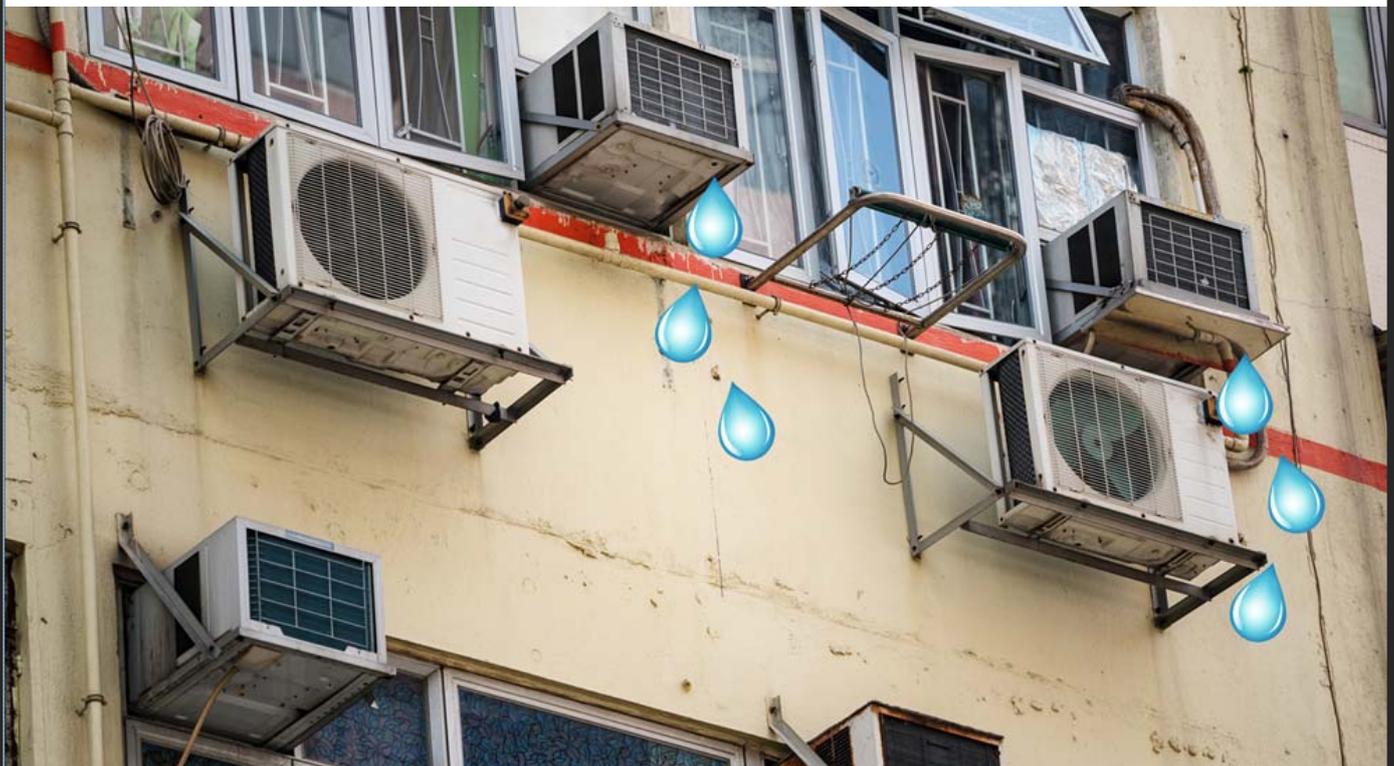


Office of The Ombudsman, Hong Kong



Direct Investigation Report

**Government Departments' Handling of
the Problem of Air-conditioner Dripping**

Completion Date: 11 April 2018

Announcement Date: 17 April 2018

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1

INTRODUCTION

BACKGROUND

1.1 High-rise buildings are ubiquitous in Hong Kong. As it is hot and humid in summer, most flats are fitted with air-conditioners. Where air-conditioners are not properly installed or maintained, dripping often occurs. Air-conditioner dripping not only affects residents of the lower floors and passers-by on the ground, but may also cause environmental hygiene nuisance. Between 2013 and 2017, this Office received 212 complaints, averaging 42 complaints per year, against the Food and Environmental Hygiene Department (“FEHD”) for failing to properly follow up complaints about air-conditioner dripping. In handling those cases, we have found a number of inadequacies in FEHD’s actions.

1.2 Against this background, The Ombudsman initiated a direct investigation on 15 September 2017 pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance, to probe how FEHD follows up cases of air-conditioner dripping, with a view to giving the Department recommendations for improvement. To better resolve the problem of air-conditioner dripping, we have also studied in this direct investigation the feasibility of the Buildings Department (“BD”) introducing measures to prompt/encourage the inclusion of installation of communal drainage pipes for disposing of condensate from air-conditioners in the comprehensive maintenance programmes of buildings.

PROCESS OF INVESTIGATION

1.3 This Office has inquired of and requested information from FEHD and BD. We have also examined a number of complaint cases about air-conditioner dripping.

1.4 On 9 February 2018, we issued our draft investigation report to FEHD and BD for comments. After considering their comments, we completed this investigation report on 11 April 2018.

2

RELEVANT LEGISLATION AND OPERATIONAL GUIDELINES

PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE

2.1 Under the Public Health and Municipal Services Ordinance (“the Ordinance”):

- (1) it is an offence to allow an air-conditioner to discharge water in such a manner as to be a nuisance;
- (2) FEHD is empowered to enter any premises to check whether there is/has been water dripping from the air-conditioner(s) of the premises;
- (3) FEHD can apply to the Court for a warrant to enter premises (“Warrant of Entry”) in case it encounters difficulty in gaining entry into the premises concerned for investigating/following up cases of air-conditioner dripping;
- (4) Where water dripping from an air-conditioner is confirmed, FEHD may issue a Nuisance Notice requiring the owner/occupier of the premises concerned to repair the air-conditioner and stop the dripping; and
- (5) FEHD may institute prosecution against those who fail to comply with the Nuisance Notice; upon conviction, an offender is liable to a maximum penalty of \$10,000 and a daily fine of \$200.

RELEVANT OPERATIONAL GUIDELINES

2.2 According to FEHD’s operational guidelines (“the Guidelines”), the District Environmental Hygiene Office (“DEHO”) of the district concerned shall conduct site visit(s) upon receipt of a complaint.

On-site Investigation

2.3 DEHO staff should attempt to conduct site investigation at different hours of the day (including non-office hours, weekends and public holidays) and, as far as practicable, at the occurrence time of dripping as reported by the complainant.

2.4 When DEHO staff arrive at the premises suspected to have a dripping problem, they will observe whether water is dripping, if the air-conditioner is in operation, and exercise the power conferred under the Ordinance to switch on the air-conditioner for testing if it is not. Where DEHO staff are unable to enter the premises, they will make observation from outside the premises (including from the ground level of the building) or from other premises.

2.5 Where no one answers the door on their first visit to the premises concerned, DEHO staff should affix a Notice of Appointment in a conspicuous position outside the premises and put a copy in the mailbox of the premises, requiring the occupier to contact DEHO for their entry into the premises within four working days.

2.6 Where the occupier does not respond, DEHO staff should visit the premises again within seven working days after issuance of the Notice of Appointment.

2.7 In case there is still no one answering the door on that second visit, or the occupier refuses to let the DEHO staff enter the premises, they should issue a Notice of Intended Entry, requiring the occupier to contact them so that they can enter the premises for investigation within three working days.

2.8 If the door is still not answered on their next visit, DEHO staff should seek help from the caretaker of the building to check the occupier’s usual schedule in order to arrange another visit.

2.9 If the occupier does not respond to the Notice of Intended Entry or refuses to let the DEHO staff enter the premises, they should issue a Notice of Intention to Apply

for Warrant of Entry. If the DEHO staff still cannot gain entry into the premises, they should consider applying to the Court for a Warrant of Entry (**para. 2.1(3)**).

Cases Where Dripping Air-conditioner Is Identified

2.10 Where an air-conditioner is confirmed to be dripping, DEHO will issue a Nuisance Notice (**para. 2.1(4)**), requiring the owner/occupier of the premises concerned to abate the nuisance by a specified date.

2.11 After the specified date, DEHO staff will follow up and check whether the Nuisance Notice is complied with. If the staff cannot gain entry into the premises concerned to test the air-conditioner, they will check the compliance of the Nuisance Notice by studying the on-site situation (e.g. observing from outside the premises, including from the ground level of the building or from other premises, or referring to the information provided by the complainant) and consider whether there is any ground to apply to the Court for a Warrant of Entry.

Cases Where Dripping Air-conditioner Cannot be Identified

2.12 For cases where the dripping air-conditioner cannot be identified, DEHO may issue advisory letters to the occupiers of all the premises suspected to be the source of dripping, reminding them to properly discharge the water from their air-conditioners if their air-conditioners have a dripping problem, so as to avoid causing nuisance to others.

3

CASE STUDIES

3.1 Every year, this Office receives many complaints about air-conditioner dripping (**para 1.1**). The following four cases highlight the inadequacies in FEHD's handling of the dripping problem.

CASE (1): FAILING TO ENTER THE PREMISES AND CONDUCT TEST ON THE AIR-CONDITIONER AFTER ISSUANCE OF NUISANCE NOTICE

3.2 In July 2016, citizen Ms A complained that there was dripping from the air-conditioner of the flat above hers ("Flat W"). After investigation, DEHO confirmed that her complaint was valid. In early September, DEHO issued a Nuisance Notice to the owner of Flat W. Around late September, Ms A alleged that the dripping problem persisted. From then until November, DEHO staff made four follow-up visits to Flat W, but each time the door was not answered. The staff left Notices of Appointment.

3.3 Meanwhile, observing from the ground level of the building and Ms A's flat, DEHO staff did not see any water dripping from the air-conditioner of Flat W. Considering that the average monthly temperatures in September and October were 27.9 and 26.8 degrees Celsius respectively, DEHO believed that households would still be using air-conditioners and concluded that the air-conditioner of Flat W had already been fixed and the Nuisance Notice complied with. Hence, DEHO considered it unnecessary to enter Flat W to test the air-conditioner or apply to the Court for a Warrant of Entry.

3.4 We find it ill-founded for DEHO to conclude that the air-conditioner of Flat W had been fixed merely based on its observation from outside the premises that no water was dripping from the air-conditioner. Suppose the air-conditioner had not actually been fixed and was merely not used at that time for one reason or another, the dripping problem would occur again in the ensuing summer.

3.5 We note that this was not an isolated incident. In investigating/following up cases of air-conditioner dripping between late summer and early autumn as in this case, FEHD tends to have the following shortcoming: once the weather turns cooler, its staff would not enter the premises to test the air-conditioner, as a result of which the dripping problem is not actually fixed and will recur in the following summer. The complainant will then have to lodge a complaint again and FEHD to start its investigation afresh.

3.6 Some complainants have pointed out that, with such handling, a dripping problem could remain unresolved for years.

CASE (2): FAILING TO SET A STANDARD DURATION FOR TESTING AIR-CONDITIONER

3.7 Citizen Mr B had complained to FEHD about water dripping from the air-conditioners of two upper floor flats (“Flat X” and “Flat Y”). DEHO staff visited Flat X and Flat Y respectively and observed their air-conditioners running for around five minutes. No water dripping was seen. DEHO concluded that the two air-conditioners had no dripping problem.

3.8 Subsequently, Mr B complained to DEHO that the dripping problem persisted. After our intervention, DEHO took our suggestion and conducted tests on the air-conditioners of Flat X and Flat Y for around 30 to 40 minutes. The tests showed that while the air-conditioner of Flat Y was not dripping, that of Flat X was.

3.9 FEHD explained to us that it had not set any standard duration for testing air-conditioners for the following reasons:

- (1) Cases of air-conditioner dripping vary. The time taken for dripping to occur after an air-conditioner is switched on could be affected by the model, horsepower and type of the air-conditioner, whether a water pan is installed at or a drainage pipe is connected to the air-conditioner, and the air humidity and relative humidity at the time of testing.
- (2) Investigation officers should take into account on-site situation, including the occurrence time of dripping, the position of the air-

conditioner's condensate drainage hole, whether any condensate drainage pipe is connected, and whether the air-conditioner is in operation, before deciding on the details of the investigation and a reasonable duration for testing.

3.10 We accept that the time needed for an air-conditioner test to produce a true result may vary from case to case. For cases where water dripping occurs shortly after a test begins, there is of course no need to carry on testing. However, for cases where water dripping does not occur shortly after the test begins, FEHD staff should continue with the test. In Case (2), it was most improper of DEHO to hastily conclude that both air-conditioners did not have a dripping problem after testing for merely five minutes. We consider that FEHD should set a reasonable standard duration for testing. Where dripping does not occur shortly after commencement of a test, the test should continue, say, for 30 minutes, in order to produce a more accurate and convincing test result. If after assessing the circumstances the FEHD staff decide that the test should be continued even further, they could certainly extend the duration of the test according to their judgement.

CASE (3): FAILING TO CONDUCT INSPECTIONS AT THE OCCURRENCE TIME OF THE DRIPPING AS REPORTED BY THE COMPLAINANT

3.11 Citizen Mr C's complaint concerned an old commercial-cum-residential tenement building. There were nearly a hundred air-conditioners at some forty flats of it facing the pavement. Mr C complained to FEHD that when he passed by the building at around 6:45 am, he found water dripping from the air-conditioners of some flats facing the pavement, causing a nuisance to passers-by.

3.12 While Mr C had specified that water dripping occurred in the early morning hours, only four of the nineteen inspections by DEHO were conducted in those hours, with the remaining three in the evening and twelve later in the morning or in the afternoon.

3.13 During those inspections conducted in the early morning hours and evening, DEHO found that the air-conditioners of four flats were dripping and those of another ten flats might have a similar problem. All the inspections conducted later in the morning or in the afternoon did not find water dripping from air-conditioners.

3.14 We note that Mr C had clearly stated in his complaint to FEHD that water dripping occurred in the early morning hours (**para. 3.11**), and yet DEHO conducted most of its inspections later in the morning or in the afternoon (**para. 3.12**). Indeed such act was destined to be futile and a waste of efforts (**para. 3.13**).

FAILING TO TAKE FOLLOW-UP ACTIONS IN ACCORDANCE WITH THE GUIDELINES AFTER ISSUING NOTICES OF APPOINTMENT

3.15 Regarding the aforementioned ten flats suspected of having air-conditioner dripping, DEHO only managed to enter one flat on the day of inspection. For the remaining nine flats into which they could not gain entry, Notices of Appointment (**para. 2.5**) were issued. However, after that, DEHO just repeatedly observed those flats from the outside, without taking any follow-up actions according to the Guidelines (including visiting the premises concerned again and, in case entry is still not possible, issuing to the occupiers Notices of Intended Entry followed by Notices of Intention to Apply for Warrant of Entry, and eventually applying to the Court for Warrants of Entry) (**paras. 2.6 to 2.9**).

3.16 DEHO conducted inspections again two months after issuing the Notices of Appointment. Out of the nine flats which DEHO could not gain entry, it still suspected that three of those flats had a dripping problem. But only until then did DEHO take the next step, namely, issuing Notices of Intended Entry (**para. 2.7**). At last, a month later, DEHO entered those flats for investigation.

3.17 In this case, DEHO had failed to take actions according to the Guidelines. After issuing the Notices of Appointment, it did not follow up in a timely manner to enter the flats to test if the air-conditioners had a dripping problem. As a result, the dripping problem remained unresolved for a prolonged period.

CASE (4): FAILING TO PROPERLY RECORD OBSERVATIONS MADE IN INSPECTIONS

3.18 Citizen Mr D made a number of complaints to FEHD about water dripping from the air-conditioner of an upper floor unit (“Unit Z”). In response to his complaints, DEHO staff conducted nine inspections at Unit Z. For four of those inspections, DEHO had no records about whether its staff had tested the air-conditioners

in the unit. The management of DEHO seemed to have turned a blind eye to this lack of record-keeping.

3.19 It is our view that FEHD staff should properly record any actions taken and any observations made during inspections for future reference. Otherwise, FEHD would not know whether inspections have been properly carried out. Moreover, their supervisors or the management should never allow them to make no records after conducting inspections.

3.20 In response to our recommendation, FEHD undertook to study whether a proforma could be provided in its Complaints Management Information System for its staff to record any observations made during their inspections, including such details as the time of switching on an air-conditioner for testing and the time of switching it off upon completion of testing.

4

NEED FOR INSTALLING COMMUNAL DRAINAGE PIPES IN BUILDINGS

4.1 As mentioned in paragraph 1.1, high-rise buildings are everywhere in Hong Kong and most households have air-conditioners in their flats. However, old buildings are generally not fitted with communal drainage pipes for disposing of condensate from air-conditioners (“Communal Drainage Pipes”) with each air-conditioner connected to the Pipes by means of rubber tubing. Even if FEHD took rigorous enforcement actions, it would not be able to eradicate the dripping problem once and for all, as those buildings without Communal Drainage Pipes are prone to have dripping from air-conditioners, giving rise to environmental hygiene nuisance.

4.2 Currently, there is no law in Hong Kong that requires buildings to install Communal Drainage Pipes. In this light, we have in this direct investigation explored with BD whether there are ways to prompt/encourage the inclusion of installation of Communal Drainage Pipes in the comprehensive maintenance programmes of buildings.

4.3 Under BD’s Building Safety Loan Scheme (“the Scheme”), building owners may apply for loans to carry out maintenance and repair works to their buildings (including external wall cladding), regardless of whether the works are done voluntarily or in compliance with statutory orders. We have asked BD whether it could prompt/encourage owners to install Communal Drainage Pipes at their buildings under the Scheme. BD agreed that it would be appropriate time-wise and cost-effective to take the opportunity of repair works on external walls to install Communal Drainage Pipes. BD also agreed to update its webpage on and application guidelines for the Scheme, to encourage building owners to install Communal Drainage Pipes when their buildings undergo comprehensive maintenance programmes with loans under the

Scheme.

4.4 Furthermore, we note that BD issues Practice Notes from time to time to the industry regarding the application and enforcement of the Buildings Ordinance and its subsidiary regulations. The Practice Notes may also cover administrative matters and suggestions relating to the execution of the Buildings Ordinance. Since many old buildings are likely to undergo comprehensive maintenance (including external wall repairs), we consider that BD can, by way of issuing Practice Notes, remind Authorised Persons (“APs”) involved in such works to recommend building owners taking the opportunity of such works to install Communal Drainage Pipes.

4.5 FEHD also agrees with us that installation of Communal Drainage Pipes would better resolve the problem of air-conditioner dripping. The Department will write to the Owners’ Corporations (“OCs”) of buildings having such a problem, suggesting that they install Communal Drainage Pipes. In addition, FEHD would, in collaboration with other relevant Government departments such as the Home Affairs Department and BD, encourage building owners to install Communal Drainage Pipes and remind OCs and property management companies to regularly check and repair those Communal Drainage Pipes already installed. We consider that FEHD could also publicise through the media the benefits of installing Communal Drainage Pipes.

5

OUR COMMENTS AND RECOMMENDATIONS

5.1 The case studies in Chapter 3 have revealed the following inadequacies in FEHD's handling of complaints about air-conditioner dripping:

- (1) not testing the air-conditioners in question once the weather turns cooler in the course of its investigating/following up complaint cases about air-conditioner dripping, as a result of which the problem is not actually fixed and will recur in the following summer (**Case (1), paras. 3.2 to 3.6**);
- (2) failing to set a reasonable standard duration for testing air-conditioners, such that test results may be unsound (**Case (2), paras. 3.7 to 3.10**);
- (3) failing to do more inspections at the occurrence time of dripping as reported by the complainants, resulting in futile inspections and a waste of efforts (**Case (3), paras. 3.11 to 3.14**);
- (4) failing to follow up air-conditioner dripping cases closely in accordance with the Guidelines, as a result of which the problem persists for a long time (**Case (3), paras. 3.15 to 3.17**); and
- (5) failing to properly record observations made in inspections (**Case (4), paras. 3.18 and 3.19**).

5.2 As mentioned in paragraph 4.1 above, for buildings without Communal Drainage Pipes, FEHD's enforcement actions are unable to eradicate the air-conditioner

dripping problem once and for all. We consider that BD can, by way of the Scheme and issuance of Practice Notes, prompt/encourage buildings to include installation of Communal Drainage Pipes in the comprehensive maintenance programmes of the buildings (**paras. 4.3 and 4.4**).

RECOMMENDATIONS

5.3 Based on the above analysis, The Ombudsman makes the following recommendations to FEHD and BD:

FEHD

- (1) In the course of investigating/following up cases of air-conditioner dripping (including cases where a Nuisance Notice has been issued), FEHD should require its staff to enter the premises to test the air-conditioners concerned, unless they could observe clearly from the outside that the air-conditioners are dripping. Where necessary, they should issue to the owners/occupiers of the premises notices for entering the premises, or even apply to the Court for a Warrant of Entry (**para. 5.1(1)**).
- (2) For cases not yet concluded by late summer/early autumn, FEHD should always continue its investigations, so as to obviate the need for the complainants to lodge further complaints when summer comes again and for FEHD to spend extra resources to conduct investigations afresh (**para. 5.1(1)**).
- (3) FEHD should set a reasonable standard duration for testing air-conditioners (**para. 5.1(2)**).
- (4) FEHD should deploy staff flexibly and conduct inspections as far as possible at the occurrence time of dripping as reported by the complainant, and remind its staff to adhere strictly to the Guidelines in handling complaints about air-conditioner dripping (**paras 5.1(3) and 5.1(4)**).
- (5) FEHD should provide a proforma in its Complaints Management

Information System for its staff to record observations made in inspections, and examine how to make use of the System to enhance its efficiency in following up complaints about air-conditioner dripping (**paras. 3.20 and 5.1(5)**).

- (6) FEHD should consider publicising through the media the benefits of installing Communal Drainage Pipes at buildings, and consult BD on the contents of the publicity materials if necessary (**para. 4.5**).

BD

- (7) BD should prompt/encourage building owners, through the Scheme, to include installation of Communal Drainage Pipes in the comprehensive maintenance programmes of their buildings (**para. 5.2**).
- (8) BD should issue Practice Notes to remind APs involved in comprehensive building maintenance programmes or external wall repairs to recommend building owners taking the opportunity of such works to install Communal Drainage Pipes (**para. 5.2**).

ACKNOWLEDGEMENTS

5.4 The Ombudsman thanks FEHD and BD for their full cooperation during the course of this investigation.

Office of The Ombudsman

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