

LCQ7: Handling water seepage reports

Following is a question by the Hon Chan Han-pan and a written reply by the Secretary for Development, Ms Bernadette Linn, in the Legislative Council today (May 29):

Question:

The Office of The Ombudsman, Hong Kong (OTO) announced a direct investigation report on Effectiveness of the Joint Office (JO) for Investigation of Water Seepage Complaints in Handling Water Seepage Reports in December 2020, and made a series of recommendations. In this connection, will the Government inform this Council:

(1) of the improvement measures implemented by the JO in response to the OTO's recommendations and how these measures enhance the efficiency and effectiveness of handling reports on water seepage in buildings (set out in a table); whether it has considered accepting the OTO's recommendation to establish a "case manager" system to facilitate the JO's close monitoring of case progress;

(2) of the number of consultants engaged by the JO whose performance was assessed by the authorities to be adverse in each of the past three years, and their proportion in the total number of consultants, and set out in a table the details of the substandard cases concerned; whether the authorities will consider increasing the penalties for consultants with adverse performance and, at the same time, introducing a bonus system to provide incentives for consultants who are able to complete the handling of cases satisfactorily within deadlines, in order to boost their determination and efficiency in handling cases;

(3) whether it will consider expanding the JO's powers (including conferring mediation and arbitration powers on the JO) and composition, and appointing a government department to act as the lead department, or requiring the Water Supplies Department to undertake interdepartmental work in conjunction with the Task Force on District Governance to deal with water seepage, with a view to enhancing the effectiveness of handling water seepage reports; and

(4) given that at present, the authorities can only issue a Nuisance Notice or Nuisance Order under the Public Health and Municipal Services Ordinance (Cap. 132) to the person causing a sanitary nuisance after the source of the water seepage causing the sanitary nuisance has been identified, whether the authorities will consider empowering the JO to handle all water seepage cases (including non-sewage seepage and condensation water caused by the operation of chilling facilities) by including all water seepage cases as nuisances which may be dealt with summarily, and imposing a fixed penalty on the persons concerned?

Reply:

President,

Proper management, maintenance and repair of buildings, including resolving inter-floor water seepage problems, are the responsibilities of owners. If water seepage occurs in private buildings, the owners concerned may co-operate among themselves to engage professionals/consultants for carrying out investigation to identify the source of seepage and conducting necessary repair works to resolve the water seepage problems. Consultants or professionals are also available in the market to provide water seepage investigation and resolution services. A list of consultancy firms and experts providing professional advice on water seepage problems has also been uploaded onto the websites of the Food and Environmental Hygiene Department (FEHD) and the Buildings Department (BD) for public reference.

Nevertheless, the Government recognises that owners often encounter difficulties in tackling water seepage problems in buildings, and therefore has set up the Joint Office (JO) formed by the FEHD and the BD. Through inter-departmental co-operation, the JO seeks to identify the source of water seepage using one-stop and systematic testing methods and require the owners concerned to carry out repair works by exercising the powers conferred by the law, leveraging the expertise of relevant departments and with co-operation of the owners or occupants concerned. When the water seepage condition concerned has caused health nuisance, the FEHD will follow up in accordance with the Public Health and Municipal Services Ordinance (Chapter 132) (PHMSO) and take criminal prosecution action as appropriate. If there is risk to structural safety of the building or water waste due to defective water supply pipe, the JO will refer the case to the BD or the Water Supplies Department (WSD) who will intervene and handle the case in accordance with the Buildings Ordinance (Chapter 123) (BO) or the Waterworks Ordinance (Chapter 102) (WO) respectively (for example, the BD will issue repair order).

Having consulted the Environment and Ecology Bureau (EEB) and the FEHD, the replies to the various parts of the question are as follows:

(1) In view of the recommendations put forward in the Direct Investigation Report by the Office of The Ombudsman (the Ombudsman) in 2020, the JO has implemented a series of improvement measures to enhance the efficiency and effectiveness in handling reports on water seepage in buildings. The main improvement measures include setting up four regional JOs to facilitate communication between the staff of the FEHD and the BD in the JO and enhance operational efficiency, so that staff of the FEHD and the BD can meet directly to discuss complex cases; enhancing the Water Seepage Complaint Management System (WSCMS) for more effective monitoring of follow-up actions and progress of water seepage cases; streamlining work procedures by reducing the number of visits before applying for a warrant to enter premises and standardising the documents for applying for a warrant; stepping up monitoring of consultants' work performance; setting up customer service team to enhance public understanding of water seepage matters; and the wider use of new testing technologies by expanding from three pilot districts in 2018 to 14 pilot districts in late 2023 to improve the success rate of identifying the source of water seepage, etc. The recommendations made by the Ombudsman,

the JO's follow-up actions and improvement measures implemented are tabulated in the Annex.

To further enhance the efficiency, effectiveness and deterrent effect of the Government's efforts on various environmental hygiene problems (including water seepage in buildings), the EEB is conducting a review of the legislative amendments to the PHMSO. The review includes, among other things, proposals to lengthen the time for entry into the premises concerned for investigation and to make it an offence for non-compliance with the Notice of Intended Entry issued by government officers. This will enable government officers to gain early access to units suspected of causing water seepage in buildings or other public health nuisance for investigation.

Please refer to the reply in Part (3) below for the proposed establishment of "case managers".

(2) In addition to implementing a series of measures to strengthen the monitoring of consultants (see recommendation (6) at Annex), to further step up monitoring of consultants' performance, the JO has formulated more stringent assessment standards for the quarterly performance reports of consultants in June 2023 (e.g. if consultants fail to submit case reports on time by a certain percentage, the JO will issue reminders, pre-warning letters or warning letters depending on the severity of the case). Moreover, the data on consultants' work progress generated from the WSCMS have been enhanced so that the JO can more effectively and timely step up random audit checks on consultants with unsatisfactory performance, as well as issue reminders, pre-warning letters, warning letters and adverse performance reports (Note 1) requiring rectification and improvement of performance. A consultant who has been issued with more than one consecutive adverse performance report under the same contract will be temporarily suspended from bidding for new contracts for a period of three months to one year.

The numbers of consultants issued with pre-warning letters/warning letters in the past three years and more are tabulated below:

Year	Number of consultants issued with pre-warning letters/warning letters (Note 2)	Proportion against total number of consultants
2021	4	36 per cent
2022	4	36 per cent
2023	3	25 per cent
2024 (as at end of May)	5	42 per cent

As the consultants have improved their performance according to the warnings upon the issuance of pre-warning letters/warning letters by the JO, it was not necessary to issue adverse performance reports to the consultants in the above-mentioned period.

We consider that the above system, which has been introduced since June last year, will enhance the monitoring of consultants' performance. In addition, as the progress of water seepage investigation hinges on various factors, including the complexity of the case, e.g. seepage involving multiple sources, recurring or intermittent seepage warranting multiple tests; and whether owners or occupiers are co-operative. As the factors concerned are not all within the control of the consultants, it may not be fair to have a bonus system that only looks at whether a case can be completed within the specified timeframe. As such, the JO has no plan to introduce a bonus system.

(3) Under the existing structure of the JO, with staff of the FEHD empowered under the PHMSO to deal with public health nuisances and staff of the BD with expertise in building surveying, there is synergy between the two departments in handling water seepage cases of varying complexity and circumstances by leveraging on the expertise and experience of the staff of the two departments. Given the different expertise and roles of the two departments, designating an officer of one of the departments as "case manager" or appointing one of the departments as leading department may not be as effective for the handling of water seepage investigation and the relevant enforcement work.

In addition, to expedite the handling of water seepage issues, the JO collaborated with the WSD to introduce the "Early Intervention" mechanism in March 2021. If the case involves continuous dripping at 20 or more drops per minute or visible leakage of water supply pipes during investigation, the JO will refer the case to WSD for follow-up actions in parallel. The WSD will study whether the case involve water wastage due to leakage in the water supply system. If confirmed, the WSD will issue repair notices to the registered consumers concerned in accordance with the WO and required them to repair the defective pipes within a specified time limit. If the registered customer fails to comply with the requirements of repair notice and complete the repair, the WSD will arrange to disconnect the water supply.

At present, claims not exceeding \$75,000 lodged as a result of water seepage in buildings will be handled to the Small Claims Tribunal. In addition, the Lands Tribunal also hears disputes involving building management (including water seepage). The Lands Tribunal has also established the Office of the Building Management Mediation Co-ordinator's Office (BMMCO) to streamline the processing of building management cases (including water seepage cases) and to encourage parties to make attempts to resolve their differences through mediation, so that such cases may be settled in an expeditious and efficient manner.

The main functions of the JO are to investigate the source of water seepage, require owners to carry out repairs and institute prosecutions as appropriate. There may be a conflict of roles and functions for the JO, which is responsible for investigation and prosecution, to concurrently mediate water seepage disputes for owners, as the mediator must not have any pre-determined stance, and be impartial and unbiased, with the objective of promoting mutual understanding and joint efforts of the parties in dispute to resolve the disputes. Considering that the BMMCO of the Lands Tribunal is

already able to provide mediation services to both parties in water seepage disputes, we do not consider it appropriate or necessary to expand the power of the JO to include mediation. To facilitate members of the public to resolve water seepage disputes through non-litigation means such as mediation, negotiation and notarisation, the JO is exploring the feasibility of providing free copies of water seepage investigation reports to the parties concerned (including the complainant and the complaine) for reference.

(4) There is an established mechanism in place for handling other water seepage problems identified by the JO during investigation (e.g. exposed drains, defective water supply pipes or water seepage from rooftops and external walls). If condensation is involved, the FEHD will deploy staff to investigate whether the problem constitutes a public health nuisance. If condensation is caused by a licensed cold store, the FEHD will study whether new licensing conditions can be added for the licensed cold store concerned subject to the actual circumstance.

In addition, the Government's fixed penalty mechanism for environmental hygiene penalties is designed to deal with environmental hygiene cases that are straightforward, clear and easy to establish. The problem of water seepage involves detailed investigation to ascertain the responsibility problem. The present way for the JO to issue Nuisance Notices and apply for Nuisance Orders from the Court as necessary is considered a more appropriate way to handle water seepage.

Note 1: If the consultant fails to submit the report on time or fails to comply with the requirements of the testing procedures, etc, to a certain extent, depending on the situations, the JO will issue reminders, pre-warning letters or warning letters. The JO will consider issuing an adverse performance report if the consultant continues to fail to improve after two warning letters issued by the government. If the consultant has received two or more consecutive adverse performance reports, the consultant will be temporarily suspended from bidding for new work contracts.

Note 2: According to records, the unsatisfactory performance of the consultants included poor overall progress/arrangement in the investigation of water seepage cases, substandard investigation reports and unsatisfactory performance of the staff of the consultants, etc.