

EXECUTIVE SUMMARY

Direct Investigation on Government Measures for Street Management

Background

On 1 November 2007, The Ombudsman initiated a direct investigation into three aspects of street management, namely:

- indiscriminate placing of skips at roadside;
- illegal parking of bicycles; and
- obstruction and nuisance from on-street promotional activities.

2. The departments concerned include the Food and Environmental Hygiene Department (“FEHD”), the Home Affairs Department (“HAD”) and the Lands Department (“Lands D”).

Street Management and District Administration

3. Street management problems arise when there is encroachment of public space for private gain or convenience at the expense of road safety, environmental hygiene and the quality of city life.

4. In 2007, the Administration set up a Steering Committee on District Administration (“SCDA”), chaired by the Permanent Secretary for Home Affairs, to provide a forum for resolving district management issues centrally.

5. In March 2008, the Chief Secretary for Administration further reminded departments of the need to address district issues in a timely and coordinated manner. Where necessary, district problems can be brought to his personal attention for speedy resolution.

Roadside Skips

6. Skips are large open containers commonly used for temporary storage of construction and demolition debris removed from nearby building or renovation sites. Complaints about skips generally focus on their obstruction to vehicular and pedestrian traffic and potential danger to motorists and pedestrians.

Current Legislation and Enforcement

7. Under section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28), Lands D can post notices on roadside skips requiring their removal, failing which the skips can be confiscated. Lands D guidelines state that staff should conduct an inspection upon receiving a complaint. If a skip is found, staff will post notice giving the owner at least one day for removal. If the skip still remains after the deadline, Lands D will remove it within three working days. Staff should process complaints promptly to minimise inconvenience to road users.

8. In 2007, SCDA invited Lands D to explore the feasibility of setting up a permit system for skips. An exchange of correspondence followed between Lands D and the Transport Department (“TD”) over the question of responsibility, but that question remains unresolved.

Our Observations

Lands D’s Delay

9. Statistics show that about 40% of Lands D inspections since 2006/07 took place over three working days after receipt of complaints. Some 20% of the cases over the same period took over five working days before a re-inspection to check for compliance was conducted. In one case, the skips had been allowed to stay on site for over 50 days despite the notices posted.

10. These point to a fundamental flaw in Lands D enforcement: the evident delay in action has little, if any, deterrent effect on real or prospective offenders.

Permit System for Long-term Solution

11. The Administration sees the need to prevent obstruction and unauthorised occupation of public space on the one hand and the necessity to place skips in public places on the other. There is already inter-departmental consensus that a permit system for skips should be developed.

12. The construction and renovation industry has a genuine need for using skips, but no lawful avenue exists for placing skips at roadside. Lands D has already explored various options. It has not formally reported nor been asked to submit a progress report. We see an urgent need for SCDA to be reconvened to restart the momentum.

Timely Inspection and Re-inspection

13. Meanwhile, as roadside skips are easily placed, removed and re-instated by the operators, prompt action in detection and firm enforcement is crucial. Lands D should streamline inspection procedures and tighten the timeframe for enforcement. Re-inspection and follow-up action should be carried out promptly.

14. In this connection, Lands D should enlist the assistance of district bodies and local residents through the District Councils (“DCs”) and District Offices (“DOs”) for close monitoring and early reporting of cases.

Further Measure

15. We consider it both reasonable, and necessary, for Lands D to recover from the persons convicted under section 6 of the Land (Miscellaneous Provisions) Ordinance the costs for Government removal of skips. Lands D has such power under the Ordinance.

Recommendations

16. The Ombudsman recommends that:
- (a) SCDA reconvene promptly;
 - (b) Lands D report to SCDA the results of its study on the proposed permit system;
 - (c) Lands D streamline its procedures to tighten its timeframe for inspection and re-inspection, removal and confiscation of skips;
 - (d) Lands D enlist the assistance of DCs and DOs, district bodies and the local community in monitoring black spots and reporting offences;
 - (e) Lands D recover the costs for Government removal of skips; and
 - (f) Lands D publicise the stepping up of action against unauthorised placing of skips.

Illegal Parking of Bicycles

17. Illegal parking of bicycles on Government land is a common phenomenon in districts where people use them to commute to and from the nearest public transport interchange (“PTI”) or ferry pier. Bicycles are often chained to roadside fixtures, causing obstruction. Often, old bicycles are abandoned and become an environmental eyesore and pollutant.

18. SCDA considered some degree of tolerance necessary in view of the need to use bicycles and the inadequacy of designated parking spaces. Enforcement should, therefore, be carried out where illegal parking is causing serious obstruction, inconveniences to other road users or is the subject of frequent public complaints.

Current Legislation and Enforcement

19. Illegally parked bicycles can be removed by Lands D for unauthorised occupation of Government land under section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) or, in the case of abandoned bicycles, as street waste by FEHD under section 9 of the Waste Disposal Ordinance (Cap. 354). They are usually cleared through joint clearance operations initiated by DOs, involving the two departments and the Police.

20. Of all 18 DOs, only Yuen Long has standing guidelines on bicycle clearance operations. Under the guidelines, Lands D would post a notice on each bicycle at least two days before a clearance operation. On the day of operation, Lands D will identify the bicycles for removal by FEHD. HAD officers and the Police will be present, the former to handle public enquiries and complaints and the latter to maintain law and order.

21. Neither Lands D nor TD takes responsibility for bicycles in PTIs. DO/Yuen Long’s guidelines also do not cover action on such bicycles. Current enforcement is conducted on an *ad hoc* basis.

22. HAD has indicated that the current approach to enforcement is neither effective nor efficient. An inter-departmental meeting chaired by HAD in November 2007 agreed to explore a more stringent approach involving changes of the legal basis for enforcement. HAD is exploring the feasibility of immediate removal of illegally parked bicycles, but the outcome is unlikely to be available within a short time.

Our Observations

Involvement of District Management

23. Without more durable and more innovative solutions, the situation is unlikely to improve. DOs have a leading role and should formulate a comprehensive strategy in consultation with the local community, especially the DCs, and with other departments. DOs should make positive use of the District Administration Scheme to create new impetus and arrive at total solutions.

Provision of Parking Facilities

24. Bicycle parking facilities at convenient locations are necessary. The Administration should continue to identify sites to ease the shortfall in such provision so that cyclists would not be forced to park their bicycles illegally or have any excuse to do so.

Enforcement Action

25. We commend HAD for initiating and coordinating joint clearance operations. To enhance the effectiveness of such operations, clear inter-departmental guidelines are necessary. We hope that DO/Yuen Long guidelines would offer useful reference for other districts to develop their own guidelines, based on agreed principles, well tried practices and local characteristics.

26. As joint clearance operations require extensive efforts and substantial resources from Government departments, they cannot be frequently or readily conducted. The departments concerned should try quicker action on a smaller scale at more frequent intervals. Where statutory powers are not in doubt, a department should mount its own direct operations, with support from contractors rather than other departments.

Bicycles on Unallocated Government Land and in PTIs

27. HAD has already spent 12 months exploring the feasibility of immediate removal of illegally parked bicycles. This calls for accelerated action.

28. There is a lack of inter-departmental agreement for the clearance of bicycles in PTIs, which causes delay in enforcement. The District Administration Scheme could help bring the departments together. Government should consider legislative amendment if necessary.

Management of Bicycle Parks

29. In designated bicycle parks, a common problem is bicycles being abandoned, left unattended for a long time or overstaying. HAD should explore more innovative ways of managing bicycle parks in consultation with relevant departments and take reference from overseas experience.

Recommendations

30. The Ombudsman recommends that:
- (a) DOs formulate a comprehensive strategy to tackle the problem of illegally parked bicycles, in consultation with the DCs and other departments under the District Administration Scheme;
 - (b) the Administration identify sites to meet the shortfall in the provision of bicycle parking facilities;
 - (c) DOs develop guidelines on clearance of illegally parked bicycles with reference to Yuen Long's ;
 - (d) relevant departments try quicker enforcement action on a smaller scale on their own;
 - (e) HAD to expedite action to explore the feasibility of immediate removal of illegally parked bicycles;
 - (f) HAD and other departments to work out an inter-departmental agreement for clearing bicycles in PTIs; and
 - (g) HAD, in consultation with relevant other departments and district bodies, to explore ways of managing bicycle parks to encourage quicker turnover and deter prolonged parking.

On-street Promotional Activities

31. On-street promotional activities range from direct advertising on easy-mount stands to setting up a base for hawking of services on site. Such activities are particularly rampant where pedestrian traffic is heavy, thus causing serious inconvenience.

32. The Administration considers that while control of such activities is necessary because of the nuisance caused, some degree of tolerance has to be given, as these activities provide employment for persons with relatively low skills. Enforcement action is, therefore, for maintaining smooth pedestrian flow and environmental hygiene.

Current Legislation and Enforcement

33. FEHD has statutory powers to tackle illegal hawking of goods under section 83B of the Public Health and Municipal Services Ordinance ("PHMSO") (Cap. 132), obstruction to cleansing operations under section 22 and serious obstruction under section 4A of the Summary Offences Ordinance (Cap. 228). Enforcement priority is accorded to cases involving illegal hawking of goods or obstruction to street cleansing operations.

34. For easy-mount stands, FEHD has the power under section 104E of the PHMSO specifically to take action on “bills or posters”. While their definition excludes “structure, apparatus or hoarding used for the display of a bill or poster”, the stands can be seized together with the posters themselves, as evidence of the offence of unauthorised display of bills or posters.

35. Upon receiving a complaint, FEHD staff would inspect the site. If on-street promotional stands or activities are found to cause obstruction, staff would verbally warn the persons concerned and request them to disperse or re-align their stands. Written warning or prosecution would follow if verbal warnings go unheeded. Recently, with easy-mount posters becoming more prolific, FEHD has started to take prosecution action under section 104E of the PHMSO.

36. In case of problems it cannot tackle on its own, FEHD would raise with other departments. Joint operations would be conducted as required.

Our Observations

Administration’s Stance

37. The Administration’s stance towards on-street promotional activities is ambivalent. The Administration does not appear to have a policy to tackle such illegal hawking of services. The argument for tolerance to maintain the employment opportunities provided by on-street promotional activities may well apply to illegal hawking of goods with better justification. On the other hand, those employing mobile or easy-mount stands tend to be major business corporations well able to afford other means of advertising and offer alternative modes of employment. The Administration should attempt to identify and bring to light the ultimate beneficiaries behind the easy-mount stands advertising. We see a need for the Administration to review its outlook, revise its stance and devise a policy for control of on-street hawking of services.

Legislation – long-term measure

38. FEHD cannot rely on section 22 of the PHMSO as the main instrument for enforcement as it is restricted to promotional activities which obstruct cleansing operations. Moreover, it is difficult to establish a case of serious obstruction under section 4A of the Summary Offences Ordinance due to the mobile nature of on-street promotional activities.

39. We appreciate FEHD’s recent initiative to take prosecution action against easy-mount posters under section 104E of the PHMSO. It has initiated pilot enforcement exercises in two districts. We consider that upon successful completion of the pilot scheme, FEHD should extend the scheme on a territory-wide basis.

40. However, we consider that the initiative does not offer a full solution as it cannot cover promotional activities where a base is set up for “hawking of services”. As an ultimate solution, FEHD should review the PHMSO for powers of enforcement action on hawking of *services*, not just goods.

Demarcating departmental responsibilities – immediate measure

41. Currently, there are no specific criteria for determining whether to tackle on-street promotional activities by FEHD alone or joint operations. A clearer demarcation of

responsibilities among the relevant departments is necessary and the District Administration Scheme (paras. 4 – 5) should be invoked.

Monitoring and Prompt Action

42. To enable swift and strong action against mobile on-street promotional activities, we consider it important that district bodies, in particular DCs and DOs, and local residents should help monitor black spots and raise early alert. FEHD should continue to mount prompt operations and step up prosecution.

Public Education and Publicity

43. Public education and publicity campaigns will help focus public attention on the problems caused by on-street promotional activities. If it is possible to name the ultimate beneficiaries in reports of successful prosecution cases, it might deter the self-respecting business community from repeated offences.

Recommendations

44. The Ombudsman makes the following recommendations:

- (a) the Administration to reconsider its stance and come up with a clear statement on enforcement action;
- (b) FEHD to review the PHMSO for powers to take enforcement action on “hawking” of services;
- (c) extend the pilot scheme to take prosecution action on easy-mount stands on a territory-wide basis;
- (d) HAD and FEHD to work out with other departments through the District Administration Scheme a clearer demarcation of departmental responsibilities;
- (e) FEHD to seek assistance from DCs and DOs in monitoring black spots and raising early complaints, with the Department mounting quick operations in response and stepping up prosecution; and
- (f) Government in general, and FEHD in particular, to enhance public awareness of the problems caused by on-street promotional activities, including making public reports on convicted cases.

Conclusion

45. How well street management is effected reflects the Administration’s determination and the effectiveness of the District Administration Scheme. Proper street management requires clear policies, adequate legislation, sufficient resources, consistent enforcement and effective response on the ground. Community support is also crucial: this should be achieved through consultation with district bodies and local residents, civic education and publicity. Where enforcement

responsibility falls on more than one department, we need clear demarcation of responsibilities, cooperative co-ordination of action and development of longer-term strategy. The District Administration Scheme, recently reinforced and more widely empowered by the Government, should enhance district capability for co-ordination and effective response to district problems.

**Office of The Ombudsman
December 2008**