

*Issue No. 1 of Reporting Year 2017/18  
(11 May 2017)  
Office of The Ombudsman*



*Direct Investigation Report  
Housing Department's Mechanism for Taking Follow-up Action  
against Unauthorised Alterations by Public Housing Tenants*

The Ombudsman has completed a direct investigation into the mechanism that the Housing Department (“HD”) has in place for taking follow-up action against unauthorised alterations by public housing tenants in their units.

Our investigation reveals that prior to August 2016, HD had not formulated any procedures and timeframes for following up those cases, or stipulated the duties of the staff responsible for taking action. In one case, the reinstatement works of the housing unit concerned was found to be still in progress despite that HD had pursued it for nearly three years. This shows the serious delay on the part of HD. Moreover, some HD officers failed to follow established guidelines properly. Some allowed tenants to reinstate fixtures that should have been reinstated by HD, while others failed to require tenants to rectify all unauthorised alterations. These cases show the rashness in follow-up actions and laxity of enforcement by HD. They also reflect on the ineffective monitoring on the part of HD’s management of the problem of unauthorised alterations to fixtures and the progress and quality of follow-up actions by its officers, leaving the problem to persist.



HD issued its new guidelines in August 2016 to offer a set of standardised criteria for follow-up actions and consistent practices. As the new guidelines have been in operation for only a few months, the results are still to be assessed. However, under the New Mechanism, HD has relaxed the requirement for alterations by allowing tenants to make alterations to kitchen/toilet/bathroom installations and floor slab; such alterations were not allowed in any circumstances under the Old Mechanism. We query whether such relaxation would affect building structures over the long term and bring about more cases of water seepage from ceiling. We consider that HD should regularly review the

effectiveness of the New Mechanism and further enhance the guidelines where necessary, so that unauthorised alterations by tenants will be followed up properly. The Ombudsman has made nine improvement recommendations to HD to address the inadequacies identified.

The investigation report is at **Annex 1**.

***Direct Investigation Report  
Government's Regulation of Factory Canteens***

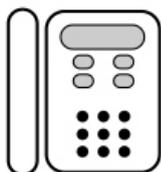


In a direct investigation, the Office of The Ombudsman has found that the policy towards factory canteens executed and enforced by the Food and Environmental Hygiene Department (“FEHD”) and the Lands Department (“Lands D”) is seriously outdated and a review of the policy is long overdue. The two departments have failed to administer effective control in approving applications for setting up factory canteens. This, coupled with lax enforcement against factory canteens serving public customers, has allowed the operators to continue to engage in such wrongful activity as if it were acceptable.

This Office urges FEHD and Lands D to review the licensing system for factory canteens, tighten up the system for approving applications for setting up factory canteens, and step up enforcement against factory canteens in breach of the licence and lease conditions.

The investigation report is at **Annex 2**.

***Enquiries***



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**Office of The Ombudsman  
11 May 2017**

**Executive Summary**

**Direct Investigation into  
Housing Department’s Mechanism for Taking Follow-up Action against  
Unauthorised Alterations by Public Housing Tenants**

**Background**

Public housing units allocated to tenants by the Housing Department (“HD”) are generally provided with various fixtures and fittings. Under the Tenancy Agreement, tenants are not allowed to install any fixtures, partitions or other erections, or to remove any original fixtures or fittings in their units without prior written consent of HD. These agreement terms aim to ensure the structural safety of public housing as well as better utilisation of original fixtures and fittings.

2. Nevertheless, this Office has found from handling past complaint cases that HD has failed to properly follow up cases involving unauthorised alterations by public housing tenants. In a case involving serious violations that might affect the loading of the housing unit, the tenants concerned have not yet reinstated the original set-up after more than two years. It should be noted that unauthorised alterations may adversely affect nearby housing units and, in more serious cases, affect the building’s loading. In order to gain a better understanding of the issue, The Ombudsman has decided to initiate a direct investigation into HD’s mechanism for taking follow-up action against unauthorised alterations by public housing tenants.

**Classification of Fixtures in Public Housing Units**

3. HD has classified the fixtures provided in public housing units into three categories, namely Categories A, B and C. Tenants who intend to apply for altering fixtures should comply with the following requirements:

<b>Category of Fixtures</b>	<b>Specification</b>
A	Alteration is not permitted
B	Prior written application to HD for alteration is required
C	Prior application to HD for alteration is not required

Details of these categories of fixtures are listed in **Appendices 1 and 2**.

## **Procedures and Requirements for Applications for Alterations to Fixtures**

4. Under the procedures stipulated by HD, estate management offices should explain to prospective tenants about the renovation arrangements when they complete the intake formalities at the offices. The tenants are to sign an undertaking immediately to indicate that they understand the requirements relating to renovation and agree to comply with such requirements.
5. Generally speaking, alterations to Category A fixtures may constitute danger or obvious hazard, lead to water seepage or serious nuisance to health or the environment, impair the uniformity of housing estates, contravene prevailing statutory requirements, and breach the statutory acoustic requirements. Applications for alterations to Category A fixtures will, therefore, be rejected by HD.
6. Alterations to Category B fixtures require prior written application to HD and compliance with prescribed requirements. Besides, successful applicants must comply with requirements for such alteration works to ensure that only appropriate works are carried out and appropriate materials used.
7. Prior approval from HD is not required for alterations to Category C fixtures. However, tenants must pay due attention when removing floor slab decorations in living/dining room and bedrooms to avoid damaging the building structure. It is not necessary to notify the estate management office concerned on completion of such alteration works.

## **HD's Mechanism for Follow-up Action against Unauthorised Alterations to Public Housing Units**

8. Subsequent to a review on regulation of alterations to fixtures in public housing units, HD issued a set of internal guidelines in November 2009. Based on the recommendations for improvement we made in relation to a complaint case involving unauthorised alterations, HD amended the foresaid guidelines in August 2016. For the purpose of discussion below, the mechanism used prior to August 2016 is referred to as the "Old Mechanism" and the one adopted thereafter the "New Mechanism".

### ***The Old Mechanism***

9. Under the Old Mechanism, if a tenant was found to have altered any of the Category A fixtures, HD would carry out works to reinstate the original set-up of the housing unit and charge the tenant for the costs. That was to ensure that the materials used and installation method would meet established standards and criteria. Moreover, HD would charge the tenant concerned an administration or supervision fee in addition to the costs of reinstatement works. Where unauthorised alterations to Category B fixtures were found, the tenants must reinstate the housing unit at their own cost.

10. Some tenants might refuse to cooperate. For examples, they deny HD staff or their representatives entry for carrying out necessary repairs; or refuse to discharge their responsibility of repairing pipes or sanitary fittings; or damage down/ sewage pipes causing leakage to the flat below. In such cases, HD could activate the Marking Scheme for Estate Management Enforcement in Public Housing Estates and allot 7 penalty points to the tenant concerned. Where a tenant has accrued 16 penalty points within two years, the tenancy concerned is liable to termination. Moreover, under section 19(1)(b) of the Housing Ordinance, HD may also issue a notice to quit to the tenant concerned, requesting him/her to vacate and return the housing unit to HD by a prescribed date.

11. Tenants who obtained consent from HD to alter Category B fixtures must comply with the relevant requirements when carrying out such works. They would also be responsible for the future maintenance and replacement of those fixtures.

12. According to internal guidelines under the Old Mechanism, estate management offices were not required to inspect the housing units to check if alterations made would meet the requirements on completion of such works. Nor had HD laid down in those guidelines the duties of frontline officers in following up cases involving unauthorised alterations, the actual procedures and timeframes, or the responsibilities of supervising officers.

### *The New Mechanism*

13. In June 2015, this Office made a number of improvement recommendations to HD in relation to a complaint case about unauthorised alterations to fixtures. Based on our recommendations, HD reviewed the Old Mechanism and completed the revision of its internal guidelines in August 2016. Thereafter, HD has adopted the New Mechanism for following up alterations to fixtures by tenants. There are three major areas of differences between the Old and New Mechanisms:

#### (1) Categories of Fixtures

14. Based on the categorisation of fixtures under the Old Mechanism, HD has added some new items of fixtures while deleting other items. HD has also reclassified some of the fixtures. The major changes to the categorisation of fixtures under the New Mechanism are as follows:

- (a) Relaxing the requirements by taking out some items from Category A and placing them under Category B. Those items include: floor tiles of balcony/toilet/bathroom/kitchen, shower tray, shower cubicle, bath-tub, water closet pan, cooking bench, branch pipe and fitting.
- (b) New items added to Category A fixtures include: acoustic window/balcony, flower bed, air-conditioner hood, dry wall, wall enclosing kitchen/toilet/bathroom, flat number plate.

- (c) New items added to Category B fixtures include: addition of sliding window behind structural protective barrier at balcony, alterations to existing non-structural internal wall (other than kitchen, toilet and bathroom), addition of block/brick wall or floor screeding.

(2) Timeframes for Monitoring and Enforcement Actions

15. Under the New Mechanism, the timeframes for monitoring and taking enforcement actions are clearly stated in the guidelines. HD adheres to its previous practice of rejecting all applications for alterations to Category A fixtures while requiring tenants to obtain its consent before making any alterations to Category B fixtures. Normally, on receipt of an application, the estate management offices shall conduct a site inspection within 90 calendar days to check for any irregularities especially those involving alterations to Category A fixtures.

(3) Duties of Frontline and Supervising Officers

16. The guidelines under the New Mechanism include provisions that set out the duties of various ranks of officers. If estate management offices are aware of any unauthorised alterations by tenants, frontline officers will conduct site inspections with the support of works staff to verify the unauthorised alterations. Besides, the officers will serve an enforcement notice to the tenant concerned demanding reinstatement within 60 calendar days upon knowledge of the situation.

17. HD should carry out reinstatement works as soon as possible in case the tenant refuses to cooperate. If estate management offices encounter any difficulties, they should seek support from the District Tenancy Management Offices under HD. If the tenant concerned is willing to cooperate, he/she should complete the reinstatement works within 60 calendar days after receipt of the enforcement notice. Or the tenant may request to extend the works period by up to 90 or 180 calendar days if there are any difficulties in doing so, provided that he/she has obtained prior approval from the Housing Managers/ Property Service Managers (in case of application for an extension for 90 days) or from the Senior Housing Managers/ Senior Property Service Managers (in case of application for an extension of 180 days). For applications for extension with full justification, the works may be extended beyond 180 calendar days, provided that prior approval is granted by the Regional Chief Manager.

18. Regional Chief Managers should maintain proper records of cases involving unauthorised alterations and review their progress as appropriate.

## **Our Comments**

### ***Problems under the Old Mechanism***

19. On the whole, problems in HD's monitoring work under the Old Mechanism are mainly reflected in the following areas:

(i) Delay in following up cases

20. Under the Old Mechanism, HD had not formulated any procedures and timeframes for following up cases, as well as the duties of officers concerned. According to HD's records, of the 65 cases of reinstatement works completed in the past four financial years, 10 cases took six months or longer (in fact 7 cases took more than nine months), while the longest-standing case was not successfully handled until after more than two years. As at 30 June 2016, there were 27 pending cases of unauthorised alterations, of which 18 cases took six months or longer and yet the reinstatement works had not been completed (in fact 13 cases took nine months or longer), while the oldest pending case had been pursued for nearly three years. So we can see the serious delay by the Department.

(ii) Staff failure to follow guidelines

21. Under established guidelines, reinstatement works of Category A fixtures must be carried out by HD in order to ensure that the materials used and installation method meet established standards and criteria and to guarantee building safety. Nevertheless, according to HD's records, 61 of the 65 cases of reinstatement works completed involved unauthorised alterations to Category A fixtures, of which 28 cases were reinstated by the tenants themselves and not HD. Such practice violated established guidelines and can be a potential danger to building safety.

22. Meanwhile, for some long-standing cases of delay in reinstatement of housing units with unauthorised alterations, HD's attitude was too lax and it failed to exercise the Marking Scheme for Estate Management Enforcement in Public Housing Estates or exercise tenancy control to enhance deterrent effects.

(iii) Rashness in follow-up actions and laxity in enforcement

23. When following up individual cases, estate management offices had failed to request tenants to fully rectify all unauthorised alterations. They actually accepted the tenants' "promise" to reinstate the housing units when they return their units in future. They then closed the case without further follow-up actions, thus showing their rashness in follow-up actions and laxity in enforcement.

(iv) Ineffective monitoring

24. The problems as noted in (i) to (iii) above occurred when estate management offices were following up individual cases, showing ineffective monitoring on the part of HD's management of the problems of unauthorised alterations to fixtures, as well as the progress and quality of follow-up actions by its staff. They have simply allowed the problems to persist.

***Still Inadequacies under the New Mechanism; Need to Review Effectiveness for Further Improvement***

25. The new guidelines issued in August 2016 offer a set of standardised criteria for follow-up actions. This would help to avoid inconsistencies in practices among different estate management offices and even different officers. This is somehow a remedial measure adopted by HD.

26. However, under the new guidelines, some fixtures have been reclassified. For examples: the floor tiles in balcony/toilet/bathroom/kitchen, shower tray, shower cubicle, bath tub, water closet pan, cooking bench, branch pipe and fitting, etc. are reclassified from Category A to Category B (**para. 14(a)** above). We consider that this may be a potential hazard to tenants' living environment, such as causing water seepage or unstable structure. In fact, according to information from HD, of the 92 cases of unauthorised alterations mentioned in **para. 20** above, 33 cases (i.e. more than one-third) involved water seepage from ceiling. The causes of water seepage from ceiling were mostly due to unauthorised alterations to kitchen/toilet/bathroom installations and floor slab, such that the waterproof layer beneath the floor slab was damaged, resulting in water seepage. HD has reclassified alterations involving kitchen, toilet, bathroom installations and floor slab from Category A to Category B. It is questionable whether this would affect building structures over the long term and hence lead to more cases of water seepage from ceiling.

27. Moreover, although the new guidelines require that estate management offices conduct a site inspection within 90 calendar days of those units with approved alteration works, if the relevant works are still in progress, the guidelines do not require estate management offices to conduct another inspection to ensure that all the alterations meet stated requirements. On the other hand, where the works are completed, it is still unknown whether a site inspection can discern any hidden works/ materials like waterproofing works/ materials and meet required standards.

28. Anyhow, the new guidelines have been in operation for only a few months and the results are still to be assessed. HD should regularly review the effectiveness in implementing the New Mechanism and, where necessary, further improve the guidelines in order to properly follow up the problems of unauthorised alterations to fixtures by tenants.

## **Our Recommendations**

29. In the light of the above, The Ombudsman recommends that HD:

- (1) regularly review the effectiveness in implementing the New Mechanism to ensure that the expected results are achieved, prevent any recurrence of faults under the Old Mechanism, and, where necessary, enhance the working guidelines, which include formulating clearer provisions, stipulating that estate management offices should arrange inspections following completion of alteration works in order to ensure that all alterations are in line with the regulations on relevant categories of fixtures;
- (2) closely monitor the impacts after revising the categories of fixtures, with particular attention to whether the reclassification of those fixtures from Category A to Category B would affect building structures and lead to more cases of water seepage from ceiling and, where necessary, further revise the categories of fixtures;
- (3) step up monitoring to ensure that frontline officers follow the guidelines, including resolutely exercising the Marking Scheme for Estate Management Enforcement in Public Housing Estates and other punitive measures where necessary;
- (4) actively follow up those outstanding cases of unauthorised alterations, especially those cases that have been pending for more than six months;
- (5) review those cases with unauthorised alterations not fully rectified, and with Category A fixtures being reinstated by tenants. That is to ensure that appropriate follow-up action have been taken;
- (6) regularly hold training courses for frontline officers with a view to enhancing their abilities to handle unauthorised alteration cases , especially those difficult ones;
- (7) step up inspections and actively detect cases of violations;
- (8) step up publicity on the categories of fixtures and installations under the New Mechanism, and demonstrate the determinations to deal with cases of unauthorised alterations; and
- (9) consider imposing heavier penalties on tenants who refuse to reinstate unauthorised alterations to fixtures made in their units.

30. HD has accepted our recommendations and has started its follow-up actions. We thank the Department for its full cooperation during our investigation and we are

pleased to note that HD has accepted all our recommendations. We will continue to monitor the progress until our recommendations are fully implemented.

**Office of The Ombudsman**  
**March 2017**

# **APPENDICES**

**“Categorization of Landlord’s Fixtures” under Old Mechanism  
(An Extract from the Housing Department’s Guidelines)**

Building/Services Elements	Landlord’s Fixtures	Fixture Category		
		A	B	C
Structure	Beams, Columns, Floor Slabs, Walls, Flower Beds	A1		
Door, Frame and Ironmongery	Door, Frame and Ironmongery (Main Entrance and Kitchen)	A2		
	Overhead Door Closers (Main Entrance and Kitchen)	A3		
	Door, Frame and Hinges (Toilet, Bedrooms)		B1	
	Door, Frame and Hinges (Balcony)		B2	
	Door Locks, Pull / Push Handles, Knobs (Toilet, Balcony, Bedroom)			C1
Metal Gate & Lock	All block types		B3	
Window Frames & Ironmongery	External Windows, Corridor Ventilation Windows, Security Grills & Burglar Bars		B4	
	Oil Tray	A4		
	Pull Handles, Stays			C2
Glazing	Doors, Windows, Louvres			C3
Finishes	Floor Tiles (Balcony, Toilet, Bathroom, Kitchen)	A5		
	Floor Finishes (Living, Dining, Bedroom)			C4
	Internal Painted Surfaces			C5
	Wall Tiling (All except Harmony, Small Households Development, Housing for Senior Citizens, Concord, New Cruciform)		B5	
	Wall Tiling (Harmony, Small Households Development, Housing for Senior Citizens, Concord, New Cruciform)	A6		
Drainage	Vertical Soil & Waste Stacks, Vertical Rain Water Stacks, Floor Drain, Fire collars	A7		
	Branch Waste Pipes & Traps to Sanitary Fittings		B6	
Sanitary Fittings & Kitchen Fixtures	Shower Tray, Shower Cubicle, Bath-tub*, W.C. Pan	A8		
	Doors on Bath-tub Rim & Shower Cubicle			C6
	Wash Hand Basin, Sink, Cistern Casing		B7	
	Cooking Bench	A9		
	Finishes of Cooking Bench			C7
	Shower Head, Taps, Plug & Chain, W.C. Seat & Cover, W.C. Cistern Fittings			C8
	Kitchen Cupboards, Cabinets (for Wash Hand Basin, Sink, Cooking Bench)			C9
Pipe Duct Enclosure		A10		
Drying Rack			B8	
Fresh & Flush Water Installations	Pipes and Fittings	A11		
Electrical	Consumer Unit, Wiring & Accessories e.g. Switches, Power Sockets		B9	
	Sub-main Cable from Meter Room	A12		
CABD (Note 5)	TV Socket		B10	C10 (Notes 3)
Security System	Doorphone Handset		B11	
Gas Installation				C11 (Notes 3)
Telephone Installation				C12 (Notes 3)
Door Bell				C13
Letter box	Doors & Hinges	A13		
	Lock			C14
	Alterations at Tenant’s expense	Not Permitted (Notes 1, 4)	Permitted with prior H.D. approval (Notes 1, 2)	Permitted No H.D. approval is required (Notes 3)

**Notes**

- (1): Unauthorized alterations will be reinstated by H.D. at Tenant’s expense.
  - (2): For H.D. approved alterations, the fixture becomes Tenant’s responsibility for all future maintenance / replacement.
  - (3): Tenant to apply directly to utility companies for alteration to gas / telephone installation / CABD outlets.
  - (4): Application for adaptation works to Category A fixtures from Disabled Persons shall be considered.
  - (5) Category “C” CABD fixtures applicable for existing and ex-HK Cable TV subscribers, or Tenants in the new estates with CABD networks provided by the HK Cable TV Company Ltd.. Others shall be under Category “B”.
- (\*): Bath tubs are provided in some block types of PRH flats. To address the need of elderly tenants and tenants with special needs, HD will entertain their requests to convert the bath tub into bathing area with a handrail provided free of charge. The position of the handrail is to be agreed with the users. HMs/PSMs may approve these applications if they are satisfied that the request is genuine. Recommendations from medical practitioners of SWD are NOT required. All requests should be processed expeditiously.

**“Categorization of Landlord’s Fixtures” under New Mechanism  
(An Extract from the Housing Department’s Guidelines)**

Building/Services Elements	Fixtures	Category		
		A	B	C
<b>Wall, floor, and Structural elements</b>	Beam, column, floor slab, structural wall, flower bed, AC hood, dry wall, wall enclosing kitchen / toilet / bathroom	A1		
	Addition of sliding window behind non-structural protective barrier at balcony		B1	
	Alterations to existing non-structural internal wall (other than kitchen/toilet/bathroom)		B2	
	Addition of block/brick wall or floor screeding		B3	
<b>Door, frame and ironmongery</b>	Fire rated door, frame and ironmongery (main entrance and kitchen)	A2		
	Overhead door closer (main entrance and kitchen)	A3		
	Non-fire rated door, frame and hinge (toilet/ bedroom/ bathroom)		B4	
	Non-fire rated door, frame and hinge (balcony)		B5	
	Door lock, pull/push handle, knob (toilet/ balcony/ bedroom)			C1
<b>Metal gate &amp; lock</b>	All block types		B6	
<b>Window, frame &amp; ironmongery</b>	External window, corridor ventilation window, security grille & burglar bar		B7	
	Acoustic window (including acoustic panel)	A4		
	Oil tray	A5		
	Pull handle, stay			C2
<b>Acoustic balcony</b>	Separating wall/window between balcony and living room, parapet wall, balcony door, vertical /inclined panel and gutter, acoustic panel	A6		
<b>Glazing</b>	Door, window, louver			C3
<b>Finish</b>	Floor tile (balcony/toilet/bathroom/kitchen)		B8	
	Floor finish (living/dining/bedroom)			C4
	Internal painted surface			C5
	Wall tile (balcony/toilet/bathroom/kitchen)		B9	
<b>Drainage</b>	Vertical soil & waste stack, vertical rain water stack, floor drain, fire collar	A7		
	Branch waste pipe & trap to sanitary fitting		B10	
<b>Sanitary fitting &amp; kitchen fixture</b>	Shower tray, shower cubicle, bath-tub*, w.c. pan		B11	
	Door on bath-tub rim & shower cubicle			C6
	Wash hand basin, sink, cistern casing		B12	
	Cooking bench		B13	
	Finish to cooking bench			C7
	Shower head, tap, plug & chain, w.c. seat & cover, w.c. cistern fitting			C8
	Kitchen cupboard, cabinet (for wash hand basin, sink, cooking bench)			C9
<b>Pipe duct enclosure</b>		A8		
<b>Laundry rack/rod</b>			B14	
<b>Fresh &amp; flush water installation</b>	Main pipe	A9		
	Branch pipe and fitting		B15	
<b>Electrical</b>	Consumer unit, wiring & accessories e.g. switch, power socket		B16	
	Sub-main cable from meter room	A10		
<b>CABD (Note 5)</b>	TV socket		B17	C10 (Notes 3)
<b>Security system</b>	Doorphone handset		B18	
<b>Gas installation</b>				C11 (Notes 3)
<b>Telephone installation</b>				C12 (Notes 3)
<b>Door bell</b>				C13
<b>Letter box</b>	Door & hinge	A11		
	Lock			C14
<b>Flat number plate</b>		A12		
	<b>Alterations at Tenant’s expense</b>	<b>Not permitted (Notes 1, 4)</b>	<b>Permitted with prior HA approval (Notes 2)</b>	<b>Permitted; No HA approval is required (Notes 3)</b>

Notes

- (1) Unauthorized alterations will be reinstated by HD at tenant’s expense.
- (2) Unauthorized alterations will be reinstated by tenant or by HD at tenant’s expense. For HA approved alterations, the fixture becomes tenant’s responsibility for all future maintenance/replacement.
- (3) Tenant shall apply directly to utility companies for alterations to gas/telephone installation/CABD outlets.
- (4) Application for modification works to Category A fixtures from Disabled Persons shall be considered.
- (5) Category “C” CABD fixtures applicable for existing and ex-HK Cable TV subscribers, or tenants in the new estates with CABD networks provided by the HK Cable TV Company Ltd. Others shall be under Category “B”.
- (\*) Bath tubs are provided in some block types of PRH flats. To address the need of elderly tenants and tenants with special needs, HD will entertain their requests to convert the bath tub into bathing area with a handrail provided free of charge. The position of the handrail is to be agreed with the users. HMs/PSMs may approve these applications if they are satisfied that the request is genuine. Recommendations from medical practitioners/Social Welfare Department are NOT required.

## **Executive Summary**

### **Direct Investigation into Government's Regulation of Factory Canteens**

#### **Background**

The rapid development of industries in Hong Kong during the 1950s and 1960s had led to the emergence of factory canteens that provided meals for factory workers in industrial buildings. It has been the Government's requirement since 1 August 1980, that all factory canteens must apply for and obtain a factory canteen licence before opening business. If operating a factory canteen in an industrial building is against the lease conditions of the land lot where the building is located, the land owner must also apply to the Government for a waiver / modification of the lease conditions.

2. The Government requires that factory canteens can only serve factory employees working in the industrial building. Nevertheless, in recent years, many factory canteens also serve public customers in a high-profile manner and the operators have been engaging in such wrongful activity as if it were acceptable. Yet, it is very doubtful whether the facilities for fire safety and food hygiene of such canteens are suitable for serving public customers. Past incidents have shown that a fire outbreak in an industrial building could bring disastrous consequences. In this light, The Ombudsman has conducted this direct investigation to examine the Government's policy, licensing system and regulatory regime for factory canteen licences, with a view to making recommendations to the relevant departments for improvement.

#### **Requirements Relating to Operation of Factory Canteens**

##### *Factory Canteen Licences*

3. The **Food and Environmental Hygiene Department** ("FEHD") is responsible for approving and issuing factory canteen licences. One of the main licensing conditions is that a factory canteen can only serve factory employees who work in the same building, **and** such employees must hold an employee card signed and issued by their employers.

4. Since factory canteens can only serve factory employees working in the same building, the food they provide and their mode of operation should be relatively simple. Consequently, compared with a general restaurant licence, the standard specified by a factory canteen licence for food room is lower. For a factory canteen with a floor area under 100 square metres, the food room should not be less than 14% of the total floor area of the canteen, subject to a minimum of 5 square metres. This standard is far lower than that of 25% for the food room of a general restaurant (the minimum being 8 square metres).

5. FEHD staff regularly inspect factory canteens (at least once every 20 weeks) to check their compliance with food hygiene standards and licence conditions.

### ***Land Lease Conditions***

6. The land leases of most industrial lots restrict the use of factory units to “industrial/godown” only. An owner of a factory unit wishing to set up a factory canteen, therefore, has to apply to the **Lands Department** (“Lands D”) first for a “waiver letter to permit a canteen within an industrial building” (“Waiver”) for lifting the above land use restriction in the land lease. Unlike other waivers for land use modification, the operator of a factory canteen having obtained a Waiver does not need to pay an additional premium to the Government to make up for the difference in rateable value of the premises resulting from the change in the land lease conditions (“waiver of additional premium”).

7. A factory canteen granted a Waiver must observe the following conditions:

- (1) It can only serve factory employees working in the same building.
- (2) It should not have a separate entrance/exit, or entrance/exit (except fire escapes) that directly leads to a public road, street or land.
- (3) It should not display promotional materials such as signs, notices or posters, or use transparent or semi-transparent materials for its external walls.

### **Our Findings**

8. Our investigation has found that many factory canteens serve public customers in breach of the licence conditions and violate the land lease conditions.

### ***Serving Public Customers in Breach of Licence Conditions***

9. Evidence suggesting that factory canteens are apparently serving public customers includes:

- (1) newspaper columns and food magazines from time to time recommending certain factory canteens to general readers;
- (2) websites and dedicated pages in social media networks set up by factory canteens for promotion; and
- (3) the personal experience of our investigation officers patronising factory canteens many times and yet having been asked whether they were factory employees.

10. **Case 2** cited in Chapter 4 of our investigation report depicts some 15 factory canteens in a certain urban industrial building, offering cuisines of different countries. Some even provide alcoholic drinks, children's meals, cooking classes and catering services for private parties.

#### FEHD's Explanation

11. Under the current licensing policy, no limit is set on the number of factory canteens within a single industrial building. It merely specifies that the total floor area of factory canteens must not exceed 10% of the gross floor area of the industrial building where they are located. Neither does FEHD restrict the types of dishes or kinds of food that factory canteens can serve. The Department contends that the factory canteens in **Case 2** offer a wide variety of cuisines just because they have to cope with market competition and to cater for consumer preferences, which is not unreasonable.

12. In case of a factory canteen breaching the licence conditions by serving public customers, FEHD may issue a verbal/written warning. The Department may further make a prosecution, or even revoke the licence of the factory canteen. However, between 2012 and 2015, FEHD only issued one verbal warning, whereas between 2016 and 2017, i.e. after our intervention, it issued 36 verbal warnings and instituted 31 prosecutions against 27 factory canteens.

#### *Violation of Lease Conditions*

13. Activities of factory canteens that violate the lease conditions include:

- (1) factory canteens located on the ground level using the means of escape leading to the public streets as an entrance/exit for customers; and
- (2) factory canteens using transparent materials for external walls, putting up signs and displaying menus and other promotional materials.

14. In **Case 1** cited in Chapter 4 of our investigation report, the factory canteen concerned has been in operation at the communal car park of an industrial building for more than 30 years, despite the fact that it has never been able to obtain a Waiver from Lands D. Although Lands D is well aware of the factory canteen's serious violation of the lease conditions, no lease enforcement action has been taken.

#### Lands D's Explanation

15. Under the current procedures, if FEHD notices during its inspection that a factory canteen may have violated the lease conditions, it will refer the case to Lands D for follow-up. When such violation is confirmed, Lands D will take lease enforcement action against the owner of the factory unit concerned. The main procedures are as follows:

- (1) to issue a warning letter, requiring the owner concerned to rectify the violation of lease conditions within a specified period;
- (2) to register the warning letter with the Land Registry so as to impose an encumbrance on the property concerned, if the violation of lease conditions is not yet rectified after the deadline; and
- (3) to exercise its statutory power to re-enter the premises if the violation continues to be serious after registration of the warning letter.

16. If a factory canteen serving public customers is located in an industrial building with godowns for dangerous goods, it will be targeted in the first round of enforcement actions under Lands D's "risk-based enforcement arrangements" against violations of lease conditions in industrial buildings. The owner of the factory unit concerned must rectify the violation within 14 days after Lands D has issued a warning letter; failing which, Lands D will re-enter the factory unit.

17. Regarding **Case 1**, Lands D's explanation was that the factory canteen in question occupied only a very small area (0.23% of the gross floor area of the building). As the canteen is located in the communal area, any lease enforcement action by Lands D would have to be taken against all building owners, and that would be unfair to them.

## **Our Comments**

### ***Adverse Consequences and Impact of Factory Canteens' Breach of Licence and Lease Conditions***

18. Where factory canteens breach the licence and lease conditions by serving public customers, it may have the following adverse consequences and impact:

- (1) People other than those who work in the industrial building may not be familiar with the internal setting of the building and so they would have to face higher risks in case of a fire outbreak. In fact, the **Fire Services Department** has included the following reminder in the fire safety standards set out for factory canteens, namely, the "Fire Safety Standards for Factory Canteens with Low Fire Potential" and the "Fire Safety Standards for Factory Canteens with High Fire Potential":

*"The admission of members of the public to any industrial building may expose them to fire dangers they are unaware of, nor prepared to face. Therefore non-regular users of the building should be discouraged and persons in the following categories restricted from using any factory canteen:-*

- *those who are of very old or young age to require care and attention of any other adult; and*
  - *those who are physically handicapped.”*
- (2) The standard of food room in a factory canteen may not be able to cope with a heavy flow of public customers. This poses food safety hazards to the customers.
  - (3) Since factory canteens can enjoy such concessionary benefits as waiver of additional premium and also lesser requirements for facilities, they can operate their business at lower costs compared with general restaurants. This will constitute an unfair competitive advantage if factory canteens are open to public customers, as if they were general restaurants, in violation of the conditions of the Waiver.
  - (4) Factory canteens serving public customers are clearly in violation of the lease conditions. If they are still allowed to enjoy the “waiver of additional premium” as “factory canteens”, that would mean a loss of revenue to the Government.

### ***Out-dated Licensing Policy on Factory Canteens***

19. Since licensing of factory canteens was introduced nearly 40 years ago, the Government has not conducted any comprehensive review of the licensing policy, nor has it plugged the loopholes in the system. The policy continues to allow the total area of factory canteens (irrespective of their number) in an industrial building to be as much as 10% of the gross floor area of the building, even though the actual demand for factory canteens has dropped over the years with factory jobs dwindling and an abundance of inexpensive eateries cropping up in the vicinity of many industrial buildings. Consequently, many operators have exploited the policy loopholes, obtained factory canteen licences, and enjoy the lower costs of operating food establishments in industrial buildings, serving public customers as if they were general restaurants.

### ***Lack of Rigorous Control by Both Departments in Approving Applications***

20. FEHD, the licensing authority, adopts a lax attitude towards the kinds of cuisines and food that factory canteens can serve. It fails to consider whether the standard of food room in factory canteens can cope with the sumptuous cuisines and banquets that some factory canteens offer.

21. And Lands D, the administrator of land leases, similarly fails to consider and assess prudently whether each application is fully justified, before granting a Waiver. Information shows that around 60% of factory canteens are on the ground level of industrial buildings, with quite a number of them located in the now commercialised

districts, such as Kwun Tong. The amounts of additional premium thus waived are obviously rather substantial.

### ***FEHD Turning a Blind Eye in Routine Inspections***

22. As shown by the figures cited in paragraph 12 above, FEHD in the past seldom took enforcement action against factory canteens which served public customers in breach of the licence conditions. **Cases 1** and **2** also show that during routine inspections of factory canteens, FEHD officers did not check the employee cards of customers, nor did they conduct any decoy operations.

23. We consider that FEHD, as the licensing and regulatory authority, has the power and responsibility to require factory canteen operators to verify the identity of customers when they are served. Serving public customers may result in higher turnover and increased inventory of food exceeding the capacity of the simple food room in a factory canteen, thereby affecting food safety and hygiene and posing a potential food safety risk to customers. Therefore, verification of the identity of customers is important.

### ***Lands D's Inadequate Enforcement Actions against Violation of Lease Conditions***

24. As shown in **Cases 1** and **2**, Lands D's enforcement actions against violation of lease conditions by factory canteens are extremely inadequate. In **Case 1**, Lands D failed to consider how the violation by the factory canteen concerned might be affecting the public. Instead, it kept on worrying about the interests of the owners of the building should lease enforcement action be taken. This is totally unacceptable. In **Case 2**, Lands D did take enforcement action against the violation of the lease conditions by the factory canteens, but only in a superficial manner, such as causing the canteens to cover up their shop signs and directional signs for entrance/exit. Nothing has been done to effectively stop the canteens from serving public customers and using means of escape for access by customers.

### ***Lack of Coordination Weakening Enforcement***

25. **Case 1** shows that FEHD and Lands D have shirked their enforcement responsibilities to each other and they have taken no action for years. As a result, the factory canteen has continued to operate in breach of the lease conditions for more than 30 years. In **Case 2**, despite the obvious violation of the lease conditions by so many factory canteens, it was not until after our intervention that FEHD referred the problem to Lands D for follow-up. The above cases reflect deficiencies in the referral and coordination mechanism between the two departments.

## **Recommendations**

26. In the light of the above, The Ombudsman urges:

### ***Lands D***

- (1) to tighten up the system for granting Waiver, so as to ensure that in all cases there is a genuine need to set up a factory canteen in the industrial building concerned;
- (2) to strictly adhere to the “risk-based enforcement arrangements” in taking lease enforcement actions against those factory canteens violating the lease conditions;

### ***FEHD***

- (3) to conduct a comprehensive and in-depth review of the policy on licensing factory canteens, jointly with relevant policy bureaux and Government departments, so as to ensure that a factory canteen licence will only be issued where the industrial building/factory concerned really needs a canteen;
- (4) to draw up clear and specific inspection guidelines, enhance training and supervision of frontline officers, and make more use of decoy operations; and

### ***Lands D and FEHD***

- (5) to set up a coordination and mutual referral mechanism for effective regulation of factory canteens, and clearly set out the powers and responsibilities of the two departments.

**Office of The Ombudsman  
May 2017**