

Executive Summary

Direct Investigation into Arrangements on Display of Publicity Materials in Public Housing Estates

In Hong Kong, about one-third of the population are residing in public housing estates. The Housing Department (“HD”), being responsible for management of public housing estates, is duty bound to formulate proper measures for ensuring that this huge sector of residents can obtain information on related community services, including designation of places in public housing estates for relevant persons/organisations to display publicity materials (“PMs”) or disseminate information to local residents in those estates. Meanwhile, many groups and organisations with diverse interests in the community are also keen to reach out through their messages to public housing residents. Any improper management of the display and distribution of PMs in public housing estates and failure to ensure fair and efficient procedures could easily lead to conflicts among different organisations, or even among the residents. This would not only generate complaints and grievances, but also give the public an impression that the Department is acting unfairly and operating in a clandestine manner.

Our Findings

2. Our direct investigation has revealed that HD has room for improvement in three areas, namely the vetting and approval of applications for display of PMs; the criteria for vetting and approving the contents of PMs; and the monitoring mechanism. Our findings are given below.

(1) Confusing Criteria for Vetting and Approving Applications for Display of Posters, and Lack of Principles in Exercising Discretionary Powers

3. HD normally processes applications for display of posters on a first come, first served basis. However, if HD receives several applications outside office hours and where the available display spots are not enough to cope with the demand, it will make approval according to the order of priority¹.

¹ The order of priority as stipulated by HD is as follows:

1st priority: Elected District Council (“DC”) Members of the constituency concerned

2nd priority: Appointed/ex-officio DC Members of the district concerned, if they are members of the Estate Management Advisory Committee of the estate concerned or have office accommodation set up in the estate concerned (For an estate with more than one DC constituency under DC Election, elected DC Members of any one of the constituencies in the estate concerned who apply for display of PMs outside their own constituency but within the estate concerned will be accorded the 2nd priority, as they are members of the Estate Management Advisory Committee of the estate concerned or have office accommodation set up in the estate concerned)

3rd priority: Elected Legislative Council (“LegCo”) Members of the geographical constituency concerned or other LegCo Members with office accommodation set up in the estate concerned

4th priority: All other DC and LegCo Members

5th priority: Mutual Aid Committees/Residents’ Associations of the estate concerned, or local non-governmental organisations

6th priority: Other approved charitable/non-profit-making organisations

4. The first come, first served basis is a clear, simple, practical and fair arrangement in itself. There should be no need to supplement it with other vetting and approving criteria. By substituting the order of priority for the first come, first served basis on the grounds of “applications received outside office hours”, HD is allowing two entirely different criteria to be applicable to the same type of applications. This would easily cause confusion, and those applicants accorded lower priority would be left with fewer opportunities to display their posters.

5. Moreover, HD has not set any limit on the number of posters to be displayed. If on the first day of application an applicant applies for displaying such a large number of posters that they would take up all the designated spots, HD will have to resolve the problem of insufficient spots with all the stakeholders by means of “professional judgement”, “consultation” and “flexible arrangement”. Yet, HD has not laid down any principles on how “professional judgement”, “consultation” and “flexible arrangement” should be applied in a discretionary way. As a result, the staff of different estate offices might handle such cases in vastly different ways, while the public or the stakeholders would have no means to know the justifications behind the staff’s decisions. An unsatisfactory situation like this would easily attract complaints and grievances.

(2) Different Understanding of PMs, with Different Vetting and Approving Criteria

6. Currently, applications for display of PMs are processed separately by estate offices. Where the contents of PMs may seem controversial, staff of estate offices will refer the applications concerned to the Housing Managers at the Headquarters. However, the decision as to whether the PMs are controversial depends on the staff’s own judgement and on whether sufficient training and reference materials are provided by HD. **Case 1 in Chapter 3** of our direct investigation report has revealed that different estate offices have different understanding of what kind of wording is “unlawful”. As a result, different housing estates can have different decisions in vetting and approving the display of the same poster. Similarly, staff of different estate offices may hold different views as to what sorts of contents are controversial and should be referred to the Headquarters. Although HD has provided in its guidelines some examples of “acceptable” and “unacceptable” contents and wording of PMs, those examples were compiled in 2012 and no updates have been provided despite the fact that many wordings and phrases now carry a sensitive and controversial meaning following changes in the social environment these few years. HD has failed to keep pace with the time, making it difficult for staff to make proper judgements.

(3) Inadequate Monitoring Mechanism

Inadequate Control of PMs Not Vetted before Display

7. Basically, HD will not screen PMs (and their contents) displayed by Legislative Council (“LegCo”) and District Council (“DC”) Members or NGOs on the notice boards outside their non-residential rental units or on the notice boards for exclusive use by mutual aid committees. Neither will HD check the PMs delivered to tenants’ mail boxes. Although HD has set out the requirements for contents of PMs on its website

and in its guidelines, HD will only take follow-up actions if complaints about violations or controversial contents are received (as in **Cases 2 and 3 in Chapter 3** of our direct investigation report). However, once the information is disseminated, subsequent follow-up action may not have much remedial effect and so it may be unfair to those affected or to other stakeholders. Recent media reports have revealed a case where a candidate for the LegCo Election obtained HD's approval to deliver PMs to tenants' mail boxes but HD later revoked its approval on finding controversial contents in those PMs. In this light, HD should review the effectiveness of its existing measures of monitoring the contents of PMs.

8. Regarding our views in the above paragraph, HD has noted that prior screening of posters to be put up on the notice boards outside the non-residential unit leased out to Councillors/organisations may arouse controversy about censorship and freedom of speech. Given the large quantities of PMs to be delivered to tenants' mail boxes and the tight schedule for vetting and approving applications, it may not be feasible to vet the contents of PMs every time. Yet, HD has agreed that it should draw the attention of applicants (persons/organisations) to the rules of display of PMs to prevent violations.

9. In our opinion, even though HD finds it inappropriate to vet those PMs prior to display, it should step up its inspections to prevent violations from the outset or recurrence of the problem.

Lax Enforcement of Tenancy Agreements

10. In **Case 2 in Chapter 3** of our direct investigation report, a Councillor displayed outside the non-residential unit rented as office the PMs of another Councillor. That was in violation of the terms and conditions of tenancy agreements for non-residential units. Nevertheless, HD only gave a verbal reminder without any follow-up action in accordance with the tenancy agreements. Such lax enforcement has caused unfairness.

No Penalties for Violations by Persons/Organisations

11. HD pointed out that estate offices can, at any time without prior notice and at an administrative cost to be recovered, revoke an approval for displaying PMs, remove unapproved PMs or those violating the display conditions or exceeding the approved display period. However, the Department's records showed that no relevant administrative costs had ever been recovered. **Case 3 in Chapter 3** of our direct investigation report also showed that even issuing warning letters to offenders could not stop the recurrence of such violations.

No Measures to Prevent Conflict of Interests Involving Individuals with "Dual Identities"

12. In **Case 4 in Chapter 3** of our direct investigation report, an elected local DC Member would automatically become a member of the local Estate Management Advisory Committee ("EMAC") and be given priority in his/her applications for displaying PMs in the estate. However, that DC Member, while attending an EMAC meeting in the capacity as an EMAC member, also participated in the discussions and

expressed his/her opinions on a proposal to designate more display spots in the estate. The proposal was vetoed in the end. Setting aside the question of whether his/her participation had led to the proposal being rejected, stakeholders concerned considered it unfair that HD had not drawn up any written guidelines for reference by EMAC members for preventing such cases of conflict of interests.

No Management Information System Regarding Display of PMs

13. HD has not set up a central database for the management and storage of information on applications for display of PMs (including the original versions of PMs) vetted by the Headquarters, the application results and relevant justifications. The absence of such a database has not only hampered the management's monitoring of the efficiency in processing applications for display of PMs, but also led to missed chances of providing valuable reference materials to frontline staff responsible for processing applications.

Recommendations

14. In the light of the above, The Ombudsman made the following recommendations for improvement to HD:

- (1) to fully and consistently adhere to the first come, first served basis in processing applications for displaying posters;
- (2) to consider setting a limit on the number of posters to be displayed. Where the designs/practices vary in different estates, then individual estates should set their own limit on the number of posters allowed to be displayed by the same applicant;
- (3) to consider drawing up the prerequisites and principles of exercising discretion in processing applications for display of PMs;
- (4) to update regularly the departmental guidelines concerning "acceptable" and "unacceptable" contents of PMs with examples in order to help frontline staff to identify "controversial" contents of PMs;
- (5) to organise regular training courses for staff to enhance their ability to understand and assess contents of PMs;
- (6) to consider stepping up inspections of PMs put up on notice boards outside non-residential rental units and those on notice boards for exclusive use by mutual aid committees so as to ensure that they comply with the terms and conditions of the tenancy agreement; and to regularly remind those persons/organisations who deliver PMs to the tenants' mail boxes of the rules of applications for display, such that violations can be prevented;

- (7) to consider drawing up penalties for persons/organisations for breaching the display conditions;
- (8) to consider formulating clear guidelines on handling cases of conflict of interests due to “dual identities” as cited in **Case 4 in Chapter 3** of our direct investigation report; and
- (9) to consider setting up a management information system for more effective monitoring of applications for display of PMs.

Office of The Ombudsman
January 2017