

## **Executive Summary Direct Investigation Report**

### **Effectiveness of Joint Office for Investigation of Water Seepage Complaints in Handling Water Seepage Reports**

#### **Introduction**

The Joint Office for Investigation of Water Seepage Complaints (“JO”), which comprises staff from the Food and Environmental Hygiene Department (“FEHD”) and Buildings Department (“BD”), is responsible for conducting investigation to identify the source of water seepage that causes hygiene nuisance and taking necessary enforcement action. Since our last direct investigation of the same topic in 2008, this Office has received complaints from members of the public against JO continuously. The main allegations of those complaints included JO’s failure to identify the source of water seepage despite the lengthy tests of various kinds conducted, and its heavy reliance on the old colour water tests to confirm the source. We also noticed that new testing technologies such as infrared thermography and microwave tomography to identify the source of water seepage have not been widely used by JO, and that its prolonged investigation has led to a huge backlog of cases.

#### **Our Findings**

2. In view of our findings, we have the following comments on the effectiveness of JO’s handling of water seepage reports.

#### ***Effectiveness of Handling of Water Seepage Reports***

##### **(I) Huge Backlog of Cases**

3. In 2018 and 2019, JO had 13,889 and 17,034 uncompleted cases respectively. The backlog was huge. As at June 2020, JO had 23,403 active cases, 8,437 cases of which were received in or before 2019. In our view, JO should proactively examine the reasons for having backlog and take effective action to clear it. The Government should consider allocating more resources to JO, if necessary, so that JO can clear the backlog as early as possible.

(II) Many Cases Require More Than 90 Working Days to Complete Investigation

4. According to JO's operational guidelines, JO can usually complete its investigation into a case and inform the informant of the findings within 90 working days if it is straightforward and the owner/occupant concerned is cooperative. Take 2019, in which JO completed its actions in 30,910 cases, as an example, 64% of the cases were completed within 90 working days while 36% required more than 90 working days to complete. Of the 8,605 cases that JO completed its investigation, 31% were completed within 90 working days while 69% required more than 90 working days, with 41% requiring more than twice the aforesaid processing time. These statistical figures show that many cases (including those where investigation had or had not been conducted) required more than 90 working days to complete actions and it was also common to complete investigations beyond 90 working days. We consider that JO should explore devising practicable reference/performance indicators, examine thoroughly the reasons why some cases required prolonged time to complete actions and formulate improvement measures. Besides, we recommend that JO review its workflow and explore the feasibility of shortening the 20-working-day time-frame for consultants to visit the suspected premises upon case assignment so as to expedite the processing of cases.

(III) Failure to Analyse the Reasons for Prolonged Time (More Than 90 Working Days) to Complete Actions and Compile Relevant Statistics

5. JO explained that as special circumstances might vary in different cases, it could not categorise the reasons why it needed prolonged time to complete actions for some cases, hence no compilation and analysis of relevant statistics. We consider that given the huge number of cases to be handled, JO should compile relevant statistics to examine in a systematic manner the various reasons for taking prolonged time to complete its actions so that it can formulate coping strategies. We understand that as at November 2020 the Review Task Force that was formed to review JO's operation has implemented some measures to streamline the work procedures. We recommend that JO refer to its experience gained in handling cases and devise a case management strategy to enhance the efficiency of handling water seepage reports.

(IV) Operational Guidelines Should Be Revised to Require That Staff Call Owner/Occupant Concerned to Arrange First Visit to Suspected Premises

6. According to JO(FEHD)'s operational guidelines, staff are not required to call the owner/occupant of the suspected premises to arrange the first visit. As a result, they may not be able to gain entry for investigation. We recommend that JO revise the relevant guidelines to state clearly that staff can make good use of investigation resources and call the owner/occupant concerned to arrange the first visit if the informant has provided, among others, the contact telephone number of the owner/occupant of the suspected premises.

(V) Failure to Update Informants Regularly on Investigation Progress during Stage III Investigation and When Conducting Confirmatory Test

7. Prior to September 2019, JO would not update the informants regularly on the progress of investigation when encountering difficulty during Stage III investigation. From September 2019 onwards, the consultants will only update the informants on the progress in writing within 20 to 35 working days after visiting the affected premises, but they will not write to the informants with updates again in case the delay dragged on. JO has planned to revise the terms of contracts offered to its consultants from the first quarter of March 2021 to stipulate that if the consultants cannot visit the suspected premises within 20 working days upon case assignment, they should update the informant in writing on the progress and explain the reasons for not initiating investigation within these 20 working days. If the situation persists, the consultant should update the informant on the progress every 20 working days. We recommend that before introducing this arrangement, JO regularly update the informant on the progress of cases where the consultant has written to the informant and further delays happen. Where it is necessary to conduct confirmatory tests, JO should also write to the informant regularly to provide updates.

(VI) Explore Simplification of Investigation Reports to Expedite Completion of Stage III Investigation

8. Between 2017 and October 2019, there were about 100 cases on average each year where JO instituted prosecution against the owner/occupant concerned for non-compliance with the Nuisance Notice ("Notice") or Nuisance Order. In the same years, the consultants submitted about 10,000 investigation reports to JO each year. In other words, only a small fraction of investigation reports JO received was produced to the

Court. We understand that investigation reports are crucial to water seepage cases and JO should not issue a Notice unless there has been sufficient evidence. However, JO should also consider how to optimise resource utilisation. In this regard, we recommend that JO seek advice from the Department of Justice (“DoJ”) and explore the feasibility of simplifying investigation reports without compromising its enforcement actions so that resources can be better utilised and Stage III investigation can be expedited.

***Effectiveness of Use of New Testing Technologies***

**(VII) Higher Success Rate of New Testing Technologies in Identifying Source of Water Seepage**

9. In 2019, JO achieved a success rate of 76% in identifying the source of water seepage by using new testing technologies including infrared thermography and microwave tomography. On application of new testing technologies in pilot districts, JO’s success rate in identifying the source of water seepage was 32 percentage points higher than that of the conventional colour water tests. This shows that new testing technologies are more effective than the conventional colour water tests in identifying the source of water seepage. Moreover, compared with the conventional colour water tests, the new testing technologies allow the investigator to collect data instantly, hence more effective in improving the efficiency of water seepage investigation. We recommend that JO proactively consider extending the use of the new testing technologies used in the eight pilot districts to other districts for identifying the source of water seepage for more cases.

***Effectiveness of Monitoring***

**(VIII) Failure to Use Water Seepage Complaint Management System to Compile Statistics and Management Reports Though The System Has Been in Place for More Than Two-and-A-Half Years**

10. The Water Seepage Complaint Management System (“WSCMS”) can compile data on the time required for completing different investigation stages and actions, which are crucial in monitoring the work of JO’s staff and the consultants. Given that the WSCMS has been in place since March 2018, we find it difficult to understand why it was not until November 2020 that JO completed inputting and checking the information of cases handled between 2018 and June 2020, tested the function and

accuracy of the WSCMS in compiling statistics and management returns, and started preparing management reports regularly. We urge JO to learn from experience so that it would not face the same situation again.

(IX) Ineffective Monitoring of Consultants

11. The case studies in Chapter 5 of our investigation report reflect the inadequacies of the consultants in handling water seepage reports, which include failure to activate early the application procedures for the Warrant of Entry, late submission of investigation reports, failure to keep properly investigation information and making multiple corrections to investigation reports. Although the consultants concerned eventually rectified their mistakes or implemented remedial measures, the investigation had been delayed, causing inconvenience to the owner/occupant concerned. We consider it necessary for JO to step up its monitoring of consultants. On the other hand, a case showed that JO issued warning letters and adverse reports to a consultant that had delays in initiating investigation and submitting the investigation report. The consultant was subsequently debarred from the tender for providing consultancy service for BD for three months only. We doubt the deterrent effect of the penalty and whether it can improve the consultant's performance. We recommend that JO(BD) discuss with its bureau on enhancing penalty for consultants with poor performance so as to create deterrent effect.

(X) Devising Reference/Performance Indicators

12. JO intends to act on the Review Task Force's recommendation and formulate practicable performance indicators for straightforward cases, and to publish regularly its service performance. We recommend that JO devise practicable reference/performance indicators for complicated cases as well so that the public will be informed of, and its staff will abide by, such indicators, and JO will have benchmarks for internal monitoring, thereby avoiding prolonged investigation and slow progress.

***Other Aspects***

(XI) Moisture-content Threshold for Initiating Investigations

13. Among the public views we received, some consider the threshold of investigation set by JO to substantiate the presence of water seepage condition too high. JO explained that concrete and the surface of plaster are susceptible to the relative

humidity of the surroundings. Based on its experience in handling water seepage cases and relevant data, it is difficult to identify the source of water seepage if the moisture content of concrete and the surface of plaster is below 35%. Hence, JO has set the moisture-content threshold at 35% or above to ensure effective use of resources. We refrain from commenting on JO's threshold of investigation regarding moisture content because it is a professional judgement of JO.

(XII) Issuing Notices and Instituting Prosecutions during Stage III Investigation

14. Regarding the public view that the practices of having JO(FEHD) staff issue Notices according to the results of Stage III investigation and instituting prosecutions against owners failing to comply with the Notices are inefficient, we are of the view that the nuisance caused by water seepage is essentially related to environmental hygiene. Given that FEHD is the department enforcing the Public Health and Municipal Services Ordinance, it is not unreasonable for its staff to take up the two tasks. What members of the public are most concerned about is the efficiency of enforcement action rather than which department should undertake those tasks. We consider that JO should review the existing arrangements and decide whether they are the best way to ensure efficiency. Otherwise, it should look into the reasons and make improvement.

(XIII) Appoint a Lead Department to Coordinate and Monitor JO's Operation and Establish a "Case Manager" System

15. JO is jointly operated by FEHD and BD, and this mode of operation may cause the enforcement responsibilities to split up. We learn from the public views that some JO staff consider the division of labour between the two departments unreasonable while others find that the absence of a lead department has caused conflicts and disputes among staff of different professional backgrounds. We are concerned that staff from FEHD and BD may work in silos, lack coordination and lack determination to resolve problems in the absence of a coherent management structure overseeing JO's operation. The inadequacies in JO's handling of water seepage reports including prolonged investigation and ineffective monitoring of consultants have persisted for many years. Hence, it is necessary for JO to have a lead department coordinate and monitor its operation and be accountable for its performance. The setting up of regional joint offices has helped improve the communication between JO staff from FEHD and BD, but it is insufficient for tackling the said problems. We recommend that JO promptly explore and confirm the designation of a lead department so that the lead department will coordinate and monitor JO's operation. While we agree that the current work

arrangement of JO could achieve synergy between the two departments, we are of the view that appointing a lead department would enhance the synergy between the two departments, given the public's expectation of resolving water seepage problems early and JO's prolonged structural problem. Currently, JO does not have a "case manager" system. We consider establishing a "case manager" system would facilitate close monitoring of case progress and provide members of the public with a single contact point to enquire about case progress. The Government's intervention of water seepage problems is fundamentally to deal with hygiene nuisance and safeguard public health. We recommend that JO proactively consider appointing a lead department and establishing a "case manager" system, and putting forward this recommendation to the Review Task Force for consideration.

#### (XIV) Whether Composition of JO Should Include the Water Supplies Department

16. Some are of the view that the Water Supplies Department ("WSD") should be included in the composition of JO. In our opinion, the establishment of JO aimed at identifying the source of water seepage that causes nuisance and taking necessary enforcement action. Normally, leakage of fresh water mains does not constitute environmental hygiene nuisance as the water seepage is not caused by unclean water. It is, therefore, justifiable not to include WSD in the composition of JO. For members of the public, nuisance arising from water seepage at the ceiling will always be disturbing regardless of the source of seepage being fresh water or otherwise, and they certainly have a reasonable expectation that JO would resolve the problem for them. In fact, every year JO refers to WSD several hundred water seepage cases allegedly caused by leakage of fresh water mains for follow-up action. We consider it more important to have WSD's early involvement than having the Department itself included in the composition of JO. We are pleased to note that JO will discuss with WSD about making it a regular arrangement to refer water seepage reports involving continuous dripping at a steady rate to WSD for early intervention.

#### (XV) Handling Water Seepage Caused by Unauthorised Building Works

17. There are views that BD lacks initiative in handling cases referred to its headquarters by JO(BD), which involve water seepage caused by unauthorised building works ("UBWs"), and simply requests that the owner of premises with unauthorised subdivided flats, which causes water seepage, resolve the seepage problem instead of eradicating the UBWs. In our opinion, it is BD's professional judgement to determine whether the UBWs have caused the water seepage and whether the UBWs should be

eradicated, hence we will not comment on this. As to whether the owner concerned should handle the problem of water seepage or UBWs first, we consider that if the UBWs in question fall into the priority categories of actionable cases, BD should issue a removal order to demand the owner concerned to eradicate the structures. Otherwise, JO should issue a Notice to the owner concerned to resolve the environmental hygiene nuisance caused by water seepage and BD should take enforcement action against the UBWs in accordance with its enforcement priorities.

#### (XVI) Resolving Water Seepage Disputes by Way of Mediation

18. Among those cases where actions were completed between 2018 and June 2020, JO discontinued its follow-up in around 14% to 17% of them during investigation each year either because the water seepage had stopped or the informant had withdrawn the report. We believe it is possible that in some cases the water seepage stopped because the owner/occupant of the premises that have water seepage made the necessary repairs after JO's intervention. We recommend that JO refer to the Free Mediation Service Scheme for Building Management offered by the Home Affairs Department and explore the introduction of mediation services to help owners find win-win solutions for disputes over water seepage and improve communication and mend fences between neighbours.

#### **Recommendations**

19. In the light of the above, The Ombudsman has made the following recommendations to JO:

- (1) proactively identify causes of and devise strategies to clear the backlog. Where necessary, the Government should consider allocating more resources to JO;
- (2) review and improve its workflow: explore shortening the time-frame for consultants' visits to the suspected premises upon case assignment; call the owner/occupant of the suspected premises to arrange the first visit where possible; update the informant on the case progress regularly; review whether the practice of having FEHD staff issue the Notice according to the results of Stage III investigation and institute prosecutions against owners are the best way to achieve the aim;



- (3) explore, in consultation with DoJ, the feasibility of simplifying investigation reports without compromising its enforcement actions;
- (4) explore the setting up of a mechanism for finding the reasons for prolonged time (more than 90 working days) needed to complete actions and compiling statistics so as to devise a case management strategy to enhance the efficiency of handling water seepage reports, and devise practicable reference/performance indicators for handling complicated cases;
- (5) proactively consider extending the initiative of using new testing technologies in the pilot districts to other districts for identifying the source of water seepage;
- (6) JO(BD) to step up monitoring of its consultants, and discuss with its bureau on enhancing penalty for consultants with poor performance;
- (7) proactively consider restructuring its setup so as to put itself under a lead department and establishing a “case manager” system; and
- (8) implement as early as possible the interim recommendations made by the Review Task Force formed by the relevant bureaux and departments, including setting up the New Territories East Regional Joint Office as planned, discussing with WSD the regularisation of JO’s referral of water seepage reports, enhancing the WSCMS and publishing its performance results regularly, setting up a customer service team and streamlining work procedures, and explore introducing mediation service to resolve disputes over water seepage.

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