

# **Food and Environmental Hygiene Department's handling of illegal extension of shops and fixed hawker pitches and accumulation of polyfoam boxes Investigation Report**

On 13 December 2020, the complainant complained to this Office against the Food and Environmental Hygiene Department (“FEHD”). On 15 December, the complainant provided us with supplementary information.

## **The Complaint**

2. Allegedly, for many years, the shops in a street (“the Street”) had habitually placed a large quantity of goods on their front pavements and under a nearby footbridge (“the Footbridge”), causing obstruction to pedestrians and poor environmental hygiene. The complainant complained to this Office that FEHD had failed to take effective enforcement against the problems.

3. After initiating a full investigation into the said problems, we decided to investigate also the problem of obstruction to pedestrians caused by the placement of goods by fixed hawker pitches in the Street.

## **Our Findings**

### ***Purview of Relevant Departments***

#### **Street Obstruction by Shops**

4. Illegal extension of business area by shops (commonly known as “Shop Front Extensions”) (“SFEs”) is a street management issue concerning the purview of several departments. One of FEHD’s core functions is to maintain environmental hygiene. When articles placed on pavements involve illegal hawking or cause obstruction to scavenging operations, FEHD will take enforcement actions according to actual situations.

5. For offences of obstruction in public places committed by shops, FEHD and the Hong Kong Police Force (“HKPF”) are empowered to issue fixed penalty notices (“FPNs”) at a fine of \$1,500 to offenders pursuant to the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance.

6. After removal of the obstructing articles, if serious obstruction is caused by articles placed at the same spot again shortly, FEHD can, depending on the actual situation, issue/reissue FPNs, arrest or prosecute the offenders by summons under the Summary Offences Ordinance.

7. For cases of imminent threats to the public and obstruction to traffic and/or other road users caused by miscellaneous articles/goods placed on carriageways, enforcement officers of various departments will, depending on actual situations, take appropriate actions under their purview. HKPF will take part in joint operations and assist other departments, when needed, including issuing FPNs to offenders.

#### Illegal Extension of Fixed Hawker Pitches

8. The existing hawker management policy is to strike a proper balance between allowing legal hawking activities on the one hand, and maintaining environmental hygiene and ensuring public safety not to be affected by such activities, as well as protecting the public from nuisance on the other. Generally, FEHD adopts the strategy of “giving warning before taking enforcement action” against obstruction caused by licensed hawkers (including fixed hawker pitches).

9. When no obstruction is caused to fire escape or emergency vehicular access, FEHD would allow the extension of fixed hawker pitches, within certain limits, beyond the approved area during the business hours, but they should revert to the approved area outside the business hours.

#### Accumulation of Polyfoam Boxes

10. According to section 22 of the Public Health and Municipal Services Ordinance, FEHD may cause a notice to be served upon the owner of any article or thing which causes obstruction to the scavenging operations or to the performance of duties by cleansing workers. If the owner cannot be found or ascertained, FEHD will cause the notice to be attached to such article or thing requiring the owner to remove the same within a period of four hours after the notice is so served or attached, and to prevent the recurrence of such obstruction by the article or thing during such period as specified in the notice.

11. If FEHD officers find any environmental hygiene problem caused by

polyfoam boxes during patrols, they may take action pursuant to the relevant law.

### ***FEHD's Explanation***

#### **SFEs**

12. The Street, with many greengrocers and meat shops on both sides, is a black spot of SFEs. FEHD has all along tackled SFEs rigorously with enforcement actions according to actual situations.

13. Between February 2020 and January 2021, FEHD received 333 complaints about SFEs in the vicinity of the Street. In the same period, FEHD took enforcement actions as follows:

- (1) conducting 192 surprise operations;
- (2) issuing 159 FPNs and 95 summonses against SFEs;
- (3) issuing 39 summonses against unlicensed hawking; and
- (4) taking 11 actions to seize the articles abandoned by hawkers.

14. FEHD will review the effectiveness of existing enforcement actions taken by the local District Environmental Hygiene Office against SFEs in the Street, and continue to request joint operations with HKPF to combat the problem of SFEs.

#### **Illegal Extension of Fixed Hawker Pitches**

15. There were 73 fixed hawker pitches in the Street selling non-food dry items. Those pitches were aligned on one side of the Street facing the carriageway.

16. Between May 2020 and April 2021, FEHD received 32 complaints about the obstruction caused by illegal extension of fixed hawker pitches in the Street. In the same period, FEHD took enforcement actions as follows:

- (1) conducting 1,084 patrols;
- (2) instigating 22 prosecutions against the persons in charge of the pitches

which caused obstruction; and

- (3) instigating 7 prosecutions against the persons in charge of the pitches for placing commodities and equipment beyond the pitch area.

17. FEHD observed that most of the goods placed near the fixed hawker pitches in the Street might have caused obstruction but they were not goods offered for sale by those fixed hawker pitches.

#### Accumulation of Polyfoam Boxes

18. The polyfoam boxes accumulated in the area under the Footbridge were recyclable materials. At present, generally speaking, there were not adequate and suitable spaces in the community for the recycling industry to process the materials collected. Waste separation, recovery and recycling are not within the ambit of FEHD. It is essential for relevant policy bureaux and enforcement departments to coordinate and implement measures to address the problem from source.

19. FEHD recognised the difficulties and situations facing the recycling industry operating in the community. While their activities would cause environmental nuisance or obstruction to scavenging operations, FEHD endeavoured to adopt a pragmatic and sympathetic approach by giving warnings before taking enforcement action.

20. FEHD observed that the polyfoam boxes in the area under the Footbridge mostly originated from the greengrocers in the Street. Those shops placed their goods on shelves for sale in the daytime and then handed the empty polyfoam boxes and plastic baskets to roadside recyclers. After collecting the polyfoam boxes and plastic baskets, the recyclers temporarily placed them on the pavements or carriageway under the Footbridge, pending conveyance by trucks after around 11 pm every day. FEHD did not have any records about the duration of placement and the owners of those articles.

21. FEHD's street cleansing contractor ("the Contractor") provided cleansing service for the public roads in the vicinity of the Street. Under the service agreement, the Contractor was required to conduct at least six rounds of street sweeping and a round of street washing in the vicinity daily.

22. According to the Contractor's verbal reports, daily cleansing work in the

vicinity of the Street was completed smoothly without any obstruction. FEHD officers regularly monitored the Contractor's performance by conducting patrols in the vicinity. After receiving the complainant's complaints, FEHD officers did not find any obstruction caused to scavenging operations by polyfoam boxes during their patrols in the vicinity.

23. During routine patrols, if any unattended articles or trolleys were found to be so placed on the pavement as to cause obstruction to scavenging operations, FEHD officers would issue a "Notice to Remove Obstruction" requiring the owner to remove them.

24. Between May 2020 and April 2021, FEHD issued 125 "Notices to Remove Obstruction" and removed 45 unclaimed items in the area under the Footbridge, and made five requests to HKPF to follow up articles placed on the carriageway which might cause obstruction to traffic.

### ***Our Site Inspections***

25. This Office conducted site inspections in the vicinity of the Street and under the Footbridge on 6 April and 6 July 2021. Our observations were as follows:

- (1) Most of the greengrocers and meat shops on both sides of the Street placed goods and miscellaneous articles on their front pavements, or even on the carriageway.
- (2) The Street's carriageway had three lanes, with the middle one for trams or other vehicles. Fixed hawker pitches were located on one of the side lanes. The goods of many pitches nearly occupied the entire lane. When trams or other vehicles travelled along the middle lane, passers-by or shoppers stopping to browse the pitches had to dodge out of their way.
- (3) During the inspection on 6 April, we found that:
  - (a) a dozen or so shops occupied the entire pavement with goods and miscellaneous articles, pedestrians had to walk on the carriageway; and
  - (b) a large quantity of polyfoam boxes were accumulated under the

Footbridge.

- (4) During the inspection on 6 July, we found that:
- (a) at least five shops occupied the entire pavement with goods and miscellaneous articles, while around ten shops occupied more than a half of the pavement with goods and miscellaneous articles; and
  - (b) no polyfoam box was found accumulated under the Footbridge.

### ***Our Comments***

#### SFEs

26. According to FEHD, the Street is a black spot of SFEs. Over the past year, more than 330 complaints were lodged with FEHD about SFEs in the vicinity, indicating the gravity of the problem. However, FEHD had only issued 159 FPNs and 95 summonses against SFEs, which means that less than one prosecution was instigated each day (see **para. 13(2)**).

27. Our inspections revealed that the problem of SFEs in the Street remained serious. Many shops even occupied the entire pavement with goods, forcing pedestrians to walk on the carriageway (see **paras. 25(1), (3)(a) and (4)(a)**) and thus jeopardising public safety. Obviously, FEHD's enforcement was ineffective or did not have sufficient deterrent effect. We consider that the problem must be addressed and urge FEHD to follow up seriously.

#### Illegal Extension of Fixed Hawker Pitches

28. According to FEHD, between May 2020 and April 2021, it received 32 complaints about illegal extension of fixed hawker pitches in the Street, and instigated 22 prosecutions against the persons in charge of the pitches for obstruction (see **para. 16**). In other words, less than two prosecutions were instigated each month.

29. We understand that as long as no obstruction was caused to fire escape or emergency vehicular access, FEHD would allow on a discretionary basis the extension of fixed hawker pitches beyond the approved area within certain limits during the business hours (see **para. 9**). Nevertheless, our inspections revealed that many fixed

hawker pitches in the Street extended their business area to the extent of nearly occupying an entire traffic lane. When trams or other vehicles travelled along the adjacent lane, it might cause danger to passers-by or shoppers stopping to browse the pitches (see **para. 25(2)**). We consider that FEHD should be reasonable in exercising its discretion. The above situation reflected that FEHD's control over the extension of fixed hawker pitches might be too lenient. Hence, FEHD needs to review whether its enforcement standards are commensurate with the gravity of the problem.

#### Accumulation of Polyfoam Boxes

30. According to FEHD, the polyfoam boxes in the area under the Footbridge mostly originated from the greengrocers in the Street. As those polyfoam boxes were temporarily placed in the public road pending conveyance by trucks after around 11 pm every day (see **para. 20**), it meant that they were placed there prolongingly from daytime to midnight and would inevitably cause certain nuisance and/or obstruction to the public.

31. FEHD quoted the Contractor as saying that at least six rounds of street sweeping and a round of street washing were conducted in the vicinity daily. The Contractor's verbal reports also showed that the daily cleansing work was completed smoothly without any obstruction by the prolonged placement of polyfoam boxes (see **paras. 21–22**). We are sceptical about this. Since a large area was occupied by the polyfoam boxes prolongingly placed on the pavements, and the Contractor had to conduct at least six rounds of street sweeping and a round of street washing in the vicinity daily, its street sweeping and washing operations were unlikely unaffected by the polyfoam boxes.

32. As shown in **paragraph 24**, FEHD had taken enforcement actions against the placement of polyfoam boxes. Our site inspections on 6 April and 7 July 2021 revealed that the problem had alleviated upon the time of our second inspection (see **paras. 25(3)(b) and (4)(b)**).

33. We do not mean to play down the efforts of FEHD in combating the problems in this case, and recognise that FEHD aspired to adopt a pragmatic and sympathetic approach in its enforcement actions, taking into account recycling in the community. However, the irregularities in the area had persisted and exceeded the reasonable scope, causing nuisance and/or obstruction to the public and even endangering road safety and pedestrians. FEHD should review its existing enforcement strategies and strength to prevent the situation from worsening. It should also liaise with other Government

departments and stakeholders for a solution to tackle the source of obstruction and environmental hygiene problem associated with recycling in the community.

**Concluding Remarks**

34. Based on the analysis in **paragraphs 26 to 33**, The Ombudsman considers the complaint **substantiated**.

**Recommendations**

35. The Ombudsman recommends that FEHD:
- (1) take enforcement actions resolutely against obstruction caused by SFEs to keep the pavements unobstructed;
  - (2) review the enforcement standards against the fixed hawker pitches concerned, draw up an implementation schedule and inform the pitch operators, so as to curb the obstruction caused by illegal extension and ensure the safety of road users;
  - (3) continue to monitor the placement of polyfoam boxes in the area under the Footbridge, and enhance control measures where necessary to keep the road unobstructed and the environment clean; and
  - (4) liaise with other policy bureaux/departments and stakeholders to formulate an effective solution for managing the placement of polyfoam boxes.

**FEHD’s Feedback on Draft Investigation Report**

36. FEHD’s feedback on our draft investigation report can be summarised as follows:

SFEs

37. Since 2021, FEHD has been stepping up enforcement actions against obstruction of pavements in the vicinity of the Street. Between January and June 2021, FEHD instigated 107 prosecutions by summons, issued 150 FPNs and made six arrests

against obstruction of pavements caused by SFEs in the Street; it also instigated 39 prosecutions by summons, made six arrests and seized over 490 kilograms of goods against unlicensed hawking.

38. FEHD has adjusted the enforcement strategies against the fresh provision shops in the Street and taken stringent control measures, including the following:

- (1) In March 2021, under the Demerit Points System for food premises or the Warning Letters System for violation of licensing conditions, FEHD issued warning letters to nine licensed fresh provision shops suspected of illegally extending business area. The licensees were warned against extending beyond the licensed area and placing or displaying goods on the shop front pavement, otherwise they were liable to prosecution and sanctions under the Demerit Points System.
- (2) In June 2021, FEHD invoked the Food Business Regulation to instigate four prosecutions and register demerit points against licensees for operating food business outside the licensed area.

39. FEHD has also adjusted the enforcement strategies against non-compliant greengrocers. Targeted enforcement actions, including flexible surprise operations at irregular hours, have been taken to prosecute and arrest offenders and seize their goods.

40. Regarding the situation cited in **paragraph 26**, FEHD explained that an incident of obstruction caused by a shop could draw repeated complaints, but the problem might be resolved by just one action of prosecution and enforcement. Consequently, it was inappropriate to directly compare the number of complaints with the number of prosecutions, thereby reaching a conclusion that FEHD's enforcement was lax.

41. FEHD asserted that the Street is a traditional hawker bazaar and wet market. Apart from trams, daytime vehicular flow is not high. Moreover, owing to the pandemic, the public tend to avoid overcrowded places, such that they might opt to walk on the road shoulder with fewer pedestrians, or even on the carriageway when there are no vehicles. Therefore, the phenomenon of pedestrians walking on the carriageway should not be attributable to the seriousness of SFEs.

42. FEHD reiterated that SFEs in the Street are a complex issue. It is necessary

to launch inter-departmental operations coordinated by the local District Office of the Home Affairs Department (“DO”), with enforcement actions taken by relevant departments as empowered by relevant laws. FEHD is in the process of actively liaising with HKPF to enhance pre-planned inter-departmental operations, and requesting DO to coordinate and take the lead to step up inter-departmental operations and initiate publicity and education campaigns. FEHD has launched publicity and education campaigns targeting the shops concerned.

#### Illegal Extension of Fixed Hawker Pitches

43. With a distinctive mode of operation, fixed hawker pitches have special attraction. They often offer novel products at low price which attract a lot of shoppers to browse and patronise, leading to short spans of crowdedness. Nevertheless, FEHD admitted that there is room for improvement regarding the enforcement strength against irregularities of fixed hawker pitches during their business hours.

#### Accumulation of Polyfoam Boxes

44. FEHD explained that only when any articles or things are so placed as to cause or likely to cause obstruction to scavenging operations or performance of duties by cleansing workers that it can invoke relevant statutory powers (see **para. 10**), thereby requiring the owner to remove them within the period specified. The prerequisite under the statutory provision is that obstruction has been caused to scavenging operations by the articles. FEHD is not entitled to exercise the above powers indiscriminately against any articles not in violation of the provision.

45. Between January and June 2021, FEHD issued 85 “Notices to Remove Obstruction” and removed 18 unattended items in the area under the Footbridge.

46. FEHD considered waste separation, recovery and recycling not within its ambit. To ensure that roadside recycling is carried out in an orderly manner and minimise any nuisance caused, it is necessary for relevant policy bureaux and departments to liaise with the industry and stakeholders, thereby establishing a regulatory and support system. FEHD has explored improvement measures with HKPF and DO, including a proposal of designating a suitable location in the district for roadside recyclers to process recyclable materials with lower impact on pedestrians and vehicular traffic. FEHD has proactively liaised with the Environmental Protection Department (“EPD”) to participate in the Pilot Scheme on Collection and Recycling

Services of Plastic Recyclable Materials. On 12 July 2021, the polyfoam boxes removed by FEHD were delivered for the first time to an EPD contractor for recycling and proper treatment.

## **Our Comments on FEHD's Feedback**

### SFEs

47. FEHD explained that it has stepped up enforcement actions against SFEs in the vicinity of the Street, and adjusted its enforcement strategies (see **paras. 37–39**). Its efforts are commendable. However, our two site inspections in April and July 2021 both revealed that the problem of SFEs in the Street remained serious (see **paras. 25(1), (3)(a) and (4)(a)**), which showed that FEHD needed to enhance enforcement measures continuously. We consider that the persistent SFEs in the Street have become a habitual malpractice. FEHD should show determination and take enforcement actions resolutely to improve the environmental hygiene in the vicinity.

### Illegal Extension of Fixed Hawker Pitches

48. Based on our observation (see **para. 25(2)**), one of the traffic lanes in the Street was mainly occupied by the goods placed by fixed hawker pitches, not by shoppers browsing and patronising the pitches. In fact, the goods of fixed hawker pitches had nearly occupied the entire lane, leaving little space for shoppers to browse and patronise the pitches. As it happened, pedestrians and vehicles might even need to scramble for passage. FEHD should prioritise the safety of pedestrians and review its enforcement standards against illegal extension of fixed hawker pitches.

### Accumulation of Polyfoam Boxes

49. We consider the prolonged placement of polyfoam boxes under the Footbridge that occupied a large road area to have caused nuisance and/or obstruction to the public, and FEHD's scavenging operations would inevitably be affected. Consequently, FEHD should exercise its statutory powers according to the actual situation to remove articles that cause obstruction to its scavenging operations. It should not disregard its duties of street cleansing and ensuring street cleanliness and hygiene even though the issue is complex or may involve the purview of other departments.

## **Conclusion**

50. After duly considering FEHD's feedback, The Ombudsman maintains the conclusion in **paragraph 34** and the recommendations in **paragraph 35**.

51. We learn that FEHD has agreed to enhance enforcement measures against illegal extension of shops and fixed hawker pitches in the Street. It would also deal with the placement of polyfoam boxes under the Footbridge from the perspective of improving environmental hygiene, and endeavour to identify a solution to this problem through liaison with relevant policy bureaux, departments and stakeholders.

**Office of The Ombudsman**

**July 2021**