

EXECUTIVE SUMMARY

Direct Investigation on Fire Safety Regulatory Measures

Background

The Cornwall Court fire in August 2008 aroused concern over fire safety especially on food premises, which entertain members of the public in large numbers. The Ombudsman, therefore, initiated in June 2009 a direct investigation to examine:

- (a) the procedures and practices in enforcement of regulatory measures for fire safety applicable to all premises;
- (b) the administration of arrangements for fire safety in licensing food premises; and
- (c) the mechanism for monitoring compliance with fire safety on food premises.

Our Findings

Roles and Responsibilities of Relevant Departments

2. The Fire Services Department (“FSD”) is responsible not only for fire-fighting and rescue, but also for promotion of fire safety and protection on all premises.

3. The Food and Environmental Hygiene Department (“FEHD”) is the licensing authority for food premises. It issues licences to food premises which meet health, fire safety and other requirements.

FSD’s Statutory Certification System

4. By law, owners of premises have to keep their fire service installations or equipment (“FSI”) in efficient working order at all times. They also have to engage registered contractors (“RCs”) to inspect their FSIs once every 12 months. After inspection, the RC has to report the results to the owner on a certificate, commonly known as FS251, within 14 days, with a copy to FSD.

Loose and Ineffective Monitoring

5. FSD manually checks FS251s received against those previously received to identify premises with overdue inspection. However, this procedure is labour-intensive and the results prone to human errors. Moreover, FSD finds it difficult to prove whether and when RCs have submitted their FS251s. As a result, only four prosecutions have been brought in the past seven years against RCs for non-submission or late submission of FS251s.

6. FSD is developing a computer system for generating lists of premises with overdue inspection of FSI. It is also considering legislative amendment to require its endorsement of FS251s before RCs issue them to owners of premises. These would facilitate the Department's monitoring of the inspections.

Lack of Transparency

7. Under the current regulatory mechanism, owners of premises have no statutory obligation to display FS251s. The state of fire safety of premises is therefore not readily known to users of premises and they are unable to play a part in reporting defects. FSD is considering legislative amendment to require conspicuous display of FS251s, which would provide a strong incentive for owners to arrange timely inspection and proper maintenance of their FSI. Pending the legislative amendment, it encourages owners to display their FS251s.

Inadequate Follow-up on FS251s Received

8. FSD classifies FS251s received into high or low priority cases by the nature and severity of the defects reported therein. For high priority cases, FSD aims to inspect the premises immediately to determine if enforcement action is necessary. For low priority cases, FSD merely issues advisory letters to urge the owners to rectify the defects.

9. Each year, about 80% of cases are classified as high priority, and about 20% as low priority. However, FSD manages to inspect only 60% of cases, which means that at least about 20% of high priority cases are not checked by FSD. Low priority cases are even more likely to be taken lightly by owners, as FSD will not take further action after issuing advisory letters.

10. FSD should certainly inspect all high priority cases and conduct random checks on low priority cases.

RCs to be Gatekeepers

11. Currently, the law requires RCs to merely inspect FSI and report results to FSD. The onus is on FSD to ensure that owners rectify the defects reported.

12. It would be desirable for FSD to require RCs to make good FSI before submitting FS251s to the Department. With RCs acting as gatekeepers, FSD can better utilise its resources in monitoring compliance by RCs and owners of premises.

Low Prosecution Rate

13. FSD has initiated only a very small number of prosecutions, not only with regard to RC's non-submission or late submission of FS251s, but also to owners' failure to check FSI annually and obstruction to or locking of means of escape. The average annual figures for the past seven years were less than one, five and 29 respectively. More rigorous action by FSD is called for.

Gaps in Coordination and Communication

14. By law, FSD may prosecute any person causing obstruction to or locking means of escape. For cases of serious obstruction caused by suspected unauthorised building works, FSD is

to refer them to the Buildings Department (“BD”) for follow-up as building safety issues, apart from taking its own enforcement action. However, of the 1,289 cases referred to BD between October 2008 and October 2009, none was followed up by FSD.

15. FSD should enhance communication with BD to facilitate decision on the enforcement action to be taken on each case.

Licensing and Inspection of Food Premises

Omission in Licence Conditions

16. An applicant for a new food business licence has to produce evidence showing that health, fire safety and other requirements have been met. However, once issued, the licence only requires the licensee to comply with food hygiene conditions. It does not specify any fire safety requirements.

17. Such inconsistency is inconceivable, given the importance of fire safety and FEHD’s wide powers to impose conditions in licences. This may invite arguments that non-compliance with fire safety requirements does not constitute a breach of licence.

Deficiency in Renewal of Licence

18. Food business licences are renewable every 12 months. In processing applications for renewal, FEHD neither requires from the licensee any documentary evidence of, nor arranges with FSD to inspect the food premises for, continued compliance with fire safety requirements.

19. In a complaint case handled by this Office, the complainant applied for a new food business licence to operate a restaurant in a multi-storey building. FEHD rejected his application, as the FS251 of the building was long overdue and FSD had not taken any action. However, the existing restaurants in the same building had no problem in getting licences renewed.

20. Such renewal of licences without compliance with fire safety requirements gives the public a false assurance of safety. The practice also differs from those for other premises such as clubs and karaoke establishments where applicants for renewal of licensee have to submit certificates to prove that all FSI on the premises are in working order and FSD officers inspect the premises before renewal of licence. FEHD should take steps to ensure that the premises meet fire safety requirements when licences are renewed.

Inadequate Inspection

21. There are currently about 22,000 licensed food premises. FSD aims to conduct a surprise inspection on each food premises every five years. Between 2006 and 2009, the number of surprise inspections conducted by FSD each year ranges from 78 to 513, falling seriously below its target. Such a small number of surprise inspections could hardly spur licensed food operators to maintain fire safety on their premises at all times.

Recommendations

22. Based on the above, The Ombudsman makes 11 recommendations to FSD and FEHD, including the following:

- (a) FSD should expedite the setting up of its computer system and the legislative amendment to enable prompt identification of owners of premises and RCs failing to comply with statutory requirements;
- (b) FSD should promote conspicuous display of FS251s on premises, while considering legislative measures for mandatory display;
- (c) FSD should inspect all high priority cases and conduct random checks on low priority cases;
- (d) FSD should consider requiring RCs to make good FSI before submitting FS251s to the Department;
- (e) where warranted, FSD should step up prosecution against owners of premises for failure to check FSI, RCs for failure to submit FS251s and owners/users for causing obstruction or locking means of escape;
- (f) FSD should work out with BD procedures whereby the latter will inform the former of action taken after receipt of referral of cases of serious obstruction, and should itself follow up on such cases by taking enforcement action where necessary;
- (g) FEHD should impose conditions in food business licences for compliance with fire safety requirements;
- (h) FEHD should work out arrangements with FSD to ensure that food premises meet fire safety requirements before approving their applications for licence renewal; and
- (i) FSD should comprehensively review its frequency of surprise inspections and manpower requirements.

**Office of The Ombudsman
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