departments and unclear delineation of responsibilities is rejected by two departments, 1823 would activate an escalation mechanism and repeatedly request the rejecting departments to review the case by officers at different ranks.

520. If a case is still unresolved after being escalated to the third level, 1823 would attempt to liaise with the departments, coordinate discussion among them, and suggest the departments to resolve the problem by "one-off" (i.e. without prejudice to the departments' stance on their purview and not to be cited as precedent in similar situation) follow-up, such as "one-off" repair works. Eventually, if departments still refuse to take up and handle the case, 1823 would coordinate a consolidated reply to the complainant and the departments are requested to state the reasons in its reply.

Unable to compel timely follow-up actions of departments

521. Between 2018 and 2023, 1823 received an average of about 550,000 complaints each year, including about 7,400 cases processed under the escalation mechanism due to rejection by departments. Of

which, about 4,100 cases (56%) took more than 30 days to complete, i.e. beyond the normal time frame for departments to reply, and about 560 cases (7.5%) were not completed even after six months, which is far from satisfactory.

522. Case studies reveal that cases taking months to complete often involved the departments' delay in reply to 1823, rejection of cases without giving reasons, and repeated disputes over division of labour or responsibilities.

523. The Office is of the view that to ensure timely referral of cases, departments should reply to 1823 within a specified time limit with reasons if they consider that a case is outside their purview or should be handled by another department. If departments fail to do so, 1823 can activate the escalation mechanism outright or request departments to review the case under the mechanism.

Escalation mechanism could not ensure direct communication and collaboration among departments

524. The most effective and speedy way to handle cross-departmental complaints is that the departments proactively and directly discuss the problem among themselves, thereby resolving disputes and reaching a consensus on the division of labour as soon as possible. Nevertheless, the case studies reveal that in the process of establishing ownership of a complaint under 1823's escalation mechanism, departments often only reiterated their respective stance that the complaint was outside their purview, and sometimes responded to the views of other departments through 1823. Departments rarely, or never, took the initiative to communicate or liaise directly among themselves regarding the case in order to clarify and reach a consensus on the division of labour.

525. The Office considers 1823's coordination and liaison work not effective in promoting direct communication, clarifying differences and

initiating collaboration among departments at an early stage to handle public complaints.

Ability to coordinate in cross-departmental complaints or complaints with unclear delineation of responsibilities to be strengthened

526. The Office finds that in the process of clarifying departments' responsibilities and identifying the responsible party in individual cases, 1823 is often stuck in a position of "having responsibility but no authority". 1823 can hardly keep track of the specific duties and remits of all departments, nor is it empowered to command departments to accept a case or follow up on any case. As such, in case of unclear delineation of responsibilities, 1823 can only approach the departments one by one and re-assign the case as instructed or suggested. This process is repeated until a department is willing to take ownership, or "one-off" operation is coordinated with the departments concerned.

527. The data of 1823 show that between 2018 and 2023, a majority (over 50%) of the cases handled under the escalation mechanism involved district problems directly related to people's livelihood and regarded as "long-standing, big and difficult". Regrettably, these livelihood issues which need to be addressed urgently were often dragged on due to unclear delineation of responsibilities. This would also give rise to a perception that Government departments are passing the buck. For individual cases, 1823's coordination of "one-off" operation might resolve the problem at hand, but the departments' fundamental disagreement or misunderstanding about their purview has yet to be fully resolved or clarified. When the same problem occurs again, 1823 has to repeat the entire process of identifying responsible departments, making referrals, and coordination.

528. While not disparaging the function of 1823's escalation mechanism in handling cross-departmental cases or cases involving unclear delineation of responsibilities, the Office considers it worthwhile to explore, in addition to the existing escalation mechanism, how 1823 can play a greater role in assisting the Government to tackle the "long-standing,

big and difficult” district problems involving multiple departments and unclear delineation of responsibilities.

529. The Office notes that under the proposals to improve district governance, the Task Force on District Governance (“TFDG”) has been set up to steer and coordinate cross-departmental and/or cross-district issues, establish the division of labour and accountability, streamline the workflow, monitor the effectiveness of measures implemented by various policy bureaux/departments (“B/Ds”), and supervise them to formulate improvement measures. The Home and Youth Affairs Bureau and the Home Affairs Department (“HAD”) support the work of the Steering Committee on District Governance and TFDG.

530. In The Office’s view, 1823 should seize this opportunity to support and facilitate the Government’s proposals to improve district governance. For cases about recurring district problems with unclear delineation of responsibilities, 1823 should establish a mechanism and draw up guidelines to standardise and regularise the procedures for escalating to the District Officers of HAD or TFDG in a systematic, proper and timely manner, with a view to resolving cases and district problems which are cross-departmental and involving unclear delineation of responsibilities more effectively through the high-level structure of the Government.

*(II) Insufficient call handling capacity to cope with service demand*

531. Between 2018 and 2023, 1823 only managed to answer between 61% and 74% of calls within 12 seconds, persistently falling short of its performance pledge to “answer at least 80% of calls within 12 seconds”.

532. Furthermore, the Office notes that in the statistics compiled by EffO, the volume of calls handled by 1823 included calls redirected to voicemail by the telephone system; in that sense, 1823 was able to handle about 68% of calls each year between 2018 and 2023. Yet, if the calls redirected to voicemail were excluded, 1823 was actually able to answer

only about 42% of calls, i.e. an average of about 2.57 million calls each year are not answered by staff immediately.

533. The Office considers that for a call centre dedicated to handling public enquiries and complaints, 1823's falling short of its own pledge in answering calls persistently between 2018 and 2023 goes against public expectations. While 1823 has improved the performance in call handling in 2023, and completed the upgrade of telephone system in late December 2023, the Office urge 1823 to proactively monitor and conduct timely review of the system to further enhance its call answering rate.

*(III) Room for improvement in crisis response capacity*

534. To support the Government's anti-epidemic measures, 1823 had been engaged to answer several COVID-related hotlines since January 2020. During the fifth wave of epidemic in February and March 2022, the volume of calls received by 1823 soared more than two times from a normal average of 380,000 calls per month. Meanwhile, the operations of 1823 were further disrupted because many frontline staff could not report for duty due to infection or compulsory testing. 1823 introduced various contingency measures in response to the situation that its service could not cope with public demand during the fifth wave.

535. The Office notes that some of the contingency measures of 1823 required the cooperation or coordination of participating departments, which might not be forthcoming.

536. The Office recognises that it is unrealistic to expect public services, including 1823 service, to be maintained at the normal level at all times in extreme situations. Nevertheless, EffO should learn from the COVID experience and prepare contingency plans. In the Office's view, EffO should discuss with all participating departments and formulate backup plans and contingency measures as soon as possible, and incorporate them into the cooperation agreements. In the event of

unexpected and urgent situations in future, both parties can take contingency measures promptly based on the agreement.

*(IV) Room of improvement in other areas of daily operations*

Further application of artificial intelligence on handling enquiries

537. In December 2019, 1823 launched the text and voice versions of Chatbot, using artificial intelligence to analyse questions input with natural language by members of the public and answer their enquiries.

538. Currently, the Chatbot of 1823 in text and voice versions can only handle a few subjects, while most enquiries about other subjects are still processed by staff upon answering telephone calls or reading text messages. The Office urges 1823 to regularly compile and analyse statistics on public enquiries, and gradually provide more information by the Chatbot based on the subjects or Government services of public concern.

Facilitating the public to check case progress

539. Currently, members of the public can check the case progress and the departments' replies on 1823 mobile application only if their enquiries and complaints have been made thereon, while others have to call or write to 1823 for case progress. The Office considers that EffO should provide further convenience for the public and facilitate them to check case progress themselves on an e-platform, thereby reducing the workload of 1823 staff and releasing more time and manpower to handle enquiries and complaints.

Encouraging departments to reply to the public via case response platform

540. 1823 launched the Case Response Platform for participating departments in July 2022. For cases that meet the criteria for automatic reply (e.g. where members of the public have left their contact details),



participating departments can use the platform to reply to the public automatically via the 1823 system.

541. In the Office's view, 1823 should require participating departments to always use the platform to reply to the public if they choose to reply via 1823, and consider opening up the Case Response Platform to all departments. This arrangement will streamline the complaint handling process of 1823. Given the automatic update of case progress by the system in parallel, it will also minimise omission of update by staff.

*(V) Need to clarify functions of 1823 with departments*

542. 1823's one-stop service for making complaints or enquiries is intended for the public. As far as departments are concerned, 1823 service assists with handling enquiries related to their powers and services, as well as referring complaints against them. In principle, 1823 is not responsible for handling on their behalf enquiries and complaints departments received directly from the public involving other departments.

543. The case studies reveal that while a department received a complainant's report not through 1823, when it intended to refer the report to the Police it passed the case to 1823 for referral on its behalf. Even though it was not within the scope of 1823 service to receive or refer crime reports for enforcement by the Police, 1823 acted as requested.

544. The Office considers that EffO needs to explain 1823's duties and scope of service to B/Ds, and request B/Ds to directly refer public enquiries, complaints and relevant information among themselves. This will not only improve the overall efficiency of the Government's handling of public enquiries and complaints, but also ensure the use of 1823 resources on its own functions.

545. Separately, under the cooperation agreements between 1823 and participating departments, departments are required to provide the content of the Knowledge Base for 1823 to answer public enquiries, and notify

1823 of the details of any new services as early as possible. EffO pointed out that on some occasions 1823 was unable to cope with a sudden surge in telephone enquiries because participating departments had not notified 1823 in a timely manner, or at all, of their newly launched services or arrangements and updated the Knowledge Base. The Office considers that 1823 may consider requesting participating departments to submit forecast plans on a regular basis for preparation accordingly, and remind departments from time to time of the importance of updating the Knowledge Base.

*(VI) EffO should make better use of experience and information from cases handled by 1823 to promote improvement of Government services and enhance standard of public administration*

546. Apart from managing 1823, EffO also serves as the Government's consultant to advise B/Ds on business process re-engineering, restructuring, performance evaluation, knowledge management and change management. The Office considers that EffO can consolidate the data collected from enquiries and complaints handled by 1823 for B/Ds to analyse the performance of public services and the concerns and needs of the community, with a view to improving public services.

547. Meanwhile, cross-departmental cases often involve disputes over accountability and division of labour, in which systemic issues cannot be ruled out. With the relevant data compiled by EffO, B/Ds can conduct comprehensive analysis together with their own data, which can help the Government examine district problems from a holistic and macro perspective, clarify the roles and functions of departments, rationalise their division of labour and workflow, and formulate a long-term strategy to enhance the coordination and integration of policies and services across different sectors.

548. The Office also notes EffO's remarks that when handling COVID-related hotlines, 1823 proactively liaised with the department concerned to ensure that anti-epidemic information was clear and

comprehensible, thereby reducing unnecessary complaints and enquiries. Its efforts are commendable. EffO should analyse public enquiries and complaints regularly from the perspective of whether Government information is clear and comprehensible (such as whether numerous enquiries have arisen from misunderstanding of Government information within a short period of time) and advise relevant departments.

549. The Ombudsman recommended 1823 to –

*Strengthening the ability to handle cross-departmental complaints with unclear delineation of responsibilities*

- (a) stringently enforce the requirement that departments reply within a specified time limit with reasons if they consider that a case is outside their purview or should be handled by another department; if departments fail to reply by the deadline, 1823 can activate the escalation mechanism outright or request departments to review the case under the mechanism so as to ensure timely handling of complaints;
- (b) establish a mechanism and draw up guidelines to standardise and regularise the procedures for escalating cases about district problems with unclear delineation of responsibilities recurring to DO or TFDG in a systematic, proper and timely manner;

*Strengthening collaboration and communication between 1823 and departments*

- (c) discuss with all participating departments on backup plans and contingency measures regarding unexpected and emergency situations that may cause serious disruption to 1823 service, standardise and regularise the plans by incorporating into the cooperation agreements, thereby providing the public with clear information and reasonable channels to make enquiries and complaints to Government departments;

- (d) explain 1823's duties and scope of service to B/Ds, and request B/Ds to directly refer public enquiries, complaints and relevant information among themselves, thereby ensuring the use of 1823 resources on its own functions, as well as improving the overall efficiency of the Government's handling of public enquiries and complaints;
- (e) request participating departments to submit forecast plans of new services or arrangements on a regular basis for preparation accordingly, and remind departments from time to time of the importance of updating the Knowledge Base;

*Enhancing the operating efficiency of 1823*

- (f) proactively monitor and timely review the newly upgraded telephone system with a view to further enhancing 1823's call answering rate;
- (g) expand the application of artificial intelligence on enquiry handling by 1823 and gradually provide more information by the Chatbot;
- (h) study the launch of an e-platform for public to check progress of cases lodged with 1823;
- (i) strictly require all participating departments to always use the Case Response Platform to reply to the public if they choose to reply via 1823;
- (j) consider opening up the Case Response Platform to all departments;

### *Optimising the use of data*

- (k) further consolidate the data collected from enquiries and complaints handled by 1823 for B/Ds to capture the data required and conduct comprehensive analysis, with a view to improving Government services;
- (l) conduct systemic analysis of cross-departmental cases and consolidate relevant data, submit reports to TFDG from time to time to facilitate the Government's resolution of cross-departmental district issues and formulation of long-term strategies to enhance district administration; and
- (m) analyse public enquiries and complaints regularly from the perspective of whether Government information is clear and comprehensible (such as whether numerous enquiries have arisen from misunderstanding of Government information within a short period of time) and advise relevant departments.

### **Government's response**

550. 1823 accepted The Ombudsman's recommendation and has taken the following follow-up actions.

### *Strengthening the ability to handle cross-departmental complaints with unclear delineation of responsibilities*

- (a) 1823 has implemented a new complaint handling mechanism. If a department considers itself not the right party to take up a complaint, it should make a request within seven calendar days (an extension of up to five calendar days can be requested for special circumstances) through the directorate staff after consulting the Head of Department, and provide justifications for the re-assignment request and indicate which department the case should be referred to with reasons. If the department fails to

inform 1823 before the deadline, 1823 will report the case to Deputy Chief Secretary for Administration, the Chairman of TFDG ;

- (b) According to the new complaint handling mechanism, if two departments successively consider themselves not the right parties to take up the complaint, 1823 will seek the ruling for lead department from the relevant District Officer. In case of doubt, the District Officer will escalate the case to the TFDG Chairman for steer and ruling. The decisions of District Officer or the TFDG Chairman will be final;

*Strengthening collaboration and communication between 1823 and departments*

- (c) 1823 has discussed with the participating departments in March 2024 regarding the arrangements for handling incoming calls and written contacts during extreme and emergency conditions that seriously affect the service of 1823, so that members of the public can have clear information and reasonable channels to make enquiries and complaints to government departments. All participating departments noted the arrangements;
- (d) 1823 has explained the responsibilities and service scope of 1823 to B/Ds in March 2024, and requested B/Ds to directly refer public enquiries, complaints and related information;
- (e) 1823 has requested participating departments in March 2024 to regularly submit plans for new services or new arrangements, and will remind departments from time to time to update the Knowledge Base;

### *Enhancing the operating efficiency of 1823*

- (f) After upgrading and improving the telephony system, 1823's average calls answer rate from January to August 2024 has further improved. 1823 will continue to actively monitor the situation and will review and improve the telephony system in a timely manner;
- (g) 1823 has fully expanded the chatbot services to all participating departments in September 2024 to answer frequently asked enquiries from public;
- (h) 1823 has completed the relevant study and submitted application for funding to develop the relevant electronic platform. The platform is expected to be launched in the first quarter of 2026;
- (i) 1823 has reminded the participating departments in March 2024 that they must always use the Case Reply Platform (i.e. Case Response Platform as mentioned in the report) to respond to citizens when they choose to respond to them via 1823;
- (j) 1823 has opened the Case Reply Platform to all departments in September 2024;

### *Optimising the use of data*

- (k) 1823 will continue to provide data to B/Ds through regular reports, and has enriched the content of the monthly reports to departments starting from April 2024, including (i) comparison of the number of enquiries and complaints with the same period of the previous year; (ii) number of overdue cases; and (iii) number of rejected cases. Upon request from B/Ds, 1823 will provide more data so that B/Ds can conduct a comprehensive analysis based on its own operational data and complaint information collected through other channels;

- (l) The new complaint handling mechanism was just launched in late August 2024. 1823 will systematically sort out the unresolved complaint cases involving cross-departmental district issues and submit report to the Chairman of TFDG; and
- (m) 1823 will continue to analyse citizens' enquiries and complaints from the perspective of whether the government information is clear and easy to understand, and provide advice to relevant departments.



**Environmental Protection Department, Food and Environmental  
Hygiene Department and Lands Department**

**Case No. DI/459 – Government’s Enforcement against Defective  
Sewage Works of New Territories Exempted Houses**

**Background**

551. In rural areas where no public sewers are available, septic tank systems are often installed in New Territories Exempted Houses (NTEHs) for sewage treatment.

552. Defective sewage works of NTEHs, such as rupture or leakage of septic tanks, may cause serious environmental pollution and nuisance and even spread diseases. To address complaints about defective sewage works of NTEHs, the Environmental Protection Department (EPD) enforces the Water Pollution Control Ordinance from the perspective of identifying any pollution caused to the waters of Hong Kong or sewage discharged into stormwater drains; the Food and Environmental Hygiene Department (FEHD) investigates the existence of any nuisance specified in the Public Health and Municipal Services Ordinance; and the Lands Department (LandsD) takes lease enforcement action, where appropriate, after examining whether the defects are in breach of the sewage provisions in the land leases.

553. The Office of The Ombudsman (the Office) has received from time to time complaints about ineffective enforcement by the government departments concerned, where the problem could only be resolved upon voluntary rectification by the NTEH owners. Against this background, the Office launched this direct investigation against EPD, FEHD and LandsD to examine the Government’s enforcement against defective sewage works of NTEHs, with a view to recommending improvement measures where necessary.

## **The Ombudsman's observations**

### *Inadequate Inter-departmental Collaboration in Complaint Handling*

554. The construction of NTEHs is subject to the approval of LandsD. In the certificate of exemption in respect of drainage works issued by LandsD, standard health requirements are imposed on the sewage facilities of NTEHs. EPD and FEHD are the major enforcement authorities for environmental pollution or hygiene nuisance caused by defective sewage works of NTEHs.

555. EPD's information showed that between 2016 and 2022, more than 60% of the complaints it received involved other departments, i.e. most of which were inter-departmental cases. The Office's investigation found that EPD, FEHD and LandsD have different views on the division of responsibilities. Case studies also revealed inadequacies on the part of the three departments in referring and following up on complaints. Despite the long existence of NTEHs, the three responsible departments still do not have a clear understanding of the actions that can be taken by and the enforcement constraints of one another in respect of sewage works. There are also no established guidelines among them on how to pursue this type of complaints under different scenarios. Without a common understanding, each department refers and handles complaints merely based on its own knowledge of the other departments' duties. As a result, problems remain unresolved even after repeated referrals among departments. The situation is indeed unsatisfactory.

556. Meanwhile, EPD and FEHD focus more on whether they can enforce the Water Pollution Control Ordinance and the Public Health and Municipal Services Ordinance respectively and seldom consider joint enforcement actions. For cases of sewage discharged into stormwater drains, apart from handling by EPD pursuant to the Water Pollution Control Ordinance, FEHD should be able to follow up from the environmental hygiene perspective. The Office reckons that the two departments should explore room for enforcement cooperation, such as

identifying the circumstances for taking joint enforcement actions to enhance the effectiveness.

*No Mechanism for Information Exchange*

557. The Office's investigation revealed no established mechanism for information exchange among EPD, FEHD and LandsD, and this may compromise the enforcement efficiency. EPD and FEHD, as the enforcement authorities, have no mechanism for exchanging information and results (e.g. dye-tracing tests) obtained during investigation to facilitate appropriate actions by each other. Some cases also revealed that the departments were not fully aware of the types of information held by one another.

558. The Office was pleased to note that after the launch of their investigation, EPD and FEHD have started discussion to strengthen cooperation on areas including information exchange. In the Office's view, LandsD should also participate in the mechanism for information exchange. This is because as the approving authority for construction of NTEHs, LandsD knows the as-built condition of NTEHs and their sewage works, and such information may facilitate the investigation of EPD and FEHD. On the other hand, LandsD may take lease enforcement action in case of non-compliance, subject to the provision of findings by EPD and FEHD.

*LandsD Should be More Proactive in Taking Lease Enforcement Action and Monitoring Case Progress*

559. The Office's case studies revealed that LandsD merely focuses on referring complaints to EPD and FEHD without fully discharging its enforcement role. Moreover, LandsD has only recorded the total number of complaints received without any breakdown or further statistics, such as the number of inspections, the number of cases with action taken and the average number of processing days. Without data analysis, it is indeed

difficult for LandsD to monitor the progress of complaint cases effectively, and the situation is far from satisfactory.

*Training of LandsD's Staff Should be Strengthened*

560. The Office's case studies revealed various kinds of misconnected or faulty sewage works. In the Office's view, it is particularly crucial to ensure the proper construction and connection of NTEH sewage works. Otherwise, these facilities would not only cause pollution easily, but also require more frequent maintenance and repairs afterwards, and involve a higher risk of damage. As a matter of fact, as the approving authority for the construction of NTEHs, LandsD has no expertise in sewage facilities. This inevitably casts doubt on its ability to make an accurate assessment of the compliance of NTEH sewage works during the approval process.

*Problems Caused by Improper Alteration of Sewage Pipes*

561. The Office's case studies revealed that pollution caused by misconnection or improper alteration of sewage pipes was not uncommon. In this light, the Office considers LandsD should step up publicity and education on the environmental hygiene problems caused by improper alteration of sewage pipes. On one hand, NTEH owners should be reminded to obtain prior permission from relevant departments, where applicable under the prevailing requirements, for any alteration of sewage pipes for monitoring by the departments; on the other hand, even where no prior permission from departments is required, owners should be advised to seek assistance from professionals to ensure proper alterations.

*Need to Explore Measures Urging Owners to Fulfil Maintenance Responsibility*

562. According to prevailing requirements, NTEH owners are responsible for proper treatment and disposal of sewage, as well as periodic inspection of sewage works. However, under the prevailing regulatory regime, no substantive measures are in place to ensure NTEH owners'

fulfilment of their responsibility for proper sewage treatment and maintenance of sewage works.

563. LandsD stressed that EPD and FEHD would take the lead in enforcement against pollution and environmental hygiene nuisance caused by defective sewage works of NTEHs. Nevertheless, both EPD and FEHD each have constraints in enforcement. Given that most NTEHs had sewage works installed underground, any defect or disrepair might remain undetected until problems emerge and by then a considerable level of environmental pollution or nuisance might have already been caused. After all, enforcement is only a remedial response. It is indeed more crucial to take preventive measures.

*Publicity and Public Education on Correct Use and Maintenance of Septic Tanks Should be Stepped up*

564. Information on the correct use and maintenance of septic tanks is mainly provided in the Guidance Notes on Discharges from Village Houses issued by EPD and it is rather technical and difficult for laymen to grasp the essential points. Following the launch of the direct investigation, EPD initiated a publicity campaign in late 2022 targeting villages not yet connected to public sewerage systems. In particular, EPD has created a new webpage and produced publicity materials with a QR code linking to the webpage, listing the points to note when using septic tank systems and details of desludging contractors.

*Application of Technology*

565. The Office noted and commended EPD for active use of innovative technology (i.e. ground penetrating radar coupled with augmented reality technology) for locating the source of water seepage as this not only reduces the inconvenience to households caused by making entry of their premises to apply dyes, but also produces strong evidence to convince NTEH owners to carry out proper repairs.

566. The Ombudsman recommended EPD, FEHD and LandsD to –

- (a) set up an inter-departmental working group to provide a communication platform regarding their respective functions and constraints, with a view to complementing one another and discussing solutions to complicated cases at an early stage to achieve synergy;
- (b) draw up operational guidelines for frontline staff specifying concrete follow-up and referral actions in typical scenarios of complaints, thereby rationalising the responsibilities and procedures for inter-departmental cases;
- (c) devise a proper mechanism for information exchange so as to enhance the effectiveness and efficiency of complaint handling;

The Ombudsman recommended EPD and FEHD to –

- (d) for cases of sewage discharged into stormwater drains, explore room for enforcement cooperation, such as identifying the circumstances for taking joint actions to enhance the effectiveness;

The Ombudsman recommended LandsD to –

- (e) formulate a monitoring mechanism for complaint cases, conduct data analysis and proactively assist other departments where necessary; if a breach of land lease provisions is confirmed, take lease enforcement action decisively;
- (f) strengthen the training of District Lands Offices' staff through experience sharing by EPD and FEHD, such that they are well equipped to inspect sewage works upon the completion of NTEHs to prevent possible environmental hygiene problems at root;

- (g) step up publicity and education on the environmental hygiene problems caused by improper alteration of sewage pipes. On one hand, NTEH owners should be reminded to obtain prior permission from relevant departments, where applicable under the prevailing requirements, for any alteration of sewage pipes for monitoring by the departments; on the other hand, even where no prior permission from departments is required, owners should be advised to seek assistance from professionals to ensure proper alterations;
- (h) explore formulating concrete measures to ensure NTEH owners know how to effectively fulfil their responsibility for proper sewage treatment and maintenance of sewage works in order to comply with the requirements of the land lease and the certificate of exemption;

The Ombudsman recommended EPD to –

- (i) further utilise electronic means and social media, produce promotional videos, etc. to raise NTEH owners' awareness of the importance of the correct use and proper maintenance of septic tanks and related information; and
- (j) consider more extensive use of new technology in due course for more effective detection of the seepage source, with a view to enhancing the effectiveness of complaint handling and investigation.

### **Government's response**

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

*Recommendation (a)*

568. An inter-departmental working group was formed amongst LandsD, EPD and FEHD with two meetings convened on 10 August 2023 and 4 December 2023. In light of The Ombudsman's observations and recommendations, the situation of complaints against sewage facilities in NTEH, the scope of work and authorities of each department, and follow-up actions under the relevant ordinance and land lease were discussed in depth.

*Recommendations (b) and (c)*

569. In November 2023, LandsD, upon discussion with EPD and FEHD, preliminarily drew up a set of draft operational guidelines for frontline staff in relation to the workflow and referral mechanism for handling complaints about sewage facilities, which included, amongst others, a workflow chart, referral procedures for follow-up by departments and an information exchange mechanism. The draft was further revised at the meeting of the inter-departmental working group held on 4 December 2023. Taking into account departments' views and subsequent discussions, LandsD will finalise the workflow with the target of implementing the relevant operational guidelines by the end of 2024.

*Recommendation (d)*

570. FEHD and EPD are collaborating in the abovementioned working group to formulate follow-up and referral procedures for common complaints, including cases of sewage discharged into stormwater drains. Besides, a joint operation was conducted by the district offices of FEHD and EPD to address a more serious and complicated sewage discharge case. The investigation proceeded smoothly and the spillage problem of the septic tanks has been properly addressed. FEHD and EPD will continue to maintain strong communication and collaboration to enhance work efficiency.



*Recommendation (e)*

571. LandsD has reviewed and optimised the internal “Enquiry and Complaint Management System” by strengthening the progress monitoring function for analysing complaints against sewage facilities. The relevant system enhancement has already been implemented since the second quarter of 2024.

572. In addition, LandsD will provide assistance to other departments when necessary. If breach of lease conditions of NTEHs is confirmed, enforcement action will be taken accordingly.

*Recommendation (f)*

573. LandsD also invited EPD and FEHD to share their work experience, including how to conduct colour dye tests for detecting septic tank leakage or overflow, suspected cases of unauthorised connection of septic tanks to public stormwater manholes, and the procedures for handling complaints related to septic tanks, so that relevant irregularities could be identified more effectively. LandsD has passed the relevant information to all District Lands Offices in the New Territories and uploaded the same onto LandsD’s intranet in July 2024 for training and reference.

*Recommendation (g)*

574. On strengthening publicity, promotional posters were jointly prepared by LandsD and EPD and posted at prominent spots through the District Lands Offices and District Offices in the New Territories in January 2024 for public viewing. In May 2024, LandsD also delivered the posters to all the Rural Committees through Heung Yee Kuk for posting at local villages. The poster was also uploaded onto LandsD’s website.

#### *Recommendation (h)*

575. To keep village house owners informed on how to effectively fulfil their responsibilities for proper sewage treatment and maintenance of sewage facilities, LandsD has, since December 2023, implemented a new measure to introduce the procedures and practices stipulated in EPD's "Guidance Notes on Discharges from Village Houses" (the Guidance Note) in the offer and approval letters of village house and rebuilding applications to notify applicants of the procedures and practices stipulated in the Guidance Note. The letters also contain a QR code so that applicants can conveniently browse the Guidance Note. In July 2024, LandsD further added such QR code of the Guidance Note onto the Certificate of Exemption in respect of Drainage Works for applicants' reference. The website link to the Guidance Note was also added to LandsD's webpage under the section for New Territories village houses for easy access by the public.

#### *Recommendation (i)*

576. Regarding strengthening education and promotion, EPD in January 2024 had produced and uploaded promotional videos to electronic media and also shared the information through the department's social media accounts to further raise the NTEH owners' awareness of the importance on the proper use, maintenance and repair of septic tanks. EPD also collaborated with the LandsD in January 2024 to produce promotional posters for the LandsD to display at various District Lands Offices to promote the importance of the correct use and proper maintenance of septic tanks and related information.

#### *Recommendation (j)*

577. EPD continues to apply innovative technologies (such as ground-penetrating radar) to assist in investigating sewage complaints from village houses based on the actual circumstances and needs of the case.

## **Food and Environmental Hygiene Department**

### **Case No. DI/466 – Regulation of Licensed Swimming Pools by Food and Environmental Hygiene Department**

#### **Background**

578. Swimming pools in Hong Kong can largely be categorised into public swimming pools and licensed private swimming pools (licensed swimming pools). While the former is operated and managed by the Leisure and Cultural Services Department (LCSD) under the Culture, Sports and Tourism Bureau in accordance with the Public Swimming Pools Regulation subsidiary to the Public Health and Municipal Services Ordinance (the Ordinance), the latter is licensed and regulated by the Food and Environmental Hygiene Department (FEHD) under the Environment and Ecology Bureau pursuant to the Swimming Pools Regulation (the Regulation) subsidiary to the same Ordinance. Licensed swimming pools offer an alternative to public swimming pools to members of the public for leisure and exercise.

579. As the licensing authority, FEHD ensures that licensed swimming pools are in compliance with the Regulation and licensing conditions mainly through regular inspections and complaint handling to protect swimmers' safety and maintain environmental hygiene.

#### **The Ombudsman's observations**

##### *Difficulty in Ensuring Achievement of Target Frequency of Successful Inspections*

580. FEHD's Health Inspectors pay surprise visits to licensed swimming pools at least once a month during the swimming season between April and October or any other periods of time where pools are open for use each year for routine inspections. If a swimming pool is found closed during a routine inspection, FEHD will still consider the

requirement of monthly inspection fulfilled. In other words, FEHD does not require its staff to arrange another routine inspection within the same month to make up the unsuccessful attempt in the event of pool closure.

581. The investigation of the Office of The Ombudsman (the Office) reveals that Health Inspectors, when conducting inspections, might encounter different extents of pool closure. In one case, FEHD managed to conduct only one successful inspection during the entire swimming season.

582. Currently, FEHD does not require licensees to submit the opening schedules of their swimming pools. They are neither required to notify FEHD should their pools be closed for maintenance. According to FEHD, Health Inspectors maintain regular communication with licensees or authorised persons in charge of the swimming pools to confirm the opening dates and hours so as to plan for inspections. Nevertheless, the Office's findings show that the regular communication between Health Inspectors and licensees/persons-in-charge regarding the opening dates and hours can be conducted verbally (such as by phone) without any records made, rendering it difficult to verify the actual practice of staff. Besides, FEHD has not laid down any guidelines as to how staff should handle situations where the swimming pool is closed during their visit.

583. The Office is of the view that FEHD is obliged to enable successful conduct of surprise inspections to swimming pools to ensure compliance with the Regulation and licensing conditions at all times for the protection of swimmers' safety and maintenance of environmental hygiene.

#### *Quality of Inspections Not Up To Standard*

584. Generally speaking, inspections to licensed swimming pools by Health Inspectors involve checking of items listed on a form named "Record of Inspection to Licensed Swimming Pool" (inspection record form) and recording of inspection results and respective actions taken on

another form named “Record of Action Taken by Inspecting Officer” (action record form). The Office’s investigation reveals that the quality of FEHD’s inspection of pools was not up to standard and irregularities (such as abnormal test result of the pH value of pool water) were overlooked. Moreover, some of the inspection items on the inspection record form could be checked by different methods with varying degree of rigorousness, and Health Inspectors might not always adopt the most reliable method during inspections.

585. The Office understands that there are no hard and fast rules on the choice of checking method, as the conduct of inspections is dependent on the setting and actual circumstances of swimming pools and Health Inspectors would have to make risk-based assessments case by case. That said, the Office considers it necessary for FEHD to ensure a certain degree of consistency in its regulatory standards while respecting the on-the-spot judgement of Health Inspectors.

#### *Impropriety in Inspection Methods and Compilation and Maintenance of Relevant Records*

586. Prior to the Office’s investigation, the inspection record form did not include important items stipulated in the Regulation and licensing conditions (such as proof of life-saving attendants’ qualification and rescue-breathing face masks). In other words, even if a swimming pool was inspected according to the then inspection record form and the Health Inspector found all listed items satisfactory, it did not necessarily mean full compliance.

587. Omission of important items in the inspection record form inevitably affects how Health Inspectors conduct inspections and compile records. For example, Health Inspectors used to put more focus on the counting of life-saving attendants than checking their proof of qualification. Even if some Health Inspectors had diligently checked the qualification of life-saving attendants, they could not record the information in the form due to its limitation, rendering subsequent

verification impossible. The Office's investigation also indicates that certain items on the inspection record form were too generic and lacked specification. As a single item may bear multiple meanings (for example, "quality of pool water" could refer to the result of either on-site or laboratory tests of pool water samples), it is difficult to apprehend the actual circumstances of inspections through the form.

588. The Office is pleased to note that after the launch of its investigation, FEHD has progressively revised or updated the inspection items to enhance the inspection record form. Meanwhile, inspection items listed on the form have become more clearly delineated for better consistency of Health Inspectors' actions. One of the case studies shows that the newly revised inspection record form can effectively alert Health Inspectors to irregularities during inspections. Furthermore, FEHD's inspection records serve as a crucial basis for its future enforcement actions. Hence, it is of paramount importance that the records are comprehensive, accurate and properly maintained. It is evident from the case studies that when conducting inspections, Health Inspectors put a tick (✓) beside an inspection item to indicate that it was satisfactory even though the item had not been duly checked for some reason. Such practice can by no means reflect the actual happenings during the inspection. Another case shows the failure of a Health Inspector to log the verbal warning given during an inspection on the action record form. Other improprieties in relation to compilation of inspection records were also seen. In fact, the current practice of using one inspection record form to record the results of multiple inspections can be confusing. The Office is pleased to learn that subsequent to the commencement of the investigation, FEHD has proactively taken improvement measures regarding Health Inspectors' compilation of records.

589. As regards record maintenance, the Office finds inconsistencies in FEHD's inspection record form and action record form, file minutes as well as Complaints Management Information System in respect of the recording of inspections to licensed swimming pools. Discrepancies between the records kept by FEHD and the licensees concerned were

spotted from case studies. Moreover, the inspection record form and action record form as paper records are prone to physical deterioration and loss, which is undesirable.

#### *Licensees Not Required to Maintain Duty Logs of Life-Saving Attendants*

590. Licensees are not required to maintain duty logs of life-saving attendants under the existing licensing conditions. Hence, when handling complaints about insufficient life-saving attendants, FEHD can only make a judgement based on the findings of subsequent inspections but can by no means check the relevant duty logs against the clues provided by complainants such as the date and time of the alleged incident. In the absence of corroborative evidence, it is difficult for FEHD to ascertain whether a licensee has violated the requirements by conducting specific investigations.

#### *Lack of Accident Notification Mechanism*

591. FEHD does not put in place an accident notification mechanism for licensed swimming pools. Unless informed by media reports or other channels, FEHD would not learn of a serious accident in a swimming pool subjected to its regulation. For the same reason, FEHD has no idea of the casualties relating to licensed swimming pools. The Office finds it unsatisfactory that FEHD, unaware of serious accidents in licensed swimming pools, can hardly conduct investigation or take follow-up actions to find out if the licensees have breached the requirements and rectified the problem and to review the appropriateness of prevailing licensing conditions.

#### *Inadequate Requirements regarding Life-saving and First-aid Equipment*

592. The existing requirements regarding life-saving, first-aid and resuscitation equipment differ considerably between licensed swimming pools and public swimming pools. The Office understands these two types of swimming pools may not be comparable in terms of patronage and

management mode. Hence, it may not be suitable to standardise their requirements from a risk management perspective. Nevertheless, under the existing licensing conditions of licensed swimming pools, licensees are required to keep rescue-breathing face masks but not more basic equipment such as lifebuoy and first-aid box. This is obviously inadequate.

### *Insufficient Guidelines on Water Quality*

593. Currently, solutions adopted by licensees in tackling pollution sources found in pool water are not standardised. Nor has FEHD set any requirements for stepping up cleaning or filtering of pool water in case different pollution sources are found in licensed swimming pools. Moreover, FEHD has not set any criteria for closing swimming pools of substandard water quality. In other words, it is entirely up to the licensee whether or not a swimming pool of substandard water quality would still be open for use.

594. During the investigation, FEHD proactively enquired with LCSD about the handling of different pollution sources in licensed swimming pools. FEHD expected to complete the revision of its guidelines in the second quarter of 2024, with reference drawn from LCSD's practice and relevant guidelines in handling similar situations in public swimming pools.

595. At the same time, FEHD has not introduced any guidelines for frontline staff on the handling of complaints about water quality of licensed swimming pools. It depends greatly on staff's on-the-spot judgement as to whether and how pool water tests should be carried out, including whether pool water samples should be taken for further laboratory tests. In fact, FEHD has admitted that, in the absence of guidelines, actions taken by staff in handling similar complaints may lack consistency. The Office is pleased to learn that in response to the investigation, FEHD has taken positive steps to formulate improvement measures.



### *Low Enforcement Rates*

596. The numbers of FEHD's enforcement actions against licensed swimming pools have been very low in recent years. Between 2017 and 2023 (as at 30 September), FEHD conducted 52 697 routine inspections, among which only two cases of non-compliance with licensing conditions were identified. Besides, FEHD received 660 complaints about licensed swimming pools during the period, representing an average of about 98 complaints each year, with only 1.2 complaints found substantiated.

597. While low enforcement rates possibly imply good performance of licensees, the Office's investigation reveals inadequacies in FEHD's inspection of licensed swimming pools in terms of frequency, quality, method and record.

### *Enhancing Monitoring by Swimming Pool Users*

598. Despite being the licensing authority and regulator of licensed swimming pools, FEHD can hardly perform round-the-clock monitoring at the scene. In October 2022, FEHD imposed an additional licensing condition requiring licensees to display at a conspicuous location of the pool the required number of life-saving attendants during the normal opening hours. This laudable move not only serves as a reminder to licensees/management staff, but also makes information more transparent to swimming pool users and empowers them to take part in the monitoring of swimming pools.

### *Regulation of Private Swimming Pools by Environmental Hygiene Authorities Not Uncommon*

599. There are views in society that operation of public swimming pools and regulation of private swimming pools should be undertaken by one single government department. Similar public views also reached the Office during the investigation. Since the abolition of the Urban Council and the Regional Council in 2000, the regulation of private swimming

pools and operation of public swimming pools have been undertaken by FEHD and LCSD respectively. The Office has enquired with the two bureaux concerned and they do not consider it necessary to alter the existing arrangements.

600. The Office understands that such views are premised on the avoidance of fragmented responsibilities among different departments. In this regard, the Office has examined the division of work on public and private swimming pools in four jurisdictions, namely Vancouver, Shanghai City, Macao and Singapore. In three of these jurisdictions, private swimming pools are regulated by the environmental hygiene authorities while public swimming pools are operated by the sports and recreation authorities. The existing division of work regarding swimming pools in Hong Kong is, therefore, not uncommon. In fact, in addition to swimming pools, there are other facilities in Hong Kong such as performance venues where the Government has similarly assigned different departments to manage and operate public facilities while licensing and regulating their private counterparts.

601. On operation and regulation of swimming pools, LCSD and FEHD may have their respective strengths. For example, LCSD is more knowledgeable about requirements regarding life-saving attendants while FEHD's experience in environmental hygiene is more comprehensive. Although public and private swimming pools are under the purview of different government departments, it is more important that the two departments complement each other.

602. The Ombudsman recommended FEHD to –

- (a) formulate operational guidelines for its staff specifying the follow-up arrangements in the event of closure of swimming pools during surprise inspections;
- (b) strengthen the training for Health Inspectors regarding the inspection of licensed swimming pools, provide more guidelines

on the circumstances under which different checking methods are applicable, and unify the checking standard of inspection items where feasible, with a view to enhancing the quality of inspections;

- (c) implement measures to help Health Inspectors familiarise with the new inspection items on the inspection record form as soon as possible, while continuing to review other items on the form as necessary to improve the effectiveness of inspections;
- (d) more proactively apply technology and explore the use of mobile apps/smart phones in recording the inspection results for licensed swimming pools;
- (e) explore stipulating in the licensing conditions the requirement for licensees to maintain duty logs of life-saving attendants and produce such records upon FEHD officers' request, to provide reference for complaint investigation or other enforcement actions;
- (f) establish a notification mechanism for accidents in licensed swimming pools and require licensees to report cases involving casualties within a prescribed period;
- (g) review the existing licensing conditions regarding the requirements for life-saving, first-aid and resuscitation equipment and explore the inclusion of basic equipment. FEHD should also identify licensed swimming pools of higher risk (such as those of higher usage or used by high-risk groups including school children) and encourage licensees to upgrade relevant equipment;
- (h) with reference to LCSD's opinions, formulate and issue to licensees in due course guidelines on the handling of pollution sources in swimming pool water. The guidelines will serve as standards for licensees when handling different pollution sources;

- (i) formulate internal guidelines on the handling of complaints about water quality of licensed swimming pools by Health Inspectors and continue to monitor their implementation;
- (j) step up its enforcement against non-compliant licensed swimming pools;
- (k) explore different ways to engage pool users in the monitoring of licensed swimming pools; and
- (l) set up a standing communication mechanism with LCSD on the regulation and management of swimming pools for greater synergy and exchanges.

### **Government's response**

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

#### *Recommendation (a)*

604. FEHD has formulated operational guidelines for Health Inspectors specifying the follow-up arrangements in the event of encountering closed swimming pools during surprise inspections. This includes contacting the licensees to inquire about the reasons of closure, timely arrangement of another surprise inspection, and reporting to supervisors when necessary to improve the quality of inspections.

#### *Recommendation (b)*

605. The Training Section of FEHD has enhanced the training for newly recruited Health Inspectors and organised courses for existing Health Inspectors regarding the inspection of licensed swimming pools to help frontline staff understand the latest operational guidelines and relevant information. FEHD has also provided guidelines for Health

Inspectors on the checking methods applicable for different circumstances, and reminded frontline staff to report to their supervisors and seek assistance when necessary according to the actual ground situation during their inspections of licensed swimming pools, with a view to enhancing the quality of inspections.

*Recommendation (c)*

606. The Training Section of FEHD has strengthened the training for newly recruited Health Inspectors and organised courses for existing Health Inspectors regarding the inspection of licensed swimming pools to help frontline staff familiarise with the new inspection items on the revised inspection record form. Moreover, FEHD has formulated operational guidelines for Health Inspectors to standardise the recording method on inspection record forms. FEHD will continue to review the inspection items on the inspection record form as necessary in future.

*Recommendation (d)*

607. FEHD is working on the enhancement of the Licensing Management Information System, which includes electronically recording the inspection results for licensed swimming pools and adding a photo-taking function. The relevant data and records will be directly uploaded to the system to facilitate timely analysis and improve regulatory efficiency. The system is expected to be put into service in the fourth quarter of 2025.

*Recommendation (e)*

608. FEHD issued a letter to licensees on 20 May 2024, setting out the measures for strengthening the regulation of licensed swimming pools, which include imposing a licensing condition requiring licensees to maintain the duty records of life-saving attendants for at least 90 days and to produce such records upon request by Health Inspectors, so as to provide reference for complaint investigation or other enforcement actions.

*Recommendation (f)*

609. FEHD issued a letter to licensees on 20 May 2024, setting out the measures for strengthening the regulation of licensed swimming pools, which include imposing a licensing condition for the establishment of a notification mechanism for any fatal drowning case occurred in the pools.

*Recommendation (g)*

610. FEHD issued a letter to licensees on 8 April 2024, encouraging them to upgrade life-saving, first-aid and resuscitation equipment according to the operational needs of their swimming pools, such as providing lifebuoys, first-aid boxes, suction devices, oxygen deployment equipment, automated external defibrillators, etc., to further ensure the safety of private swimming pool users.

*Recommendation (h)*

611. Having made reference to the practices of LCSD for handling water quality problems in public swimming pools, FEHD issued a letter to licensees on 20 May 2024, providing them with the “General Advice on Handling Pool Water Contaminated with Stool, Vomitus or Unusual Foreign Objects (e.g. Carcasses of Small Animals) in Licensed Swimming Pools” for reference.

*Recommendation (i)*

612. FEHD has formulated operational guidelines for Health Inspectors, setting out the internal guidelines on how to handle complaints regarding water quality of licensed swimming pools, including conducting pool water tests and collecting water samples for laboratory tests.

*Recommendation (j)*

613. To step up the enforcement against non-compliant licensed swimming pools, FEHD has introduced a supervisory inspection system. Chief Health Inspectors and Senior Health Inspectors of district offices are required to conduct surprise inspections of licensed swimming pools in their respective districts on a regular basis to check on the performance of frontline inspectors, and to ensure licensees' compliance with the licensing conditions and statutory requirements.

*Recommendation (k)*

614. FEHD imposed an additional licensing condition in October 2022 requiring licensees to display the required number of life-saving attendants during pool opening hours at a prominent location at the pool's entrance. In addition, FEHD issued a letter to licensees on 20 May 2024 about strengthening the measures for regulating licensed swimming pools, which include imposing a licensing condition to stipulate that licensees have to display the recent photograph(s), name(s) and Pool Lifeguard Award number(s) of the life-saving attendant(s) on duty, as well as the quality standard for pool water and the test result in the pool area. This not only serves as a reminder for licensees and management staff, it also make information more transparent, achieving joint monitoring with pool users.

*Recommendation (l)*

615. To facilitate information exchange and experience sharing, FEHD and LCSD have already held two meetings for a more in-depth understanding of each other's work in management of swimming pools, as well as the procedures of handling complaints and monitoring pool water quality. The two departments will continue to share experience, including how to make good use of technology to enhance swimmers' safety through meetings and site visits.

## **Food and Environmental Hygiene Department**

### **Case No. DI/467 – Food and Environmental Hygiene Department's Regulation over Sale of Food in Hot/Cold Holding and Non-prepackaged Beverages by Means of Vending Machine**

#### **Background**

616. In recent years, more and a wider variety of vending machines selling food in hot/cold holding and non-prepackaged beverages are available on the market. The products on sale are mainly non-prepackaged beverages, and ready-to-eat food items which require temperature control or simple processing on site. Under the Food Business Regulation (Cap. 132X), any person who intends to engage in the sale of food by means of a vending machine must first apply to the Food and Environmental Hygiene Department (FEHD) for a Permit to Sell Food by Means of Vending Machine (VM Permit), and comply with a range of licensing requirements and conditions for food safety and environmental hygiene.

617. An investigation conducted by the Office of The Ombudsman (the Office) reveals that some permit holders have not complied stringently with the licensing requirements and conditions imposed by FEHD, including not storing food at the required temperature and failing to empty regularly the containers for litter or liquid waste inside the machines, and there is room for improvement on the part of FEHD in licensing control.

#### **The Ombudsman's observations**

*(I) Details about the devices and operation of licensed vending machines should be recorded*

618. In the course of processing VM Permit applications, FEHD basically would not request applicants to submit any information about the devices or operation of vending machines, including information directly



related to compliance with the licensing requirements and conditions, such as the internal/external design of the machine to keep out insects, rodents and dust, whether and how the food storage temperature inside the machine is recorded automatically and regularly, the parts inside the machine that require regular cleansing and sterilisation, the operation of automatic cut-off device (if any). The Office finds some case files of licensed vending machines containing no information about their exterior, design or operation.

619. The Office is of the view that FEHD should keep record of the details about the exterior, design and operation of each licensed vending machine, which can serve as the reference and basis for approving the applications as well as provide its staff with specific information to conduct routine inspection or handle suspected breaches of licensing conditions in future, thereby enhancing enforcement effectiveness.

*(II) Specific records of pre-approval inspection should be kept*

620. The Office's investigation reveals that FEHD's records of pre-approval inspections varied considerably in format and level of details, even though the VM Permit applications were for selling the same food type. Some case files simply stated that inspection was completed and confirmed the applicant's compliance with all requirements, while others recorded the findings of the inspections and the compliance status with respect to each requirement, with photographs taken during site inspections attached.

621. The Office considers site inspection a crucial procedure before FEHD's approval of VM Permit applications for the protection of public health and food safety. FEHD should draw up guidelines instructing its staff on how to record specific findings of a site inspection with respect to each licensing requirement, including checking their observations against information provided by the applicant about the devices and operation of the vending machine. This could help ensure proper conduct of inspections as well as consistent standards and practices across all inspecting staff.

*(III) Licensing conditions are phrased too broadly*

622. FEHD has formulated the licensing conditions with focus on the daily operation, maintenance and cleansing of vending machines. In particular, permit holders are required to constantly monitor and record the temperature at which the food is being stored in the machine, regularly cleanse and sterilise the inside of the machine, and keep a record of such services. Nevertheless, the licensing conditions do not stipulate at what interval the internal temperature of a machine should be recorded, the frequency of internal cleansing, and the items to be included in the servicing records. The Office's concern is that if FEHD's provisions for the actions required are phrased too broadly, the regulatory effect might be compromised. For instance, if the temperature of a machine is taken just once daily, or its internal parts are cleansed and sterilised just once monthly, it is doubtful whether such actions are sufficient for FEHD to reasonably evaluate the operation and hygienic condition of the machine for protecting food safety.

623. Given the varying designs and functions of vending machines, in the Office's view, FEHD may require applicants to specify their own pledges upon application regarding the frequency of monitoring and cleansing, as well as the format of servicing records. Such pledges can be incorporated in the licensing conditions of vending machines if agreed by FEHD. This will form a solid and specific basis for both FEHD and permit holders to ascertain compliance with the conditions.

*(IV) Licensing control of vending machines should be strengthened*

Temperature and servicing records of vending machines have never been checked

624. When FEHD staff conduct routine inspection on licensed vending machines, permit holders or their staff are normally not present to open the machines' doors for FEHD to inspect the inside of the machines. However, many licensing conditions involve the operation, cleansing or maintenance

of a machine's internal parts. It is difficult to evaluate accurately the compliance with those conditions by merely observing the exterior of the machines.

625. Moreover, the licensing conditions require permit holders to keep records of the temperature and cleansing and sterilisation of the machines for inspection by FEHD. Nevertheless, the Office's investigation reveals that FEHD has never asked any permit holders to present those records for inspection or reference. The Office considers that these records, in addition to facilitating FEHD's investigation in case of food safety incidents or complaints, serve a more important and proactive purpose of reminding permit holders to stringently comply with the requirements for machine operation and maintenance, thereby controlling the associated food safety hazards. FEHD should conduct random checks on the records from time to time. It may also consider requiring permit holders to take photos showing the condition of the relevant machine parts after servicing as records for inspection by FEHD. This can compel permit holders to properly comply with the licensing conditions at all times.

More proactive bacteriological testing should be in place to strengthen control

626. Under the licensing conditions, FEHD prescribes the types and standards of bacteriological testing for vending machines of drinking water (no drinking utensil provided) and freshly squeezed orange juice. Three consecutive unsatisfactory bacteriological samples of water/orange juice within six months will result in suspension of the permit, and subsequent failure to improve within a specified period may lead to cancellation of the permit.

627. However, in response to the Office's enquiry about how the compliance of permit holders with this condition is monitored, FEHD only referred to the Food Surveillance Programme of its Centre for Food Safety (CFS) and cited a risk assessment study related to vending machines, where samples of food sold by a number of vending machines were taken

for microbiological testing. However, the Food Surveillance Programme is not linked to the licensing system for food business premises. Under its routine monitoring of VM Permits, FEHD would not proactively take samples of beverages sold by licensed vending machines (with licensing conditions prescribing the standards of bacteriological quality) for bacteriological testing, nor would it require permit holders to conduct regular testing themselves and report the results to FEHD.

628. Results of bacteriological testing are objective data showing whether the beverages are safe for consumption, and regular or ad hoc testing can facilitate FEHD's assessment of food safety hazards. If testing results reveal an increased or even substandard level of a certain kind of bacteria, it will alert the permit holder to the need of detecting and rectifying the problem as soon as possible. The Office considers that FEHD should conduct bacteriological testing more proactively to monitor the food and beverages sold by means of vending machines.

*(V) Additional/improvement measures should be taken to facilitate public monitoring*

629. The Office urges FEHD to step up publicity to promote public awareness of the regulation over vending machines. This will not only enhance public alertness to food safety, but also let members of the public know that any suspected irregularities of vending machines can be reported to FEHD.

#### Displaying the VM Permit on the outside of the machines

630. Currently, FEHD only requires all VM Permit applicants to prominently display their name, address and telephone number (if any) on the outside of the machines. To facilitate public identification of the licensing status of vending machines, the Office considers that FEHD can require permit holders to display the VM Permit or its copy on the machine, showing that it is operated with the permission of FEHD. By doing so, and also with the information available on FEHD's thematic website on

vending machines to be launched later, the public can learn more about the licensing requirements and conditions imposed on the vending machines of different food types, and monitor their compliance with such conditions.

#### Fitting an externally readable thermometer to the machine

631. During its site visits, the Office found that many vending machines under temperature control were not fitted with an externally readable thermometer to indicate the internal temperature, nor was the relevant information provided. The Office considers that FEHD should require all vending machines of food under temperature control to be fitted with an externally readable thermometer, or relevant information should be provided, such that the public and FEHD staff can immediately know the temperature at which the food is being stored in the machines.

#### Improving the list of permitted premises

632. During its site visits, the Office found that some addresses on the List of Permitted Premises were unclear and insufficient for the public to locate the vending machines. In this connection, FEHD should review the address information on the list and rectify the inadequacies.

*(VI) Advice should be given to organisations dispensing free food by means of vending machines so as to ensure food safety*

633. The Office notices that some social welfare organisations have been dispensing free food, frozen or in hot holding, by self-service machines to support people in need. Since the operation is not considered to be a food business, those organisations are not required to apply for food business licences or VM Permits for those self-service machines from FEHD. From the perspective of food safety, the Office considers that FEHD should provide relevant organisations with important information and good practices in dispensing food by self-service machines, thereby safeguarding public hygiene and health.

634. The Ombudsman recommended FEHD to –

- (a) require VM Permit applicants to submit information about the devices and operation of vending machines and keep it in the case files;
- (b) update existing guidelines with instructions to staff on how to compile specific records of pre-approval inspection;
- (c) beef up the licensing conditions with clear and specific details on temperature control, machine cleansing and sterilisation, and record keeping;
- (d) explore stepping up random checks on permit holders' records of temperature control and machine cleansing and sterilisation as part of its monitoring work;
- (e) explore the feasibility of more proactive bacteriological testing of food and beverages sold by means of vending machine, thereby reinforcing licensing control;
- (f) step up publicity to raise public awareness of licensed vending machines and relevant licensing conditions;
- (g) revise licensing requirements such that permit holders shall display the VM Permit or its copy on the outside of the machines, and disseminate information about the licensing requirements/conditions imposed on vending machines to facilitate public monitoring of their compliance;
- (h) require all vending machines of food under temperature control to be fitted with an externally readable thermometer or to provide relevant information;

- (i) review the List of Permitted Premises available on FEHD website to ensure that the addresses listed thereon are sufficient for the public to locate the vending machines; and
- (j) consider the perspective of food safety and provide organisations dispensing free food by self-service machines with important information and good practices for safeguarding public hygiene and health.

### **Government's response**

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

#### *Recommendation (a)*

636. FEHD has reviewed the records to ensure that information on the devices and operation of the vending machines are included in the files. In addition, FEHD has imposed a new permit condition on new application, requiring applicants to submit information about the devices and operation of vending machines. If there is any update or amendment to such information or procedures, the permit holders must report to FEHD immediately and submit a copy of the relevant information to the Department.

#### *Recommendation (b)*

637. FEHD has updated its internal Licensing Management Information System in May 2023. Under the new system, frontline staff are required to process and report on new permit applications through the system, replacing the previous paper-based follow-up records. The new system's interface design also requires officers to fill in the details of the follow-up work, including the specific records of pre-approval inspection for VM Permit applications.

*Recommendation (c)*

638. FEHD has imposed an additional permit condition on new application, specifying the requirements for temperature control and machine cleansing and sterilisation (including the frequency of such work). Permit holders are required to keep the relevant records for at least three months, and to produce the records during inspection by FEHD staff.

*Recommendation (d)*

639. Since July 2024, FEHD has required frontline staff to conduct random checks on permit holders' records of temperature control and machine cleansing and sterilization at least once a year.

*Recommendation (e)*

640. FEHD's team on licence regulatory control has been providing relevant information of licensed vending machine to CFS to include in its Food Surveillance Programme. If test results do not meet standards, CFS will inform the team on licence regulatory control for the team to take regulatory action based on the relevant permit condition, including temporary suspension or cancellation of the permit. All food samples from vending machine tested by CFS from 2018 to 2023 passed the laboratory tests. CFS will continue to operate the Food Surveillance Programme on a risk-oriented basis and take food samples for microbiological, chemical and radiation testing.

*Recommendation (f)*

641. FEHD has launched a new thematic webpage on its website to step up publicity for information related to VM Permit.



*Recommendation (g)*

642. FEHD has updated the relevant permit condition to require permit holders to prominently display their name, address and telephone number (if any), as well as the VM Permit or its copy, on the surface of the machines.

*Recommendation (h)*

643. FEHD has updated the relevant permit condition to require all permit holders to fit at least one thermometer on their vending machines selling food under temperature control, so as to show customers the temperature at which the food is being stored.

*Recommendation (i)*

644. FEHD has reminded frontline staff to pay more attention to the descriptions of addresses of vending machines, and contact the permit holders for verification when necessary to ensure the accuracy of records on the website.

*Recommendation (j)*

645. CFS has drawn up the Guidelines on Food Safety and Hygiene for Vending Industry, and explained the content of the guidelines to the trade and organisations dispensing free food to the public by self-service machines through the Trade Consultation Forum in April 2023 and a webinar in March 2024. The guidelines are available on CFS's website for download.

## **Government Secretariat – Development Bureau**

### **Case No. DI/463 – Handling of Complaints Involving Trees on Government Land**

#### **Background**

646. There are vast numbers of trees across the territory. The Government currently adopts an integrated approach for managing trees on Government land, under which the department responsible for maintaining a Government facility or site takes care of the trees within the area.

647. The Tree Management Office (TMO) under the Development Bureau (DEVB) formulates comprehensive tree management strategies and measures for Hong Kong. It coordinates and supervises Government departments' handling of tree complaints at the central level. In the course of the investigation, the TMO has proactively implemented a number of improvement measures, including reviewing and updating the complaint handling mechanism, strengthening the coordination with and supervision of departments in handling tree complaints, assisting departments in clearing the backlog of tree complaints. In addition, a dedicated task force chaired by the Permanent Secretary for Development (Works) was established to conduct a comprehensive review of the prevailing tree management guidelines. Ten recommendations were subsequently made to enhance the tree inspection and risk assessment regime. The Ombudsman believes that the above measures should effectively reduce the number of problematic trees at source, thereby bringing down the number of complaints.

## **The Ombudsman's observations**

### *TMO Should Step in More Proactively in Complaint Cases Involving Disputes over Responsibilities*

648. Information provided by 1823 showed that between 2018 and October 2022, each year 1823 received on average some 24,000 tree complaints, of which about 1,100 cases on average (or 3.3% to 5.9% over the annual total of complaints received) involved disputes over responsibilities among departments. Each year, in dozens of such cases, the complainant received a reply only after more than three months. While the number of cases involving disputes over responsibilities makes up only a small percentage of the annual total, the conditions of trees change from one minute to the next. If tree complaints are not handled in a timely manner because of departments' disagreement over responsibilities, not only would it easily lead to an impression of departments passing the buck, but also pose safety hazards.

649. The Office's investigation found that in the past, upon notification by 1823 of a dispute over responsibilities, TMO would follow the mechanism to first wait for a review of the case by the complaint officers of the departments concerned, then formally step in to coordinate and adjudicate if the dispute remains unresolved. In three case studies, The Office found that by the time TMO stepped in according to the mechanism, about four to six months had already lapsed since the cases were received. After the commencement of The Office's preliminary inquiries, TMO piloted an enhanced mechanism in early 2022 under which it would intervene earlier to handle all cases that 1823 has taken to the complaint officers of the departments concerned. Nevertheless, The Office's case studies revealed that the case handling time was subject to numerous factors and the case might have been seriously delayed when it was taken to the departmental complaint officers. In other words, even if TMO intervened at the time when the case was raised to the departmental complaint officers, the overall handling time would not significantly shorten.

650. This shows that for tree complaint cases involving disputes over responsibilities, if TMO bases its decision to step in solely on the complaint handling stage, the disputes may not be settled in a timely manner. Given that the aim of TMO in setting up the inter-departmental mechanism is to effectively clarify tree management responsibilities for early resolution of complaints, The Office considers that the overall handling time of a tree complaint case should be a criterion for TMO's intervention. Even if a case is not yet taken to the departmental complaint officers, TMO should still step in when there is already a serious delay in the overall case progress by different reasons, lest a problematic tree would become an environmental nuisance or even a safety hazard due to delayed handling.

*TMO Should Make Good Use of Case Handling Experience to Reduce Disputes Among Departments*

651. The Technical Circular (Works) No. 6/2015 (the Technical Circular) promulgated by DEVB sets out the division of responsibilities among tree management departments. Tree management responsibilities are basically determined by the location of a tree. The Office's case studies found that from time to time, there were divergent interpretations of the Technical Circular by departments and even recurrence of disputes over similar issues. For instance, departments had argued over which part of the tree should define its location, or they had different interpretations as to the meaning of "roadside trees within 10 metres from kerb of non-expressway public roads (outside country parks) on unleased/unallocated Government land" in the Technical Circular. The Office believes similar disagreements would not be rare.

652. Since 2022, TMO has uploaded the summaries of its decisions in representative cases onto the Government intranet with a view to providing guiding examples to departments. Yet, information provided by 1823 showed that the number of complaint cases involving disagreement among departments in 2022 remained at about 800. The effectiveness of sharing case decisions in reducing disputes among departments remains to be seen.

While the Office understands that some cases may involve special circumstances and disputes over responsibilities among departments can unlikely be avoided completely, the Office are more concerned whether there exist prolonged fundamental differences in opinions or even misunderstanding of the delineation of tree management responsibilities by departments, resulting in recurrent disputes over similar issues.

653. The Office reckons that in addition to sharing its decisions in individual cases with departments, TMO should conduct systemic analysis on completed cases, collate information about departments' common differences in opinions and misunderstanding of tree management responsibilities and conduct exchanges and sharing with the departments regularly. TMO should also review and update the content of the Technical Circular as appropriate in a timely manner by including the guiding principles from its decisions in previous cases for the departments to follow.

*TMO Should Supervise and Monitor Departments' Compliance with Inter-Departmental Mechanism for Handling Complaint Referrals*

654. Under the current inter-departmental mechanism, when a department receives from 1823 a tree complaint that it considers outside its purview, it should, within seven days of receiving the referral, submit a preliminary investigation report to 1823 for their further referral to another department. The Office's case studies revealed that some departments had failed to notify 1823 of their disagreement in taking up the case within the specified time frame, resulting in a substantial protraction of the overall case handling time. Some other departments merely mentioned in their replies to 1823 that the trees in question were at a certain location and therefore outside their purview, without giving any supplementary information (such as maps or photographs). Subsequently, 1823 had to look for relevant information in order to identify the responsible department. All the above would affect the overall progress of handling tree complaints.

655. The Office considers that TMO should supervise departments' strict compliance with the requirements of the inter-departmental mechanism in handling complaint referrals, i.e. they should raise a request to 1823 for further referral within the specified time frame and provide sufficient information if they disagree to take up a case. TMO should also monitor departments' compliance to ensure timely referral of complaint cases.

*TMO Should Instruct Departments to Conduct Joint Inspections Promptly in Case of Disputes over Responsibilities*

656. From the Office's case studies, the Office noticed that disputes among departments often arose because they had different observations at the scene. Such disputes can in fact be settled through joint inspections. Currently, however, the disputing departments seldom conduct joint inspections, unless upon TMO's intervention and request.

657. The Office opines that TMO should instruct departments to conduct joint inspections promptly in case of disputes over tree maintenance responsibilities, such that responsibilities can be clarified as soon as possible.

*TMO Should Strengthen Monitoring of Departments' Carrying out of Ordinary Tree Work in Response to Complaints*

658. Currently, tree management departments reply to tree complaints in accordance with their own performance pledges. Regarding the tree management work entailed in handling complaints, a guideline formulated by DEVB stipulates that when departments identify a dead tree or a non-old and valuable tree infected with brown root rot disease in an area with high pedestrian and vehicular traffic flow, they should remove it no longer than four weeks. Other than this, there is no stipulation on the time frame for completing ordinary tree work such as pruning or removal of dead branches. Departments can decide on their own how to proceed with such work based on the circumstances.

659. The Office's investigation revealed that none of the departments has drawn up an internal time frame for carrying out ordinary tree work or set up a database recording the completion dates of tree work in response to complaints. Even if departments have met their pledge in replying to the complainants, there is no objective information on whether they have actually carried out the tree work involved in a timely manner.

660. The Office considers that TMO should require departments to formulate a time frame for carrying out ordinary tree work in response to complaints based on the actual need, and to report related data to TMO regularly for monitoring to ensure proper handling of the tree problems under complaint.

*TMO Should Review and Enhance the Categories of Data Included in 1823's Monthly Reports*

661. Each month, 1823 submits to TMO a report on tree complaints with multiple categories of data, including the number of tree complaints 1823 received in the month, the number of complaints completed, the number of outstanding complaints and the number of complaints with overdue replies, as well as the number of complaints raised to departmental liaison officers, complaint officers and TMO. TMO monitors the departments' handling of tree complaints through the monthly reports.

662. The Office's investigation found that 1823's monthly reports only contain data on the number of overdue cases under various departments as at the last day of a month, rather than the accumulated number for the period. Therefore, the current 1823 monthly reports fail to reflect a complete picture of the departments' performance in handling tree complaints. Besides, since 1823 does not maintain figures on the accumulated number of complaint cases involving overdue replies by departments, TMO cannot grasp a full picture of departments' delay in handling tree complaints referred by 1823, including the number of complaints delayed in reply, the duration of the delays and the overall trend. In addition, the 1823 monthly reports only contain the number of

complaints raised to different officers of departments or to TMO for examination, without analysis on the case completion time. The Office is of the view that the completion time of cases involving unclear delineation of responsibilities is of high reference value by helping TMO assess the effectiveness of the inter-departmental mechanism.

663. The Office recommends that TMO review and enhance the categories of data included in 1823's monthly reports for more rigorous monitoring of departments' performance in handling tree complaints and the operation of the inter-departmental mechanism.

*TMO Should Collect Data on Tree Complaints Not Received via 1823*

664. Between 2018 and October 2022, the Government received an average of some 28,000 tree complaints each year, of which about 24,000 (or 86%) were received via 1823. The remaining 4,000 complaints (or 14%) were received by departments directly or through other means.

665. 1823 handles tree complaints received in accordance with the established mechanism, requiring the responsible department to reply by the specified date, and issuing reminders and monthly reports to departments when a reply is overdue. To facilitate monitoring, 1823 also submits monthly reports to TMO which contain various categories of data on tree complaints. As regards tree complaints not received via 1823, they would be handled by the departments in accordance with their own monitoring mechanism and performance pledges. At present, TMO only requires departments to report the total number of tree complaints received each year with no other information or analysis. This reflects TMO's relatively limited understanding of tree complaints not received via 1823 and the departments' handling.

666. The Office recommends that TMO require departments to submit regularly data relating to tree complaints not received via 1823 for comprehensive monitoring of complaints received through various channels and follow-up actions by the departments.



*TMO Should Continue to Monitor LandsD's Performance in Handling Tree Complaints*

667. Information from 1823 showed that LandsD used to have a huge number of tree complaints with overdue replies. As at both December 2021 and March 2022, the department had a backlog of more than 2,000 tree complaints where replies remained outstanding. The Office's case studies found that in a case involving tree failure risk referred by 1823, LandsD took more than a year to reply to the complainant via 1823 that the case was still under investigation, not to mention its subsequent follow-up action. This Office finds such serious delay absolutely unacceptable.

668. The Office noticed that since the second half of 2022, TMO has strengthened the monitoring of tree complaint handling by LandsD; LandsD has also set up an internal task force led by its Deputy Director to conduct a comprehensive review of the procedures for handling tree complaints. Nine recommendations have been made and seven subsequently implemented. Information from 1823 showed that the backlog of cases has significantly shrunk. As at October 2022, the number of tree complaints with overdue replies by LandsD had considerably dropped to four.

669. However, it must be noted that the above is only the number of cases in which LandsD had delayed in replying to 1823. The department does not maintain figures on the actual number of tree complaints with clearance work to be completed. As such, there is no objective information on whether the trees involved in the backlog of complaint cases have been properly handled. The Office hopes that LandsD can make good use of the computer information system it is developing as an internal monitoring tool to facilitate case follow-up and data analysis.

670. In any event, LandsD is responsible for carrying out ad-hoc maintenance for trees on unleased and unallocated Government land. The number of trees involved is huge and the related workload onerous. The Office considers that TMO should continue to monitor LandsD's

performance in handling tree complaints and provide assistance where necessary to ensure proper handling of problematic trees.

671. The Ombudsman recommended TMO to –

- (a) for tree complaint cases involving disputes over responsibilities among departments, consider using the overall handling time of the case as a criterion for intervention, so as to reduce the risk of a problematic tree becoming an environmental nuisance or even a safety hazard due to delayed handling;
- (b) conduct systemic analysis on completed complaint cases involving disputes over responsibilities, collate information about departments' common differences in opinions and misunderstanding and conduct exchanges and sharing with the departments regularly; review and update the content of the Technical Circular as appropriate in a timely manner by including the guiding principles from its decisions in previous cases for the departments to follow;
- (c) supervise departments' strict compliance with the requirements of the inter-departmental mechanism in handling complaint referrals, i.e. they should raise a request to 1823 for further referral within the specified time frame and provide sufficient information if they disagree to take up a case. TMO should also monitor the departments' compliance to ensure timely referral of complaint cases;
- (d) instruct departments to conduct joint inspections promptly in case of disputes over tree maintenance responsibilities, such that responsibilities can be clarified as soon as possible;
- (e) require departments to formulate a time frame for carrying out ordinary tree work in response to complaints based on the actual

need, and to report related data to TMO regularly for monitoring to ensure proper handling of the tree problems under complaint;

- (f) review and enhance the categories of data included in 1823's monthly reports for more rigorous monitoring of departments' performance in handling tree complaints and the operation of the inter-departmental mechanism;
- (g) require departments to submit regularly data relating to tree complaints not received via 1823 for comprehensive monitoring of complaints received through various channels and follow-up actions by the departments; and
- (h) continue to monitor LandsD's performance in handling tree complaints and provide assistance where necessary to ensure proper handling of problematic trees.

### **Government's response**

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

#### *Recommendation (a)*

673. TMO integrated and updated the Guidelines for handling tree-related complaints (The Guidelines) in September 2023. The overall handling time of the case has been included in the Guidelines as one of the criteria for intervention. If a case cannot be assigned to the responsible department within 28 working days, 1823 will escalate the case to TMO for handling.

#### *Recommendation (b)*

674. TMO has conducted a systemic analysis of tree-related complaint cases involving disputes over responsibilities among departments, collated

common disagreements and misunderstandings, and regularly communicated and shared with tree management departments through different channels including –

- (a) uploading the summary of individual representative adjudicated cases onto the government intranet for departments' compliance since 2022;
- (b) sharing observations with suggested improvements on cases involving disputes over responsibilities among departments regularly with departmental complaint officers for colleagues' reference since March 2023; and
- (c) briefing the rulings and outcomes of representative escalated cases, as well as suggestions for improvement on general cases involving disputes over responsibilities among departments in the Works and Greening Committee meetings since February 2023 to facilitate departments to review and follow up as appropriate.

675. The prevailing Technical Circular setting out the division of responsibilities among tree management departments is appropriate and will be periodically reviewed as necessary.

*Recommendation (c)*

676. The Guidelines explicitly stipulate that if an assigned department considers the case outside their jurisdiction, they must submit a request for re-assignment to 1823 within seven working days with justification, including site visit record with findings, tree location, site photographs, etc. The request for re-assignment should also be reviewed and agreed by the department's officers at the professional or equivalent rank. If the assigned department fails to submit a request for re-assignment within the specified time frame, they will be responsible for handling the complaint and responding to the complainant.

677. TMO will continue to communicate with 1823 to monitor the compliance with the abovementioned requirements by the departments and to follow up as necessary.

*Recommendation (d)*

678. The Guidelines stipulate that departments should proactively communicate among themselves to resolve cases under disputes and promptly arrange joint site inspections when necessary to ascertain the tree management responsibilities. As such, cases involving disputes over responsibilities have been resolved through joint site inspections.

*Recommendation (e)*

679. In terms of general tree work in response to complaints, the “Guidelines for Tree Risk Assessment and Management Arrangements” stipulate that if a tree management department identifies a dead tree or confirms infection with Brown Root Rot Disease of a non-Old and Valuable tree, it must be removed within no more than four weeks. For complaint cases that do not pose immediate danger (such as removing dead branches, pruning tree crowns, pest control, etc.), the department will arrange the work as early as possible based on individual tree conditions. In addition, the Guidelines for handling tree-related complaints also recommend the working time for general tree work (such as tree removal and pruning) for reference of departments. The Guidelines also request departments to cordon off concerned area and post warning notices in response to the site conditions in the course of risk mitigation work to safeguard public safety.

*Recommendation (f)*

680. Commencing from May 2023, 1823’s monthly report includes the number of overdue cases of tree management departments within the month and details of the escalated cases for TMO to monitor the overall performance of departments in handling tree-related complaints.

681. Commencing from July 2023, 1823 also provides two additional items of information for TMO to monitor the handling of complaints, including the number of cases that departments requested re-assignment exceeding seven working days and those without providing justifications.

*Recommendation (g)*

682. TMO had requested all tree management departments to adopt the same standard of handling tree-related complaints received via 1823 and those received via other means. The above requirement was also incorporated in the Guidelines for compliance by the departments.

*Recommendation (h)*

683. TMO has been holding regular meetings with the Lands Department and communicating through different channels to review various improvement measures and their feasibilities, including complaint handling, contract management, and tree work, etc., to ensure proper handling of tree-related complaints.

684. TMO will continue to monitor the performance of the Lands Department in handling tree-related complaints and provide assistance to ensure proper handling of problematic trees.

685. With the implementation of the above measures in 2023, the performance of tree management departments on complaint handling has significantly improved, resulting in a substantial decrease in complaint handling time. Key achievements include –

- (a) Overdue complaint cases at end of month reduced from an average of over 1 000 per month in 2022 to less than 10; and
- (b) Handling time of general complaint cases reduced from an average of 60 days in 2022 to around five days.

686. To enhance the tree risk management, a Task Force (Task Force) on Roadside Tree Planting and Maintenance was set up in September 2022. The Task Force reviewed the existing tree management arrangement, including the "Guidelines for Tree Risk Assessment and Management Arrangements", methods of tree inspection, tree species planted by the roadside, aboveground and underground growth spaces for trees, soil quality management requirements, etc. with the following ten enhancement measures recommended in January 2023 –

- (a) making clear the line of command concerning tree management;
- (b) expanding the scope of "tree basis" risk assessment;
- (c) arranging periodic inspections for trees along village roads on unleased and unallocated Government land based on risk principle;
- (d) enhancing implementation of risk mitigation measures;
- (e) enhancing reporting of tree failure cases and stepping up auditing of tree risk assessment reports;
- (f) more extensive use of technology in tree management;
- (g) replacement of senescent pioneer species;
- (h) formulating new guidelines for minimum soil volume and soil depth for tree planting;
- (i) introducing suitability and sustainability assessment for roadside trees; devising suitable measures to improve site conditions or replacing trees which are no longer suitable for site in urban areas; and
- (j) building up capacity of tree management personnel.

687. While majority of the above enhancement measures are completed or on-going, the development of the suitability and sustainability is in good progress with anticipated completion in early 2025.

688. Furthermore, TMO has been closely collaborating with the Heung Yee Kuk, Area Committees and District Councils to collect data of problematic trees before the wet season for departments to follow up. To further protect the public interest, the TMO has also been collaborating with Mass Transit Rail Company Limited and Peak Tram Company Limited with an aim to minimise tree risks along railway and tramway lines.

689. TMO and tree management departments will dedicate efforts to managing trees properly, so as to create a green living environment for the community while safeguarding public safety.



## **Government Secretariat – Education Bureau**

### **Case No. DI/458 – Education Bureau’s Monitoring of Boarding Sections of Schools for Children with Intellectual Disability**

#### **Background**

690. Some schools for children with intellectual disability (ID) subsidised by the Education Bureau (EDB) have boarding sections that provide boarding service to children with moderate or severe ID who meet the boarding criteria. EDB regards the boarding sections of schools for children with ID as part of the schools. Their daily operation and management, therefore, should be overseen by the incorporated management committee of the school in accordance with the school-based management principles, just like the school section. EDB monitors the schools and their boarding sections on various aspects to ensure that their governance and operation comply with the relevant legislation and the guidelines it has issued.

691. To ensure that there are appropriate measures to monitor the quality of the boarding sections of schools for children with ID so as to protect the welfare of the children, the Office of The Ombudsman (the Office) conducted a direct investigation to examine EDB’s monitoring of the boarding sections of schools for children with ID and identify room for improvement, if any.

#### **The Ombudsman’s observations**

692. The Office had the following comments and recommendations with respect to EDB’s monitoring of boarding sections of schools for children with ID.

*Guidelines on Day-to-Day Operation of Boarding Sections of Schools for Children with ID*

693. Before March 2021, EDB had not promulgated any guidelines specifically for the operation and management of the boarding sections of schools for children with ID. Schools drew up their own school-based guidelines according to the relevant legislation and EDB's other guidelines, which did not contain any detailed requirements in respect of the boarding sections' day-to-day operation, personal care and nursing for boarders, daily routine arrangement and matters on which records must be kept.

694. In March 2021, EDB compiled the "Practice Guide for Special Schools on Planning and Managing Boarding Service" (the Practice Guide) for boarding sections of special schools (including those of schools for children with visual impairment, hearing impairment, ID or physical disability). However, the Practice Guide only describes in very broad terms the principles and direction of operating and managing the boarding sections of special schools. While about 70% of the boarders in aided special schools are children with moderate or severe ID, the Practice Guide contains no specific points on the daily care and nursing of the children with ID or the procedures to be followed by the boarding sections. Save for some relatively specific minimum staffing requirements for the boarding sections during the night time, the Practice Guide does not stipulate any detailed and uniform basic requirements on other day-to-day operational issues. The Office's view was that the Practice Guide, being rather unspecific, was neither effective in enhancing the services of the boarding sections of schools for children with ID, nor conducive to EDB's monitoring work.

695. The Office understood that schools for children with ID are provided with specialists of different grades in the boarding sections to offer professional advice and support and these schools also formulate school-based policies and guidelines for operating and managing the boarding sections in accordance with the school-based management

principles. However, if the operational guidelines of different schools cover different aspects of their boarding sections, or the approach or criteria adopted for handling the same issues differ greatly, then the parents, EDB or even the staff of the boarding sections can hardly monitor and judge objectively whether the operation of the boarding sections is proper. The Office considered it imperative that EDB devises uniform requirements for certain aspects of the basic operation of the boarding sections so as to regulate their operation and lift their service standard, with a view to safeguarding the rights and welfare of the boarders with ID.

696. In this light, EDB should, having regard to the circumstances of boarders with ID, enhance the Practice Guide, stipulate basic requirements for certain aspects of the day-to-day operation of the boarding sections (especially for aspects involving daily care of boarders and record-keeping), and require the boarding sections of schools for children with ID to incorporate some of EDB's basic requirements into the school-based guidelines drawn up by the schools themselves.

*Requiring Boarding Sections to Install Closed-Circuit Television (CCTV) Surveillance Systems with Recording Function and Conduct Surprise Checks of the Footages*

697. EDB neither required the boarding section of schools for children with ID to install CCTV surveillance systems with recording function nor provided grants for the installation. In October 2022 (i.e. after the Office had launched this direct investigation), EDB collected information about installation of CCTV surveillance systems from the aided special schools (including schools for children with ID that had a boarding section). While all the boarding sections of schools for children with ID have now installed CCTV surveillance systems, some of them do not have the systems with recording function in the dormitory area due to various reasons. The CCTV footages of the boarding sections of schools for children with ID had not been checked during EDB's school visits in the past or joint school visits conducted since the promulgation of the Practice Guide.

698. The Office considered that an effective monitoring mechanism should aim at enabling timely detection of irregularities and efficient follow-up actions. The Office was of the view that so long as the Personal Data (Privacy) Ordinance is complied with, EDB should require the schools for children with ID to install CCTV systems with recording function within the perimeter of their boarding sections and make regular arrangements for random checks of the recorded footages. EDB should consider providing extra installation grants, where necessary, to the schools and deploy its staff to random check the CCTV footages from time to time.

*Systematic Monitoring of the Use of Physical Restraint or Seclusion on Boarders with ID*

699. When children with ID lose control of their emotion or display serious behavioural problems, the schools may apply physical restraint (e.g. a restraint belt, straitjacket, restraint chair or safety chair) appropriate to the situation in order to restrict their body movement, or use seclusion to confine the area of their activities. In this regard, EDB has issued the “Guideline on the Use of Physical Restraint or Seclusion to Handle Students with Special Education Needs Having Serious Emotional and Behavioural Problems” (the Restraint or Seclusion Guideline), which on the one hand encourages schools (including schools for children with ID having a boarding section) to use positive behaviour support strategies to reduce the chance of children displaying emotional or behavioural problems, and on the other hand seeks to provide schools with guidelines to follow when application of physical restraint or seclusion is called for. The Restraint or Seclusion Guideline does not cover the use of “protective” or “medical” physical restraints.

700. The Office’s investigation found that regardless of the nature of the physical restraint having been applied on a boarder being “protective” or “medical”, or whether physical restraint or seclusion was used when a boarder displayed serious emotional or behavioural problems, EDB had not maintained any record on the number of boarders with ID who needed

such interventions or the details of the cases. In addition, during their inspections or visits at the boarding sections of schools for children with ID in the past, EDB officers had not checked the condition of the boarders who needed physical restraint or seclusion. The Office considered that for protecting the welfare of the boarders who need such interventions, EDB's monitoring of the boarding sections of schools for children with ID should cover the use of physical restraint or seclusion so as to ensure that the boarding section staff would, and are reminded to, implement the relevant procedures prudently and properly. During inspections at the boarding section of those schools, EDB officers can ask the schools to report the data on and details of the boarders who need physical restraint or seclusion as a management and safety measure. Besides, they should also conduct spot checks of the documents relating to the decisions to apply physical restraint or seclusion on boarders.

701. On the other hand, the Restraint or Seclusion Guideline only sets out the general principles, procedures and points to note. It was not drawn up specifically for boarders with ID. Yet, as opposed to other special schools, the boarding sections of schools for children with ID are more likely to need physical restraint or seclusion to handle emotional or behavioural problems of their boarders. In this light, the Office considered that it would be prudent and responsible of EDB to provide more specific and detailed guidelines with respect to the use of physical restraint or seclusion on boarders to the boarding sections of schools for children with ID.

702. The Office opined that EDB should formulate detailed and rigorous basic guidelines (including implementation procedures and monitoring mechanism) for the boarding sections, targeting the special circumstances of boarders with ID. For example, the guidelines should set out the time interval for releasing the physical restraint, the frequencies of checking the reactions of a boarder under restraint or seclusion, handling of his/her toileting and eating/drinking needs, and record and information to be completed by boarding section staff after applying physical restraint or seclusion; and require that the head of the boarding section or the nurse

should random check the condition of the boarder under restraint or seclusion and counter-sign to confirm the relevant records. EDB should also require the boarding sections of schools for children with ID to incorporate EDB's basic guidelines into their school-based policies or guidelines (if any). For discharging their monitoring duties, EDB officers should conduct checks of the records on using physical restraint or seclusion during inspections at the boarding sections of school for children with ID.

703. In addition, EDB should set down basic requirements for the boarding sections of schools for children with ID in respect of the design and facilities of the seclusion space or area to ensure that the environment is safe and humane. It should maintain information about such space or area in the boarding section of each school for regular inspection and assessment of compliance with the relevant requirements regarding their design and facilities.

*External School Review (ESR) Teams Need to Observe and Assess Boarders' Condition and Daily Lives at Boarding Sections*

704. The Key Performance Measures and Stakeholder Survey Reports submitted to the ESR teams by the schools for children with ID include the stakeholders' impression and satisfaction level with respect to the day-to-day services of the boarding sections. During an ESR, the ESR team may, on a need basis, observe the lives of boarders in the boarding section, or speak with the specialist staff of the boarding section to understand the state of affairs in the boarding section. The Office's view was that observation at the boarding sections can give the ESR team a more comprehensive idea about the circumstances and development of the school. Given that for most schools for children with ID that have boarding sections, the two most recent ESRs conducted were about eight to ten years apart, the ESR teams should take the opportunity of the review to examine whether the services of the boarding section can complement the school's development plans and identify room for improvement, if any. In this connection, EDB should include observation of the environment of the

boarding sections and daily lives of boarders as an inspection item during an ESR, such that the ESR teams can understand how the boarding sections can provide services complementary to the planning and development of the schools, and make specific improvement recommendations to the schools.

### *Effectiveness of Inspections at Boarding Sections*

705. While EDB would conduct a number of visits at schools for children with ID in every school year, those visits hardly covered the boarding sections; and inspections at the boarding sections of schools for children with ID had also been very infrequent. For instance, between school years 2017/18 and 2019/20, in each school year an average of six to nine schools for children with ID having a boarding section (out of a total of 14 or 15 such schools during the period) had had the section inspected. About half of the boarding sections had been inspected only once during those three school years, and two of them had not been inspected at all. Even after the Practice Guide had been promulgated, there was no significant increase in the frequency of EDB inspections at the boarding sections during the following year. The Office recommended that EDB proactively increase the inspection frequencies and set down a key performance indicator with respect to the inspections each year at the boarding section of each school for children with ID (e.g. setting down a minimum number of inspections). Furthermore, given that surprise inspections (especially those conducted during non-office hours) can better reflect the actual operation and state of affairs in the boarding sections, EDB should also arrange surprise inspections at the boarding sections of schools for children with ID at different time periods of the day (including both office and non-office hours), instead of conducting only announced inspections, as it had done in the past.

706. The Office noticed that prior to the promulgation of the Practice Guide, EDB had not spelt out the scope of inspection or prepared inspection checklists for the Special Education Division (SED) and School Development Division (SDD) during inspections at the boarding sections

of schools for children with ID. Since the promulgation of the Practice Guide in March 2021, schools for children with ID having boarding sections are required to provide a number of documents for the joint inspections conducted by the two Divisions. Yet, the focus of the joint inspections is whether the schools have drawn up various school-based guidelines and mechanisms (such as a review mechanism for assessing the boarders' need for accommodation and a contingency mechanism). Inspection officers of EDB are not specifically required to conduct site inspections and assessment of the facilities of the boarding sections or review the boarders' daily routine and record their condition. Meanwhile, the Office did not see any substantial difference between the joint inspections carried out by the SED and SDD after promulgation of the Practice Guide and the inspections they previously conducted separately.

707. The Office considered the depth and breadth of EDB's inspections still insufficient as they cannot really help EDB understand the daily lives of the boarders with ID and whether the care services provided are proper. EDB should review and broaden the scope of inspections at the boarding sections of schools for children with ID, and focus on assessing the boarders' daily routine at the boarding sections (including meals and nutrition, personal care, daily living care, administration of drugs and medical treatment, environment and safety measures, activities organised by the boarding sections and staffing arrangement), observing the physical and psychological well-being as well the emotion and behaviour of the boarders, and scrutinising the records on care and use of restraint and seclusion. In addition, EDB should draw up clear delineation of duties and schedules for collaboration between the SED and SDD, define indicators for conducting separate or joint inspections so as to ensure that the boarding sections of schools for children with ID would be properly inspected by the two Divisions.

#### *Qualification of Officers Inspecting Boarding Sections*

708. EDB inspections officers and members of ESR teams do not possess qualifications relating to health care and social work. The Office



opined that if the inspection officers of EDB and ESR teams can include professionals with relevant qualifications, they would be in a better position to comprehensively assess whether the environment and safety measures, daily care services and personal care services of the boarding sections are proper and adequate, and be more sensitive to any anomalies in the emotion and behaviour of the boarders with ID.

709. The Office was of the view that for ensuring the effectiveness of inspections, EDB can consider including professionals with qualifications in health care and social work in the ESR teams and EDB's inspection teams responsible for conducting inspections at the boarding sections of schools for children with ID. Besides, EDB can explore the feasibility of allowing the parents of boarders with ID to participate in the inspections at the boarding sections for assessing the service quality of the boarding sections from the perspectives of different stakeholders.

#### *Mechanism for Reporting Serious or Life-Threatening Accidents at Boarding Section*

710. The Office's investigation found that a school for children with ID had repeatedly and seriously delayed reporting to EDB about serious or life-threatening accidents that had happened at its boarding section. This reflected that EDB's reporting mechanism had not been strictly complied with. Consequently, EDB could not deploy staff to collect evidence and carry out investigation at the boarding section of the school in a timely manner, and was therefore unable to devise or propose precautionary or rectification measures as soon as possible. Meanwhile, EDB has not set down a clear and definite time frame for the boarding sections of schools to submit written reports on serious or life-threatening accidents. The Office considered it imperative of EDB to set a clear deadline for the boarding sections of schools for children with ID to submit written reports on accidents, and monitor closely whether there has been delay in reporting accidents. Serious actions must be taken by EDB against non-compliance.

711. The Office recommended EDB to –

- (a) enhance the content of the Practice Guide, having regard to the condition of the boarders with ID, and stipulate basic requirements for certain aspects of the day-to-day operation of the boarding sections of schools for children with ID (e.g. aspects involving the daily care of boarders and record-keeping), and require the schools to incorporate EDB's basic requirements into their school-based policies and guidelines;
- (b) require the boarding sections of schools for children with ID to install CCTV surveillance systems with recording function, and stipulate the basic requirements for CCTV installation in the Practice Guide;
- (c) arrange EDB staff to conduct random checks from time to time of the recorded footages of the CCTV surveillance systems installed at the boarding sections;
- (d) include the use of physical restraint or seclusion on boarders by the boarding sections as an item for review during inspections;
- (e) formulate detailed and rigorous basic guidelines (including implementation procedures and monitoring mechanism) specific to the use of physical restraint and seclusion as a measure to manage boarders with ID losing control of their emotion and behaviour, and require the boarding sections of schools for children with ID to incorporate the guidelines into their school-based policies and guidelines;
- (f) provide further guidelines on the design and facilities of seclusion space in the boarding section of schools for children with ID with a view to protecting the children's safety;
- (g) include observation of the environment of the boarding section of schools for children with ID and daily lives of boarders in ESR;

- (h) arrange surprise inspections at the boarding section of schools for children with ID during both office and non-office hour, and draw up key performance indicators for inspections at the boarding section of each of those schools per school year;
- (i) review and broaden the content of inspections at the boarding sections of schools for children with ID, including focusing on assessing the daily routine at the boarding sections, observing the physical and psychological well-being of boarders, and scrutinising the records of the boarders;
- (j) devise clear arrangements and inspection indicators for EDB's inspections at the boarding sections of schools for children with ID;
- (k) explore the feasibility of arranging inspections at the boarding sections of schools for children with ID by professionals with qualifications in health care and social work, and of allowing parents to participate in the inspections; and
- (l) strictly require boarding section of schools for children with ID to adhere to the requirements for reporting serious or life-threatening accidents and stipulate a clear deadline for submitting written reports.

### **Government's response**

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

#### *Recommendations (a) and (e)*

713. In May 2023, EDB set up a working group, comprising representatives from EDB, the Social Welfare Department, aided special schools and school sponsoring bodies, as well as lay persons (including

one with experience in caring for children with disabilities), to revise the Practice Guide and the Restraint or Seclusion Guideline appended to the Practice Guide. The two sets of guidelines, duly revised, were uploaded to EDB's relevant webpage (i.e. [sense.edb.gov.hk](http://sense.edb.gov.hk)), and were incorporated into the School Administration Guide in August 2024 for formal adoption starting from the 2024/25 school year.

714. EDB has also correspondingly updated the School Administration Guide by enriching the sample Checklist of Student Safety and Health Measures to remind schools (including those providing boarding service for children with ID) to formulate, in accordance with the Practice Guide and the Restraint or Seclusion Guideline, school-based policies and relevant guidelines that incorporate fundamental elements and requirements of the daily operation of the boarding section for compliance by the staff concerned. and arrange relevant professional training for related school personnel. Schools are required to assign dedicated personnel to co-ordinate and implement the relevant measures, and review and enhance them regularly.

*Recommendation (b)*

715. Under the revised Practice Guide, special schools are required to install CCTV systems (including CCTVs with real-time monitoring and recording functions) in their boarding sections, and to formulate school-based policies and mechanisms for monitoring and viewing CCTV video footages. Sample CCTV surveillance notices, "Personal Information Collection Statement" and "Privacy Policy Statement", are attached to the Practice Guide for schools' reference.

*Recommendations (c), (d), (i) and (j)*

716. EDB has put in place enhanced work arrangements for joint visits to the boarding sections of special schools, covering various aspects, including –

- (a) activities during a joint visit, including (i) meeting with management personnel and specialist staff of the boarding section to understand the condition of the boarding section; (ii) understanding how relevant records are maintained by the school (such as records of personal health and nursing care of boarders, records of preparation and administration of medication for boarders, records of school-based random checks on CCTV footages, records on using physical constraint or seclusion and records of inspections to the boarding section by the school's Incorporated Management Committee); where necessary, conducting random checks on relevant records on-the-spot; and (iii) paying visits to the boarding section to understand on-the-spot the operation of the boarding section, inspect the environment/equipment of the boarding section, and understand boarders' daily routine, daily care, physical and psychological conditions, etc.;
- (b) key aspects of inspection and distribution of responsibilities within EDB, covering inspection of the management and organisation of the boarding section, and inspection of the day-to-day operation of the boarding section, the physical and psychological conditions of boarders, and the use of physical restraint or seclusion to handle boarders having serious emotional and behavioural problems; and
- (c) pre-visit preparation, specific work during the visit and post-visit follow-up.

717. According to the revised Practice Guide, boarding sections are required to maintain records of relevant school-based policies and mechanisms, along with records of real-time monitoring and viewing of CCTV footages, which should be submitted to EDB upon request. EDB officers will conduct random checks on the CCTV footages during joint visits to the boarding sections of schools for children with ID. In general, EDB will, based on the actual school operation (including school days,

non-school days, and operation of the dormitories during various time slots), randomly inspect specific CCTV footages. If there are specific needs (such as handling complaints on related matters), EDB officers will also conduct random checks on relevant CCTV footages.

*Recommendation (f)*

718. As regards the design and facilities of seclusion space, specific guidelines have been added to the revised Restraint or Seclusion Guideline, requiring schools and boarding sections to ensure the provision of a safe environment when seclusion is deemed necessary.

*Recommendation (g)*

719. EDB updated the internal guidelines for ESR in August 2023, incorporating a specific item to observe the environment of boarding sections of schools for children with ID and daily lives of boarders. Starting from the 2023/24 school year, EDB has, based on the established mechanism, arranged for schools for children with ID with boarding sections to undergo ESR with a view to validating the schools' performance (including the boarding section) in self-evaluation under the enhanced School Development and Accountability framework. The focuses of inspection and specific arrangements are reviewed and enhanced on an ongoing basis.

*Recommendation (h)*

720. EDB has enhanced the work arrangements for joint visits to boarding sections of special schools by adding arrangements and performance indicators for surprise visits to boarding sections during and outside office hours every school year.

*Recommendation (k)*

721. Since the 2023/24 school year, EDB has enhanced the composition of the team conducting joint visits by including EDB staff and wardens from special schools' boarding sections with qualifications in social work, as well as nursing officers from special schools with qualifications in health care. EDB also recommends schools to involve parents in the inspections arranged by the school's Incorporated Management Committee every school year to better understand parents' views and enable corresponding responses or improvements.

*Recommendation (l)*

722. EDB has enhanced the relevant sections of the School Administration Guide, requiring schools to inform EDB of any serious/life-threatening accidents involving students. If the students concerned are boarders of EDB-subvented boarding sections, schools are also required to submit a report to EDB within three calendar days (inclusive of public holidays) after the accident. The updated School Administration Guide was uploaded to EDB webpage in September 2023 for compliance by schools.

## **Housing Department**

### **Case No. DI/462 – Housing Department’s Arrangements for Housing for Senior Citizens and Converted One-person Units**

#### **Background**

723. In the 1980s, the Housing Department (HD) introduced the Housing for Senior Citizens (HSC) scheme to provide hostel-type public rental housing (PRH) for elderly tenants aged 60 or above. With 24-hour welfare worker (or warden) service, there are three types of HSC according to the design of units, namely Type 1 (HS1), Type 2 (HS2) and Type 3 (HS3). Tenants have to share the kitchen, living room and/or bathroom facilities. Converted one-person (C1P) units of a similar design as HS1 were also provided in response to public demand for one-person PRH units at that time.

724. Nevertheless, with the change of times, public expectations for living condition and privacy are no longer the same. These units, with shared kitchen and bathroom facilities, have become unpopular. To reduce their vacancy rates, the Hong Kong Housing Authority (HKHA) has taken multiple measures over the years, such as lifting the age limit for HSC, ceasing the allocation of HS1 and C1P units and providing tenants with transfer incentives with a view to recovering and converting these units into ordinary PRH flats. After a lapse of nearly two decades, HD has yet to recover all HS1 and C1P units which are no longer available for allocation. As at the end of March 2023, around 60% of the partitioned rooms in these units were vacant; the vacancy rates of HS2 and HS3, which are still available for allocation, were also high at around 15% and 10% respectively.

725. Given the problem of short-term shortage of public housing in Hong Kong, it is incumbent upon HD to review the effectiveness of existing measures related to HSC and C1P units and make corresponding adjustments. While showing compassion and sympathy for the elderly



tenants affected, HD should also ensure more effective deployment of relevant PRH resources to meet the strong demand for public housing.

### **The Ombudsman's observations**

#### *(I) Too Many PRH Applicants Refused Allocation of HS2/HS3 Units*

726. HD allocates HS2/HS3 units to general PRH applicants in order to reduce the vacancy rates of those units. The Office of The Ombudsman (the Office), however, notes that most members of the public would not regard HSC with shared kitchen and bathroom facilities as ordinary PRH flats. HD lifted the age limit for HSC years ago and has continued to allocate these units, but in each of the past five years more than 1 000 PRH applicants refused the offers of HSC units. In 2021/22, only 3% of PRH applicants who had not joined the Express Flat Allocation Scheme (EFAS) accepted the offers of HSC units, indicating that these units were highly unpopular. The Office considers HD's practice obsolete to regard and allocate HSC with shared kitchen and bathroom facilities as ordinary PRH flats.

727. Currently, the vacancy rates of HS2 and HS3 are 15% and 9% respectively, higher than the overall target of below 1.3% under the key performance indicators set by HKHA for PRH vacancy rate, and also far higher than the vacancy rates of ordinary PRH flats. Given the short-term shortage of public housing, the Office considers that the vacancy rate at above 10% undesirable and the use of PRH resources has not been optimised.

728. Moreover, some PRH applicants have alleged that they were allocated units with shared kitchen and/or bathroom facilities despite not having applied for EFAS or HSC. These applicants felt aggrieved at HD's arrangements that refusing the offer would be counted as forfeiting one chance of flat allocation. Although the PRH application form specified that HSC might be allocated to non-elderly applicants whose household size is one or two persons, HD did not explicitly explain that tenants in

these units would have to share the kitchen and/or bathroom facilities with others.

### *(II) Too Few HS1 and C1P Tenants Applied for Voluntary Transfer*

729. Cessation of the allocation of HS1 and C1P units would facilitate HD's recovery and conversion of these units into ordinary PRH flats, yet the progress depended on whether elderly tenants were willing to transfer. Despite HD's incentives, the elderly tenants of HS1 and C1P units were not keen on voluntary transfer. In the past five financial years (from 2017/18 to 2021/22), voluntary transfer was not the major reason for elderly tenants to move out of their HS1 or C1P units.

730. Since HD has to wait for all the tenants to move out from a unit before converting it into an ordinary PRH flat, the vacancy periods of partitioned rooms in these units are often long. Around 80% of HS1 units and nearly 90% of C1P units had partitioned rooms left vacant for ten years or longer (involving a total of 498 partitioned rooms). Moreover, as at the end of March 2023, 96% of HS1 units and 100% of C1P units were let to just one household (involving a total of 370 units). In other words, almost all these units were occupied by only one household. Consequently, the progress of unit conversion is extremely slow, and the vacancy rates of these two types of units are persistently high.

### *(III) Welfare Worker Service of HSC Deviated from Original Purposes*

#### (1) Role of Welfare Workers in HS2/HS3 Altered

731. HKHA lifted the age limit for HSC so that single non-elderly tenants are allowed to live in HSC units. With those non-elderly or even young tenants, the role of welfare workers in HSC, whose task was looking after the daily needs of the elderly in the past, has also changed. In addition to caring for the elderly HSC tenants and performing general duties of building management, welfare workers are also expected to harmonise the

relations between two generations of tenants. It calls into question whether they have enough time to understand and care for every elderly tenant.

## (2) Welfare Worker Service for HS1 Ceased

732. The Government's original intent to introduce hostel-type HSC with 24-hour welfare worker service was to provide better care for elderly tenants. Welfare workers would help the elderly to overcome adaptation difficulties, and foster harmonious relations among tenants. However, the welfare worker service for HS1 ceased in November 2022.

733. Currently, all HS1 units are occupied by singleton elderly tenants. After the cessation of welfare worker service, these units are equipped with emergency alarm system, but the effect is entirely different from the regular care provided by welfare workers to the elderly tenants in the past. The living conditions of these HSC units become the same as that of ordinary PRH flats. The original intent of providing hostel-type accommodation for the better care of the elderly has gradually been defeated.

## *(IV) Failing to Explore Breakthrough Measures*

### (1) Targeting HS2/HS3 Units Still Available for Allocation

#### Launching New Allocation Scheme

734. The Office notes that nearly 90% of the applicants joining EFAS (who knew that they might be allocated or even select by themselves an HSC unit) accepted the offers of HSC units, reflecting that HSC units are more acceptable to applicants when they could make an informed choice.

735. While HD considered the existing EFAS conducive to the letting of HS2/HS3 units through the mode of self-selection by applicants, the effect is not entirely satisfactory, given the high vacancy rates and number of refused offers of these units. In the Office's view, if the situation

persists without significant improvement, HD should seriously consider tailoring a specific allocation scheme for the better utilisation of PRH resources, thereby optimising the use of available resources to benefit people in need.

#### Letting to PRH Applicants as Transitional/Interim Housing

736. HD opined that the letting of HS2/HS3 units with higher vacancy rates than ordinary PRH flats to PRH applicants as transitional housing is not feasible. Given that transitional housing and public housing are subject to different policies and modes of operation and management, handing over a small portion of vacant units to non-governmental organisations (NGOs) for refurbishment and operation as transitional housing might cause confusion and would not be economically efficient.

737. The Office recognises HD's concerns and worries, but the concept of using these units as transitional/interim housing is worth further exploring. If HD is concerned about the possible impact caused to PRH applicants on the waiting list, it can consider selecting one of the HSC blocks on a trial basis and letting some of the long-vacant units to applicants who have been waiting for PRH for years and living in substandard homes, thereby providing short-term accommodation for people with urgent housing needs.

#### Changing the Use

738. Currently, HKHA has no plan to convert or change the use of HS2/HS3 units. These units are allocated to PRH applicants on an ongoing basis. If existing arrangements remain unchanged, the occupancy rates of these units will hardly improve significantly. In the long run, HKHA should more proactively examine the needs for changing the use of HSC, or even conduct an assessment on specific HS2 units located in the ancillary facilities blocks of PRH estates (mostly above the commercial podium or carpark), and consider including those HS2 units in redevelopment plans so as to address the root of this issue.

## (2) Targeting HS1 and C1P Units No Longer Available for Allocation

### Promoting and Introducing More Transfer Incentives

739. Information showed that between 2016 and 2021, 306 HS1 units (or 61%) and 67 C1P units (or 29%) recovered were converted into flats suitable for six persons or more. Evidently, recovering these units can release more sizable flats for larger families and benefit more PRH applicants. The Office notes that HD launched the Phasing-out Programme over 20 years ago to encourage and facilitate the transfer of HS1 and C1P tenants to other PRH flats. Although the programme had certain effect initially, the progress of recovering these units has slowed down subsequently.

740. Meanwhile, for HS1 with the welfare worker service already ceased and C1P units without ancillary service all along, HD's home visit teams should continue to attend to the needs of elderly tenants therein. In addition, HD should approach and collaborate with the Social Welfare Department (SWD) or welfare agencies to provide suitable support to the elderly tenants of HS1 and C1P units according to their individual circumstances and welfare needs, and proactively persuade and encourage them to transfer.

741. HD has introduced the Full Rent Exemption Scheme for Elderly Households, under which elderly tenants of HS1 and C1P units aged 70 or above will be granted a one-off domestic removal allowance upon moving to a PRH flat of suitable size and full rent exemption for life thereafter. However, the response to the scheme has been lukewarm. The Office urges HD to review the effectiveness of existing schemes from time to time. To this end, HD's home visit teams can sound out the elderly tenants to understand their views about the scheme and other incentives during home visits, thereby evaluating the effectiveness of various schemes and formulating more attractive solutions to encourage voluntary transfer of elderly tenants of HS1 and C1P units.

### Following up on the Transfer of Non-elderly Tenants

742. HD's information shows that as at the end of May 2023, there are still seven households solely consisting of non-elderly members in C1P units. While HD has encouraged them to take up the entire unit through Automatic Offer scheme, no tenants vacated their units under the scheme in the past five financial years (from 2017/18 to 2021/22), reflecting that it is not effective. HD should continue to follow up on their cases actively to speed up the recovery of these units.

743. The Ombudsman recommended HD to –

- (a) review whether HS2/HS3 units should still be classified as ordinary PRH flats, and consider ceasing to allocate these units to general PRH applicants;
- (b) seriously consider tailoring a specific allocation scheme for HS2/HS3 if the vacancy rates of these units and the number of refused offers remain high without significant improvement;
- (c) in case of unsatisfactory results of the measures aforesaid, draw on the concept of transitional housing and consider selecting one of the HS2/HS3 blocks on a trial basis and allocating some of the long-vacant units as short-term accommodation for people with urgent housing needs;
- (d) review the effectiveness of the existing measures, and in case of unsatisfactory results of the measures aforesaid, consider in the long run the needs for changing the use of HS2/HS3, or even conduct an assessment on specific HS2 units and consider including those HS2 units in redevelopment plans;
- (e) before the implementation of the measures aforesaid, continue to step up publicity and disseminate information about HS2/HS3 to enhance the understanding of PRH applicants;

- (f) promote and introduce more transfer incentives, approach and collaborate with SWD or welfare agencies to proactively persuade and encourage the elderly tenants of HS1 and C1P units to transfer, such as rehousing in the same district;
- (g) consider instructing its home visit team to sound out the HSC and C1P tenants to understand their views about the Full Rent Exemption Scheme for Elderly Households and other incentives during home visits, thereby evaluating the effectiveness of various schemes and formulating more attractive solutions; and
- (h) continue to follow up on the cases of C1P households solely consisting of non-elderly members and speed up the recovery of these units.

### **Government's response**

744. HD accepted The Ombudsman's recommendations (e) to (h) and has taken follow-up actions. Details are as follows.

#### *Recommendation (e)*

745. HD has been promoting HS2/HS3 units to PRH applicants through various publicity channels to enable them to know more about the facilities, support and services provided in these units.

#### *Recommendation (f)*

746. HD will continue to work closely with SWD and welfare agencies to provide elderly tenants with different levels of support, including medical care, social activities and home support, with a view to enhancing their quality of life. To further encourage elderly tenants of HS1 and C1P units to join the transfer scheme, HD will refer tenants' cases to SWD or welfare agencies subject to their practical needs, so as to provide more community activities and services such as assisting elderly tenants in

relocating, encouraging them to join community activities, providing them with services such as meal delivery and home cleaning. The aim is to help them adapt to the new community as soon as possible by strengthening their social network and support services, thereby ensuring that they are properly rehoused.

*Recommendation (g)*

747. To speed up flat recovery, HD has been adopting a proactive approach to encourage HS1 and C1P tenants to participate in various transfer schemes. Since June 2022, HD has arranged on a rotational basis for its home visit team to visit all HS1 and C1P tenants to distribute leaflets and introduce to the tenants various voluntary transfer schemes, including Internal Transfer, Special Transfer, Full Rent Exemption Scheme for Elderly Households, Harmonious Families Transfer, as well as arrangements for eligible tenants of partitioned rooms under Automatic Offer scheme for C1P tenants to rent the entire unit etc., so as to familiarise them with the schemes. During the visits, the team took the initiative to ask the tenants about their intention of transfer and process their requests on a case-by-case basis, such as accommodating their requests for allocation (e.g. PRH flats in specified districts or estates) subject to the availability of resources. By November 2023, the team had visited all HS1 and C1P units and completed the first round of home visits. Among them, five households have applied for Full Rent Exemption Scheme for Elderly Households or Special Transfer. HD will continue to handle these cases, including the allocation of suitable flats to tenants who have applied for transfer, and follow up on the remaining cases in which tenants are still considering transfer.

748. Through the visits, HD has understood that most elderly tenants are reluctant to transfer mainly due to fear of adapting to new surroundings as a result of their advanced age. HD will address their housing needs with compassion and continue to liaise with welfare agencies and the District Services and Community Care Teams to further encourage these elderly



tenants to move to self-contained flats or HS2/HS3 units with welfare worker service.

*Recommendation (h)*

749. HD has continued to proactively follow up on these cases. The number of cases of C1P households solely consisting of non-elderly members has decreased from seven as at the end of May 2023 to four as at the end of December 2023. In one of these cases, the tenant is a physically disabled person who wishes to continue to reside in the current unit due to difficulty in adapting to a new environment. The remaining three tenants said they had adapted to the present living environment and were unwilling to move. HD will continue to follow up on these three cases and understand their needs in order to persuade them to accept transfer.

750. HD did not accept The Ombudsman's recommendations (a) to (d) for the reasons set out below.

*Recommendation (a)*

751. HKHA's mission is to provide PRH to low-income families who cannot afford private rental accommodation. HS2/HS3 PRH units are public housing resources and provide applicants with an additional choice of different types of PRH. Currently, HKHA would provide each eligible PRH applicant a maximum of three housing offers. Applicants may decide whether to accept the offers in accordance with their individual preferences and circumstances. Although HS2/HS3 units may not be the first choice for PRH applicants, the allocation of these units to PRH applicants provides an opportunity for early intake for singletons and two-person households with urgent housing needs who wish to improve their living environment. HSC units also cater to the needs of PRH applicants who wish to move into HSC, such as the elderly and the chronically ill who need to be housed in hostel-type accommodation with communal facilities and warden service. With the number of PRH applicants far exceeding PRH supply at present, HD considers it inappropriate to cease the

allocation of HS2/HS3 units to PRH applicants at this stage as it will reduce the number of PRH units available for allocation and lengthen applicants' waiting time for PRH allocation.

752. Meanwhile, HD has been promoting HS2/HS3 units to PRH applicants through various publicity channels to enable them to know more about the facilities, support and services provided in these units. HD has produced an information video on HSC and uploaded it onto HKHA's website and Facebook page for public viewing, and broadcast it at the lobby of the Applications Sub-section and during the briefing sessions held prior to the detailed vetting interviews of PRH applicants. Moreover, HD has made available information leaflets on HSC at the Applications Sub-section and the Cash Allowance Office for collection by applicants. The leaflets are also distributed to applicants who have been allocated HSC units and those attending the briefing sessions. A QR code for the HSC information video has also been included in the Public Rental Housing Application Guide for PRH applicants' advance viewing of the relevant information before they apply.

*Recommendation (b)*

753. The existing EFAS is considered conducive to the letting of HS2/HS3 units, which are less popular, to eligible PRH applicants through the mode of self-selection to facilitate early intake of PRH flats. In the EFAS launched in the past five years, all HS2/HS3 units on the list were selected by PRH applicants. Nearly 90% of the eligible PRH applicants accepted the allocation after flat selection. Therefore, HD considers it more efficient and cost-effective to continue allocating flats to applicants in need through the mode of self-selection under EFAS rather than by launching similar allocation schemes.

754. To enable applicants joining EFAS to better understand the facilities, support and services of HS2/HS3 units, HD has shown the relevant video and distributed information leaflets on HSC at briefing sessions on flat selection. HD has also included the QR code for the HSC

information video in the Application Guide and Arrangements and Points to Note for Flat Selection in EFAS 2024 for applicants' advance viewing of the relevant information before they apply for flats and attend flat selection.

*Recommendation (c)*

755. HD considers that existing PRH resources (including HSC) should be allocated to families or individuals on the waiting list according to the established mechanism as far as practicable, so as to more directly resolve their difficulties in the long run. Given that the policies and modes of operation and management of transitional housing and HA's general public housing are different, letting these units as transitional housing would require identifying suitable tenants and drawing up a separate set of fair and transparent eligibility criteria. As most of the existing HS2/HS3 units have already been let out, handing over a small portion of scattered and vacant units to NGOs for refurbishment and operation as transitional housing and provision of social services would cause confusion and involve a lot of administrative procedures and costs. Apart from not being economically efficient, it will affect the direct allocation of these units to families or individuals on the waiting list as long-term accommodation.

*Recommendation (d)*

756. The past five years of EFAS yielded satisfactory results in the allocation of HS2/HS3 units, and with HD's enhanced publicity on HSC, it is believed and expected that the allocation rate will further increase. Therefore, HD will not consider changing the use of HS2/HS3 at this stage. As for the redevelopment recommendation, HKHA will consider the actual circumstances in a prudent manner in accordance with its policies and principles when deciding whether to redevelop individual PRH estate. Although the redevelopment of PRH estates may increase the supply of public housing in the long run, there are also quite a number of projects which led to a reduction of overall number of units. Besides, redeveloping PRH estates will unavoidably reduce the number of units available for

allocation to PRH applicants. Therefore, for the time being, HD will continue to strive to increase the allocation rate of HS2/HS3 units so that PRH applicants can move into PRH flats as soon as possible.

#### *Other Comments*

757. HKHA has all along been reviewing the situation of HS1 and C1P units and taking multiple measures to expedite the conversion of these units into ordinary PRH flats for letting in the light of social development and the changing housing needs of the public. As at the end of June 2024, the number of partitioned rooms in HS1 units has been reduced from about 5,600 in 2006 to only about 430 at present (involving about 170 PRH flats), while that of C1P units has been significantly reduced from about 5,800 in 2000 to only about 300 at present (involving about 120 PRH flats), accounting for an extremely small portion of the 800,000-odd PRH flats in Hong Kong. This indicates that the measures taken have been effective to a certain extent. As the vast majority of the remaining tenants of HS1 and C1P units are elderly, HD will continue to address their housing needs in a sensible and compassionate manner.

## **Leisure and Cultural Services Department**

### **Case No. DI/465 – Repairs and Maintenance of Outdoor Recreational and Sports Facilities under Leisure and Cultural Services Department**

#### **Background**

758. The Government has been devoting considerable resources in recent years to improve the design and utilisation of public play spaces. The quality, suitability and safety level of outdoor recreational and sports facilities have substantial impact on raising the living quality of the general public. As the management authority for a huge number of outdoor recreational and sports facilities, the Leisure and Cultural Services Department (LCSD) has a duty to ensure that the facilities are in good condition and to arrange for their timely repairs and maintenance so that they can be used by the public safely for a sustained period.

#### **The Ombudsman's observations**

##### *(I) Lack of Specific Guidelines for Facilities Inspection and Inadequate Safety Awareness of Frontline Staff*

759. LCSD has formulated departmental guidelines instructing frontline staff to inspect recreational and sports facilities periodically, drawn up procedures for reporting damage in facilities, and provided relevant on-the-job training to frontline staff on a regular basis to enhance their knowledge about the condition and inspection of the facilities. Nevertheless, the investigation of the Office of The Ombudsman (the Office) found that some LCSD frontline staff had failed to report in a timely manner damage in recreational facilities and safety mats, and/or implement suitable temporary safety measures. This reflected a failure to fully understand the points to note during facilities inspections and the relevant safety requirements, as well as an inadequate awareness in reducing potential safety hazards among some LCSD staff.

760. In the Office's view, LCSD should list out on the routine inspection form the facilities in a venue such that frontline staff can follow the list to inspect the facilities one by one during routine inspections and record the inspection results accordingly to obviate omissions. LCSD should also compile a technical practice guide for facilities inspections using wording intelligible to staff at all ranks and written from an execution perspective to guide the frontline staff. Objective or measurable standards and illustrations of the physical objects should be provided as far as possible with a view to assisting frontline staff to accurately assess the damage spotted in facilities and evaluate the need to implement temporary safety measures. Furthermore, LCSD should step up training on facilities inspection to ensure understanding of the content of the practice guide by its staff so as to bolster their relevant knowledge and skills.

*(II) Monitoring of Overall Repairs Procedures Inefficient*

Improper Recording of Inspection Results and Reporting of Damage

761. The routine inspection forms and damage report forms for the facilities at different LCSD venues are filed and archived by individual District Leisure Services Offices to which a venue belongs, and the LCSD headquarters could not easily and systematically monitor the progress of the various facilities repair cases. In early 2023, LCSD started to develop a computer system that enables electronic recording of inspection results of and repairs for outdoor venues. Given the sheer number of facilities under LCSD management, the Office considered it imperative that LCSD make use of smart technologies to consolidate and manage its facilities repair efforts. LCSD should follow up closely on the progress of developing the relevant computer system, and ensure that the relevant staff (including frontline venue staff, management staff and works staff responsible for arranging the repairs) can inspect in real time the records relating to facilities inspection and repairs, and follow up on the repair works in a timely manner.

### Systematic Follow-up on Cases of Repairs Suspension Necessary

762. Depending on the actual operation of a venue or for some other reasons, LCSD's works staff may from time to time put on hold the repair works for facilities and continue to open the facilities in question to public use under safe circumstances. LCSD estimated that each year, there are as many as 300 to 400 such cases where repairs for damaged facilities is suspended, sometimes for as long as half a year. The Office opined that LCSD should compile a watch list for cases of repairs suspension (especially before full deployment of the aforementioned computer system) and devise a follow-up system for such cases to regularly inspect the damage in the facilities involved. This would not only strengthen facilities management for better safety risk control, but also help preclude omissions or delays in follow-up.

### Ineffective Monitoring of Works Progress

763. The LCSD venue staff and LCSD's internal maintenance teams responsible for coordinating and handling repairs for outdoor recreational and sports facilities would monitor and follow up on the progress of repair works. Reminders or even warnings would be issued to contractors when delay in repairs is found. However, the Office noticed that warning letters were often issued only after the expected works completion date. In the Office's view, once a works order is issued to the contractor, LCSD should monitor the commencement and progress of the repair works more effectively. For instance, LCSD can require the contractor to proactively report the different works procedures and works stages and set a last works date for the contractor in a timely manner. It should also clearly indicate to the contractor that decisive actions (such as cancelling the works order and reflecting the actual situation in the appraisal reports) would be taken in case the repairs are not completed on time, such that the possibility and magnitude of delay in the works can be minimised.

*(III) Term Contract Arrangement Not Well-Considered and Not Conducive to Improving Efficiency and Quality of Repair Works*

764. LCSD has outsourced the repairs and maintenance works for outdoor recreational and sports facilities and, by districts, awarded two term contracts to contractors. Nevertheless, the two term contracts were invariably awarded to the same contractor in recent years. We consider that if LCSD can engage more than one term contractor simultaneously, the impact on repair and maintenance works can be diminished when one of the contractors is unable to provide normal services. In this light, LCSD should conduct a major review of the term contract arrangement to explore a suitable alternative in appointing term contractors so as to raise the efficiency and quality of LCSD's repair works. It should also adopt options that allow more flexible arrangements in engaging term contractors to take up repairs for facilities. This can reduce the risk of over-reliance on one single contractor on the one hand and bring about greater flexibility in assigning repair works to contractors on the other. Healthy competition amongst contractors can also boost the quality and efficiency of their service.

*(IV) Stronger Monitoring of Contractors Called For*

765. The Office's investigation found that between 2017 and 2022, the actual time taken by LCSD to complete repairs of facilities was about two months, much longer than the time limit (14 to 60 days) LCSD has set for completing general repairs. Delay in repair works was rather serious between 2018 and 2022, during which around a quarter to half of the repair works involved contractors' failure to complete the repairs by the expected completion date. The Office opined that LCSD needs to understand the specific reasons for delay in each repair case. It should consider adding to the relevant computer system a function to extract statistical data that are useful for examining and analysing the root causes of the problems, then formulate specific improvement measures to help the contractors raise their efficiency and help LCSD strengthen its monitoring of the contractors.



*(V) Unclear Records on Performance Appraisals for Contractors and Guidance Should Be Provided to Works Staff*

766. Since November 2019, LCSD has adopted the Development Bureau (DEVB)'s mechanism for monitoring approved public works contractors to grade the contractors' performance and been submitting the appraisal reports to the DEVB. Yet, the Office found that in the past, LCSD had failed to give a full picture of the contractors' actual performance in the appraisal reports. For instance, the appraisal reports neither mentioned the number of repair works that had involved delay or the number of written warnings issued to the contractor during the appraisal period, nor provided clear, specific and substantial justification for the grade given. This would undermine the effectiveness of the monitoring mechanism and related measures.

767. While LCSD had since 2021 made detailed records on the aspects of the contractors' performance that were considered "marginally satisfactory" or "poor", the Office opined that for the appraisal reports to always accurately reflect the contractors' performance, LCSD should provide the works staff responsible for evaluating contractors' performance with clear guidelines, including requiring them to provide objective data in the appraisals.

*(VI) Consider Using Smart Technology to Facilitate Reporting of Facilities Damage by the Public*

768. About 60 percent of LCSD's recreational and sports venues do not have on-site staff. Members of the public who discover damaged facilities can notify the venue in question during office hours or call the Government hotline 1823 for referral. The Office opined that LCSD can consider making use of smart technology that allows people to report damaged facilities for LCSD's prompt follow-up actions, for example, by scanning the QR code attached to a recreational and sports facility or using instant communication software.

769. The Ombudsman recommended LCSD to –

- (a) consider compiling a technical practice guide on facilities inspection using wording intelligible to staff at all ranks to guide the frontline staff. Objective or measurable standards and illustrations of physical objects should be provided as far as practicable to assist them to judge accurately the damage spotted in facilities and assess the need to implement temporary safety measures;
- (b) instruct venue staff to list out on the routine inspection form the facilities in a venue, together with Chinese explanations, so that frontline staff of the venue can follow the list to inspect one by one the facilities during routine inspections and record the results accordingly to obviate omissions;
- (c) strengthen facilities inspection training for frontline staff to ensure their understanding of the relevant inspection guidelines and their safety awareness in implementing temporary safety measures for damaged facilities or cordoning off those facilities. Refresher training courses should also be arranged for them regularly to solidify their relevant knowledge and skills;
- (d) follow up closely on the development of the computer system designed for facilities inspection and recording of repairs, and ensure that in the future, the relevant staff (including frontline venue staff, management staff and works staff responsible for arranging the repairs) can inspect in real time the records relating to facilities inspection and repairs, as well as follow up on the facilities repairs in a timely manner;
- (e) compile a watch list for cases of repairs suspension and draw up a follow-up system for such cases;

- (f) monitor more effectively the progress of facilities repairs and draw up guidelines to instruct frontline staff how to execute the relevant tasks;
- (g) revisit the current term contract arrangement, including to avoid awarding all term contracts to one single contractor at the same time, and in the long run explore options that allow more flexible arrangements for engaging term contractors to take up facilities repair works so as to avoid over-reliance on one single contractor and bring about greater flexibility in assigning repair works to contractors;
- (h) probe and analyse the reasons for works delay by contractors, collect data relating to work delay with a view to identifying the root causes and formulating specific improvement measures to help raise the efficiency of repairs by contractors and effectiveness of monitoring of contractors by LCSD;
- (i) consider installing a function in the relevant computer system to extract statistical data of reference value for research and analysis so as to strengthen monitoring of the overall repairs process;
- (j) provide clear appraisal guidelines to the works staff who evaluate contractors' performance such that the appraisal reports to be submitted to DEVB can reflect contractors' performance more accurately and serve as reference for LCSD in contractor selection in the future; and
- (k) consider making use of smart technology to facilitate public report of damaged recreational and sports facilities under LCSD.

### **Government's response**

770. LCSD accepted The Ombudsman's recommendations and has taken or will take the following follow-up actions.

*Recommendation (a)*

771. LCSD's Guidelines on Inspection and Repair of Playground Equipment (the Guidelines) have been updated. Images captured from training videos on inspection of equipment safety and photos of common damage in playground equipment are included, which can serve as specific examples for reference. These are available in both Chinese and English, making it easier for staff at all ranks to understand, assisting them to ascertain the damage in equipment accurately and assess the need for implementing temporary safety measures.

*Recommendation (b)*

772. The routine inspection form in the Guidelines has been updated. The play as well as recreation and sports equipment commonly available in recreation and sports venues, as well as common damage items of such equipment are listed. The Chinese version of the form is also provided so that frontline staff can follow the list therein to inspect equipment items one by one during routine inspections and better record the results accordingly to obviate omissions.

*Recommendation (c)*

773. The training for frontline staff is ongoing. Intranet links of the course materials and training videos on playground equipment inspections have been provided in the Guidelines. This makes it easier for frontline staff to review the course content on Intranet to consolidate relevant knowledge and skills. In addition to organising training courses on playground equipment inspections on an ongoing basis, LCSD has also provided specific examples in internal training courses for reference. This allows frontline staff to better understand how to implement temporary safety measures for damaged park and playground equipment or cordon off such equipment, thereby enhancing their safety awareness in this regard. LCSD will continue to offer training for frontline staff and make

them well-versed with the job requirements, thereby facilitating them to take appropriate actions on discovery of damaged equipment.

*Recommendation (d)*

774. LCSD will follow up closely on the progress made to develop the computer system. The pilot run of the relevant system was rolled out in four LCSD venues in the third quarter of 2024 and its effectiveness will be examined in six months' time. Extending the system to other venues will be considered, subject to availability of resources.

*Recommendation (e)*

775. LCSD has compiled a watch list for cases of repairs suspension with the aid of existing computer programmes, and devised, together with venue staff and contractors, repair works schedules for such cases. Works staff will review the watch list on a monthly basis and follow up on the cases during regular works progress meetings with contractors. In addition, works staff will also maintain close liaison with venue staff to step up inspection and closely monitor the conditions of equipment with a view to ensuring timely completion of repair works.

*Recommendation (f)*

776. LCSD's internal working guidelines have been updated with time frames of various monitoring processes introduced for clarity sake. To minimise the possibility and extent of works delay, LCSD has reminded works staff to report contractors' performance issues and urge the contractors in question to take effective follow-up measures immediately should persistent works delay or substandard works are noted during site inspections and that the situation continues without reasonable explanations despite advice given to the contractors. In the event of further failure on the part of the contractors to make improvements or provide justified reasons upon reminders, the Maintenance Team will issue warning letters to the contractors immediately and reflect their

underperformance in Contractor's Performance Report in a faithful manner. LCSD has received more than 2,200 defect report forms for facilities in 2024 (up to September). The average time required for handling repairs of facilities has been reduced substantially by over 40%, from 61.6 days in 2022 to 35 days in 2024.

*Recommendation (g)*

777. The new repair and maintenance contracts of playground equipment was awarded in October 2024. With reference to similar contracts awarded by DEVB and LCSD, the current contractual terms for maintenance and repair services have been refined. LCSD has imposed restrictions in terms of tender awarding such that the two contracts must be awarded to two separate contractors, which are not related, directly or indirectly, to each other. This is to reduce the risks of failure on the part of a single contractor to deliver normal services owing to poor performance.

*Recommendation (h)*

778. LCSD will make use of the updated routine inspection form in the Guidelines and collect information including the most commonly damage items as well as the types, locations and frequencies of damage in playground equipment to examine and analyse the overall repair process to help improve repair efficiency. LCSD will also implement targeted improvement measures such as storing those equipment parts vulnerable to damage in advance so as to enhance overall repair efficiency.

*Recommendation (i)*

779. To step up monitoring of the overall repair process, LCSD has added a function to the information management computer system under development which extracts statistical data of reference value, including the types, locations and frequencies of damage in equipment of venues, as well as dates of reports from frontline officers and issuance of works orders

by works staff. Having such data is helpful in keeping better track of progress in the overall repair process and explore targeted improvement measures with a view to improving overall repair efficiency. The pilot run of the relevant system was rolled out in four LCSD venues in the third quarter of 2024 and its effectiveness will be examined in six months' time. Extending the system to other venues will be considered, subject to availability of resources.

*Recommendation (j)*

780. LCSD has updated its internal guidelines under which an appraising officer can make reference to the content and number of warning letters issued to contractors under different aspects within a reporting period as an objective criterion for assessing the contractor's performance in that quarter. It ensures that the performance reports to be submitted to DEVB can reflect the contractor's performance more accurately and can provide reference for LCSD's future selection of contractors. The number of works orders handled by Maintenance Term Contractors, that involved delay over 61 days, has been reduced substantially in 2024 by about 65% when compared with 2022.

*Recommendation (k)*

781. LCSD has, in recent years, been proactive in promoting intelligent park design with the use of smart technologies. In addition to developing an information technology system to record inspections on play equipment, LCSD has progressively introduced smart fitness equipment to outdoor recreation venues under its management. Such equipment allows users to access data on their physical activities, while making it possible for LCSD's venue staff to monitor its usage remotely, thereby facilitating them to manage such equipment.

782. Separately, LCSD will, on a pilot basis, provide contact details of venues and QR codes directing to LCSD's enquiry email on signages in transformed public play spaces. This offers greater convenience for

members of the public to report damaged equipment and facilitates LCSD to arrange follow-up actions as soon as possible. Such QR codes are anticipated to be provided in transformed public play spaces in the first quarter of 2025. Upon review of the effectiveness of the pilot scheme, LCSD will implement the arrangements in phases in other venues with similar equipment.



## **Social Welfare Department**

### **Case No. DI/457 – Pilot Scheme on Community Care Service Voucher for the Elderly**

#### **Background**

783. The Government's current elderly care policy is to promote "ageing in place as the core, institutional care as backup". Introduced in September 2013, the Pilot Scheme on Community Care Service Voucher (CCSV) for the Elderly (the Pilot Scheme) supported frail elderly persons to age in place under the mode of "money-follows-the-users". With its second and third phases entered upon in October 2016 and October 2020 respectively, CCSV has been introduced for over a decade. Based on their individual needs, holders of CCSVs can receive day care service and home care service offered by service providers recognised by the Social Welfare Department (SWD).

784. The Government has continued to review the Pilot Scheme and take enhancement measures, which include increasing the number of CCSVs, adopting more flexible service modes and enlisting more organisations to provide services. Meanwhile, there were public views that some elderly persons had insufficient knowledge of the Pilot Scheme while some had never used the services with the vouchers they received. Government data show that between 2013-14 and 2020-21, the total number of CCSVs increased from 1,200 to 8,000. Nevertheless, as at 2020-21, more than 20% of the total number of elderly persons receiving vouchers over the years had left the Pilot Scheme without ever using the services. Moreover, the scheme had been at the try-out stage despite long years of operation.

785. In view of the above, The Office of The Ombudsman (the Office) launched this direct investigation to examine the operational arrangements for the Pilot Scheme, including its service planning, the workflow of processing applications, measures to assist elderly persons to select service

providers, monitoring of service quality and utilisation rates, as well as promotion and publicity efforts for the services, and to make recommendations to the Government for improvement.

## **The Ombudsman's observations**

### *Applying for and Using CCSVs*

786. Elderly persons eligible for CCSVs must have been assessed and recommended for community care services (CCS) or residential care services (RCS) under the Standardised Care Need Assessment Mechanism for Elderly Services<sup>8</sup>, and are waitlisted for subsidised CCS and/or RCS on the Central Waiting List for Subsidised Long Term Care (LTC) Services (Central Waiting List) without having received any kind of such services.

787. In 2024-25, the monthly floor and ceiling values of CCSVs are \$4,372 and \$10,455 respectively. Subject to their individual needs, elderly persons can purchase any service packages offered by recognised service providers (RSPs) that are priced between the floor and ceiling voucher values. Subject to the voucher values, RSPs offer services to elderly persons on a monthly basis and apply to the Government for reimbursement of the actual costs. CCSV values are adjusted annually based on the Composite Consumer Price Index.

788. CCS are purchased in the mode of co-payment by voucher holders under the “affordable user pays more” principle. Elderly persons who can afford less will receive more Government subsidies. The service package values include the amount of co-payment to be made by elderly users. SWD will determine the co-payment category of elderly persons by assessing their financial condition taking into account the household income of the elderly persons and their residing family members and with

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<sup>8</sup> When applying for LTC services, elderly persons are required to undergo the Standardised Care Need Assessment by recognised assessors (including social workers, nurses, occupational therapists, physiotherapists, etc.). When the LTC needs of the elderly are ascertained, they will be matched with appropriate LTC services. CCS and RCS are two major types of subsidised LTC services.

reference to the quarterly Median Monthly Domestic Household Income released by the Census and Statistics Department. There are six categories of co-payment ranging from 5% to 40% of the service package values.

789. Under the Pilot Scheme, there were three service delivery modes, namely day care centre service (“centre-based” mode); home care service (“home-based” mode); and “centre-based” and “home-based” service (“mixed mode”). The scope of services offered to CCSV holders included rehabilitation exercise, nursing care, meal service, personal care, residential respite service, speech therapy service, etc. Voucher holders may switch RSPs depending on their needs without SWD’s approval. As at June 2024, there were about 270 RSPs operated by non-governmental organisations receiving Government subventions, non-profit-making organisations/social enterprises and private organisations having experience in providing care services for the elderly.

790. The Chief Executive stated in the 2022 Policy Address that the Pilot Scheme would be made permanent in the third quarter of 2023 and the number of CCSVs will increase in phases to 12,000 in 2025-26. Its coverage would also be expanded to include rental of assistive technology products.

791. Having examined the work of SWD, the Office has the following comments and recommendations.

#### *The Pilot Scheme Has Been in Operation and under Review for Years*

792. SWD first adopted the “money-follows-the-users” mode in the Pilot Scheme, aiming to enhance services through market competition among RSPs. From the perspective of public finance, the principles of “money-follows-the-users”, “affordable user pays more” and “co-payment” can help achieve financial sustainability of CCS. CCSV has been introduced for over a decade. SWD explained that the market was not yet developed when the Pilot Scheme was initially introduced and there were not many RSPs. SWD had spent time reviewing the scheme and

adopted various enhancement measures at different phases in order to explore how best to utilise the new mode and to enhance the scheme progressively.

793. In the Office's opinion, as the operation of the Pilot Scheme was essentially different from that of traditional subsidised services, both the market and elderly persons needed time to understand and familiarise themselves with it. For the first and second phases of the Pilot Scheme, the Sau Po Centre on Ageing of The University of Hong Kong had indeed offered multiple views and suggestions, which were taken on board by SWD in formulating enhancement measures for the next phase of the scheme. Some of the measures such as extending the eligibility of RSPs to include private organisations, increasing the supply and diversity of services, expanding the coverage of the scheme from eight districts to all 18 districts throughout the territory and strengthening local collaboration could not be achieved immediately. Hence, the Office found it understandable for SWD to have taken a relatively long period of time to test the measures and operation of the Pilot Scheme for enhancement.

*A Multi-pronged Approach Is Needed to Improve the Utilisation Rate*

794. SWD's statistics showed that the utilisation rate, calculated as the percentage of the number of voucher holders actively using the services over the quota of vouchers, was around 60% in Phase 2 of the Pilot Scheme, and that in Phase 3 increased from 59% in 2020-21 to 78% in 2021-22 and further to 86% as at the end of December 2022. The utilisation rate has been gradually improving, which should be attributable to the fact that since Phase 3, SWD has started inviting all eligible elderly persons on the Central Waiting List to apply for CCSVs and issuing more vouchers than the quota under the scheme. While the quota for Phase 3 was set at 8,000, there were 10,046 valid vouchers issued by SWD as at the end of December 2022, of which 6,851 were being used by participants to purchase services offered by RSPs. SWD's proactive steps to send invitation letters to eligible elderly persons and issue CCSVs have been

effective in lifting the utilisation rates, thus better utilising the voucher quota. The Office found SWD's practice worthy of recognition.

795. On the other hand, the Office's investigation revealed that many elderly persons waitlisted for subsidised LTC services on the Central Waiting List actually applied for CCSVs to meet potential needs before they were granted traditional subsidised services. In fact, this is in line with SWD's positioning of CCSVs as an additional option for elderly persons waitlisted for services on the Central Waiting List to receive assistance with the CCSVs issued when necessary.

796. As SWD pointed out, RSPs apply for reimbursement of subsidies on an accountable basis under the Pilot Scheme. Unused CCSVs, therefore, will not waste public money or occupy resources of RSPs. The Office understood that unused CCSVs will not obstruct the turnover of vouchers or SWD's issuance of vouchers to elderly persons in need as long as the voucher holders do not outnumber the voucher quota. Nevertheless, for maintaining and even improving the utilisation rate of CCSVs, the Office considered that SWD should continue with its endeavours to encourage eligible elderly persons newly added to the Central Waiting List to apply for CCSVs, and regularly (e.g. once every year) approach those voucher holders who have not used the vouchers received. This would facilitate SWD's collation of information for analysis and identification of potential areas for service improvement, while enabling SWD to re-examine elderly persons' service needs in collaboration with the responsible workers, so as to help them better utilise the vouchers, including choosing suitable RSPs or service packages.

797. The Office also recommended that SWD obtain from RSPs the waiting list for their services, approach other RSPs and the voucher holders on the list and attempt to make matching suggestions so that those elderly persons can receive necessary services as soon as possible.

798. Moreover, by the time the Office released the investigation report in August 2023, SWD indicated that it was exploring the feasibility of

allowing voucher holders to purchase services from more than one RSP concurrently to allow more flexibility under the Pilot Scheme. SWD expected the measure to be implemented in the third quarter of 2023. The Office recommended that SWD expedite its study and test for early implementation so that elderly persons can enjoy services under the scheme more flexibly, thereby improving the utilisation rate of CCSVs.

*Supply of “Centre-based” Services Should be Increased*

799. According to SWD’s information, RSPs offered a total of 12,689 home care service (“home-based” services) places in the third phase of the Pilot Scheme as at the end of December 2022. While there were a total of 4,712 elderly persons using “home-based” services and the “mixed mode” of “centre-based” and “home-based” services offered by RSPs in their respective districts, 4,323 elderly persons were waitlisted for “home-based” services on the Central Waiting List. The Office assumed that the sum of these two types of elderly (i.e. 9,035 persons) represented the aggregate demand for “home-based” services. The capacity of “home-based” services can abundantly accommodate the needs of voucher users and those on the Central Waiting List.

800. As regards the supply and demand at the district level, some districts had excessive demand for “home-based” services from elderly persons using the services provided by RSPs in their respective districts and those residing in the districts and waitlisted for such services. Those districts were the Central and Western District, Islands District, Wong Tai Sin District, Sha Tin District, the North District and Yuen Long District. On the contrary, Wan Chai District, Sham Shui Po District, Kowloon City District and Yau Tsim Wong District appeared to have surplus supply of “home-based” services (each with over 500 places more than needed). Nevertheless, as many RSPs offer cross-district “home-based” services to elderly persons from various districts and RSPs cannot charge users extra cost for travelling to the districts they are allowed to serve, using cross-district services does not incur extra transportation and time costs for elderly users. The Office believed that the demand and supply of “home-

based” services can maintain a balance among districts given service places of RSPs of different districts can flexibly complement one another.

801. As at the end of December 2022, 4,191 places for day care centre services (“centre-based” services) were provided under the Pilot Scheme. While there were 3,518 users of “centre-based” services and “mixed mode” of “home-based” and “centre-based” services, 1,771 persons were waitlisted for “centre-based” services on the Central Waiting List, making up a total of 5,289 elderly persons in need of “centre-based” services. SWD explained that a place for “centre-based” services could be used by more than one voucher holder in different time slots or on different days. That means the total number of service places might not be insufficient to meet the demand. In the absence of detailed information on the utilisation status of each service place, the Office could not comment on the actual situation of demand and supply of service places. Considering only the total number of users, there was still a surplus of service places.

802. As regards the demand and supply of “centre-based” services at the district level, there was a deficit of service places in six districts out of the 18 districts over the territory, namely the Eastern District, the Southern District, Wong Tai Sin District, Sha Tin District, Islands District and Yuen Long District, assuming that one service place could accommodate 1.5 elderly persons. This showed that the supply of “centre-based” service places in those districts could not meet the demand of voucher holders using services of RSPs and elderly persons waitlisted for such services in those districts. This observation is generally in line with SWD’s data on the number of voucher holders in various districts using cross-district “centre-based” services. On the other hand, in Sham Shui Po District, Yau Tsim Mong District, Kowloon City District and Kwai Tsing District, the supply of relevant services was relatively sufficient.

803. The Office understood that there are more constraints in transport arrangements and premises for day care centres. For example, RSPs must provide an indoor area of 5.25 square metres for each “centre-based” service place. Hence, only a few RSPs could offer cross-district “centre-

based” services. The “centre-based” service supply of traditional subsidised services is subject to similar constraints. As such, it is more difficult to balance the demand and supply of “centre-based” services at the district level.

804. SWD regularly examines the adequacy of CCSV services in various districts and provides updates on service availability at the district level in sharing sessions and briefings for RSPs. Besides, SWD encourages organisations to offer more services and extend their service modes in districts with a larger elderly population or greater service demand. In view of the insufficiency of “centre-based” service places in a number of districts, coupled with the Government’s initiative of making permanent the Pilot Scheme and increasing the quota progressively, the Office recommended that SWD continue to regularly provide up-to-date statistics and information about the supply and demand of CCSV services in each district to existing and potential RSPs. SWD should also invite more organisations to offer services or extend the modes and coverage of services in districts with keen demand so that more “centre-based” service places can be provided to address the needs of elderly users inside and across districts.

805. For analysing the demand and supply at district level, the Office had requested SWD to provide statistics on the number of active voucher holders residing in each district. SWD explained that such analysis should not rely on one single factor such as the difference between the number of active voucher users living in each district and the service places provided in that district. SWD takes into account a number of factors when analysing the local demand and supply of services. These factors include the size of the elderly population, the median household income, the number of inactive voucher holders (categorised by the address of voucher holders), the number of voucher holders using service provided in a district (including elderly persons living in that district and those coming from other districts), the utilisation rates of RSPs’ services and changes in the rates of each district.



806. The Office accepted SWD's view that whether the supply of services could meet the demand should not be judged by one single factor like the number of active voucher holders residing in a district but using services in other districts. The Office also found it reasonable for SWD to have used the aforesaid data and information to examine the demand and supply of services at the district level. Nevertheless, the Office considered that the number of active voucher holders residing in each district should reflect more directly the demand for CCSV services within that district. As a matter of fact, the number of inactive voucher holders in each district (categorised by the address of voucher holders) could only reflect the district demand indirectly because most of the inactive voucher holders do not have immediate needs for such services. Moreover, the number of voucher holders using services provided in a district (including elderly persons residing in that district and those coming from other districts) has its limitation because that number of voucher holders is unlikely to exceed the service places offered by RSPs in the district, making it hard to reflect any excessive demand for service places. If SWD considers that the above two pieces of data could reflect the district demand for services, then the number of active voucher holders residing in each district (including elderly persons using services within their district or across other district(s)) should be regarded as even more significant in reflecting the district demand. The Office recommended that SWD incorporate such data in the analysis of the demand and supply of services at the district level for a more comprehensive result.

*Elderly Persons without Carers Should Be Given More Assistance*

807. There were views that elderly persons might not understand the complicated operation of the Pilot Scheme. Hence, they did not know how to use the vouchers received, or they would purchase or use the wrong services. They might also be lured to purchase unnecessary services by co-payment. As a result, some suggested that SWD introduce a case management system to the Pilot Scheme and assign an independent case manager to follow up on the care needs of each voucher holder, and assist the elderly persons and their carers to identify suitable RSPs and service

packages. The Office had also received similar views from members of the public.

808. According to the arrangement of the Pilot Scheme, the RSPs selected by the voucher holders have to follow up on their care needs and arrange suitable services for them. RSPs should formulate an individual care plan (ICP) for a voucher holder and devise a service package based on the wish of the elderly person and sign a service package agreement with him/her under the supervision of professionals (i.e. enrolled/registered nurses, physiotherapists, occupational therapists or registered social workers). After starting the provision of service, RSPs should also review the care needs of the elderly person at regular intervals (at least once every six months) so as to modify the service package.

809. SWD requires that RSPs must respect the choice and will of voucher holders in the aforesaid process. SWD has also set out guidelines on how RSPs should formulate and implement ICPs for voucher holders. When conducting service monitoring visits at the premises of RSPs, SWD's staff will randomly check the ICPs of voucher holders, review their reports and service records to ascertain whether the RSPs have provided services and completed the ICPs as agreed.

810. Moreover, SWD set up a Centralised Team in the second phase of the Pilot Scheme to support voucher holders in collaboration with responsible workers<sup>9</sup>. SWD considered that, compared with other external organisations, the Centralised Team, being familiar with the operation of the Pilot Scheme, should be able to support voucher holders and responsible workers in a more direct and focused manner. Voucher holders and carers can approach responsible workers or the Centralised Team for assistance, which includes answering their enquiries, helping them to decide whether they should apply for CCSVs, selecting RSPs and service

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<sup>9</sup> Responsible workers refer to social workers working for the service units under the Government or non-governmental organisations, who are responsible for assisting elderly persons by following up on their registration and allocation of LTC services.

packages that best suit their needs, and helping elderly persons switch RSPs where necessary.

811. There were more than 10,000 voucher holders under the Pilot Scheme. The Office understood that it requires tremendous manpower and resources to provide individual case management service to such a large number of elderly persons, no matter it is SWD or other organisations that take up the work. Having weighed the pros and cons, SWD decided that the responsibility of assisting voucher holders and following up on their LTC needs should be shared by the Centralised Team, responsible workers and RSPs, instead of assigning an independent third party to offer case management service. SWD must have taken manpower and financial factors into account before making the decision. In the Office's opinion, the crux was whether the current mode can help elderly persons make good use of CCSVs to meet their LTC needs.

812. The Centralised Team will proactively contact voucher holders on three particular occasions: one month after the elderly person has received but yet to use the vouchers; three months have passed but the elderly person has yet to use the vouchers; and when the elderly person quits the Pilot Scheme. The team will find out why voucher holders do not use the vouchers and offer them assistance where necessary. For example, the team can help the elderly persons select suitable RSPs and service packages.

813. Each year, the Centralised Team handles thousands of enquiries from voucher holders, carers, responsible workers and RSPs, the majority of which are enquiries about the Pilot Scheme and how to apply for CCSVs, with the rest concerning the selection of suitable RSPs and service packages and switching RSPs, etc. The number of enquiries decreased by 42% from 5,311 in 2017 to 3,064 in 2022.

814. Based on the above information, the work of the Centralised Team is different from what case management is generally perceived. Nevertheless, the team's work can indeed help voucher holders or carers

to a certain extent to make the best out of the voucher services and assist them in resolving problems with using vouchers, including finding services that best suit their needs. In recent years, the Centralised Team has received fewer enquiries, indicating that elderly persons and stakeholders concerned have become more familiar with the operation and usage of CCSVs.

815. On the other hand, there have been fewer complaints against RSPs. SWD received only 18 complaints between 2018-19 and 2022-23 (as at the end of December 2022), on average three to four complaints per year. Only nine of them were substantiated or partially substantiated. During the same period, SWD did not receive any complaints about elderly persons not knowing how to use CCSVs, purchasing/using wrong services, or being lured into purchasing unnecessary services. This shows that the situation mentioned in the public views may be individual cases only.

816. Nevertheless, many elderly persons in Hong Kong do not have children or carers, and they are in need of greater assistance from SWD or responsible workers when using CCSVs. In the Office's opinion, as the Centralised Team has reduced workload on handling enquiries, it should have more capacity to support voucher holders without children or carers. For example, the Centralised Team could telephone them regularly in addition to the three aforesaid occasions to understand how they have been using the vouchers and offer assistance where necessary.

#### *More Random Interviews Should be Arranged during Service Monitoring Visits*

817. Each year, SWD carries out service monitoring visits at day care centres under RSPs and the home of users receiving home care services to monitor the service quality of RSPs. During the visits, SWD will examine relevant records, files and facilities, as well as conduct random interviews with users and check their service records, to ensure that RSPs have met all the requirements of SWD. SWD has also formulated internal guidelines on the procedures for conducting service monitoring visits and a checklist

to facilitate staff's discharge of duties and recording of the results. Between 2017-18 and 2021-22, SWD issued only 21 notices of irregularity, on average four notices per year. SWD had handled the cases in accordance with the established procedures and confirmed that the RSPs concerned had rectified the irregularities.

818. The Office's staff had observed how SWD staff performed service monitoring visits at day care centres and elderly users' home. The Office reckoned that the staff acted in accordance with SWD's guidelines and requirements and carefully examined RSPs' records and provision of services. The Office considered that SWD's mechanism of service monitoring visits operated smoothly in general and served its purposes.

819. During the service monitoring visits, SWD will randomly interview on the spot one to three users of day care centres or home care services or their carers to gather their feedback on CCSVs, service providers and services. In the Office's view, the interviews enabled SWD to learn about the experience and views of voucher users as well as their genuine comments on the Pilot Scheme, service providers and services, beyond the paper records kept by RSPs. This will help SWD monitor the service quality of RSPs and even gauge public feedback on the effectiveness of the Pilot Scheme.

820. The Office, however, noticed that SWD interviewed only one voucher holder of "centre-based" services in nearly all the service monitoring visits from 2021-22 to 2022-23 (as at the end of December 2022). Regarding "home-based" services, two voucher holders were interviewed in about 20% to 30% of the service monitoring visits. According to SWD, random interviews with voucher holders or carers during the visits is only one of SWD's means of collecting their feedback. When processing the reimbursement of subsidies to RSPs every month, SWD's staff will also proactively contact voucher holders with heavy usage of services to understand their situation. That said, since SWD's service monitoring visits are unannounced and carried out annually, and conducting random interviews with users is an essential part of the process,

improving the effectiveness of service monitoring visits should be more conducive to the enhancement of the overall service quality. Hence, the Office recommended that SWD instruct its staff to conduct random interviews with at least two users or their carers during service monitoring visits for both “centre-based” services and “home-based” services, so as to step up its monitoring of the service quality without requiring excessive additional manpower and resources.

821. In addition, by the time the Office released the investigation report, SWD did not place any opinion survey forms at the premises of RSPs to allow elderly persons or carers to make identified or anonymous submission of views on CCSVs, service providers or services. The Office, therefore, recommended that SWD introduce this measure to facilitate its monitoring of RSPs’ performance.

#### *Reasons for Switching RSPs by Voucher Holders Should Be Examined*

822. Under the Pilot Scheme, voucher holders can freely switch RSPs based on their needs without obtaining SWD’s approval. This is one of the initiatives making CCSV services more flexible than traditional subsidised services. SWD’s information showed that between the years of 2017-18 and 2022-23, about 200 to 500 voucher holders switched RSPs each year. SWD, however, had not maintained statistical information on the reasons for their change.

823. Voucher holders may switch RSPs for a number of reasons such as moving home, transportation or personal preference. It may also be due to the service quality of the original RSPs. As RSPs are required to notify SWD of any voucher holders quitting the services or any new enrolments, the Office found it feasible for SWD to approach the voucher holders concerned upon receiving such notifications in order to understand their reasons for switching RSPs. In case it is due to the service quality of the original RSP, SWD should duly follow up and urge the RSP concerned for improvement.

*Updates on Vacancy for Service Places Should Be Regularly Provided on SWD Elderly Information Website and Its Function Should Be Upgraded*

824. Elderly persons and carers can use the search engine on SWD Elderly Information Website (EIW) to look for suitable RSPs by district and service delivery mode, and get the contact information, the number of service places and vacancy as well as service items of RSPs. By using an exclusive account established by SWD, RSPs are required to update the vacancy for service places on EIW at least on a fortnightly basis in case of changes in the availability of services. If RSPs do not update their vacancy for service places, EIW system will automatically send an email reminder to alert them to provide updates in a timely manner.

825. During its investigation, the Office used the search engine on EIW to randomly check information about 10 RSPs and found that the information on the number of service places and vacancy of five of these RSPs were last updated three months to more than two years ago. As regards such long delay in updating the said information, SWD explained that the COVID-19 pandemic had affected the provision of services by some RSPs, and the vacancy for service places had remained unchanged for a long period of time. Accordingly, the RSPs needed not update the relevant information on the website.

826. In the Office's opinion, even if the vacancy for service places had indeed remained unchanged for a long time, the RSPs should still have provided relevant information via the exclusive account according to the time frame set by SWD. EIW would then have shown the time of the latest update, thus avoiding a misunderstanding that the information had expired. The Office recommended that SWD require RSPs to provide timely updates on the vacancy for service places. SWD should also step up its monitoring of RSPs' compliance with the requirement. As a further measure, SWD should modify the functions of EIW so that voucher holders or carers can check the real-time vacancy for service places, saving them the trouble of calling individual RSPs for such information.

827. In this regard, by the time the Office released the investigation report, SWD indicated that it had been exploring how the information technology system can be improved and the feasibility of developing an electronic platform for providing service and information to applicants or voucher holders more conveniently. Voucher holders can then process real-time checks on information about their vouchers and service records as well as the vacancy for service places of RSPs. On the other hand, RSPs can also update the vacancy for service places via the electronic platform and submit relevant documents and applications for reimbursement of subsidies to SWD so as to streamline the administrative work. The enhancement measure for the system was completed in the third quarter of 2023.

*Make Better Use of Newspaper or Television Interviews for Publicity*

828. Since the launch of the Pilot Scheme, SWD has been using various channels to promote CCSV services among eligible elderly persons and members of the public and explain the details and key features of the Pilot Scheme, including holding press conferences, publishing press releases and blogs, accepting newspaper and television interviews, releasing information on SWD's website and distributing leaflets and CD-ROMs at District Elderly Community Centres, Neighbourhood Elderly Centres and Day Care Centres for the Elderly. SWD has also cited real cases in newspaper and television interviews to highlight the advantages of CCSVs to elderly persons and their carers. Between 2013 and 2022, SWD organised 77 district-based sessions to promote CCSV services to responsible workers and provide updates on the Pilot Scheme.

829. That said, the Office noticed that the major publicity means of the Pilot Scheme had been press releases, articles on the Secretary for Labour and Welfare's blog and promotional speeches of government officials when they attended events. There was only one occasion where the Pilot Scheme was publicised through newspaper and television interviews with users and carers. The Office considered that newspaper and television interviews could reach more audience and help elderly persons and carers



better understand the advantages of CCSVs (for example, the flexibility that elderly persons can enjoy in arranging services and switching RSPs) through real cases. Hence, this kind of publicity should be more effective. The Office recommended that SWD consider arranging more newspaper or television interviews with real cases cited to promote voucher services among elderly persons and carers, so as to attract more eligible elderly persons to use such services.

830. The Ombudsman recommended SWD to –

- (a) continue with its endeavours to encourage eligible elderly persons newly added to the Central Waiting List to apply for CCSVs, and regularly (e.g. once every year) approach those voucher holders who have not used the vouchers received in order to identify potential areas for service improvement and re-examine elderly persons' service needs in collaboration with responsible workers and help them choose suitable RSPs or service packages;
- (b) obtain from RSPs the list of elderly persons waiting for their services, approach other RSPs and the voucher holders on the list and attempt to make matching suggestions so that those elderly persons can receive necessary services as soon as possible;
- (c) expedite its study and test on allowing voucher holders to purchase services from more than one RSP concurrently for early implementation so that elderly persons can enjoy services under the scheme more flexibly;
- (d) continue to regularly provide up-to-date statistics and information about the supply and demand of CCSV services in each district to existing and potential RSPs, and invite more organisations to offer services or extend the modes and coverage of services in districts with keen demand so that more “centre-based” service places can be provided to local or cross-district elderly users;

- (e) incorporate the number of active voucher holders residing in each district (including elderly persons using local services and those using cross-district services) in the analysis of the demand and supply of services at district level for a more comprehensive result;
- (f) provide more support to voucher holders without children or carers by, for example, proactively telephoning them on occasions other than the standard contact time points, so as to understand how they have been using the vouchers and offer assistance where necessary;
- (g) instruct its staff to conduct random interviews with at least two users or carers during service monitoring visits for both “centre-based” services and “home-based” services, so as to step up the monitoring of the service quality;
- (h) place opinion survey forms at the premises of RSPs to allow elderly persons or carers to make identified or anonymous submission of views on CCSVs, service providers or services to SWD;
- (i) upon receiving notification of voucher holders’ leaving the original RSPs, approach the voucher holders concerned to understand their reasons for switching RSPs. In case it is due to the service quality of the original RSPs, SWD should duly follow up on the matters;
- (j) require RSPs to provide timely updates on the vacancy for service places and step up the monitoring of their compliance with the requirement. As a further measure, SWD should modify the functions of EIW to allow voucher holders or carers to check the real-time vacancy for service places, saving them the trouble of calling individual RSPs for such information; and

- (k) consider arranging more newspaper or television interviews with real cases cited to promote voucher services among elderly persons and carers, so as to attract more eligible elderly persons to use such services.

### **Government's response**

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

#### *Recommendation (a)*

832. To improve the utilisation rate of CCSVs, SWD continues to issue invitation letters and CCSVs to eligible elderly persons waitlisted for subsidised LTC services on the Central Waiting List. SWD issues annual questionnaire surveys to the responsible workers of voucher holders who have not used voucher services for three consecutive months, in order to understand their reasons of not using the vouchers and their service needs.

833. SWD implemented enhancement measures in November 2023, by adding a section to the application form to collect information on family members residing with the voucher holder, and adding a reply slip requiring the applicant to confirm receipt of the voucher issuance notice and indicate whether SWD's assistance is needed when using voucher services. For cases which have not returned the reply slip, SWD accords priority in contacting elderly singletons or elderly couple households to provide appropriate assistance.

#### *Recommendation (b)*

834. Starting from the fourth quarter of 2023, SWD obtains from all RSPs the list of elderly persons still waiting for service allocation from their service units on a quarterly basis, and proactively approaches these elderly persons to assist them in making effective use of their CCSVs

(including matching them with services from other RSPs) so that they can receive the services they need as soon as possible.

*Recommendation (c)*

835. Starting from September 2023, each voucher holder may purchase services from two RSPs concurrently according to their needs. SWD will review service utilisation and collect voucher users' feedback as appropriate.

*Recommendation (d)*

836. SWD conducted three briefing/sharing sessions in 2023-24 to provide existing and potential RSPs with the data on the demand and supply of CCSVs in all districts, and actively encouraged organisations to launch or expand their service modes and coverage in districts with relatively tight supply. SWD has uploaded the relevant data and information onto its website, which are updated on a half-yearly basis, for reference by organisations/service units concerned.

*Recommendation (e)*

837. SWD has incorporated the number of elderly persons using the CCSVs residing in each district (including those using services within their district or across other district(s)) into the analysis of service demand and supply at the district level.

*Recommendation (f)*

838. SWD has optimised the voucher application form and voucher issuance notice since November 2023. Through collecting information on family members residing with the voucher holders (if any), SWD can promptly and accurately identify elderly persons who lack family care and proactively contact them for follow-up.

*Recommendation (g)*

839. Starting from September 2023, during the annual surprise inspection to day care centres providing “centre-based” services, SWD will randomly interview at least two voucher users or their carers on the spot. Relevant service records and files are also reviewed. Starting from 2024-25, SWD has fully implemented this recommendation made by the Ombudsman by randomly interviewing at least two voucher users or their carers during service monitoring visits for both “centre-based” and “home-based” services.

*Recommendation (h)*

840. SWD has launched a customer satisfaction questionnaire survey for the CCSV Scheme. Starting from December 2023, voucher users and carers are invited to make identified or anonymous submission of views on the voucher services, service arrangements and staff performance of RSPs, etc. The questionnaire can be obtained from RSPs, or an electronic version can be downloaded by scanning the QR code posted at RSPs or via SWD’s website.

*Recommendation (i)*

841. Starting from the fourth quarter of 2023, SWD sends letters on a quarterly basis to voucher holders who have switched RSPs, inviting them to express their opinions through the “Survey Questionnaire on Switching RSPs”. If the returned questionnaires show that voucher holders or their carers have switched RSPs due to unsatisfactory service quality, SWD will proactively approach them to gather details. SWD will also review the service performance of the relevant RSPs. Even if no irregularity is found, SWD will provide the RSPs concerned with the feedback of service users and recommend that they review and improve their service performance.

*Recommendation (j)*

842. In September 2023, SWD launched an electronic service platform – Voucher Information System for the Elderly (VISE) to allow voucher holders to check the utilisation status of their vouchers in real time, search for RSPs and download monthly service schedules, etc.

843. EIW automatically sends bi-weekly reminder emails to RSPs on timely updating of service information (including service vacancy). SWD monitors RSPs' compliance with this requirement. If RSPs fail to publicise and update their vacancy status in a timely manner, SWD will contact their management to follow up; if RSPs persistently fail to comply with the reminders, SWD will also issue written notifications to them. SWD is currently examining the data exchange function between VISE and EIW with a view to reflecting and updating vacancy position more effectively.

*Recommendation (k)*

844. SWD has been publicising and promoting CCSV services through various channels. In addition to placing or posting promotional posters, leaflets and advertisements at locations frequently visited by elderly persons, service units and public light buses, SWD has also partnered with RSPs to give radio interviews between August 2023 and June 2024. Besides, in January 2024, SWD invited a voucher holder and his carer to share their experience and promote CCSV services by giving a newspaper interview in person.

845. SWD also continues to carry out publicity work across all districts. Apart from introducing the CCSV Scheme and the latest service developments to responsible workers, SWD directly engages potential service users through instantaneous interactions to increase their understanding of the Scheme.

## **Transport Department**

### **Case No. DI/456 – Measures and Usage of On-street Parking Spaces Designated for People with Disabilities (PWD)**

#### **Background**

846. In the past, only drivers with disabilities holding the Disabled Person's Parking Permit (DPPP)<sup>10</sup> were entitled to use the on-street parking spaces designated for PWD (DPS). With effect from 29 January 2021, the Transport Department (TD) introduced a new measure to extend the eligibility for using DPS to holders of the Parking Certificate for Drivers Who Carry People with Mobility Disabilities (Parking Certificate) to facilitate the carrying of specified persons with lower limb mobility disabilities (persons with LLMD). The new measure is aimed at promoting social integration of disabled persons as well as supporting and easing the burdens of carers. The Office of The Ombudsman (the Office) concurs that these objectives are in line with the current policy direction.

847. The Office considers that the provision of DPS involves both the on-street parking policy and the policy of transport for persons with disabilities. In handling relevant issues, TD has to consider and balance the two aspects concurrently. Moreover, TD should ensure that people with comparable levels of lower limb disabilities, either as drivers or passengers, are equally entitled to use DPS. Yet, in achieving these objectives, TD apparently has not anticipated the problems stemming from the discrepancies between DPPP and Parking Certificate in terms of approval criteria, checks against abuse, etc., when the holders of both documents are allowed to use DPS for free.

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<sup>10</sup> At present, disabled persons within the definition under section 2 of the Road Traffic Ordinance (Cap. 374) and fit to drive a motor vehicle are entitled to a range of driving and parking concessions. Disabled persons who apply for a driving licence are required to undergo assessments and testing, and will be issued a driving licence upon TD's approval. After obtaining valid driving licences and vehicle licences, drivers with disabilities are eligible to apply for the DPPP.

## **The Ombudsman's observations**

848. The Office's investigation has revealed the following comments and recommendations on the part of TD in formulating the new measure, assessing the supply and demand of DPS, processing applications, preventing abuse and handling complaints.

### *(I) Process of Formulating New Measure*

#### Failing to Consult Stakeholders

849. TD formulated and introduced the new measure in the wake of an application for leave for judicial review in 2019. Against this background, no public consultation had been conducted, nor had TD collected the views of stakeholders (such as DPPP holders, representatives of PWD and/or their carers, qualified persons responsible for assessment of disability condition, etc.). Not only did TD miss the opportunity to refine the new measure's operational details and foster a consensus through extensive and thorough consultation and discussion, the lack of transparency during the formulation process also created a negative perception of the new measure among the stakeholders affected.

#### Causing Confusion and Frustration by Hastily Changing Requirements and Conditions of Use

850. When TD first introduced the new measure, it simply adopted the original practice before expanding the scope of Parking Certificate, i.e. in addition to registered doctors and registered physiotherapists, it also accepted school principals and registered nurses as qualified persons to issue the relevant certification. However, around four months later and since then, only registered doctors and registered physiotherapists are accepted as qualified persons. Besides, TD received public complaints and views shortly after launching the new measure. It then revised the Parking Certificate's conditions of use within a few months, reflecting that TD had not carefully considered the operational details and possible scenarios.



851. The Office considers that TD should draw on the experience, effectively use various communication channels to engage stakeholders, thereby formulating comprehensive and proper solutions to better respond to their demands.

*(II) Supply and Demand of Designated Parking Spaces*

Lack of Effective Measures to Balance Supply and Demand and to Promote Turnover of Parking Spaces

852. After the launch of the new measure, the ratio of DPS to holders of DPPP/Parking Certificate has increased from 1: 4 to 1: 8.5. The extra demand brought about by the new measure has aggravated the imbalance in supply and demand, while the increase of DPS lags far behind the increase of Parking Certificate holders. Meanwhile, those spaces are free to use without any requirement for registration or parking records. It is difficult to verify whether a vehicle had overstayed in a DPS, and there are no practical measures to promote turnover of Parking Spaces.

853. The Office considers it necessary for TD to clarify the policy direction of having DPS and fully assess the supply and demand. TD should weigh up all factors and set a target ratio of DPS to DPPP/Parking Certificate holders for formulation of long-term plan and development of ancillary facilities. It should also collect and compile data on the supply and demand for DPS, including conducting regular surveys on usage rates for systematic analysis of the existing and future supply and demand. Moreover, TD should draw up a timetable for regular review of progress of the related tasks, and properly adjust its actions and follow up based on the results obtained.

Failing to Disseminate Information about Usage Rates of Designated Parking Spaces

854. Before launching the new measure, TD had surveyed the usage rates of DPS. Nevertheless, TD has not released the survey results, such that stakeholders are not fully aware of the demand for those spaces.

855. The Office considers releasing such data conducive to higher transparency of Government administration and operation, thereby enhancing the public's awareness (especially the stakeholders affected) of the policy rationale and engaging their support for the policy and relevant measures. In particular, TD should provide the survey results when liaising with members of the Working Group on Access to Public Transport by PWD regarding the usage of DPS and the scope of Parking Certificate.

### *(III) Criteria of DPPP and Parking Certificate*

856. Due to their different regimes and backgrounds, DPPP and Parking Certificate have their own sets of approval procedures and eligibility criteria. DPPP is issued under the Road Traffic (Parking) Regulations (Cap. 374C) (the Regulations) with eligibility criteria prescribed in the law. Parking Certificate, on the other hand, is an administrative measure, and TD can adjust the relevant requirements and measures according to circumstances. Although DPPP and Parking Certificate both provide parking concessions, the discrepancies between their approval criteria and conditions of use cause problems of various degrees.

### To Rationalise the Relationships among Applicant, Registered Vehicle Owner and Person to be Carried

857. TD has not imposed any restriction on the relationship between Parking Certificate applicant and the person to be carried. In the past, Parking Certificate holders were only entitled to use the designated parking spaces inside TD's carpark when carrying the person with LLMD. Under the new measure, they can also use DPS free of charge, thus boosting the demand for those parking spaces. Given the insufficient supply, TD should

examine whether its former lenient approach in approving application is tenable.

858. Meanwhile, DPPP applicant or his/her spouse (where the spouse is also a disabled person) must be the registered owner of the relevant vehicle, while Parking Certificate application can be made with a vehicle registered in the name of the applicant or the passenger with mobility disability. Multiple applicants can apply to TD for a Parking Certificate if they have to share the duty of carrying the same person. Upon approving such application, TD would issue only one Parking Certificate so that the certificate can only be used by one of the vehicles listed thereon at any given time. However, it certainly increases the risk of abuse. Also, TD allows registered vehicle owner to authorise another person to be the applicant of Parking Certificate to drive his/her vehicle for carrying the person with LLMD, making the approval procedures more complicated. The Office urges TD to stringently review the eligibility criteria for Parking Certificate, especially in cases where the applicant, the registered vehicle owner and the person to be carried are different parties and authorisation for other persons to drive a vehicle is involved.

859. The Office's investigation revealed that TD had approved an application for Parking Certificate on compassionate grounds in exceptional circumstances where the applicant was not the registered owner of the vehicle to be used. To avoid queries about TD's deviation from the established requirements, the Office considers it essential to spell out the consideration factors for approval on compassionate or discretionary grounds. TD should also draw up the approval conditions and criteria to ensure that the procedures are fair and impartial.

#### Failing to Prescribe Maximum Number of Vehicles Listed on Each Parking Certificate

860. TD accepts application for Parking Certificate in which the applicant would register more than one vehicle, but requires that only one of the vehicles should use the certificate at any given time. Upon approval

of application to change information (such as changing the vehicle registration mark, adding or reducing the number of vehicles registered on a Parking Certificate, etc.), TD would request the holder to surrender the old Parking Certificate and then issue a new one. Yet, if TD mishandles the surrender of old Parking Certificate, it might create a loophole for abuse of DPS. Moreover, TD would not examine why Parking Certificate applicants need to register three or more vehicles, nor has it set a clear standard on the maximum number of vehicles to be registered on each certificate internally.

861. The Office urges TD to set out a clear and uniform standard on the maximum number of vehicles registered for each Parking Certificate, and draw up operational guidelines for handling applications with multiple vehicles, including in what circumstances such applications are acceptable.

#### No Restriction on Vehicle Types and Specifications

862. Unlike DPPP holders who are bound by the Regulations to use particular types of vehicles (i.e. private cars, motor cycles or motor tricycles), Parking Certificate holders are not restricted as to the types or specifications of vehicles they would use. The Office is of the view that TD should consider objectively whether certain types of vehicles are suitable for general use by people with LLMD (for example, whether people with LLMD can easily get on/off a sports car with very narrow space), thereby minimise abuse of Parking Certificate.

863. The Office urges TD to step up scrutinising such applications and draw up reasonable standards on the vehicle types to be used by Parking Certificate holders. TD can also consider requiring provision of photographs of the relevant vehicle in new or renewal applications for verifying that the vehicles used are suitable for carrying the specified persons with LLMD.

#### *(IV) Measures to Prevent and Tackle Abuse*

864. The Office notes that at times the person with LLMD carried by the Parking Certificate holder when driving into a DPS might not return there to get on the vehicle, and the same vehicle would occupy DPS for a long time in the interim. Despite no breach of the conditions of use (i.e. the person with LLMD named on the Parking Certificate must be on board when the vehicle was driven in and/or out of the space), the situation was unsatisfactory and not conducive to promoting the turnover of DPS.

865. In the Office's view, TD should not only adopt effective measures to closely monitor the usage of DPS, but also explore the feasibility of imposing certain limitations. For instance, it can set a time limit or charge fees after the time limit for parking, so as to promote the turnover of DPS.

#### Failing to Investigate and Handle Complaints Systematically

866. According to its procedures for handling complaints about Parking Certificate abuse, TD would issue a warning letter to the holder for the first violation. Where repeated or persisting abuses are found, TD would cancel the Parking Certificate. To prevent holders suspected of violating the conditions of use from taking advantage of time difference or other excuses (such as before TD could issue a warning letter or holders denied having received the warning letter) and continuing with the abuse, TD should review its current procedures in handling abuse cases and clarify the definition of "repeated abuse" and the enforcement procedures, including the warning letter system, the consequences of holders not replying by deadline, etc.

867. On the other hand, TD conducted regular surveys, mostly on weekdays (i.e. Mondays to Fridays), in the vicinity of Parking Spaces with high usage rates and with frequent complaints or reports by the public. Considering that TD has been allocated more resources for on-site surveys, the Office urges it to, besides stepping up monitoring, increase the number

of surveys at weekends to obtain a more comprehensive understanding of the actual usage of DPS at those locations.

#### Improper Arrangement for Recalling Parking Certificates

868. The Office's case studies revealed that some holders had put off surrendering invalid Parking Certificates to TD. Another case showed that TD had issued a new certificate before the old one was surrendered, resulting in two certificates being used concurrently by different holders claiming to carry the same person with LLMD. These cases reflected serious inadequacy in TD's procedures for recalling of Parking Certificates.

869. On the contrary, the Regulations stipulate the duties of DPPP holders after cancellation of DPPP (either in paper or electronic form) and the penalties for non-compliance. With the introduction of e-Permits, the need for TD to recall paper Parking Certificate would be reduced. Still, as the Parking Certificate is issued as an administrative measure, the fact that non-compliant holders are not liable to any legal consequences calls into question the fairness of the policy.

#### Penalties Carrying Insufficient Deterrence

870. The Office considers that TD should fully recognise the fact that there is no law that regulates non-compliance by Parking Certificate holders, continue to use new technology (e.g. smart monitoring system) to monitor the usage of Parking Spaces and step up enforcement against various forms of abuse. In the long run, TD should consider and explore strengthening the regulatory measures by legislative amendments.

#### Exploring Other Practical Solutions

871. The Office urges TD to continue exploring other practical solutions to prevent and address abuse of DPS. It should also coordinate and sort out different solutions jointly with stakeholders, thereby fostering

a consensus. On the front of new technology application, TD may consider providing real-time information about the availability of DPS via the “HKeMobility” application, similar to that of general on-street parking spaces, facilitating the instant search of DPS by DPPP/Parking Certificate holders.

872. The Ombudsman recommended TD to –

- (a) clarify the policy and positioning of having DPS, fully assess their supply and demand, draw up a timetable for various tasks and regularly review progress of the tasks;
- (b) regularly survey the usage rates of DPS, and release the data to the public;
- (c) comprehensively review the eligibility and approval criteria for Parking Certificate, especially in cases where the applicant, the registered vehicle owner and the person to be carried are different parties and authorisation for another person to drive a vehicle is involved, as well as the consideration factors and conditions for approval on compassionate and discretionary grounds;
- (d) review and strengthen measures against various forms of Parking Certificate abuse;
- (e) when processing applications for Parking Certificate with multiple vehicles, step up scrutinising whether the applicants have a genuine need to use multiple vehicles, and draw up operational guidelines for handling such cases;
- (f) draw up reasonable standards on the vehicle types used by Parking Certificate holders, and take proper measures to ensure that application is made with vehicles suitable for carrying the specified person with LLMD;

- (g) explore setting limits on the use of DPS to promote turnover, such as setting a time limit of parking or charging fees after certain time limit;
- (h) review existing procedures for handling parking abuse, clarify the definition of “repeated abuse” and the enforcement procedures;
- (i) proceed with the installation of smart monitoring system at DPS to step up monitoring of their usage;
- (j) in the long run, consider and explore legislative amendments to address the discrepancies between DPPP and Parking Certificate in terms of approval procedures, eligibility criteria and conditions of use due to their different regimes and backgrounds; and
- (k) use various communication channels to engage and collect views extensively from stakeholders regarding the usage of DPS and the scope of Parking Certificate, thereby exploring and drawing up more comprehensive and proper solutions.

### **Government’s response**

873. TD accepted The Ombudsman’s recommendations and has taken follow-up actions as below.

#### *Recommendations (a) and (b)*

874. TD has reviewed the policy and positioning of having DPS. TD will continue to consider providing additional DPS at individual locations as far as practicable having regard to factors such as the actual usage of DPS, relevant guidelines in the Hong Kong Planning Standards and Guidelines (HKPSG), views of groups for PWD, supply of DPS in the vicinity, actual road traffic conditions, views of the local community, etc. The number of DPS in Hong Kong increased from 449 to 555 (an increase



of approximately 24%) from the end of January 2021 to the end of June 2024.

875. On demand assessment, TD will continue to conduct an annual survey on DPS to review the usage of the parking spaces. TD's 2024 survey on the usage of DPS will be conducted in the fourth quarter. In addition, TD issued a questionnaire survey to groups for PWD, DPPP and Parking Certificate holders in September 2024 to better understand the demand of PWD for DPS.

876. Besides, at the meeting with the Working Group on Access to Public Transport by People with Disabilities (Working Group) meeting held in late July 2024, TD provided information on the results of the survey on the usage of DPS to the disabled groups, while collecting views from the members of the groups for PWD in the Working Group on the proposed locations for additional DPS. TD will continue to release information on the results of the survey on the usage of DPS to disabled groups in the Working Group.

*Recommendations (c) to (f) and (h)*

877. TD has comprehensively reviewed the application eligibility and approval criteria of the Parking Certificates, and enhanced measures to deter improper use of these certificates in various ways. TD proposed tightening the application threshold and eligibility of the Parking Certificates; and raising the penalties for violation of approval condition of these certificates, etc. After drawing up various enhancement measures, TD consulted disabled groups at the Working Group meeting at the end of December 2023 and conducted written consultation with DPPP and Parking Certificate holders between January and February 2024.

878. Having considered the views of stakeholders collected during the consultation period, TD reported the consultation findings at the Working Group meeting held in July 2024 and November 2024, and announced that a total of 16 improvement measures on application eligibility

(*Recommendations (c)*), approval criteria (*Recommendations (e) and (f)*) and strengthening deterrence against improper use of Parking Certificates in various ways (*Recommendations (d) and (h)*) to be implemented by TD, with key enhancement measures as follows –

- (a) the person with LMMD to be carried (the person to be carried) must be a person certified by a doctor of the Department of Health or the Hospital Authority to be suffering from a disease or physical disability that causes him/her considerable difficulty in walking;
- (b) the applicant (registered vehicle owner) must be a relative of the person to be carried. If the applicant is not a relative of the person to be carried, TD may exercise its discretion to consider the application;
- (c) each Parking Certificate should only allow registration of a maximum of two vehicles for applications. TD will exercise discretion to consider approving registration of up to three vehicles;
- (d) registered vehicles must be either private cars<sup>11</sup> or light goods vehicles<sup>12</sup>. If the applied registered vehicle is a light goods vehicle or other special types of private car<sup>13</sup>, the applicant will be required to submit photographs of the applied vehicle or a video to prove that the vehicle to be used is suitable for carrying person with LLMD;
- (e) the names of the Parking Certificate holders (i.e. the applicant and the person to be carried) and the first four characters of their ID

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<sup>11</sup> The private car to be used should not hold a Hire Car Permit for the purpose of carriage of passengers for reward and should not use the DPS for commercial use.

<sup>12</sup> If it is the only vehicle owned by the applicant or the person to be carried, TD will exercise its discretion to consider the application.

<sup>13</sup> Other special types of private car include off-road vehicles, sport cars etc.

card numbers will be added on the inner page of the Parking Certificate;

- (f) whether the Parking Certificate is considered “to be misused again” is calculated based on the number of misuses. If the Parking Certificate is found to be misused twice, TD will consider cancelling the certificate; and
- (g) increasing penalties for misuses of Parking Certificate. For example,
  - i. applications from the holder would not be considered for a period ranging from 12 to 36 months, depending on the cancellation record of the holder, etc.; and
  - ii. if the Parking Certificate holder is found to be using the DPS for commercial purposes, including loading and unloading of goods, TD will cancel the relevant Parking Certificate without prior warning, and applications submitted by the Parking Certificate holder concerned will not be considered for a period of 36 months after cancellation.

879. TD will notify the Working Group and Parking Certificate holders of the implementation arrangements effective from April 2025 in writing in December 2024.

*Recommendation (g)*

880. In respect of the exploration of setting limits on the use of DPS to promote turnover of DPS, TD consulted disabled groups at the Working Group meeting held in end December 2023 and conducted written consultation with DPPP and Parking Certificate holders between January and February 2024. TD has consolidated the views collected during the consultation, and has noted that the stakeholders held different views about to whom the limitations should apply and some suggesting that the

limitations should only apply to Parking Certificate holders (and not DPPP holders). Since there is no consensus among the stakeholders on the proposal, TD has to handle the matter carefully. After the implementation of the above recommended improvement measures for Parking Certificate, TD will assess the effectiveness of these improvement measures and review the concerned recommendation.

*Recommendation (i)*

881. To enhance the monitoring of DPS, the application of new technologies is being actively explored. After consulting the Working Group and the relevant District Councils, TD launched a trial of the new electronic parking device (including users need to tap the card for using the parking spaces) at four selected locations from end-December 2023 to April 2024. Participants of the trial include representatives of the disabled groups for persons with physically disabilities in the Working Group and interested DPPP and Parking Certificate holders.

882. Subsequently, TD collected opinions from those participants in the trial in the form of a questionnaire in late May 2024. TD reported the views collected for the trial at the Working Group meeting held in July 2024 and sought views from the disabled groups of the Working Group. TD is following up on the relevant views gathered.

*Recommendations (j) and (k)*

883. With the implementation of the proposed enhancement measures relating to the Parking Certificate above (i.e. Recommendations (c) – (f) and (h)), TD will assess the effectiveness of these improvement measures and examine whether there is a need for legislative amendments and will continue to maintain communication with stakeholders to understand their views and follow up as appropriate.