

# Office of The Ombudsman announces results of direct investigation into Government's enforcement against unauthorised building works in New Territories Exempted Houses (with photos)

The following is issued on behalf of the Office of The Ombudsman:

The Ombudsman, Ms Winnie Chiu, today (February 16) announced at a press conference the completion of the direct investigation into the Government's enforcement against unauthorised building works (UBWs) in New Territories Exempted Houses (NTEHs) and made 11 recommendations for improvement to the Buildings Department (BD) and the Lands Department (LandsD).

In April 2012, the Government implemented an enhanced enforcement strategy against UBWs in NTEHs. The BD, as the enforcement authority, takes priority actions against UBWs constituting imminent danger, UBWs under construction or newly completed ones (Note), and existing UBWs not posing imminent danger but constituting serious contravention of the law and posing higher potential risks that are first-round targets, while the LandsD plays a supporting role in BD's enforcement by providing relevant information.

Investigation by the Office of The Ombudsman reveals that the number of reports of UBWs received by the BD had risen from 2 127 in 2012 (since April) to 8 552 in 2021. As at the end of 2021, nearly half of the removal orders issued by the BD were against UBWs built after the implementation of the enhanced strategy (i.e. UBWs under construction or newly completed). Around one quarter of the removal orders issued against UBWs under construction were outstanding while the deadline for removal had passed, among which about 68 per cent were issued in or before 2018. Removal orders regarding newly completed UBWs revealed a similar problem. This shows that BD's enforcement actions have been ineffective in curbing the proliferation of UBWs. In some of the cases studied, the BD took nine to 18 months after site inspection to issue a removal order against UBWs under construction, which is an obvious failure to meet the objective of taking "immediate" enforcement action.

Moreover, the progress of large-scale operations for the identification of first-round targets has been slow. In the past decade, the BD completed inspections of only about 46 per cent of recognised villages in the territory. On the whole, as at the end of 2021, 2 016 (about 37.4 per cent) of the 5 384 removal orders issued by the BD were outstanding while the deadline for removal had passed. The Office randomly checked some long-standing non-compliant cases and found that BD's issuance of removal orders

was followed by years of inaction.

The Office's investigation also reveals that among the 972 convictions for non-compliance with removal orders in the past decade, the average fine was about \$9,500 only and there were only nine cases (involving three NTEHs) in which imprisonment was imposed. The average fine upon re-conviction for persistent non-compliance increased to about \$13,400 only. The Office finds the existing penalty insufficient to deter non-compliance. On the other hand, as the BD has not made use of the information collected from its enforcement actions to compile statistics on UBWs, it is difficult for the Department to make systematic assessment of the effectiveness of the enhanced strategy and the changes after its implementation. There is also room for improvement in the mechanism for information exchange and co-ordination between the BD and the LandsD.

Ms Chiu said, "It is commendable of the Government to have implemented the enhanced strategy with a clear policy objective to step up enforcement against UBWs in NTEHs. Nevertheless, our findings reveal multiple inadequacies in the actual implementation of the strategy in the past decade that inhibit full accomplishment of the policy objective. While we acknowledge the continuous effort of the BD in curbing UBWs, the slow progress of large-scale operations and the backlog of cases reflect that the Department may not have the capacity to manage all necessary enforcement actions. The BD should consolidate its experience in implementing the enhanced strategy in the past decade, holistically review the policy and resource utilisation and explore how the limited resources can be utilised pragmatically to target the most serious types of UBWs and repeated offenders for the time being. The Department should in tandem formulate performance indicators for measuring effectiveness in accordance with the policy objective."

The Office's major recommendations made to the BD include:

- review the existing guidelines and set clearer internal targets for processing tasks other than site inspections regarding UBWs under construction;
- explore streamlining the enforcement procedures for tackling UBWs under construction;
- review the existing arrangements for consultants' submission of work reports regarding large-scale operations and proactively identify areas for streamlining (such as more extensive use of electronic submission of reports), as well as explore measures to expedite the vetting of consultants' reports;
- step up the monitoring of follow-up and enforcement actions on UBWs in NTEHs and the clearance of backlog cases of non-compliance in accordance with the internal timetable;
- reflect to the Court the seriousness of cases involving flagrant contravention of the law or continuing irregularities and step up prosecutions against persistent non-compliant owners for greater deterrent effect;

- compile statistics on UBWs based on the information collected from follow-up and enforcement actions for analysis purposes; and
- holistically review the policy of the enhanced strategy and resource utilisation, explore how the limited resources can be utilised pragmatically to target the most serious types of UBWs and repeated offenders for the time being, and in tandem formulate performance indicators for measuring effectiveness in accordance with the policy objective.

The Office also recommends that the BD and the LandsD regularly monitor pending cases with information outstanding to ensure there is no delay or omission in information exchange. The two departments should also consider setting up an interdepartmental liaison group to strengthen co-ordination and enhance the effectiveness of handling special cases.

The BD and the LandsD have generally accepted the Office's recommendations.

The full investigation report has been uploaded to the website of the Office of The Ombudsman at [www.ombudsman.hk](http://www.ombudsman.hk) for public viewing.

Note: Newly completed UBWs refer to UBWs completed on or after June 28, 2011.

