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Office of The Ombudsman, Hong Kong



***Investigation Report
Transport Department Shirking Responsibility and Failing to
Handle Properly the Problem of Illegal Parking of Bicycles at a
Public Transport Interchange***

The public transport interchange (“PTI”) on the ground level of a private housing estate is Government property. The problem of illegal parking of bicycles there had persisted for more than two years without any improvement. The owners’ committee of the estate had repeatedly complained to the Transport Department (“TD”) and the local District Office, but neither of them was willing to take up the responsibility.



Our investigation showed that the problem persisted primarily because TD, claiming that it was responsible only for matters relating to transport management, refused to take up its management responsibility of the PTI. While documents indicated that it is the “User Department” of the PTI, TD kept denying its management responsibility and was reluctant to take a leading role in exploring measures to deal with the problem, which dragged on as a result.

This Office made a number of recommendations to TD, *inter alia*, to take up and discharge its management responsibility for similar PTIs and to find a solution to the problem of illegal parking of bicycles.

A summary of the investigation report is at **Annex A**.

***Direct Investigation on
Fire Safety Regulatory Measures***

The Ombudsman has completed a direct investigation into the fire safety regulatory measures for food premises enforced by the Fire Services Department (“FSD”) and the Food and Environmental Hygiene Department (“FEHD”).

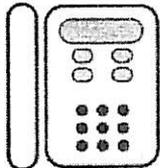


The investigation has revealed that while FSD has a statutory certification system for owners of premises to engage registered contractors to inspect their fire service installations or equipment annually, the Department's monitoring is loose and ineffective. Its inspections of premises have fallen below target and it has initiated few prosecutions for non-compliance and for obstruction to or locking of means of escape.

The investigation also shows that FEHD renews food business licences without checking whether the premises meet fire safety requirements. As a result, renewed licences pose a false assurance of safety of the premises to the public.

The Ombudsman has made 11 recommendations for improvement to the two departments.

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



Enquiries

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Summary of Investigation Report

Complaint about Illegal Parking of Bicycles at a Public Transport Interchange

The Complaint

Since December 2007, the owners' committee of a private housing estate had repeatedly complained to the Transport Department ("TD") and the local District Office ("DO") about illegal parking of bicycles at the public transport interchange ("PTI") on the ground level of the estate. However, the problem persisted. The committee was dissatisfied that the departments concerned had not taken proper action to solve the problem.

Background

Title of the PTI

2. Government had, through land grant conditions, required the developer of the estate to build the PTI. Upon completion of the estate, the title of the PTI was transferred to Government.

The Accommodation Regulations

3. The Accommodation Regulations provide for the management and utilisation of all Government properties (including those within private developments). All departments concerned are to comply.

4. Section 341 of the Regulations stipulates that when a Government property is completed, it should be jointly inspected by the Architectural Services Department, the Government Property Agency ("GPA") and the "User Department". Once compliance with building specifications is confirmed, the "User Department" will take over the property.

5. Under section 344 of the Regulations, the "User Department" shall manage the property and monitor its operation and utilisation.

Building Hand Over Certificate

6. In May 1995, TD signed the Building Hand Over Certificate (“Certificate”) and took over the PTI as the “User Department”.

The Event

7. In February 2007, at a meeting of the Working Group on Tackling Illegal Bicycle Parking (“Working Group”) under the District Management Committee, DO asked TD to provide additional bicycle parking spaces at the PTI as a long-term solution to the problem of illegal parking. TD argued that under the Maintenance Schedule in force, duties were to be shared among various departments, so the problem of illegal parking of bicycles should be jointly handled by all the departments concerned.

8. In December 2007, the management company of the estate wrote to DO and requested removal of the illegally parked bicycles. DO referred the letter to TD for follow-up action.

9. By January 2008, there was still no consensus as to which department should be responsible for dealing with the problem of illegal parking of bicycles. DO resorted to suggesting at a Working Group meeting that inter-departmental clearance operations be carried out on an *ad hoc* basis.

10. In May that year, the management company wrote to TD and asked the Department to solve the problem of illegal parking of bicycles. The Department replied in June that the issue was under the jurisdiction of the Working Group, and that the Department would refer the complaint to DO for follow-up action.

11. Then in August 2008, the management company wrote to DO and TD again, urging them to solve the problem. DO asked TD to clarify with the management company its management responsibility as the “User Department” of the PTI. In the event, TD replied to the management company that the case had been referred to the Food and Environmental Hygiene Department (“FEHD”) and the Police.

12. During April and May 2009, DO coordinated six inter-departmental operations to temporarily remove bicycles illegally parked at the PTI. Participating departments included TD, FEHD and the Police.

Our Comments

Management Responsibility

13. The problem of illegal parking of bicycles at the PTI persisted for years, primarily because TD refused to take up its management responsibility of the PTI.

14. As TD had signed the Certificate and taken over the PTI as the “User Department”, it should be responsible for managing the PTI and monitoring its operation in accordance with section 344 of the Accommodation Regulations. The Maintenance Schedule merely set out the maintenance and repair duties of various departments, which did not cover management responsibility.

15. Nonetheless, TD kept denying its management responsibility of the PTI and was reluctant to take a leading role in exploring measures to cope with the problem, which dragged on as a result.

16. We can understand that removal of illegally parked bicycles was not a normal duty for TD and that the Department had no legal authority to deal with the problem. However, as the “User Department” of the PTI, TD should discharge its management responsibility. If necessary, it could seek assistance from departments having the resources and legal authority, instead of using excuses to evade its responsibility for tackling the problem.

Conclusion

17. In light of the above, The Ombudsman considered the complaint against TD **substantiated**.

Recommendations

18. GPA records show that there are currently 44 Government-held PTIs within private developments in Hong Kong, while TD claimed to have taken over only 20 of them. Anyhow, the management problem is wide-ranging.

19. The Ombudsman made a number of recommendations to TD, including:

- (a) to confirm with GPA the number and locations of PTIs;

- (b) to take up and discharge its overall management responsibility for the PTIs;
- (c) to formulate a code of practice and clear guidelines with regard to such PTIs;
- (d) to inspect the PTIs periodically for early rectification of irregularities;
- (e) to plan bicycles clearance operations with other departments in advance;
- (f) to seek legal authorisation from the Secretary for Justice for enforcing the Summary Offences Ordinance and removing bicycles abandoned at PTIs; and
- (g) to explore other methods of tackling the problem of illegal parking of bicycles.

Office of The Ombudsman
May 2010

EXECUTIVE SUMMARY

Direct Investigation on Fire Safety Regulatory Measures

Background

The Cornwall Court fire in August 2008 aroused concern over fire safety especially on food premises, which entertain members of the public in large numbers. The Ombudsman, therefore, initiated in June 2009 a direct investigation to examine:

- (a) the procedures and practices in enforcement of regulatory measures for fire safety applicable to all premises;
- (b) the administration of arrangements for fire safety in licensing food premises; and
- (c) the mechanism for monitoring compliance with fire safety on food premises.

Our Findings

Roles and Responsibilities of Relevant Departments

2. The Fire Services Department (“FSD”) is responsible not only for fire-fighting and rescue, but also for promotion of fire safety and protection on all premises.

3. The Food and Environmental Hygiene Department (“FEHD”) is the licensing authority for food premises. It issues licences to food premises which meet health, fire safety and other requirements.

FSD’s Statutory Certification System

4. By law, owners of premises have to keep their fire service installations or equipment (“FSI”) in efficient working order at all times. They also have to engage registered contractors (“RCs”) to inspect their FSIs once every 12 months. After inspection, the RC has to report the results to the owner on a certificate, commonly known as FS251, within 14 days, with a copy to FSD.

Loose and Ineffective Monitoring

5. FSD manually checks FS251s received against those previously received to identify premises with overdue inspection. However, this procedure is labour-intensive and the results prone to human errors. Moreover, FSD finds it difficult to prove whether and when RCs have submitted their FS251s. As a result, only four prosecutions have been brought in the past seven years against RCs for non-submission or late submission of FS251s.

6. FSD is developing a computer system for generating lists of premises with overdue inspection of FSI. It is also considering legislative amendment to require its endorsement of FS251s before RCs issue them to owners of premises. These would facilitate the Department's monitoring of the inspections.

Lack of Transparency

7. Under the current regulatory mechanism, owners of premises have no statutory obligation to display FS251s. The state of fire safety of premises is therefore not readily known to users of premises and they are unable to play a part in reporting defects. FSD is considering legislative amendment to require conspicuous display of FS251s, which would provide a strong incentive for owners to arrange timely inspection and proper maintenance of their FSI. Pending the legislative amendment, it encourages owners to display their FS251s.

Inadequate Follow-up on FS251s Received

8. FSD classifies FS251s received into high or low priority cases by the nature and severity of the defects reported therein. For high priority cases, FSD aims to inspect the premises immediately to determine if enforcement action is necessary. For low priority cases, FSD merely issues advisory letters to urge the owners to rectify the defects.

9. Each year, about 80% of cases are classified as high priority, and about 20% as low priority. However, FSD manages to inspect only 60% of cases, which means that at least about 20% of high priority cases are not checked by FSD. Low priority cases are even more likely to be taken lightly by owners, as FSD will not take further action after issuing advisory letters.

10. FSD should certainly inspect all high priority cases and conduct random checks on low priority cases.

RCs to be Gatekeepers

11. Currently, the law requires RCs to merely inspect FSI and report results to FSD. The onus is on FSD to ensure that owners rectify the defects reported.

12. It would be desirable for FSD to require RCs to make good FSI before submitting FS251s to the Department. With RCs acting as gatekeepers, FSD can better utilise its resources in monitoring compliance by RCs and owners of premises.

Low Prosecution Rate

13. FSD has initiated only a very small number of prosecutions, not only with regard to RC's non-submission or late submission of FS251s, but also to owners' failure to check FSI annually and obstruction to or locking of means of escape. The average annual figures for the past seven years were less than one, five and 29 respectively. More rigorous action by FSD is called for.

Gaps in Coordination and Communication

14. By law, FSD may prosecute any person causing obstruction to or locking means of escape. For cases of serious obstruction caused by suspected unauthorised building works, FSD is

to refer them to the Buildings Department (“BD”) for follow-up as building safety issues, apart from taking its own enforcement action. However, of the 1,289 cases referred to BD between October 2008 and October 2009, none was followed up by FSD.

15. FSD should enhance communication with BD to facilitate decision on the enforcement action to be taken on each case.

Licensing and Inspection of Food Premises

Omission in Licence Conditions

16. An applicant for a new food business licence has to produce evidence showing that health, fire safety and other requirements have been met. However, once issued, the licence only requires the licensee to comply with food hygiene conditions. It does not specify any fire safety requirements.

17. Such inconsistency is inconceivable, given the importance of fire safety and FEHD’s wide powers to impose conditions in licences. This may invite arguments that non-compliance with fire safety requirements does not constitute a breach of licence.

Deficiency in Renewal of Licence

18. Food business licences are renewable every 12 months. In processing applications for renewal, FEHD neither requires from the licensee any documentary evidence of, nor arranges with FSD to inspect the food premises for, continued compliance with fire safety requirements.

19. In a complaint case handled by this Office, the complainant applied for a new food business licence to operate a restaurant in a multi-storey building. FEHD rejected his application, as the FS251 of the building was long overdue and FSD had not taken any action. However, the existing restaurants in the same building had no problem in getting licences renewed.

20. Such renewal of licences without compliance with fire safety requirements gives the public a false assurance of safety. The practice also differs from those for other premises such as clubs and karaoke establishments where applicants for renewal of licensee have to submit certificates to prove that all FSI on the premises are in working order and FSD officers inspect the premises before renewal of licence. FEHD should take steps to ensure that the premises meet fire safety requirements when licences are renewed.

Inadequate Inspection

21. There are currently about 22,000 licensed food premises. FSD aims to conduct a surprise inspection on each food premises every five years. Between 2006 and 2009, the number of surprise inspections conducted by FSD each year ranges from 78 to 513, falling seriously below its target. Such a small number of surprise inspections could hardly spur licensed food operators to maintain fire safety on their premises at all times.

Recommendations

22. Based on the above, The Ombudsman makes 11 recommendations to FSD and FEHD, including the following:

- (a) FSD should expedite the setting up of its computer system and the legislative amendment to enable prompt identification of owners of premises and RCs failing to comply with statutory requirements;
- (b) FSD should promote conspicuous display of FS251s on premises, while considering legislative measures for mandatory display;
- (c) FSD should inspect all high priority cases and conduct random checks on low priority cases;
- (d) FSD should consider requiring RCs to make good FSI before submitting FS251s to the Department;
- (e) where warranted, FSD should step up prosecution against owners of premises for failure to check FSI, RCs for failure to submit FS251s and owners/users for causing obstruction or locking means of escape;
- (f) FSD should work out with BD procedures whereby the latter will inform the former of action taken after receipt of referral of cases of serious obstruction, and should itself follow up on such cases by taking enforcement action where necessary;
- (g) FEHD should impose conditions in food business licences for compliance with fire safety requirements;
- (h) FEHD should work out arrangements with FSD to ensure that food premises meet fire safety requirements before approving their applications for licence renewal; and
- (i) FSD should comprehensively review its frequency of surprise inspections and manpower requirements.

**Office of The Ombudsman
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