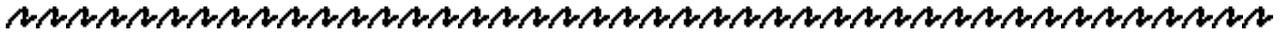


*Issue No. 3 of Reporting Year 2021/22  
(23 December 2021)  
Office of The Ombudsman*



***Direct Investigation Report  
Regulatory Work on Dog Keepers' Obligations by  
Agriculture, Fisheries and Conservation Department***

The Ombudsman has completed a direct investigation on the regulatory work on dog keepers' obligations by the Agriculture, Fisheries and Conservation Department ("AFCD") and made a number of recommendations for improvement to the Department.



Our investigation has identified room for improvement in AFCD's follow-up and enforcement action with respect to dog keepers' suspected violation of the Rabies Ordinance and its subsidiary legislation, handling of dog licence applications and change of dog licensee, reclaiming of lost dogs, publicity on reducing dogs surrendered by dog keepers, as well as its efforts and arrangements for renewing dog licences and updating of dog keeper information. The Ombudsman has made 11 recommendations for improvement to AFCD.

The executive summary of the direct investigation report is at **Annex 1**.

***Direct Investigation Report  
Government's Control of Illicit Fuelling Activities***

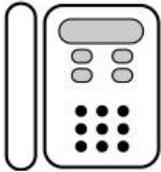
The Ombudsman has completed a direct investigation concerning the Government's control of illicit fuelling activities.



While recognising the Fire Services Department ("FSD")'s endeavour to combat illicit fuelling activities, our investigation has identified areas for improvement in its manpower resources, enforcement action, statutory

penalties, and publicity and education. Moreover, under the existing legal framework, combating such illicit activities by FSD alone from the fire safety perspective can hardly eliminate the problem at source. Therefore, if the improvement measures are ineffective, the Government should explore the feasibility of introducing control-at-source improvement measures, so as to combat illicit fuelling activities at the source of supply.

The Ombudsman has made a total of five recommendations to FSD and the Security Bureau. The executive summary of the direct investigation report is at **Annex 2**.



### *Enquiries*

For press enquiries, please contact Ms Kathleen Chan, Senior Manager (External Relations) at 2629 0565 or by email [kathleenchan@ombudsman.hk](mailto:kathleenchan@ombudsman.hk).

**Office of The Ombudsman**  
**23 December 2021**

## **Executive Summary Direct Investigation Report**

### **Regulatory Work on Dog Keepers' Obligations by Agriculture, Fisheries and Conservation Department**

#### **Introduction**

In Hong Kong, the number of pet-keepers is growing and the awareness about care for animals is getting stronger in the community. The Rabies Ordinance was initially enacted to protect public health and safety. Licensing, microchipping and vaccination of dogs, however, are no longer just necessary preventive measures against a rabies outbreak, but also legal obligations for strict compliance imposed on dog keepers in order to protect dog welfare (under the law, “dog keepers” does not simply refer to persons who own dogs or apply for dog licences. Unless where interpretation of the law is involved, people who own or keep dogs are collectively referred to as “dog keepers” in general hereafter).

2. As the Government department responsible for safeguarding animal welfare, the Agriculture, Fisheries and Conservation Department (“AFCD”) should on the one hand advise and educate animal keepers to properly take care of and manage their animals, and on the other exercise its statutory powers to take appropriate enforcement action against offenders, so that they would know the consequences of breaking the law.

#### **Our Findings**

3. Our direct investigation has identified the following aspects for improvement with respect to AFCD’s regulatory work on dog keepers’ obligations.

***(I) Should Initiate More Proactive Follow-Up Action on Suspected Violations of Law by Dog Keepers***

4. AFCD points out the need to strike a balance between protection of dog welfare and stringent enforcement. For instance, the Department would not rashly prosecute dog keepers who failed to license their dogs, with a view to preventing rabies and encouraging those dog keepers to apply for dog licences. We consider that in handling

issues relating to the keeping of and caring for pets, relying merely on draconian punishment is not advisable. Nevertheless, sole reliance on self-discipline of dog keepers is not sufficient either. AFCD should take sterner follow-up action on suspected violations of law by dog keepers to bring home to irresponsible dog keepers the consequences of offences.

5. With respect to cases involving violations of law by dog keepers, AFCD can consider collating and taking reference from experience in handling past cases with a view to reviewing related work arrangements for more rigorous investigation and evidence collection, thereby raising the chance of successful prosecution and achieving deterrent effect on offenders. Besides, AFCD should strive to handle similar cases in a consistent manner to obviate doubts about unfair treatment. In cases where it decides not to prosecute, other administrative measures can be considered in light of the nature and circumstances of individual cases. Such measures include issuance of an advice or a warning letter to the dog keeper concerned, and making a record of the incident to facilitate future follow-up action as necessary.

***(II) Should Strictly Require Dog Keepers to Observe Legislative Requirements***

(1) Strengthen Follow-up work on cases involving failure to license, vaccinate and microchip a dog in a timely manner

6. At present, AFCD would take actions against dog keepers who have failed to license their dogs or renew the dog licence only when their dogs have not been properly controlled or have bitten people. We consider such enforcement action too passive to deter offenders. AFCD should be more proactive and strictly require dog keepers to observe the legislative requirement and discharge their statutory duty to license their dogs. In addition, AFCD should conduct random dog licence inspections at public places where dogs gather (instead of running licence checks only in response to complaints), and require dog keepers to license their dogs or renew the licence by a specified deadline. Enforcement action should be taken against dog keepers who flout the requirement.

(2) Improve licence renewal reminders to dog keepers

7. Under the prevailing arrangement, AFCD would send licence renewal reminders to dog keepers who apply for a dog licence at an Animal Management Centre (“AMC”) under the Department. Dog keepers who apply for a licence via private

veterinary clinics would receive licence renewal reminders only if they have provided their email address to AFCD at the time of application. We consider that AFCD should make proactive use of the information in the Enhanced Animal Licensing and Enforcement System (“EALES”)<sup>1</sup> to send notifications to all dog keepers whose dog licence is about to expire to remind them to renew the licence and re-vaccinate their dogs by a specified date.

(3) Raise dog licensees’ awareness of notifying AFCD promptly of change in contact information and identity of dog keeper

8. Our investigation has found a number of instances in which the dog keepers’ information in the EALES was inaccurate or outdated. As a result, AFCD could not trace the dog keepers and ascertain their identities, let alone taking further enforcement action against offenders. We consider that AFCD should strictly enforce the requirement that dog licensees should notify the Department of change in address as soon as possible. When processing licence renewal applications, AFCD should also ask the applicants to make a written declaration on the veracity of their contact information, and state clearly the possible legal liability for making false declaration. The electronic platform to be developed by AFCD, in addition to allowing veterinary clinics to directly input licence application information, can also include a function to process changes of licensees and updates on contact information of dog keepers.

***(III) Need to Review Current Administrative Arrangements***

(1) Set time frame for veterinary clinics to submit licence applications

9. In addition to microchipping and vaccination services, veterinary clinics also submit dog licence applications to AFCD on behalf of dog keepers. Nevertheless, processing time for such applications varies among clinics. We consider that AFCD should formulate relevant guidelines requiring veterinary clinics to submit dog licence applications to AFCD within a specific time frame after microchipping and vaccinating the dogs concerned. Moreover, to ensure the accuracy of applicants’ contact information, AFCD should also consider strengthening its liaison with dog keepers. For instance, after completing the processing of an licence application that is submitted via veterinary clinic, AFCD can notify the dog keeper directly of licence issuance by electronic means (such as SMS message to mobile phones or email).

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<sup>1</sup> The EALES contains information such as the names, addresses and telephone numbers of dog keepers, and the rabies vaccination history of dogs.

(2) Enhance arrangements with animal welfare organisations for handling lost dogs

10. Animal welfare organisations (“AWOs”) do not have information of registered dog keepers. So, upon catching or receiving a microchipped dog, they can only call AFCD for follow-up action. We opine that there may be omissions in verbal information. To minimise the risk of mistakes, AFCD should strengthen its current communication mechanism with AWOs. For instance, AFCD can allow AWOs to provide information about the dogs they have caught to the Department by electronic communication. Clear records can speed up case processing and facilitate the Department’s examination of evidence and follow-up actions in the future.

(3) Refine arrangements for reclaiming lost dogs by dog keepers

11. Our investigation has found that persons other than the registered dog keepers can take away dogs from the AMCs under AFCD. As such, with respect to the arrangements for reclaiming un-microchipped dogs, AFCD should consider requiring the person who comes forward to reclaim a dog to provide more information to confirm his/her keeper status so that dogs would not be mistakenly taken away.

(4) Handle properly cases of change of licensee

12. There are inadequacies in the handling and confirmation of change of dog licensees by AFCD staff. AFCD should handle such applications prudently, step up staff training and remind staff to verify carefully the information provided by both the new and original dog keepers and obtain the written confirmation of both parties in order to protect their interests.

***(IV) Need to Improve Efforts in Reducing Dogs Surrendered by Dog Keepers***

13. AFCD has been educating the public and advising them against abandoning their pets. Yet, its practice of accepting dogs surrendered by their keepers may provide opportunities for some dog keepers to evade their legal obligations. The Department indicates that it is considering to stop receiving dogs surrendered by keepers without good reasons. We are of the opinion that before implementing such an arrangement, AFCD must first strengthen the regulation of dog keepers’ obligations under the law, strictly require dog keepers to license their dogs and provide accurate contact information to the Department, and take follow-up actions against dog keepers in breach

of the law (such as abandoning their dogs). In addition to stepping up publicity, AFCD should consider other measures to prompt those dog keepers intending to give up their dogs to think twice and consider thoroughly whether it is their only option. For instance, AFCD can require that dog keepers must make an appointment in advance for going through the formalities of surrendering a dog.

***(V) Should Step Up Publicity on Dog Licence Renewal and Updating of Licensee Information***

14. Our investigation has found that some dog keepers do not have sufficient understanding of their legal obligations, such as their duty to renew the dog licence or to notify AFCD of change in contact information and change of licensee in a timely manner. We consider that AFCD should step up public education in this aspect.

**Recommendations**

15. In light of the above, The Ombudsman has made 11 recommendations to AFCD, as follows:

- (1) take appropriate and effective measures to follow up more strictly on suspected violations of law by dog owners and strengthen investigation and evidence collection; in cases where AFCD decides not to prosecute, to consider other administrative measures (such as issuing advices or warning letters to remind dog keepers to observe the statutory requirements) and make relevant records of the cases;
- (2) conduct random dog licence inspections at public places where dogs gather, require dog keepers to license their dogs or renew the licence by a specified deadline, and take enforcement action against non-compliant dog keepers;
- (3) make use of the information in the EALES to send notifications to dog keepers whose dog licence has expired or is about to expire, requiring them to renew the dog licence by the specified deadline. The notification should state outright the legal consequences of non-compliance. AFCD can also consider revising the dog licence application form to clearly inform applicants that their contact

information would be used for the purpose of sending licence renewal notifications;

- (4) require dog licence applicants to make a written declaration at the time of licence renewal applications (including applications submitted via private veterinary clinics) on the veracity of their contact information, and let them understand the legal consequences of making false declaration;
- (5) formulate guidelines to require organisations and veterinary clinics that assist in dog licence applications to submit the applications to AFCD within a specific a time frame after microchipping and vaccinating a dog; start as soon as possible the development of an electronic platform that allows veterinary clinics to submit dog licence applications; and for licence applications submitted via private veterinary clinics, consider notifying the dog keepers directly of licence issuance by electronic means;
- (6) in the long run consider permitting members of the public to submit electronically applications for changing dog keeper contact information and change of licensee;
- (7) strengthen its current communication and liaison mechanism with AWOs, consider allowing AWOs to provide information about the dogs they have caught to AFCD by electronic communication so as to facilitate immediate follow-up by the Department;
- (8) with respect to the arrangements for reclaiming un-microchipped dogs, consider requiring the person who comes forward to reclaim a dog to provide more information to confirm his/her keeper status;
- (9) handle prudently applications relating to change of licensee, step up staff training and remind staff to verify carefully the information of both the new and original dog keepers and obtain the written confirmation of both parties;
- (10) explore more measures to prompt dog keepers intending to give up their dogs to think twice and consider thoroughly whether it is their only option; and

- (11) step up publicity and public education on dog keepers' responsibility to renew dog licence and notify AFCD of change in contact information and change of licensee in a timely manner.

**Office of The Ombudsman**  
**December 2021**

## **Executive Summary**

### **Direct Investigation Report**

#### **Government's Control of Illicit Fuelling Activities**

##### **Introduction**

The prevalence of illicit fuelling activities in Hong Kong has long been a matter of public concerns. Premises carrying out such illegal operations (commonly known as “illegal filling stations”) are found in various districts, and some of them are even close to residential neighbourhoods. These stations generally lack fire protection and firefighting equipment and pose fire safety threats to the public. Against this background, the Office of the Ombudsman launched this direct investigation to examine the Government’s measures to combat illicit fuelling activities, with a view to exploring areas for improvement.

##### **Our Comments**

2. At present, the Fire Services Department (“FSD”) combats illicit fuelling activities under relevant legislations (including the Fire Services (Fire Hazard Abatement) Regulation, Dangerous Goods Ordinance (“DGO”) and Dangerous Goods (General) Regulations) from the fire safety perspective, mainly through surprise inspections, complaint handling and inter-departmental joint operations. To this end, FSD has set up an Anti-illicit Fuelling Activities Task Force (“Task Force”). Moreover, FSD combats the use of dangerous goods vehicles (“DGV”) for illicit fuelling activities through the licensing regime for DGV. FSD also mounts publicity campaigns against such illicit activities through various channels and platforms.

3. After examining its work, we consider FSD to have conscientiously endeavoured, within the confines of existing legislation and manpower resources, to combat illicit fuelling activities through enforcement action and the licensing regime for DGV, so as to protect public safety. Nevertheless, illegal filling stations remain prevalent in view of their huge demand and profitability. To deter such operations and on the basis of existing legislation, we have identified the following areas for improvement in FSD’s manpower resources, enforcement action, statutory penalties, and publicity and education.

## ***Manpower Resources***

4. The Task Force comprises only seven members, including a supervisor and other members divided into three teams. In 2020 each team conducted an average of around 1.17 inspections per working day. In addition to inspections, the Task Force is also responsible for gathering intelligence and conducting joint operations with relevant departments, mainly the Customs and Excise Department (“C&ED”) and the Hong Kong Police Force (“HKPF”). However, there were as many as 350 black spots associated with illegal filling stations where the Task Force had carried out inspections and enforcement action. Constrained by relatively tight manpower, FSD should review the Task Force’s existing staff establishment and, based on actual circumstances, explore the need for its adjustment through internal redeployment and/or seeking additional resources from the Government, so as to cope with its heavy workload.

## ***Enforcement Action***

5. In recent years, some illegal filling stations have been operated in more flexible modes to evade FSD’s enforcement action. For instance, the diesel for sale is stored in fuel tanks or barrels on board a goods vehicle, and the stock of diesel at the illegal filling station is kept below the statutory exempt quantity. We also notice that under the current DGV licensing regime, a licence holder intending to use his/her DGV for operating an illegal filling station could engage a third party to run the business on-site. This would make it difficult for FSD to establish the licence holder’s involvement, thereby reducing the chance of licence suspension or revocation.

6. Concurrently with this direct investigation, FSD has been undertaking an exercise to amend the DGO and its subsidiary legislation. The amendments include reducing substantially the statutory exempt quantity for storage and conveyance of diesel from 2,500 litres to 500 litres. The amendments are expected to be implemented in the first quarter of 2022. We believe that such measure would be conducive to stepping up control of illicit fuelling activities by FSD. Nevertheless, given the various modes adopted by operators to evade regulation, coupled with the prevalence of illegal filling stations, FSD should continue to strengthen its enforcement efforts. We recommend that FSD, where manpower reallocation is practicable, consider increasing the frequency of surprise inspections and joint operations with C&ED and/or HKPF.

## ***Penalties***

7. Between 2016 and 2021 (up to 30 June), no offenders were sentenced to imprisonment after being convicted of participating in illicit fuelling activities. The maximum fines imposed by the court ranged from \$5,000 to \$50,000, which were insufficient to create an adequate deterrent effect in comparison with the profits derived from operating illegal filling stations. We are pleased to note that among the legislative amendments already made, the maximum levels of fines under relevant legislation have been amended to increase the deterrent effect. We recommend that FSD continue to monitor whether the amended penalties are effective in deterring illicit fuelling activities. Where the effect is unsatisfactory, FSD should timely consider further legislative amendments to raise the penalties.

## ***Publicity and Education***

8. We notice that FSD mainly relies on traditional media and platforms for publicity and public education, with less use of new media for enhancing the public's vigilance against illicit fuelling and encouraging them to report such activities. FSD's publicity and education initiatives are aimed at the general public, less often oriented to the potential customers of illegal filling stations, i.e. professional drivers. Hence, we recommend that FSD, on the basis of existing publicity campaigns, explore ways for diversifying the channels and methods of publicity and public education, with a view to encouraging the public to report illicit fuelling activities, and promoting awareness of the hazards posed by illegal filling stations among potential customers.

## ***Exploring the feasibility of introducing control-at-source improvement measures***

9. Our investigation shows that some oil companies in Hong Kong sell Euro V diesel<sup>1</sup> at wholesale prices to customers for their own use and distributors for resale. However, neither FSD nor the oil companies concerned have any idea about the identity of the clients purchasing diesel from the distributors. As such, even if the diesel is obtained for operating illegal filling stations, FSD would be unable to trace those cases. Moreover, the legislation enforced by FSD does not regulate, in any form, the supply and sale of dangerous goods (including Euro V diesel), nor does it empower FSD to mandate oil companies or distributors to provide client information for tracking the flow

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<sup>1</sup> Euro V diesel is light diesel oil. According to the Environmental Protection Department's website, since 1 December 2007, Euro V diesel has been exclusively offered at all local fuel filling stations. Since 1 July 2010, the Government has tightened the statutory specifications of motor vehicle diesel to Euro V level.

of transactions. In other words, under the existing regulatory framework, while FSD has endeavoured to combat illicit fuelling activities, its hands are tied in terms of stemming the supply of fuels for illegal filling stations, and hence its effort can hardly tackle the root of the problem. To address the problem of illegal filling stations at root, a more effective approach is to attempt to stem the supply of fuels for these stations.

10. In our view, the Government may evaluate the effectiveness of the aforesaid improvement measures after implementation for a certain period of time. If the results are unsatisfactory, we recommend that the Government explore the feasibility of introducing control-at-source improvement measures, so as to combat illicit fuelling activities at the source of supply. The existing market of Euro V diesel involves many operators and stakeholders in the sector. When implementing the recommendation, the Government would need to achieve the effect of combating illicit fuelling activities at source on the one hand, and minimise the impact on the sector on the other. We appreciate that the formulation of related improvement measures would be complex, and their successful implementation may require the professional expertise and experience of multiple departments. Therefore, should the need for a study arise, we recommend that consideration may be given to the Security Bureau (“SB”) in taking the lead to carry out the feasibility study. It may consider designating the responsibilities and duties of relevant departments, as well as setting up an inter-departmental collaboration mechanism. In undertaking the study in the future, SB may consider suitable arrangements having regard to the distribution market of diesel at that time.

## **Our Recommendations**

11. In sum, this Office has made the following recommendations to FSD and SB:

### ***FSD***

- (1) review the existing staff establishment of the Task Force and, based on the actual circumstances, explore the need for its adjustment to cope with the heavy workload;
- (2) after implementing the recommendation in **paragraph 11(1)**, consider increasing the frequency of surprise inspections and joint operations with C&ED and/or HKPF;

- (3) continue to review the amended penalties for greater deterrence against illegal fuelling activities; and
- (4) explore ways for diversifying the channels and methods of publicity and public education, so as to encourage the public to report illicit fuelling activities and promote awareness of the hazards posed by illegal filling stations among potential customers.

***SB***

- (5) review the measures in paragraph 11(1) to (4) after implementation for a certain period of time and, if the results are still unsatisfactory, explore the feasibility of introducing control-at-source improvement measures, so as to combat illicit fuelling activities at the source of supply.

**Office of The Ombudsman  
December 2021**