

## **Drawing up and publishing guidelines on dangerous goods vehicles by Fire Services Department and Labour Department Investigation Report**

On 20 April 2020, the complainant lodged a complaint with this Office against the Fire Services Department (“FSD”) and the Labour Department (“LD”). On 5 May and 20 August 2020, he provided this Office with supplementary information.

### **The Complaint**

2. The complainant, a company proprietor, purchased a goods vehicle equipped with a tail lift for his company in 2019. He applied to FSD for a licence to use the vehicle for carrying Category 2 dangerous goods (“DG”) (namely diving oxygen cylinders). Subsequently, he applied to FSD for renewing the vehicle licence (“DGV”) after installing tail lift warning lights on it according to LD’s occupational safety regulations. During the vehicle examination on 8 April 2020, FSD told the complainant that it had introduced a new requirement following a discussion with LD over the past half year. It was stipulated that vehicles carrying Category 2 DG should not have the tail lift warning lights installed near the DG to avoid explosion caused by gas leakage. Since the complainant’s company vehicle posed an explosion risk with its warning lights installed near the DG, FSD refused to renew its licence and suggested the complainant contact LD for details of the new requirement. The complainant queried that the warning lights would only be switched on while the vehicle was stationary and the tail lift in operation. Given that the warning lights were off while the vehicle was moving, there was no explosion hazard. Besides, he enquired with LD in late April to verify the above new requirement on the installation position of warning lights, but LD said no relevant guideline was available.

3. Regarding the above issues, the complainant alleged that:

- (1) **FSD and LD** had failed to inform the public of the new requirement (i.e. the tail lift warning lights of vehicles carrying Category 2 DG should not be installed near the DG) after introducing it, nor had they drawn up relevant guidelines. As a result, he was at a loss for how to comply with it. Neither did the departments give vehicle owners a grace period to re-install the warning lights in compliance with the new requirement (**Allegation (1)**); and

- (2) **FSD** was unreasonable in refusing to renew the licence of his company's vehicle on the grounds that its warning lights were installed near the DG and posed a safety risk (**Allegation (2)**).

## **Our Follow-up Investigation**

4. At our request, FSD and LD replied to this Office and the complainant in parallel on 4 and 29 June 2020 respectively. Subsequently, we conducted further inquiry and requested supplementary information from the two departments. After examining their replies and supplementary information, we decided to launch a full investigation and informed the two departments and the complainant of our decision by letter on 20 August.

5. Later, in an email to this Office on 20 August 2020, the complainant relayed that he had received from LD a letter dated 3 August 2020. It stated that owners of vehicles carrying Categories 2 and 5 DG must comply with the Fire Safety Guidelines for Conveyance of Category 2 or 5 Dangerous Goods ("Tail Lift FSG") issued by FSD on 29 April 2020, where warning lights should be installed on the back side of tail lifts (i.e. facing the rear end of the vehicle). The complainant considered that warning lights installed on the back side would become invisible when the tail lift was lowered, and thus could not serve the purpose of alerting people to the danger near the rear end and avoiding trapping injuries. Moreover, when the tail lift was lowered to the ground, it could crush and damage the warning lights. In this connection, the complainant further complained to this Office that LD was unreasonable in requiring vehicle owners to install warning lights on the back side of tail lifts according to the Tail Lift FSG (**Allegation (3)**).

6. After examining the information and explanations provided by FSD and LD between 17 September and 9 October, we issued a draft investigation report on 27 November to the two departments for comments. Our investigation was completed following their replies on 17 and 29 December. Our findings are as follows.

## **Our Findings**

### ***FSD's Requirements***

7. Pursuant to the Dangerous Goods Ordinance, FSD is responsible for issuing licences for vehicles carrying Categories 2 and 5 DG. Furthermore, it is stipulated

under item 14 of the Standard Fire Safety Requirements for Vehicles Used for Conveyance of Category 2 Dangerous Goods (Excluding LPG, Chlorine and Electronic Gases) in Cylinders (“the FSR”): “Only electric lights shall be used on the vehicle. No fire, artificial light or article capable of causing fire or explosion shall be carried on the vehicle.”

8. Upon receiving an application for issuance/renewal of licence for a vehicle carrying Category 2 DG, FSD would issue the FSR to the applicant for compliance. Subsequently, FSD would conduct a vehicle examination and, subject to compliance with the FSR and receipt of the licensing fee from the applicant, issue a licence (normally valid for one year). Licensees would receive a renewal reminder from FSD three months before licence expiry. They should apply for licence renewal and arrange a vehicle examination to ensure their DGVs’ continuous compliance with FSD’s requirements (including the FSR).

### ***LD’s Requirements***

9. The Guidance Notes on Prevention of Trapping Hazard of Tail Lifts (“the GN”) was issued by LD in July 2013 and revised in October 2015. It sets out the general safety measures for tail lift operation to facilitate compliance with occupational safety and health regulations by duty holders. Its purpose is to safeguard the workers engaged in operation of tail lifts and other tasks near the tail lifts, so as to avoid accidents. The GN provides for installation of six safety devices by owners on their goods vehicles, including audio and visual warning devices (such as warning lights), for reducing the risk of trapping injuries caused by operation of tail lifts.

### ***Sequence of Events***

10. In the fourth quarter of 2019, it came to the notice of FSD during vehicle examinations that some DGVs had warning lights installed on the front side of the tail lift (i.e. facing the inside of the vehicle). The applicants/licensees indicated that the installation was made in accordance with LD’s occupational safety regulations. Nevertheless, FSD found that the warning lights, which were not in conformity to its standards for explosion protection, were installed facing the inside of the vehicle, thereby posing a fire or explosion risk and failing to comply with the FSR. The vehicles could not pass FSD’s examination and their licences would only be issued/renewed after rectification and re-examination.

11. In this connection, FSD approached LD in November 2019, and a meeting was held with LD and the Electrical and Mechanical Services Department (“EMSD”) on 26 November. The aim was to understand LD’s requirement on installing tail lift warning lights under the GN, and to discuss ways for assisting DGV owners to comply with the requirements of LD and FSD. At the meeting, FSD asserted that warning lights installed on the front side of the tail lift would pose a fire or explosion risk to the DGV. Warning lights, other than those conforming to the standards for explosion protection under FSD’s relevant fire safety requirements, should be installed outside the potentially explosive atmospheres such as the back side of the tail lift. LD agreed at the meeting that it would consider revising the GN and notify the garages/service providers engaged in retrofitting tail lift safety devices for goods vehicles (“Garages/SPs”) of the installation position of warning lights.

12. In January 2020, LD visited/contacted all of the 22 Garages/SPs to explain the requirement on installing warning lights for DGVs to ensure compliance of their retrofitting service with FSD’s requirements. However, at that time LD did not notify the affected vehicle owners.

13. LD received the complainant’s complaint on 15 and 20 April 2020 respectively. The complainant alleged that after installing the tail lift warning lights according to LD’s requirement, FSD refused his application for renewing the DGV licence during the vehicle examination on 8 April 2020, on the grounds that the warning lights posed a fire or explosion risk. FSD received the same complaint from the complainant on 20 April. Subsequently, FSD issued the Tail Lift FSG on 29 April and proactively distributed it to the DGV licensees/applicants concerned. On 6 May, FSD provided LD with the Tail Lift FSG for reference.

14. After learning of the complainant’s case, LD expedited the revision of the GN, with a letter issued on 8 July 2020 to a total of 35 Government departments/public bodies to seek their views on the safety devices (including warning lights) under the GN. LD drew up a draft revised version in August. It would further consult the sector with a view to publishing the revised version as soon as possible.

15. Following the complainant’s complaint, LD also started preparation in June 2020 for direct notification to the affected vehicle owners. Based on the information of vehicle owners provided by FSD, LD issued a letter, attached with the Tail Lift FSG, to a total of 199 vehicle owners on 3 August 2020.

## Responses from FSD and LD

### *Response from FSD*

#### Allegation (1)

16. FSD asserted that it is clearly stipulated under item 14 of the existing FSR: “Only electric lights shall be used on the vehicle. No fire, artificial light or article capable of causing fire or explosion shall be carried on the vehicle.” The FSR is available on the department’s website. Item 14 of the FSR has proved effective in regulating the licensing of vehicles carrying Categories 2 and 5 DG across the territory.

17. It is the requirement of LD under the GN, as opposed to FSD’s, to install tail lift warning lights. FSD has all along approved applications for licence/renewal provided that a DGV has complied with the FSR and passed its vehicle examination, even though the vehicle has not been fitted with warning lights. In case the warning lights are found to be so positioned to pose a threat to fire safety and in breach of the FSR, FSD will request the vehicle owner to rectify and arrange re-examination. FSD will approve the application for licence/renewal after confirming the vehicle’s compliance with its requirements (including the FSR).

18. In view of the situation cited in **paragraph 10** above, FSD approached LD in November 2019, and a meeting was held with LD and EMSD on 26 November to explore how applicants/licensees could be spared the need to arrange re-examination of DGVs and the inconvenience and confusion so caused. Since LD agreed at the meeting that it would consider revising the GN and notify the Garages/SPs of the installation position of warning lights, FSD did not take the initiative to notify the vehicle owners affected or draw up separate guidelines immediately after the meeting.

19. After the aforesaid meeting, FSD gradually noted that many DGVs undergoing its vehicle examinations had the warning lights properly installed on the back side of the tail lift in compliance with the FSR. There was a significant decrease of cases with warning lights installed on the tail lift facing the inside of the vehicle. FSD considered the obviously improved situation to signify that LD had taken effective follow-up action in notifying the Garages/SPs of the installation position of warning lights. In the occasional cases where non-compliance was identified, FSD would explain the proper installation position (i.e. on the back side of the tail lift) to the applicants on the spot, and arrange re-examination of vehicles in the following week as far as practicable.

Eventually, all the relevant applicants successfully passed FSD's vehicle examinations and obtained/renewed the licences.

20. During the several months after the meeting, FSD continued to follow up and stayed in close contact with LD. After learning of the complainant's case, FSD approached LD again in April 2020 to avoid confusion caused by further cases of DGVs failing to pass the vehicle examinations due to improper positioning of tail lift warning lights. On 29 April, FSD proactively issued the Tail Lift FSG, which was acceptable to both departments, to each applicant for issuance/renewal of licence. The proper position for installing tail lift warning lights on DGVs was clearly specified. Since then, FSD had not come across any further cases of DGVs with tail lift warning lights installed at improper positions during its vehicle examinations for licence issuance/renewal. In June 2020, FSD held another meeting with LD to discuss other electrical devices under the GN.

21. As regards the complainant's request for giving vehicle owners a grace period to re-install the warning lights, FSD indicated that as improper positioning of tail lift warning lights on the DGV would pose a threat to fire safety, it was in breach of item 14 of the FSR. Due to safety concern, it was not advisable to set a grace period for the requirement. In fact, FSD would require the applicant for issuance/renewal of licence to rectify any non-compliance identified during its vehicle examination and arrange re-examination. After passing the re-examination, FSD would approve the application for licence/renewal.

#### Allegation (2)

22. On 8 April 2020, FSD examined the DGV of the complainant's company for licence renewal. It found that a pair of flashing lamps not in conformity to the standards for explosion protection had been installed on the front side of the tail lift, thereby failing to meet item 14 of the FSR and the vehicle examination. FSD explained the reason to the complainant on the spot, and clearly told him that if tail lift warning lights were to be installed on the DGV, he could retrofit the warning lights on the back side of the tail lift to avoid causing a fire or explosion risk for compliance with the fire safety requirements. At the complainant's request, FSD also provided the telephone number of the relevant LD officer, so that he could obtain details from LD regarding the occupational safety regulations on installing tail lift warning lights.

23. On 22 April 2020, during re-examination of the complainant's company

vehicle, FSD found that the flashing lamps had been removed and the vehicle was in compliance with the FSR. The complainant's application for licence renewal was approved on 24 April.

24. The complainant queried that the warning lights would only be switched on while the vehicle was stationary and the tail lift in operation. Given that the warning lights were off while the vehicle was moving, there was no explosion hazard. In response, FSD explained that because the warning lights were connected to a power source, gas leakage from the DG inside the vehicle compartment would still pose a threat to fire safety even when the tail lift was not in operation.

25. Furthermore, after receiving the complainant's complaint on 20 April 2020 (see **paragraph 13** above), FSD gave him a reply by telephone on 28 April. On that occasion, FSD explained again the fire safety requirements applicable to DGV licence, why his company's vehicle could not pass FSD's examination on 8 April 2020 and feasible solutions, including installation of the warning lights on the back side of the tail lift.

### ***Response from LD***

#### Allegation (1)

26. LD indicated that tail lifts vary in design and function. Hence, LD only requires duty holders to install audio and visual warning devices, such as warning lights, at proper positions on tail lifts to alert workers to the trapping hazard arising from the operation of tail lifts, thereby complying with the GN. LD has no specific requirement on the installation position. Duty holders can install tail lift warning lights at suitable positions to meet their needs.

27. LD also remarked that a photograph in the GN showing a pair of warning lights installed at the top corners on the front side of the tail lift ("the sample photo") is for illustration only. In the GN, LD already specified that in addition to the provisions under the GN, duty holders must also observe the requirements of other Government departments. After issuing the GN, LD had a number of meetings with the sector regarding its implementation and explained that the sample photo is for reference only.

28. LD explained that the installation of warning lights is usually carried out by the Garages/SPs in their workshops. Therefore, during the meeting in November 2019

with other Government departments including FSD, LD considered it effective to prevent warning lights from being wrongly installed on DGVs by notifying the Garages/SPs of the installation position. After the meeting, LD maintained close contact with the Garages/SPs to follow up the installation of warning lights by the sector (see **paragraph 12** above).

29. When LD received the complainant's complaint for the first time on 15 April 2020 (see **paragraph 13** above), it immediately explained to him via telephone that the GN did not stipulate any requirement on the installation position of warning lights. LD suggested he install warning lights on the back side of the tail lift or acquire warning lights in conformity to the standards for explosion protection, such as those published by the European Union ("EU"). On 20 April, LD received the same complaint from the complainant again, and noted that FSD had already issued the Tail Lift FSG by that time. Hence, LD replied to the complainant by email on 14 May that DGVs with tail lift warning lights installed in accordance with the Tail Lift FSG would be regarded by LD as complying with the GN concerning installation of visual warning devices. The Tail Lift FSG was also attached for his reference.

30. Before learning of the complainant's case, LD had not received any enquiries about installation of warning lights on DGVs. After receiving the complainant's complaint in April 2020, LD realised that the problem could not be entirely resolved by giving notification to the Garages/SPs. It, therefore, started preparation in June for direct notification to the vehicle owners affected. On 3 August, LD issued a letter, attached with the Tail Lift FSG, to 199 vehicle owners (see **paragraph 15** above).

31. Moreover, after learning of the complainant's case, LD expedited the revision of the GN, with a view to completing the consultation and publishing the revised version as soon as possible (see **paragraph 14** above). LD would step up communication with FSD and other relevant departments to ensure public awareness of the latest provisions under the GN, thereby preventing recurrence of similar incidents.

### Allegation (3)

32. LD stated that during the telephone call on 15 April 2020 (see **paragraph 13** above), the complainant queried that when the tail lift was lowered to the ground, it might crush and damage the warning lights installed on its back. At that time, LD explained that based on its experience, it was not often to find warning lights being crushed and damaged by tail lifts. LD also advised him to acquire warning lights in



conformity to the standards for explosion protection for installation on the front side of the tail lift. In response to our investigation, LD added that tail lifts of goods vehicles are usually fitted with a pair of brackets protruding on the back. When the tail lift is lowered to the ground, only the brackets will touch the ground. Vehicle owners can install warning lights beyond the brackets on the back of the tail lift, so as to avoid crushing and damaging the warning lights when the tail lift is lowered to the ground. The Garages/SPs consulted by LD also indicated that it was not often to find warning lights being crushed and damaged by tail lifts.

33. As regards the complainant's allegation that warning lights installed on the back side of the tail lift would become invisible when the tail lift was lowered, thereby not serving the purpose of alerting people to the danger near the rear end and avoiding trapping injuries, LD told this Office that trapping injuries only occur when the tail lift is being elevated and closed. The function of warning lights is to alert people to stay away from the rear end when the tail lift is being closed. As such, LD considered that even though the warning lights become invisible when the tail lift is lowered, it will not cause a trapping hazard.

## **Our Observations and Comments**

### ***Allegation (1)***

34. After scrutinising the GN issued by LD, we are of the view that although it did not specify any requirement on the installation position of tail lift warning lights, the sample photo therein might cause vehicle owners to misunderstand that they must install warning lights on the front side of the tail lift. If a DGV owner installs warning lights according to the sample photo, the vehicle will fail to comply with the FSR issued by FSD and the application for licence/renewal will be affected.

35. After identifying the fire hazard caused by warning lights wrongly positioned on DGVs, FSD approached LD to discuss how to facilitate vehicle owners' compliance with the requirements of FSD and LD on fire safety and occupational safety concurrently. We consider its action commendable. During the meeting on 26 November 2019, the two departments clarified the proper position for installing warning lights, thereby enabling their staff to clearly explain the requirement to vehicle owners when handling licence applications or enquiries.

36. Regarding the complainant's case, after examining the replies of FSD and LD,

we find the two departments to have clearly explained the feasible solutions to him when examining the vehicle or handling his subsequent enquiries, including re-positioning the warning lights on the back side of the tail lift or acquiring warning lights in conformity to regulations, such as the EU standards for explosion protection. By adopting such solutions, he could avoid posing a fire or explosion risk to the vehicle and comply with the relevant fire safety requirements.

37. However, the complainant was concerned that FSD and LD had not drawn up guidelines or notified the public in a timely manner after clarifying the proper installation position of warning lights in November 2019, such that vehicle owners could be well prepared before FSD's vehicle examination and avoid the inconvenience caused by subsequent rectification and re-examination. We consider the complainant's concern not unjustified. We are pleased to note that after learning of the complainant's case, FSD and LD immediately expedited the formulation of guidelines and notification of the affected vehicle owners, so as to prevent recurrence of similar incidents. Nevertheless, in hindsight we find the following inadequacies on the part of the two departments.

38. First, after agreeing to consider revising the GN during the meeting on 26 November 2019, LD should have followed up the matter speedily. We acknowledge that it takes time to complete the entire consultation and revision process as various issues are covered under the GN. However, LD should have first issued letters to vehicle owners to inform them of the requirement on installing tail lift warning lights, or published the revised requirement on its website. This would allow vehicle owners to thoroughly understand the requirement and prepare for the application/renewal of DGV licences. In fact, after the complainant's case occurred and before the revision of the GN is completed, LD already issued a letter regarding the installation of tail lift warning lights to 199 affected vehicle owners on 3 August 2020. This showed that the two courses of action could proceed separately.

39. Second, after discussing with FSD, LD's initial judgement was that it only needed to notify the Garages/SPs of the requirement on installing tail lift warning lights for DGVs, so as to ensure compliance of their retrofitting service with FSD's requirements. LD considered it not necessary to separately notify the affected vehicle owners. Nevertheless, the complainant's case revealed that the problem could not be resolved by simply notifying the Garages/SPs. This reflected LD's initial failure to come to grips with the need and situation of vehicle owners and lack of thorough consideration.

40. Meanwhile, FSD explained that after the meeting on 26 November 2019, it gradually noted a significant decrease of cases with warning lights installed on the tail lifts facing the inside of the vehicle. FSD considered it to signify that LD had taken effective follow-up action in notifying the Garages/SPs of the installation position of warning lights. In the occasional cases where non-compliance was identified, FSD would immediately explain to the applicants. We acknowledge that the follow-up action taken by LD subsequent to the meeting was indeed conducive to reducing the number of non-compliance cases. However, during the several months between the meeting held by the two departments and the complainant's case, FSD still came across cases (although the number was small) with wrongly positioned warning lights during its vehicle examinations. We believe that if FSD had informed LD of its observations at an early stage and jointly reviewed any need to step up dissemination of information, the inconvenience encountered by the complainant could have been avoided.

41. Lastly, we consider the handling of this incident as a whole to have revealed inadequate coordination and unclear demarcation of duties between FSD and LD. After their discussion during the meeting on 26 November 2019, LD indicated that it would consider revising the GN and notify the Garages/SPs of the relevant requirement. Nevertheless, after the complainant's case occurred, the duty immediately fell on FSD to issue the Tail Lift FSG, which was acceptable to both departments, to each applicant for issuance/renewal of licence. This gave rise to a perception of chaotic administration. We urge FSD and LD to take reference from this case and step up coordination and rationalise the release of information in future.

42. In light of the above analysis, The Ombudsman considers the allegation against **FSD partially substantiated**, and the allegation against **LD substantiated**.

### *Allegation (2)*

43. From the information provided by the complainant to this Office, including photographs and video footage showing his company's goods vehicle, we notice that the warning lights were indeed installed on the front side of the tail lift (i.e. facing the inside of the vehicle). When the tail lift was closed, the warning lights would be positioned near the DG. The complainant queried that the warning lights would only be switched on while the vehicle was stationary and the tail lift in operation. Given that the warning lights were off while the vehicle was moving, there was no explosion hazard. In response, FSD explained that because the warning lights were connected to

a power source, gas leakage from the DG nearby would still pose a threat to fire safety even when the tail lift was not in operation (see **paragraph 24** above).

44. We consider that it is within the professional judgement of FSD to decide whether the installation position of warning lights will pose a fire or explosion risk. This is not an administrative matter subject to our comment. Nevertheless, we reckon FSD to have followed its licensing procedures in requiring the vehicle owner to rectify the installation position of warning lights and arrange re-examination after identifying non-compliance with the FSR.

45. The Ombudsman, therefore, considers the allegation against **FSD unsubstantiated**.

### *Allegation (3)*

46. LD's response to the complainant's queries about the installation position of tail lift warning lights is cited in **paragraphs 32 and 33** above. We consider that it is within the professional judgement of LD to decide on the proper position of warning lights (including being effective for alerting the workers engaged in operation of tail lifts/other people to the trapping hazard, and whether being prone to be crushed and damaged by the tail lift). This is not an administrative matter subject to our comment. The complainant can raise any further queries about the installation position of warning lights with LD direct for it to follow up.

47. The Ombudsman, therefore, considers the allegation against **LD unsubstantiated**.

### **Conclusion**

48. Overall, based on the analysis in **paragraphs 34 to 47** above, The Ombudsman considers the complainant's complaint against **FSD and LD partially substantiated**.

### **Recommendations**

49. This Office recommends that LD:

- (1) complete the revision of the GN as soon as possible, and ensure that the affected vehicle owners are informed of the revised provisions; and

- (2) schedule the review of other existing guidelines on occupational safety, liaise with relevant departments in case of any inconsistencies or contradictions with the licensing conditions/requirements of other departments, make revisions and inform the affected parties, and take interim measures where necessary to ensure public awareness of such provisions before completion of the entire revision process.

### **FSD's Feedback on Our Draft Investigation Report**

50. Disagreeing with our comments in **paragraphs 37, 40 and 41** above, FSD had the following feedback:

- (1) Long before the complainant's case occurred, FSD had drawn up the FSR for the licensing of DGVs. The existing FSR, which is stringent and has proved effective, is available on the department's website for public information. The installation of tail lift warning lights is not a specific requirement imposed by FSD for the licensing of DGVs. However, applicants who install tail lift warning lights according to the GN issued by LD should also comply with the FSR (including the standards for explosion protection) to avoid posing a fire or explosion risk to the vehicle. FSD has not introduced any revision to this requirement. Where necessary, FSD is willing to accommodate the requirements of relevant departments or the feasible solutions suggested by licence applicants regarding fire safety.
- (2) After identifying from vehicle examinations the risk posed to fire safety by the installation of tail lift warning lights, FSD immediately approached LD and suggested a meeting on 26 November 2019 for discussing the issue. At the meeting, FSD made specific and feasible suggestions to LD regarding the standards for explosion protection and the installation position of tail lift warning lights on DGVs. Since the installation of tail lift warning lights was entirely its requirement and within its expertise, LD agreed at the meeting that it would take up the responsibility to review and revise the relevant guidelines and notify the stakeholders of the standards and requirements. After the meeting, FSD stayed in contact and communication with LD. During subsequent examinations of DGVs, FSD found significant improvement in the

situation, with fewer cases of warning lights not in compliance with the FSR. This showed that the communication and follow-up actions of the two departments had produced synergy effects. Evidently, the two departments had maintained close communication, with effective coordination and clear demarcation of duties. FSD would continue to liaise with LD and follow up on other tail lift devices under the GN.

- (3) No licensees were denied renewal of their DGV licences because of improper positioning of tail lift warning lights. The complainant's case was an isolated incident. During the first examination of his vehicle on 8 April 2020, FSD already gave him a detailed account of its fire safety standards and feasible solutions on the spot, and arranged re-examination of his vehicle in the following week. Eventually, his licence was successfully renewed. FSD, therefore, did not reject the complainant's application for licence renewal.
- (4) Subsequently, FSD proactively issued the Tail Lift FSG to DGV licensees to reinforce their awareness of the relevant requirement. The Tail Lift FSG did not overlap with the guidelines issued by LD to the Garages/SPs and other stakeholders. Besides, FSD had not received from the sector or DGV licensees any feedback that the fire safety requirements on the installation position of warning lights were unclear or confusing. Consequently, FSD disagreed with our comments that there were "inadequate coordination and unclear demarcation of duties between the two departments giving rise to a perception of chaotic administration".

## **LD's Feedback on Our Draft Investigation Report**

51. LD indicated that after the meeting on 26 November 2019, it started reaching out to the Garages/SPs to explain the requirement on installing warning lights for DGVs. Since no relevant enquiries were received from FSD or other departments subsequently, LD at that time considered it effective to prevent improper positioning of warning lights on DGVs by notifying the Garages/SPs. After learning of the complainant's case, LD realised there was room for improvement. LD, therefore, uploaded to its website <sup>Note 1</sup> the Tail Lift FSG issued by FSD for public information. In early January 2021, LD completed the consultation on the draft revised version of the GN with the sector and

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<sup>Note 1</sup> [https://www.labour.gov.hk/eng/faq/oshq11\\_whole.html](https://www.labour.gov.hk/eng/faq/oshq11_whole.html)

relevant departments. It would complete the revision as soon as possible. LD accepted our comments and would implement our recommendations.

### **Our Concluding Comments**

52. In response to FSD's feedback, we stress that we have not discounted the efforts of FSD and LD before and after the occurrence of the complainant's case. Our commendation for their actions, which is given in **paragraphs 35 to 37** above, need not be repeated here.

53. We also agree with FSD that the installation of tail lift warning lights is a requirement of LD for safeguarding occupational safety and within its expertise. Nevertheless, as pointed out by FSD, DGV licence applicants who install tail lift warning lights in accordance with LD's requirement should also comply with the FSR of FSD for DGVs to ensure fire safety. Hence, both departments have their roles and responsibilities in ensuring the proper installation of tail lift warning lights on DGVs, and assisting vehicle owners to accurately understand the relevant provisions.

54. The focus of this investigation is whether the requirement on installing tail lift warning lights was disseminated by FSD and LD in a timely and coordinated manner, such that vehicle owners clearly understood the requirement and were well prepared before FSD's vehicle examination. While FSD stated that the complainant eventually succeeded in renewing the licence after re-examination of his vehicle, we consider it not the crux of the case.

55. Our concern is that during the several months between the meeting held by FSD and LD on 26 November 2019 and the occurrence of the complainant's case, FSD still came across cases with wrongly positioned warning lights during its vehicle examinations. However, FSD did not notify LD of its observations at an early stage, such that they could jointly review whether the follow-up actions after the meeting were adequate to resolve the problem. We believe that if the two departments had discussed the issue swiftly and stepped up dissemination of information at that time, the inconvenience encountered by the complainant could have been avoided. Regarding FSD's remark that the complainant's case was an isolated incident, although FSD and LD might not have received other complaints similar to the complainant's, in our view it did not necessarily imply that no other vehicle owners had encountered the same inconvenience during that period. More critically, such inconvenience could have been avoided via timely liaison, follow-up action and rationalisation between the

departments.

56. FSD also indicated that the Tail Lift FSG issued to DGV licensees did not overlap with the guidelines issued by LD to the Garages/SPs and other stakeholders. In this regard, our concern is not any overlap between the two departments' guidelines in their contents or targets. In fact, taking into account the incident as a whole, before the occurrence of the complainant's case FSD considered that it had no role to play because LD had already agreed to review and revise the relevant guidelines. After the occurrence of the complainant's case, FSD immediately took the initiative to issue the Tail Lift FSG to DGV licensees on 29 April 2020. At that time, the GN was under revision by LD. Subsequently, on 3 August 2020 (i.e. more than three months later), LD issued a letter to advise the affected vehicle owners to comply with the Tail Lift FSG issued by FSD.

57. As shown in the preceding paragraph, there was inadequate coordination between FSD and LD in drawing up and publishing guidelines, easily leading to confusing information. While FSD indicated that it had not received any negative feedback from the sector or DGV licensees, we still consider this case to have revealed unsatisfactory cooperation between the two departments, which justifies our comments in **paragraph 41** above. We urge the two departments to take reference from this case, so as to prevent recurrence of similar incidents.

58. As for LD, we are pleased to learn that it accepted our comments and will implement our recommendations.

## **Final Remarks**

59. Upon considering the feedback from FSD and LD, The Ombudsman maintains her conclusion in **paragraphs 34 to 48** above. We will continue to follow up with LD until the implementation of our recommendations.

**Office of The Ombudsman**  
**January 2021**