

# **Executive Summary Investigation Report**

## **Immigration Department's Mechanism for Following up Cases of Unregistered Birth**

### **Foreword**

A tragedy happened in Hong Kong in which a 15-year-old girl plunged to her death from a building. It was later discovered that the girl and her younger sister were born in Hong Kong, but their parents had never registered their births. The incident aroused public concern about whether the well-being of children without a birth registration are adequately protected, as well as the social problems (such as child abuse, illegal immigration and human trafficking) that may arise as a result. In this connection, the Office of The Ombudsman decided to launch a direct investigation against the Immigration Department (“ImmD”).

### **Background**

2. Under the Births and Deaths Registration Ordinance, the father or mother of a newborn have a duty to register the birth within 42 days at a births registry (“the registry”) of ImmD. Besides, all public and private hospitals must furnish the registry with a birth return of any newborn within 42 days upon delivery.

### ***ImmD's Mechanism for Follow-up on Unregistered Birth Cases***

3. Prior to the tragic incident in April 2015, ImmD handled cases of unregistered birth by sending, at three months after birth, the first reminder to the parents via surface mail. If the birth remained unregistered six months after birth, a second reminder would be issued, to be followed by a third one via registered mail if the birth remained unregistered nine months after birth. ImmD would also contact the parents by telephone if their contact numbers were available. In case a reminder was returned, ImmD would try other means to contact the parents.

4. In the wake of the tragic incident, ImmD introduced a new mechanism on 27 May 2015. In addition to sending three reminders under the old mechanism to the baby's parents and contacting them by telephone, ImmD would input the parents' particulars into its computer system nine months after the baby's birth, such that when they use ImmD's services (such as applying for an identity card or a travel document), the Department can take the opportunity to further follow up on their failure to register the birth of their baby. If a birth registration remains outstanding 15 months after birth, the registry would refer the case to ImmD's Investigation Division, and the parties involved may be prosecuted. Should anything unusual be discovered in the course of checking (e.g. the parents concerned having breached the conditions of stay),

the registry would refer the case to the Investigation Division direct for follow-up action.

## **Our Findings**

### ***Cases between 1990 and 2015***

5. After the tragic incident, ImmD searched its records between 1 January 1990 and 26 May 2015, and found 151 cases in which a baby's birth remained unregistered after more than 12 months. ImmD had issued three reminders as required only in 49 cases (about 32.5%), two reminders in 19 cases (about 12.6%), one reminder in 13 cases (about 8.6%), and none at all in 70 cases (about 46.4%). Regarding the parents' addresses on the birth returns, 120 were complete, and the remaining 31 were incomplete or even entirely missing.

6. In the aforementioned 151 cases, except for one case in which the mother was no longer traceable and the child's birth was subsequently registered by a social worker, all other 150 cases had been referred to the Investigation Division for follow-up action. Nevertheless, those referrals were all made in or after May 2015. In other words, under the old mechanism, ImmD had never investigated these 151 cases of unregistered births for over 12 months, let alone instituting prosecution.

7. Since the new mechanism had come into effect, up to 31 December 2017 and after discounting the 47 cases in which the birth registrations had been completed earlier or the babies had died prematurely, ImmD conducted investigations into the remaining 104 cases and completed 52 cases. In 35 of those cases, ImmD instituted prosecution against either the father or the mother. Except for one acquittal case, the defendants in all the other 34 cases were convicted. ImmD decided not to bring prosecution for the remaining 17 cases due to lack of evidence or after obtaining legal advice from the Department of Justice. Meanwhile, 52 cases are still under investigation.

### ***Cases after 2015***

8. Since the coming into effect of the new mechanism on 27 May 2015 and up to 31 December 2017, there were 401 cases of unregistered birth (six months or longer after birth). Of those cases, 352 had been subsequently registered, while the parents in another 17 cases had been located and they were completing the formalities of birth registration. The remaining 32 cases had been or would be input into ImmD's computer system and/or referred to the Investigation Division for follow-up action.

## **Our Comments**

9. **It is the duty of parents to register the birth of their newborns. If they fail to do so, the most vulnerable ones are undoubtedly their newborns, who are incapable of seeking help by themselves. One could easily imagine the potential crisis and risks the newborns are exposed to in such circumstances. Given the hardship caused to the innocent children by their parents' failure to perform their duty, even one case is too many.**

10. For cases of unregistered birth, ImmD is the sole department in possession of the most comprehensive information, and it is within its purview to pursue those cases. Nevertheless, our investigation revealed that, under its old mechanism before May 2015, ImmD's follow-up action on cases of unregistered birth could be described as feeble and ineffective. The extent of ImmD's inaction was startling. After the tragedy of the 15-year-old girl, which was shocking, sad and regrettable, ImmD responded quickly by completing the review within a short period and introducing the new mechanism.

### ***Follow-up Procedures under Old Mechanism Tantamount to Inaction - Some Youngsters only had Their Births Registered at the Age of 20***

11. Under the old mechanism, ImmD's follow-up procedures were no more than issuing reminders in a routine manner. Between 1990 and 2015, there were an astounding 151 cases of unregistered births (12 months or longer after birth). For nearly half of those cases, no reminders had ever been issued. The situation was appalling.

12. Moreover, under the old mechanism, ImmD had never referred such problem cases to the Investigation Division, let alone instituting any prosecution. In certain cases, the birth was only registered more than/nearly 20 years after the birth of a child. It is indeed worrying to think about what those innocent children had gone through in childhood and the first 20 years of their lives, how they received education and participated in group activities, and what their future would be. ImmD's senior management had all along failed to perform the monitoring duties diligently. They can hardly escape the blame for failing to step in and rectify such malfeasance of inaction.

### ***Missing the Opportunity to Intervene at an Early Stage***

13. Of the aforementioned 151 cases, in 30 cases the mother was in breach of the conditions of stay. Since under the old mechanism there were no established procedures for verifying whether the parents were overstayers, ImmD had never been alerted about such cases and thus failed to take action at an early stage.

14. Furthermore, there were seven mothers who failed to register the births of more than one child, and these cases involved 16 children in total. In other words,

when the birth returns of their second and third newborns were received from the hospitals, ImmD did not realise that the same mothers had not yet registered the births of their elder children and thus missed the opportunity to initiate an early intervention.

## **Areas for Improvement under the New Mechanism**

### ***Problems of Incomplete Address on Birth Returns Need to be Resolved***

15. Under the new mechanism, there were still many cases whereby the residential address of parents on their birth returns was either incomplete or missing. Many of those cases concern public hospitals. It should be noted that obtaining accurate and complete residential addresses and contact telephone numbers is a key factor to successfully locating the parents. ImmD should collaborate with the Hospital Authority and private hospitals with a view to formulating improvement measures to resolve the problem of incomplete residential addresses on the birth returns.

### ***Early Intervention***

16. In our view, one reminder is sufficient to alert busy parents who forget to register the birth of their newborns, or those who do not understand the requirement under the law. In fact, most of those unregistered birth cases involved complicated family problems; some mothers were afraid of revealing their identities as overstayers, some even denied having given birth to their babies. The later the problem cases are identified, the more difficult it would become to locate the parents concerned.

17. To enable early intervention, we recommend that ImmD consider reducing the number of reminders to two. When the parents still fail to register the birth of their newborns after the second reminder is issued (i.e. after six months), ImmD should take more proactive follow-up actions through its computer system and referring such cases to its Investigation Division.

### ***Exploring the Feasibility of Establishing a Mandatory Notification Mechanism***

18. We have explored the feasibility of establishing a mandatory notification mechanism to require relevant organisations (such as social services units) to submit reports on suspected cases of unregistered births. While we understand that in-depth research, wide consultation with stakeholders and legislation are necessary before such a mandatory mechanism can be implemented, we hope that this direct investigation can help instill the idea for the Government to start conducting research and consultation on the feasibility of establishing a mandatory notification mechanism.

### ***Publicity and Public Education***

19. Most parents should know the importance of birth registration for their children. Hence, apart from giving basic information such as the procedures and required documents for birth registration, ImmD should also emphasise in its publicity and public education campaign how parents' failure to complete birth registration promptly can cause harm to their children, and what legal consequences the parents may face.

### **Recommendations**

20. In the light of the above, The Ombudsman recommends that ImmD:
- (1) strengthen its communication and coordination with hospitals with a view to solving the problem of incomplete address on birth returns;
  - (2) initiate early intervention in cases of unregistered birth;
  - (3) enhance its public education campaign to emphasise how failure to complete birth registration promptly can cause harm to children, and what legal consequences the parents may face; and
  - (4) take the lead to study with other relevant departments (such as the Social Welfare Department, the Department of Health and the Police) possible ways to strengthen the existing follow-up mechanism, including the feasibility of establishing a mandatory notification mechanism.

### **Concluding Remarks**

21. We are pleased to note that ImmD has accepted all our recommendations and implemented some of them already. The Department has introduced further improvement measures to enhance the efficiency of the new mechanism. We will continue to monitor the progress until all the recommendations are implemented.

**Office of The Ombudsman**

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