

Office of The Ombudsman announces results of direct investigation into Government's regulation of illegal occupation or obstruction of streets by goods and miscellaneous articles (with photo)

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 results of the direct investigation into the Government's regulation of illegal occupation or obstruction of streets by goods and miscellaneous articles, identifying three major areas for improvement; namely enforcement actions, inter-departmental joint operations and the complaint referral mechanism.

The investigation by the Office of The Ombudsman revealed that the Food and Environmental Hygiene Department (FEHD) enforcement actions were ineffective in curbing irregularities. As a result, in some street obstruction black spots with frequent inspections, the enforcement figure was not high but the obstruction of streets persisted. There was also a severalfold variation in the FEHD's inspection and enforcement statistics on different black spots, reflecting possible inconsistencies in the intensity of inspection and enforcement by different District Environmental Hygiene Offices. Moreover, the existing penalty is inadequate to deter repeated offenders and serious cases such as large-scale occupation of pavement areas by goods and miscellaneous articles.

The Office considers that the FEHD should use various data, including number and types of shops and past statistics on inspection and enforcement, as parameters for an holistic analysis in order to formulate effective plans for inspection and enforcement. The FEHD should also step up the monitoring at the central level of the arrangements for inspection and enforcement as well as resource utilisation across District Environmental Hygiene Offices, and identify any marked discrepancies requiring adjustment. To increase the non-compliance cost of street obstructions and for more effective control over repeated and persistent offenders, the Environment and Ecology Bureau and the FEHD should review comprehensively the existing penalties under the law, including raising the maximum penalty imposed by means of summons and the level of fixed penalty, and favourably exploring the introduction of a progressive penalty system under the fixed penalty provision.

On the other hand, in recent years, the FEHD and the Police have been progressively conducting joint operations in various districts. Apart from

prosecuting offenders, they have seized and confiscated goods or miscellaneous articles in public places to strengthen the deterrent effect. The Office considers that the authorities should explore the feasibility of empowering FEHD staff to remove, seize and detain goods and miscellaneous articles causing illegal occupation or obstruction of streets, so as to allow greater flexibility in enforcement planning and better use of the Police's manpower.

The investigation also revealed that when following up on cases of unauthorised occupation by high-mobility articles, the Lands Department (LandsD) merely focused on making referrals to other law enforcement departments without rendering assistance to them from the perspective of tackling illegal occupation of government land. Moreover, the LandsD's enforcement figures on shopfront platforms, which are among its major enforcement targets, has been on a downward trend in recent years. In this regard, the LandsD should establish a co-ordination mechanism enabling other departments to seek its assistance where necessary, and step up its enforcement against unauthorised extensions of business areas with shopfront platforms.

District Offices under the Home Affairs Department (HAD) organise inter-departmental joint operations on a need basis. The investigation reveals that the practices of and the number of joint operations conducted by different District Offices varied considerably. While some District Offices organised over 100 joint operations over the past few years, some did not organise any operations in the same period. Furthermore, a case study reveals that even though the District Office concerned attempted to organise joint operations, the situation remained a stalemate when the District Office was unable to resolve expeditiously departments' disputes on their enforcement responsibilities.

The Office reckons that the HAD should supervise District Offices with regards to a more active performance of their role in co-ordinating district affairs and problem solving among departments, and encourage other departments to make good use of their co-ordinating role, so as to ensure timely handling of inter-departmental cases of illegal occupation or obstruction of streets by goods and miscellaneous articles. As for unsettled irregularities or unresolved disputes on enforcement responsibilities after District Offices' intervention, the HAD should decisively escalate the matter to the Steering Committee on District Administration (note) for early consensus building through high-level negotiation. At the same time, the Steering Committee on District Administration should favourably consider establishing a standing mechanism at the central level to regularly review completed inter-departmental cases requiring a longer processing time in various districts, with a view to ascertaining whether systemic issues are involved, and making improvements where necessary.

Complaints about illegal occupation or obstruction of streets are mainly received by 1823, which could refer most of the complaints to the appropriate departments for follow-up under the prevailing mechanism. Nevertheless, for cases with unclear demarcation of responsibilities, 1823 could only mediate

between the departments with no power to instruct any of them to take follow-up actions. This was inevitably inefficient and cumbersome. The Office had earlier launched a direct investigation to examine the effectiveness of 1823 in handling complaints and enquiries, and will include the above observations in the investigation and explore improvement measures.

Ms Chiu said, "Illegal occupation or obstruction of streets by goods and miscellaneous articles has been an issue of wide public concern. The Office receives a large number of related complaints every year. We are pleased that the Government has earlier set up the District Matters Co-ordination Task Force, led by the Deputy Chief Secretary for Administration, to tackle illegal occupation or obstruction of streets more effectively by launching the Government Programme on Tackling Hygiene Black Spots and reviewing the existing penalties, and more, coupled with continuous education and publicity. The Office believes that, under the Task Force's leadership, various departments can handle the problem more systematically. The Office hopes that the relevant bureaux and departments can implement our recommendations promptly so as to further enhance the effectiveness of regulation and enforcement."

The Ombudsman has made 14 recommendations to the Government. Details can be found in paragraph 6.46 of Chapter 6 of the investigation report. The relevant bureaux and departments 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 for public viewing.

Note: Chaired by the Permanent Secretary for Home and Youth Affairs and comprising directorate officers of departments, the Steering Committee on District Administration is a standing inter-departmental co-ordination platform tasked to tackle district affairs such as street management issues, including environmental hygiene problems, illegal occupation of Government land and street obstruction by shops.

