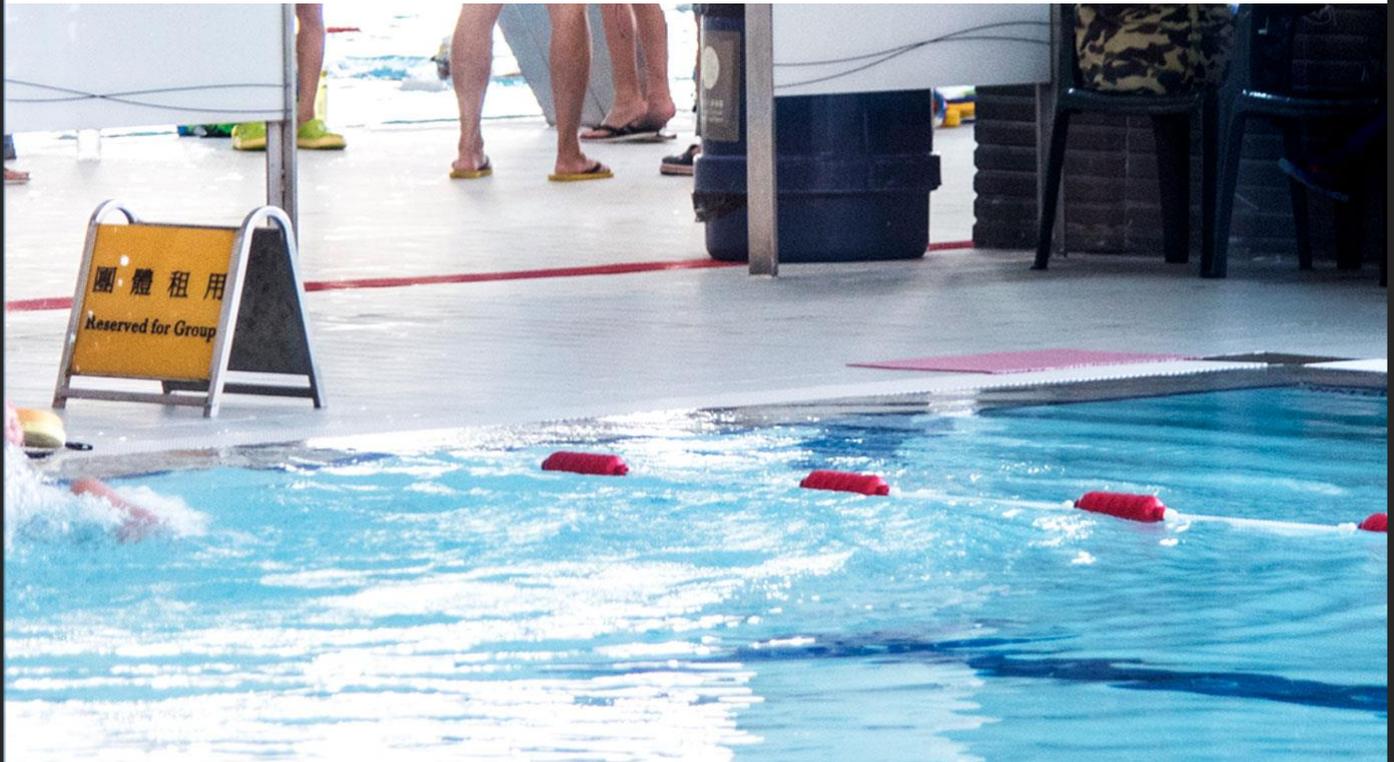


香港申訴專員公署
Office of The Ombudsman, Hong Kong



主動調查報告
Direct Investigation Report

康樂及文化事務署公眾泳池泳線分配及監管機制
Leisure and Cultural Services Department's
Allocation of Swimming Lanes in Public Swimming Pools and
Its Monitoring Mechanism

報告完成日期：2020年7月7日
Completion Date: 7 July 2020

報告公布日期：2020年7月9日
Announcement Date: 9 July 2020

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Executive Summary Direct Investigation Report

Leisure and Cultural Services Department's Allocation of Swimming Lanes in Public Swimming Pools and Its Monitoring Mechanism

Introduction

Among the 44 public swimming pools currently managed by the Leisure and Cultural Services Department (“LCSD”), the main pools, secondary pools, training pools, teaching pools and diving pools in 42 swimming pools are available for hire by organisations during designated sessions. For fair allocation of swimming lanes in public swimming pools to different organisations (including Government departments, schools, relevant national sports associations (“NSAs”) and their affiliated clubs, non-governmental organisations, etc.), LCSD has established the mechanism and priorities for booking of those swimming lanes by organisations.

2. To promote water sports in a holistic manner, LCSD has implemented the Central Lane Allocation Scheme (“CLAS”) since 2005 for the main pools of public swimming pools, whereby major relevant NSAs are assisted to hire the main pool swimming lanes for long-term sports development and training. Under CLAS, LCSD first coordinates with the NSAs on the allocation of number and sessions of swimming lanes in the main pools. Subsequently, each NSA, based on a set of fair and reasonable mechanism and procedures, should coordinate and nominate its own affiliated clubs to hire the allocated sessions. Such applications should then be submitted to LCSD for approval.

3. However, some swimming clubs and members of the sector pointed out that the internal allocation mechanism of certain NSAs are unfair. Yet, LCSD has not regulated how the NSAs allocate the swimming lanes. After allocation of swimming lanes, some clubs would subsequently cancel a large number of bookings for those lanes. Notably, there were media reports that some clubs allegedly used the allocated public swimming lanes for organising profit-making swimming courses. The current operation of CLAS warrants our attention.

Our Findings

4. In sum, we have identified the following five inadequacies in LCSD's mechanism for allocation of swimming lanes in public swimming pools.

(I) Unclear Use of Public Swimming Lanes Allocated under CLAS

5. LCSD introduced CLAS to coordinate the demands for main pool swimming lanes among the NSAs/swimming clubs, thereby providing stable venues for long-term training of swimmers. LCSD stressed that training in swimming covers a wide range of levels. Since the implementation of CLAS, LCSD has not given a clear definition of "training" use (such as solely for training purpose by swimming squads). At present, LCSD relies on the Terms and Conditions of Hire of Public Swimming Pools ("Hire Terms"), which stipulates that non-swimmers and beginners are not allowed to participate in any event in the main pool at depth exceeding 1.5 metres, to regulate the use of swimming lanes.

6. According to the Hire Terms, other than activities for beginners, it is in principle permissible to conduct all kinds of aquatic activities, ranging from training for full-time athlete swimmers to coaching lessons for non-beginners, in the swimming lanes allocated under CLAS. Our investigation has revealed that many swimming clubs would subsequently cancel bookings for the swimming lanes allocated under CLAS. If those clubs actually using the swimming lanes for long-term training, they are unlikely to frequently cancel bookings for the allocated swimming lanes. If they merely use the allocated swimming lanes for holding similar swimming courses as those provided by other private clubs or organisations, members of the public and other stakeholders would query why CLAS is unique and essential. As such, LCSD has to differentiate the use of swimming lanes allocated under CLAS from ordinary swimming courses.

7. We consider it necessary for LCSD to liaise with the NSAs and stakeholders and review the use of swimming lanes allocated under CLAS (for instance, whether the swimmers/swimming squads using those lanes are subject to any eligibility criteria, such as cumulative attendance rate in training programmes or reaching certain levels of swimming techniques). LCSD should also draw up relevant guidelines and hire terms which are compatible with the current training needs of the sector and public expectations.

8. Meanwhile, after clearly stipulating the use of main pool swimming lanes allocated under CLAS, LCSD should scrutinise jointly with the NSAs the number of swimming lanes required, and proactively consider reducing the number of lane hours available under the scheme. In particular, more swimming lanes in popular sessions should be released for booking by other organisations outside CLAS through the established procedures in an open and fair manner, or for public use.

(II) Failing to Monitor Allocation of Swimming Lanes by NSAs

9. Under the current mechanism of CLAS, LCSD first coordinates with the NSAs on the allocation of number and sessions of swimming lanes in the main pools. The NSAs then distribute those allocated lanes among their affiliated clubs based on their internal mechanisms. LCSD generally refrains from interfering in matters within the scope of internal administration and professional knowledge of the NSAs. In other words, LCSD will not interfere in the specific arrangement for allocating swimming lanes to affiliated clubs by the NSAs based on their internal mechanisms.

10. However, during our investigation, many swimming clubs and coaches told us that the internal allocation mechanisms of certain NSAs are unfair. Some swimming clubs are able to use their competitive edge (such as with longer club history) over other affiliated clubs within their NSA to obtain more swimming lane resources. Taking the Hong Kong Amateur Swimming Association (“HKASA”) as an example, in 2017/18 the aggregate lane hours obtained by the ten affiliated clubs of HKASA with the most swimming lanes allocated represented nearly half of the total lane hours allocated to HKASA under CLAS. Evidently, substantial swimming lane resources are controlled through CLAS by a handful of clubs within HKASA. This may hamper the development of small-scale or newly established swimming clubs.

11. We consider that LCSD, as the administrator of swimming lanes in public swimming pools, should not only ensure that the swimming lanes allocated under CLAS are properly used, but also oversee that the swimming lanes are allocated under a fair mechanism to stakeholders in need, so as to prevent any NSAs/swimming clubs from taking advantage of CLAS to gain overwhelming control over swimming lane resources.

12. We recommend that LCSD consider setting up an independent panel/committee to review the objective mechanism/criteria for allocation of swimming lanes. The Department can consult the NSAs, swimming clubs, members of the sector and stakeholders to collectively draw up the objective mechanism and criteria for

allocation of swimming lanes, thereby enhancing the transparency and fairness of the mechanism, and balancing the demands of various stakeholders.

13. Moreover, LCSD should explore setting an upper limit on the number of lanes allocated to each club to prevent the allocation of swimming lanes from being overly concentrated in certain swimming clubs, especially for the peak hours or swimming lanes in popular main pools. This will give other interested swimming clubs or organisations more opportunities to hire the swimming lanes in those sessions and venues.

(III) Failing to Effectively Verify Whether Swimming Clubs Have Used Public Swimming Lanes for Profit-making Purposes

14. LCSD requires the swimming lanes in public swimming pools hired at normal rates to be used for non-profit purposes only (including swimming lanes allocated under CLAS). Nevertheless, LCSD has not established any stringent verification mechanism to ensure strict compliance with the relevant requirement by the NSAs and swimming clubs. LCSD currently accepts that NSA-affiliated clubs use the swimming lanes hired under CLAS solely for non-profit purposes, simply on the ground that the Articles of Association of the NSAs require their affiliated clubs to be non-profit-making organisations.

15. In response to media reports that certain affiliated clubs of HKASA allegedly used public swimming lanes to hold swimming courses for profit-making purposes, we note that HKASA, during its investigation, could not obtain the financial reports of the affiliated clubs concerned regarding the income and expenditure of their swimming courses. It shows that the NSAs are not in a position to regulate or individually scrutinise whether their affiliated clubs have derived profits from organising activities. It is based on wishful thinking that LCSD accepts all activities organised by swimming clubs are not for profit simply on the grounds that they are non-profit-making organisations. This also reflects that LCSD has failed to effectively verify and enforce the provision that swimming clubs should only use public swimming lanes for non-profit activities.

16. On preventing swimming clubs from using the swimming lanes for profit-making purposes, we are aware that LCSD has introduced improvement measures to strengthen the declaration and review systems of relevant swimming clubs, including stipulating that LCSD has the right to require the clubs to submit their audited accounts

or statement of accounts audited by a certified public accountant for scrutiny. We urge LCSD to step up monitoring the effectiveness of those improvement measures (such as diligently scrutinising the accounts of swimming clubs) and conduct timely reviews of those measures, thereby ensuring that all activities organised by swimming clubs under CLAS are non-profit in nature.

(IV) Too Lenient in Regulating Cancellation of Bookings for Public Swimming Lanes by Swimming Clubs

17. Under CLAS, the NSAs and their affiliated clubs should have conducted internal “coordination” before applying to LCSD for hiring of swimming lanes for long-term training of swimmers. Consequently, after allocation of swimming lanes, there should not be frequent changes or cancellations by swimming clubs.

18. However, we found the opposite after scrutinising the situation of bookings and cancellations of swimming lanes allocated under CLAS in five public swimming pools¹. Of the five swimming pools, three recorded cancellation rates at higher than 10% in 2017 and 2018, with the highest at 34%. The cancellation rates of certain clubs were as high as 100%. Another club was allocated swimming lanes via different NSAs, only to cancel bookings for those lanes subsequently.

19. Moreover, although some swimming clubs cancelled a large number, or even all, of their bookings for the allocated swimming lanes, we have not seen any rejection of their applications by LCSD. Nor has LCSD adopted any follow-up measures, such as restricting their subsequent applications. In other words, swimming clubs can cancel bookings at no extra cost or consequence.

20. To ensure that CLAS is effective and fair in allocation of swimming lanes for use by swimming clubs, we consider that LCSD should impose stringent restrictions on swimming clubs for cancellation of allocated swimming lanes. Any clubs apply to cancel their approved bookings must provide substantive and reasonable justification, or LCSD should reject such applications and require them to pay the hire charges in full. Further, LCSD should raise the cost of cancellation (such as charging an administration fee) to deter swimming clubs from obtaining swimming lanes under CLAS and cancelling them subsequently.

¹ They are the Victoria Park Swimming Pool, Kowloon Park Swimming Pool, Morrison Hill Swimming Pool, Tseung Kwan O Swimming Pool and Lai Chi Kok Park Swimming Pool.

21. In the long run, LCSD should also liaise with the NSAs to jointly devise a specific mechanism for cancelling the bookings of swimming lanes allocated under CLAS, including stipulating the maximum number of swimming lanes allowed to be cancelled by their affiliated clubs, the number of cancellations allowed and the procedures for cancellation. As a deterrent, LCSD should take decisive action to impose more rigorous penalties on swimming clubs found to have lightly cancelled the allocated swimming lanes.

(V) Inadequate Regulatory Action against Unauthorised Transfer of Swimming Lanes

22. According to the Hire Terms, hirers are prohibited from transferring the hired swimming lanes to other organisations. To prevent unauthorised transfer of swimming lanes, LCSD staff will verify the identity of users and relevant coaches upon admission of an organisation to the hired venue. Moreover, LCSD requires the trainees of organisation hirers to wear swimming caps or other identifiers of their organisations for easy identification. Swimming pool staff will also conduct poolside inspection from time to time.

23. Nevertheless, we received a number of comments about swimming clubs evading the inspection of LCSD by various means (such as asking trainees to wear the swimming cap of another club, or hiring swimming lanes in the name of another club with higher ranking, and then using the lanes in the capacity of that club). To address the unauthorised sharing or transfer of swimming lanes by swimming clubs, we consider it essential for LCSD to strengthen the relevant regulatory efforts and measures.

Conclusion

24. We have to emphasise that this direct investigation is not against any NSAs, nor do we require LCSD to interfere in their internal affairs or to scrap CLAS. However, this investigation has revealed that the current problems of CLAS stem from LCSD's over-reliance on the NSAs to allocate swimming lanes and monitor on their own. Even when problems emerged, LCSD could only accept the information and explanations provided by the organisations concerned. Having difficulty in probing directly and deeply into the organisations' internal administration and operation or taking substantive follow-up action, LCSD was unable to effectively rectify the problems.

25. Through our improvement recommendations, including clearly defining the use of swimming lanes, devising an objective and transparent mechanism for allocation of swimming lanes, and improving the mechanism for cancellation of bookings, we hope that LCSD can be prompted to improve CLAS, leading to more effective and fair allocation of precious swimming lane resources to stakeholders in need, and higher transparency of the allocation mechanism for better monitoring by the public.

Recommendations

26. In the light of the above, The Ombudsman makes the following eight recommendations to LCSD:

- (1) to liaise with the NSAs and representatives of the sector for stipulating clearly the use of main pool swimming lanes allocated under CLAS (for instance, the swimmers/swimming squads using those lanes are subject to some eligibility criteria, such as cumulative attendance rate in training programmes or certain levels of swimming techniques), and draw up relevant guidelines and hire terms;
- (2) to stringently review the number of lane hours in the main pools allocated under CLAS, especially for those popular sessions, thereby releasing more swimming lanes for booking by other organisations through established procedures, or for public use;
- (3) to consider establishing an independent panel/committee and consulting the NSAs, swimming clubs, members of the sector and stakeholders to collectively draw up the allocation mechanism and criteria in an objective and transparent manner;
- (4) to explore setting an upper limit on the number of main pool swimming lanes allocated to each swimming club, especially for the peak hours or swimming lanes in popular main pools, so as to give other interested swimming clubs or organisations more opportunities to hire the swimming lanes in those sessions;

- (5) to step up monitoring the effectiveness of the improvement measures regarding the declaration and review systems of swimming clubs, and conduct timely reviews of those measures, thereby ensuring that all activities organised by swimming clubs under CLAS are non-profit making;
- (6) to impose restrictions on swimming clubs for cancelling their bookings of main pool swimming lanes allocated under CLAS, and explore ways to raise the cost of such cancellations by swimming clubs;
- (7) in the long run, to liaise with the NSAs to jointly devise a specific mechanism for cancellation of main pool swimming lanes allocated under CLAS, and impose more rigorous penalties on those swimming clubs found to have lightly cancelled their bookings; and
- (8) to strengthen the regulatory efforts and measures against unauthorised transfer of swimming lanes by swimming clubs.

Office of The Ombudsman
July 2020

1

INTRODUCTION

BACKGROUND

1.1 To promote sports development and training, the Leisure and Cultural Services Department (“LCSD”) has implemented the Central Lane Allocation Scheme (“CLAS”) since 2005, whereby seven national sports associations (“NSAs”) are given priority allocation of certain swimming lanes and sessions in the main pools of LCSD’s public swimming pools for long-term sports development and training. Under CLAS, LCSD first coordinates with the NSAs on the number of swimming lanes and hours to be allocated. The NSAs then distribute the lanes under priority allocation among their affiliated clubs based on their own allocation systems.

1.2 Nevertheless, there were media reports about unfairness in the systems of some NSAs for allocating swimming lanes to their affiliated clubs, resulting in undue advantage to the large-scale clubs at the expense of the smaller ones. In particular, there were allegations of irregularities such as violation of the hire terms. Such media reports caused this Office to become concerned about whether LCSD has sufficiently monitored the NSAs’ allocation of the swimming lanes under CLAS among their affiliated clubs.

1.3 Against this background, The Ombudsman declared a direct investigation on 17 July 2018 against LCSD pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance to probe whether the Department has established an effective mechanism and properly monitored the allocation of swimming lanes in public swimming pools to the NSAs and their affiliated clubs under CLAS, and any room for improvement.

SCOPE OF INVESTIGATION

1.4 The scope of this direct investigation covers:

- whether LCSD has in place an effective mechanism under CLAS for allocating the main pool swimming lanes in public swimming pools;
- whether LCSD has sufficiently monitored the allocation of main pool swimming lanes in public swimming pools by the NSAs among their affiliated clubs under CLAS;
- whether LCSD has sufficiently monitored the swimming clubs' compliance with the hire terms stipulated by the Department; and
- any areas for improvement.

PROCESS OF INVESTIGATION

1.5 In this direct investigation, this Office has:

- examined the mechanism and procedures for allocating swimming lanes in public swimming pools;
- examined the background and original intention of implementing CLAS, and its allocation and monitoring mechanism;
- examined the allocation of main pool swimming lanes in public swimming pools to the NSAs and their affiliated clubs under CLAS;
- examined the practices of the NSAs and their affiliated clubs in applying and using the swimming lanes under CLAS;
- held meetings with relevant members of the sector; and
- invited views from members of the public.

1.6 On 18 February 2020, we issued a draft investigation report to LCSD for comments. The Department's written reply was received on 21 May 2020. This final report, upon considering and duly incorporating LCSD's comments, was completed on 7 July 2020.

2

ALLOCATION OF SWIMMING LANES IN PUBLIC SWIMMING POOLS AND ITS REGULATORY MECHANISM

ARRANGEMENT FOR HIRE OF SWIMMING LANES IN PUBLIC SWIMMING POOLS BY ORGANISATIONS

2.1 Among the 44 public swimming pool complexes currently managed by LCSD, the main pools, secondary pools, training pools, teaching pools and diving pools in 42 swimming pool complexes are available for hire by organisations during designated sessions.

2.2 With regard to the policy objective of water sports development, the principle of fairness and the needs of stakeholders, LCSD has established the procedures and mechanism for hire of swimming lanes with booking priorities set for different types of organisations. To facilitate the use of public swimming pools by members of the public on weekends and public holidays, and to balance and cater for the needs of various swimming pool users, LCSD allows organisations to hire swimming lanes in accordance with the following principles:

- main pools are not available for block booking by organisations on Saturday afternoons, Sundays and public holidays as far as possible (excluding territory-wide or international competitions jointly organised by LCSD and the relevant NSAs);
- during swimming pool opening hours, not more than four swimming lanes in the main and secondary pools in each pool complex are

available for block booking by organisations at the same time (excluding teaching pools); and

- District Leisure Managers can exercise discretion to increase/decrease the number of swimming pools/lanes available for priority booking, taking into account the demands of local residents and the training needs of hirers.

MECHANISM FOR ALLOCATION OF SWIMMING LANES IN PUBLIC SWIMMING POOLS

Mechanism for Hire of Swimming Lanes in Public Swimming Pools and Booking Priorities

2.3 LCSD has drawn up the Booking Procedure for Public Swimming Pools (“Booking Procedure”) to stipulate the mechanism and booking priorities for hire of swimming lanes in public swimming pools by organisations. LCSD indicated that the Booking Procedure was devised upon consulting the major users of swimming pools and seeking advice from the Independent Commission Against Corruption (“ICAC”). Simply put, LCSD accords priority to applications for hire of swimming lanes to host activities (such as swimming courses, swimming galas or major swimming competitions) solely organised or sponsored by the Home Affairs Bureau or LCSD, or jointly organised by them with other organisations. Applications for organising such activities can be submitted one year in advance. After that, LCSD will handle applications from schools, relevant NSAs and their affiliated clubs, venue-based lifeguard clubs, non-governmental organisations (“NGOs”) endorsed by the Social Welfare Department, and other government departments. These users can submit the applications up to one school year to four months in advance. Other entities eligible for block booking, including bona fide organisations (such as swimming clubs), associations and corporations, can submit applications two months in advance for hiring not more than one lane hour in the 25-metre/50-metre pools, or one pool hour in the teaching/training pools during non-peak hours. Apart from swimming pool facilities, the same arrangement is applicable to other sports venues under LCSD. LCSD accords priorities to booking applications from such organisations as schools, relevant NSAs and their affiliated clubs and reasonably allocates limited resources.

2.4 LCSD stated that where applications for hire of swimming lanes in a public swimming pool at the same session are received from different organisations, the allocation will be made according to the priorities set out in the Booking Procedure. If the applications are from organisations of the same priority category, swimming pool supervisor will first liaise with the organisations to explore whether they can change the required session or number of swimming lanes. Where the situation cannot be resolved by coordination, the allocation will be determined by ballot.

Hire Charges of Swimming Lanes in Public Swimming Pools

2.5 The hire charges of public swimming pool facilities fall into three categories, namely the normal rates, concessionary rates and commercial rates. The normal rates are applicable to charitable organisations, non-profit-making NSAs and their affiliated clubs, and other non-profit-making organisations engaged in sports promotion. The concessionary rates, at half of the normal rates, are applicable to schools and subvented NGOs for the bookings of designated days and sessions, and organisations for persons with disabilities for all bookings. Currently, the normal rate for hiring a 50-metre swimming lane is \$166 per hour during the peak season (July and August) and \$83 per hour during the non-peak season (all months other than July and August).

2.6 The commercial rates, at double the normal rates, are applicable to organisations outside the above two categories for hosting activities considered to be profit-making by LCSD.

CENTRAL LANE ALLOCATION SCHEME

Background

2.7 LCSD indicated that it had received feedback from the NSAs in the past that allocation of swimming lanes by ballot was undesirable (see **para. 2.4**), as swimming clubs could not secure bookings at the same venue and their trainees had to change to other venue for training. This would not only cause inconvenience to swimming clubs and trainees, but also hamper the sustainability of their training programmes.

2.8 For comprehensive promotion of water sports, LCSD, upon consultation with the Community Sports Committee of the Sports Commission, implemented CLAS in 2005 for the main pools of public swimming pools, to specifically assist relevant major NSAs in hiring the main pool swimming lanes for long-term sports development and training.

2.9 Under CLAS, LCSD first coordinates with the NSAs on the number of swimming lanes and sessions in the main pools to be allocated to them. Subsequently, each NSA, based on a set of fair and reasonable system and procedures, should coordinate and recommend its own affiliated clubs to apply for the allocated sessions. The affiliated clubs then submit their applications to the relevant swimming pool offices for approval by LCSD. After that, LCSD will issue booking confirmation letters to the affiliated clubs to confirm acceptance of their applications.

2.10 Currently, there are seven NSAs participating in CLAS, namely Hong Kong Amateur Swimming Association (“HKASA”), the Hong Kong Life Saving Society (“HKLSS”), Hong Kong Triathlon Association (“HKTA”), Hong Kong Underwater Association (“HKUA”), Hong Kong Paralympic Committee and Sports Association for the Physically Disabled (“HKPC&SAPD”), Hong Kong Sports Association for Persons with Intellectual Disability (“HKSAPID”), and the New Territories Regional Sports Association (“NTRSA”).

2.11 LCSD stressed that the main pool swimming lanes allocated under CLAS are used for long-term sports development as well as continuous and steady training of athlete swimmers, rather than coaching lessons organised for non-swimmers and novices. It is also stipulated in LCSD’s Terms and Conditions of Hire of Public Swimming Pools (“Hire Terms”) that non-swimmers and novices are not allowed to participate in any event in the main pool at depth exceeding 1.5 metres. Consequently, the swimming lanes allocated under CLAS cannot be used for coaching lessons for non-swimmers and novices. Since all NSAs and their affiliated clubs, when hiring swimming lanes under CLAS, must comply with the above Hire Terms and the Public Swimming Pools Regulation (“the Regulation”) in using those lanes to conduct aquatic activities and training, and the main pools are hired by the NSAs (such as HKASA, HKLSS and HKUA) for various training purposes, courses and levels, LCSD also requires the NSAs and their affiliated clubs to specify the purpose of hiring facilities in the application form for booking swimming lanes to facilitate scrutiny and inspection by staff. LCSD considered the Hire Terms to be effective in upholding the policy objective of comprehensively promoting water sports, and preventing organisation

hirers from using the allocated main pool swimming lanes to organise beginner-level lessons for non-swimmers and novices.

Principles and Mechanism for Allocating Swimming Lanes under CLAS

2.12 LCSD handles the allocation of swimming lanes under CLAS according to the following principles:

- the booking chart under CLAS is compiled annually;
- the booking chart for the next year is compiled with reference to the allocation pattern of swimming lanes in the year before as far as possible; and
- in deciding the allocation of swimming lanes for the next year, the Department also takes into account the track record of using the swimming lanes by various major users, thereby adjusting the number of swimming lanes allocated to those major users in the next year.

2.13 LCSD added that the NSAs, of varying scales and modes of operation, have in place different systems for allocation of swimming lanes to their affiliated clubs. For instance, HKASA determines the allocation priorities based on the annual cumulative scores of its affiliated clubs, the calculation of which covers a series of items, such as club history, the number of swimmers participating in competitions, their performance and rankings in swimming competitions (see **Chapter 4** for details). LCSD stated that it has all along deferred to the NSAs' autonomy and refrained from interfering in affairs within the scope of their internal administration and professional knowledge. Nonetheless, LCSD also requires the NSAs to handle their affairs in a fair, open and transparent manner.

2.14 LCSD clarified that CLAS is not a standing arrangement. Each year, the Department conducts an annual meeting with all major users to evaluate the effectiveness of the Scheme and whether it should be carried on. For instance, at the meeting in January 2019, all attendees agreed that CLAS was conducive to the continuous and steady training provided by the major NSAs and their affiliated clubs engaged in water sports, and the promotion of long-term sports development. As such, the continuation of CLAS in the following year was supported.

2.15 LCSD further asserted that CLAS has started to bear fruit after implemented for years. In recent years, Hong Kong athletes have achieved excellent results in swimming, triathlon and parasports events time and again, with a number of elite athletes having been enrolled for further training with the Hong Kong representative squads. This demonstrates that LCSD's regulatory measures are effective in ensuring that the NSAs use the swimming lanes for purposes in line with the Department's policy objective of comprehensively promoting water sports, and are successful in facilitating the development of water sports.

2.16 Furthermore, since CLAS is for coordinating the bookings of main pool swimming lanes by organisations belonging to the same priority category (i.e. the relevant NSAs and their affiliated clubs), it has no implication on the booking priorities of organisations as set out in the Booking Procedure.

REGULATING USE OF SWIMMING LANES IN PUBLIC SWIMMING POOLS

Regulating Use of Swimming Lanes by Organisations

2.17 LCSD monitors the organisation hirers of swimming lanes pursuant to the Regulation and the Hire Terms.

2.18 To ensure compliance with the Regulation and the Hire Terms by organisation hirers of swimming lanes, swimming pool staff will verify the identity of users and relevant coaches upon admission of an organisation to the hired venue. Any person whose identity is not specified in the application form will be refused entry to the swimming pools. Moreover, staff will take headcounts from time to time of the organisation's participants to ensure that the number of facility users conforms to the upper and lower limits¹ as stipulated in the Hire Terms.

2.19 It is also stipulated in the Hire Terms that organisation hirers should not transfer the hired swimming lanes. To check against unauthorised transfer of swimming lanes and unauthorised use of swimming lanes by persons other than the trainees of organisation hirers, LCSD requires the trainees of organisation hirers to wear caps or other identifiers of their organisations when swimming for easy identification.

¹ Pursuant to the Hire Terms, the lower limits of users in a 50-metre and 25-metre swimming lane are six and four respectively.

Penalty Mechanism against Irregularities in Use of Swimming Lanes

2.20 LCSD pointed out that its staff will take follow-up action against organisation hirers found to be in breach of the relevant regulations or conditions. For relatively minor irregularities (such as improper attire), staff will issue verbal advice and require immediate rectification. If the number of users in a swimming lane falls below the lower limit, apart from issuing verbal advice to the organisation hirer, LCSD staff will immediately withdraw the swimming lane and release it for public use. LCSD will also report the breach to the NSA concerned and follow up.

2.21 Furthermore, LCSD has in place a penalty mechanism to deter organisations from abusing their priority right to book the venues. An organisation hirer in breach of the Hire Terms will be issued a notification on breach of the Hire Terms according to the relevant provisions, and the breach will be kept on record. In general, if a breach of the Hire Terms is committed again by an organisation hirer or its trainees at the same venue within 30 days, LCSD will issue to the organisation concerned a notification on suspension of the booking priority to which it is entitled for three months or for one school year (applicable to schools) without refund of any charges already paid.

Regulating Profit-making Activities Conducted in Swimming Lanes

Verifying Non-profit-making Status of Swimming Clubs

2.22 Under CLAS, LCSD provides special assistance to the relevant NSAs to hire swimming lanes in public swimming pools according to their priority category, thereby facilitating the continuous and steady training conducted by eligible swimming clubs. LCSD requires all organisations given the priority to book swimming lanes to be non-profit-making in nature. All proceeds received from an activity should be solely spent on the same activity. Any surplus should only be preserved for promoting the development of relevant sports by that organisation. It is not allowed to channel any proceeds directly or indirectly to any persons (including any members of that organisation) or other organisations.

2.23 LCSD indicated that the NSAs are generally non-profit-making organisations with sports promotion set as one of their major objectives. To be eligible for application processing as a priority user, an NSA-affiliated club must have its

applications vetted, recommended and formally approved by its NSA. Taking HKASA as an example, its articles of association stipulate that its affiliated clubs must be non-profit-making organisations. Consequently, LCSD also accepts that all its affiliated clubs hire swimming lanes in the capacity of non-profit-making organisations.

2.24 Upon commencement of our investigation, we received submissions separately from five NSAs² which are participants under CLAS, with comments on the scheme and a brief account of their internal administrative affairs.

2.25 Both HKASA and HKTA informed us that swimming clubs are required to submit documents (such as club constitution) as proof of their non-profit-making status before their applications for affiliation are vetted and approved. HKSAPID stated that it has not set up an affiliation scheme. Other NSAs did not give details in this aspect.

2.26 As regards the review of affiliated clubs' accounts and financial reports, HKASA stated that its affiliated clubs are largely reluctant to disclose their relevant accounts, citing reasons of secrecy. Since LCSD has not provided it with subsidies for engaging relevant professionals to review the affiliated clubs' accounts and financial reports, HKASA is unable to conduct any review. HKTA and HKUA also stated that their affiliated clubs are not mandatorily required to submit any accounts and financial reports. In other words, those NSAs are simply unable to monitor the financial position of their affiliated clubs and whether their activities are profit-making.

Penalty Mechanism against Unauthorised Use of Swimming Lanes for Profit-making Activities

2.27 LCSD asserted that it is a breach of the Hire Terms on the payment of hire charges if an organisation hirer uses the swimming lanes hired at normal rates for profit-making purposes. In case there is substantive evidence showing an organisation hirer has breached the above provision, LCSD will take follow-up action and seek legal advice on the case. The organisation will be required to reimburse the difference between the normal and commercial rates. Moreover, LCSD will also consider suspending the booking priority to which the breaching organisation is entitled.

² No comments were received from HKLSS and NTRSA.

2.28 LCSD admitted that the fees charged by organisation hirers on their trainees are not regulated under the Hire Terms. However, LCSD reckoned that the charging of fees by a non-profit-making organisation is not definitive evidence of its activities being held for profit. Certain non-profit-making organisations (such as schools) may need to charge fees on their trainees to fund an activity wholly or partially. Hence, it is not sufficient to reveal the nature of an activity just by considering whether the organisation hirer has charged any fees on the trainees.

2.29 To ensure that all NSAs comply with the above provision, LCSD, before releasing the swimming lanes allocated under CLAS in 2018/19 and 2019/20, required the NSAs to sign a reply slip to undertake that the allocated swimming lanes will not be transferred for use by other organisations, and those lanes will only be used for non-profit-making activities. With a view to strengthening the detailed arrangement or provisions for hire of relevant facilities, LCSD completed a review of the Hire Terms in early 2019 and issued its revised version to the relevant NSAs in May 2019. In the course of revising the Hire Terms, LCSD has obtained advice from the relevant departments (including the ICAC).

3

OVERVIEW OF ALLOCATION AND REGULATION OF SWIMMING LANES

OVERVIEW OF SWIMMING LANES IN PUBLIC SWIMMING POOLS HIRED BY ORGANISATIONS

3.1 From 2014/15 to 2018/19, the lane hours in public swimming pools hired by organisations are tabulated as below:

Table 1: Lane hours* in public swimming pools hired by organisations

Year	Available lane hours	Hired lane hours	Occupancy rate
2014/15	861,168	268,424	31.2%
2015/16	847,873	283,021	33.4%
2016/17	860,364	295,900	34.4%
2017/18	879,183	307,756	35%
2018/19	855,799	299,273	35%
Total	4,304,387	1,454,374	33.8%

* Including lane hours in the main pools, secondary pools and training pools. Excluding the Jockey Club Yan Oi Tong and Sheung Shui Swimming Pools (both swimming pools only provide leisure pools), and the Tsing Yi Southwest Swimming Pool was only opened for use in July 2017. A lane hour means the hire of one hour in a swimming lane. The hire of two swimming lanes in the same hour is counted as two lane hours, and so forth.

3.2 According to **Table 1**, more than 260,000 lane hours were hired by organisations yearly, representing over 30% of available lane hours. Of which, the lane hours hired by HKASA and its affiliated clubs ranged from 120,000 to 140,000 hours, or around 15% of available lane hours. Moreover, we notice that HKASA and its

affiliated clubs hired nearly 40% or more of available lane hours in the main pools or training pools of certain public swimming pools, up to 57% in the highest case. Those venues included the Wan Chai, Morrison Hill, Island East, Siu Sai Wan and Hammer Hill Road Swimming Pools (some swimming pools are not included under CLAS, see para. 3.4).

3.3 Regarding the above situation, LCSD explained that each swimming pool complex varies in the types and numbers of facilities as well as its districts and locations. Given that swimming pools are hired by organisations mainly for swimming training, and the demands for other training activities (such as life-saving or finswimming) are lower in comparison (for instance, the training pools of the Island East, Siu Sai Wan and Hammer Hill Swimming Pools are relatively shallow and not suitable for life-saving or finswimming purpose), it is not unreasonable that more swimming lanes are hired by HKASA’s affiliated clubs. This also reflects the public demands for various types of training activities offered by organisations in the sector.

OVERVIEW OF SWIMMING LANES ALLOCATED UNDER CLAS

3.4 According to information from LCSD, 29 of its swimming pool complexes are equipped with a main pool, of which 26 are included under CLAS³. From 2014/15 to 2018/19, the lane hours (in the 50-metre main pools) allocated by LCSD under CLAS are tabulated below:

Table 2: Lane hours in public swimming pools allocated under CLAS

Year	Lane hours
2014/15	110,919
2015/16	99,625
2016/17	91,696
2017/18	91,926
2018/19	93,685
Total	487,851

³ The Wan Chai, Pao Yue Kong and Chai Wan Swimming Pools are equipped with main pools, but they are not included under CLAS.

3.5 **Table 2** shows a slightly downward trend in the number of lane hours allocated under CLAS. Taking 2016/17 as an example, LCSD remarked that the lane hours allocated under CLAS represented only around 20% of available lane hours⁴ in the 50-metre main pools in that year. The Department considered that apart from CLAS, individual swimming clubs or organisations still have leeway to hire swimming lanes in LCSD’s public swimming pools through the general procedures.

3.6 The lane hours allocated to the NSAs under CLAS are given in **Table 3**:

**Table 3: Total lane hours in public swimming pools
allocated yearly to NSAs under CLAS**

Year	NSA#						
	HKASA	HKLSS	HKTA	NTRSA	HKUA	HKSAPID	HKPC&SAPD
2014/15	69,519 (62.7%)	27,724 (25%)	9,473 (8.5%)	2,691 (2.4%)	1,121 (1%)	391 (0.4%)	0 (0%)
2015/16	59,776 (60%)	26,932 (27%)	8,623 (8.7%)	2,570 (2.6%)	1,298 (1.3%)	268 (0.3%)	158 (0.2%)
2016/17	50,678 (55.3%)	27,995 (30.5%)	8,329 (9.1%)	2,819 (3.1%)	1,547 (1.7%)	328 (0.4%)	0 (0%)
2017/18	51,043 (55.5%)	28,078 (30.5%)	7,684 (8.4%)	3,033 (3.3%)	1,656 (1.8%)	418 (0.5%)	14 (0%)
2018/19	54,251 (57.9%)	26,346 (28.1%)	7,768 (8.3%)	3,394 (3.6%)	1,636 (1.7%)	290 (0.3%)	0 (0%)
Total	285,267 (58.5%)	137,075 (28.1%)	41,877 (8.6%)	14,507 (3%)	7,258 (1.5%)	1,695 (0.3%)	172 (0%)

Figures in brackets are the percentages of lane hours allocated to the NSAs over total available lane hours (Table 2).

HKASA:
Hong Kong Amateur Swimming Association

HKUA:
Hong Kong Underwater Association

HKLSS:
The Hong Kong Life Saving Society

HKSAPID:
Hong Kong Sports Association for Persons with Intellectual Disability

HKTA:
Hong Kong Triathlon Association

HKPC&SAPD:
Hong Kong Paralympic Committee & Sports Association for the Physically Disabled

NTRSA:
The New Territories Regional Sports Association

⁴ In 2016/17, 463,256 lane hours were available in the 50-metre main pools of public swimming pools.

3.7 From **Table 3**, it can be seen that in all five years from 2014/15 to 2018/19, HKASA remained the NSA having been allocated the highest number of lane hours under CLAS (accounting for 55.3% to 62.7% of the total available lane hours). Around 60% of lane hours were allocated to it yearly. Together with HKLSS, the two NSAs took the lion’s share of the lane hours available under CLAS at nearly 90%.

3.8 We note that the percentage of lane hours allocated to HKASA decreased from 62.7% in 2014/15 to 55.3% in 2016/17. LCSD explained that HKASA did not apply for booking the allocated main pool sessions in five swimming pools in 2016/17, resulting in a drop of its overall allocation percentage in that year. It was not related to the swimming lanes actually used by HKASA being less than expected in the year before. As regards the remaining NSAs, the lane hours allocated to them in those five years largely remained steady without significant fluctuation.

3.9 Moreover, a document of the Community Sports Committee remarked that organisation hirers tend to concentrate on hiring swimming lanes between 4 pm and 8 pm. In this connection, we also obtained from LCSD details about the allocation of swimming lanes to the NSAs during that period from 2014/15 to 2018/19, as given in **Table 4**:

**Table 4: Total lane hours in public swimming pools
allocated yearly to NSAs under CLAS
(During peak hours between 4 pm and 8 pm only)**

Year	NSA (Table 3, #)						
	HKASA	HKLSS	HKTA	NTRSA	HKUA	HKSAPID	HKPC& SAPD
2014/15	48,673 (69.9%)	12,643 (18.2%)	5,932 (8.5%)	1,596 (2.3%)	455 (0.7%)	351 (0.5%)	0 (0%)
2015/16	48,127 (69.1%)	12,719 (18.3%)	6,108 (8.8%)	1,822 (2.6%)	590 (0.8%)	240 (0.3%)	79 (0.1%)
2016/17	39,085 (64.4%)	12,915 (21.3%)	5,873 (9.7%)	1,889 (3.1%)	650 (1.1%)	270 (0.4%)	0 (0%)
2017/18	39,173 (64.6%)	13,075 (21.6%)	5,388 (8.9%)	1,975 (3.3%)	732 (1.2%)	299 (0.5%)	7 (0%)

Year	NSA (Table 3, #)						
	HKASA	HKLSS	HKTA	NTRSA	HKUA	HKSAPID	HKPC&SAPD
2018/19	40,188 (65.3%)	12,787 (20.8%)	5,465 (8.9%)	2,132 (3.5%)	718 (1.2%)	228 (0.4%)	0 (0%)
Total	215,246 (66.8%)	64,139 (19.9%)	28,766 (8.9%)	9,414 (2.9%)	3,145 (1%)	1,388 (0.4%)	86 (0.0%)

Figures in brackets are the percentages of lane hours allocated to the NSAs over available lane hours during that period.

3.10 Taking into account only the peak hours between 4 pm and 8 pm, the percentage of lane hours allocated under CLAS to HKASA in those five years was even higher at nearly 70%.

3.11 We asked LCSD whether it would consider imposing an upper limit on the number of lanes allocated to the NSAs. LCSD replied that given the diversified demands for swimming lanes from organisation hirers and participants, it is difficult to set an upper limit on the percentage of lanes allocated to each NSA annually (whether under CLAS or not).

3.12 At present, LCSD has no plan to set an upper limit on the percentage of lanes allocated to each NSA annually. Nevertheless, in its future review of CLAS, LCSD will proactively consider exploring the feasibility of adjusting the upper limit of lanes available for hire in certain main pools or sessions.

SITUATION OF REGULATING ACTUAL USE OF SWIMMING LANES IN PUBLIC SWIMMING POOLS

3.13 To learn more about the actual use of swimming lanes by swimming clubs, we obtained from LCSD the relevant statistics between 2013/14 and 2018/19. It is noted that different forms of irregularities were found on the part of swimming clubs in the use of swimming lanes, as detailed in **Table 5**:

**Table 5: Irregularities of swimming clubs in use of swimming lanes
from 2013/14 to 2018/19**

Year	Irregularities (No. of cases found)		
	Total No. of swimmers does not fall within the upper and lower limit	Failing to cancel booking before the day of use	Others*
2013/14	87	126	16
2014/15	24	43	18
2015/16	22	58	18
2016/17	29	96	16
2017/18	54	289 [#]	10
2018/19	57	230 [#]	20
Total	273	842	98

* Other forms of irregularities include occupation of facilities outside the hired area, coach photographing at poolside, failing to vacate the venue on time, and eating and drinking at poolside.

Pool management staff had strengthened their monitoring on the irregularities and stepped up regulatory actions, thus resulting an increase in the number of regulatory measures taken in those years.

3.14 The above table shows that the most common form of irregularities on the part of swimming clubs is failing to cancel a booking before the day of use.

3.15 There were media reports about the irregularity of private transfer of swimming lanes among affiliated clubs. In this regard, an investigation conducted by LCSD (including scrutinising the admission records of the two swimming pools concerned and details of the organisation hirers, and inspecting the use of facilities) did not reveal any irregularities as alleged. In any event, LCSD issued a letter to remind all NSAs and their affiliated clubs that they should not transfer the swimming lanes hired by them for use by other organisations. LCSD will also step up verifying the booking details when approving organisation hirers to use swimming pool facilities.

3.16 Statistics about the regulatory measures taken by LCSD against the irregularities of swimming clubs are given in **Table 6**:

Table 6: Regulatory measures taken by LCSD from 2013/14 to 2018/19

Year	No. of regulatory measures					
	Verbal advice	Written advice	Issuance of notification on breach	Withdrawal of lanes	Suspension of priority eligibility	Others*
2013/14	198	11	52	128	2	1
2014/15	57	10	17	30	0	2
2015/16	71	14	17	32	0	3
2016/17	117	33	13	48	0	4
2017/18	180 [#]	51	34	158 [#]	1	1
2018/19	154 [#]	5	24	147 [#]	0	0
Total	777	124	157	543	3	11

* Other regulatory measures include requesting improvement at the annual meeting with the swimming clubs, or reporting to the NSA concerned.

Pool management staff had strengthened their monitoring on the irregularities and stepped up regulatory actions, thus resulting an increase in the number of regulatory measures taken in those years.

3.17 From **Table 6**, it can be seen that LCSD mainly relied on issuing verbal advice to rectify the irregularities of swimming clubs. LCSD indicated that most organisation hirers were cooperative. Upon verbal advice issued by LCSD staff, the organisation hirers found to be in breach of the provisions would immediately rectify the problems. Hence, it was unnecessary to take further action (such as issuing written advice or notification on breach). Moreover, swimming pool staff would meet with the organisation hirers concerned to follow up the irregularities. LCSD undertook to continuously enhance the existing regulatory mechanism and step up monitoring the use of swimming pool facilities by organisation hirers.

ALLEGATION ABOUT USING SWIMMING LANES IN PUBLIC SWIMMING POOLS BY SWIMMING CLUBS FOR PROFIT-MAKING PURPOSES

3.18 There were media reports that certain affiliated clubs of HKASA had used the swimming lanes obtained through priority allocation under CLAS to organise swimming courses. However, those affiliated clubs instructed their trainees to deposit course fees into bank accounts of private companies. Those swimming courses were allegedly profit-making in nature and in breach of the Hire Terms.

3.19 In response to the above allegation, LCSD required HKASA to appoint persons who have no relation with the swimming clubs concerned to investigate and submit a report to the Department. Subsequently, HKASA formed an independent investigation committee and appointed three of its committee members who have no relation with the swimming clubs concerned to investigate the matter.

3.20 On 27 April 2018, HKASA submitted an investigation report to LCSD to give an account of its findings. Its findings confirmed that all three affiliated clubs concerned are non-profit-making organisations and thus meet the criteria of CLAS. After checking a random sample of the affiliated clubs' training information, HKASA did not discover any incident of transfer of swimming lanes by the affiliated clubs concerned.

3.21 Nevertheless, the investigation report revealed that each of the three affiliated clubs had appointed a company/person as agent (by written or verbal agreement) to handle the administrative work for organising the swimming courses, including the collection of course fees on their behalf. Yet, all three affiliated clubs had not set up a separate account for the income and expenditure derived from the swimming courses organised with the swimming lanes allocated under CLAS, nor reflected such amounts in their financial statements.

3.22 To further clarify the matter, LCSD examined the financial documents and agency agreements of the three affiliated clubs. After examination, LCSD also concluded there was no substantive evidence that those affiliated clubs had used the swimming lanes in public swimming pools for profit-making purposes, or transferred the lanes to other swimming clubs. In spite of that, LCSD found inadequacies on the part of the three affiliated clubs in the declaration system and the appointment of agents, and there was room for improvement. LCSD has introduced a number of improvement measures (see **Chapter 6**).

4

MECHANISM AND OVERVIEW OF NSAs' ALLOCATION OF SWIMMING LANES TO AFFILIATED CLUBS

NSAs' MECHANISMS FOR ALLOCATION OF SWIMMING LANES TO THEIR AFFILIATED CLUBS

4.1 As mentioned in **paragraph 2.13**, after allocation of swimming lanes by LCSD under CLAS, the NSAs then distribute those lanes among their affiliated clubs based on their own mechanisms. Upon commencement of our investigation, five of the NSAs (see **note 2** in **para. 2.24**) joining CLAS provided us with information about how they allocate the swimming lanes internally.

4.2 Among those five NSAs, only HKSAPID stated that there is no affiliated club under the regime of the Association, while each of the remaining four NSAs have a scheme of affiliated clubs/group members. Regarding its mechanism for allocation of swimming lanes to affiliated clubs, HKPC&SAPD stated that it will not allocate any lanes to its group members. They can only participate in the activities and competitions organised by HKPC&SAPD.

4.3 The remaining three NSAs, i.e. HKUA, HKTA and HKASA, have their own mechanisms for determining the allocation priorities of swimming lanes accorded to affiliated clubs. HKUA stated that it only has six affiliated finswimming clubs, with only around 200 to 300 active swimmers as at October 2018. Due to the relatively small number of participants, it has not encountered any problem in the allocation of swimming lanes. Regarding the priorities in use of swimming lanes by its affiliated clubs, HKUA usually considers such factors as whether the lanes are for training competitive swimmers, any adverse records of the affiliated clubs and proximity of location.

4.4 HKTA stated that it collects biannual reports from its affiliated clubs about their activities and members, and assigns rating scores to those affiliated clubs based on their number of members, coaches and supporting staff, the number of triathlon events/training courses they held, etc. A priority list including all affiliated clubs will be compiled, under which a club with higher score is given higher priority in booking swimming lanes. The number of swimming lanes available for hire by each affiliated club is determined by its number of members. An upper limit is set for each round of allocation to prevent the large-scale clubs from taking up a majority of swimming lanes.

4.5 Under HKASA's mechanism for allocation of swimming lanes, priorities are determined annually by the cumulative scores of affiliated clubs, which are rated in respect of two major areas (i.e. performance and non-performance rating scores). Moreover, HKASA has designated two types of membership, namely full member and affiliate member (observer status). An affiliated club's priority in booking swimming lanes is also affected by its membership.

4.6 HKASA explained that the non-performance rating scores covered such items as club history, number of registered swimmers, participation in competitions, proactiveness in assisting HKASA to organise events, and participation in local open water swimming competitions. The performance rating scores covered such items as number of swimmers in HKASA training squads, number of record breakers or holders, number of swimmers selected for Hong Kong representative squads, ranking in age group championships, ranking in Hong Kong International Open Swimming Championships, and ranking in local open water swimming competitions.

4.7 HKASA added that it understood those swimming clubs with more registered swimmers and competition participants need more swimming lanes. HKASA, therefore, assigns a score linked to a swimming club's number of registered swimmers. The items of performance rating scores are performance benchmarks aimed to encourage swimming clubs to foster the development of high-level athletes, who can achieve outstanding results for Hong Kong in swimming events.

4.8 Furthermore, HKASA has set up a subcommittee on swimming pool policy to monitor the allocation of swimming lanes in a fair and impartial manner. The subcommittee consists of representatives from venue-based affiliated clubs, non-venue-based affiliated clubs and observer clubs, enabling HKASA to collect views from swimming clubs of varying scales, thereby formulating a fairer system with proper policy for swimming lane allocation.

4.9 According to information provided to LCSD by HKASA, in 2017/18, the aggregate lane hours obtained by the top ten affiliated clubs of HKASA having been allocated the most swimming lanes represented nearly half of the swimming lanes allocated to HKASA under CLAS.

SITUATION OF SWIMMING LANES HIRED BY SWIMMING CLUBS UNDER CLAS

4.10 To understand the situation of hiring and allocating swimming lanes under CLAS, we obtained from LCSD the monthly data of five public swimming pools⁵ in 2017 and 2018 regarding the swimming lanes allocated to the NSAs and their affiliated clubs under CLAS for examination. The relevant data are given in **Table 7**.

Table 7: Comparison between swimming lanes allocated to and cancelled by swimming clubs

2017						
	Victoria Park	Kowloon Park	Morrison Hill	Tseung Kwan O	Lai Chi Kok Park	Total
Lane hours booked by clubs	4,882	5,989	4,738	2,356	3,596	21,561
Lane hours cancelled by clubs (after confirmation letter issued by swimming pool)	1,224*	535	64	590*	1,138	3,551
Lane hours actually hired by clubs	3,658	5,454	4,674	1,766	2,458	18,010
Cancellation rate	25.1%	8.9%	1.4%	25.0%	31.6%	16.5%

⁵ The five public swimming pools are the Victoria Park, Kowloon Park, Morrison Hill, Tseung Kwan O and Lai Chi Kok Park Swimming Pools.

2018						
	Victoria Park	Kowloon Park	Morrison Hill	Tseung Kwan O	Lai Chi Kok Park	Total
Lane hours booked by clubs	3,051	5,616	4,565	2,153	3,679	19,064
Lane hours cancelled by clubs (after confirmation letter issued by swimming pool)	738*	485	81	399*	1,252	2,955
Lane hours actually hired by clubs	2,313	5,131	4,484	1,754	2,427	16,109
Cancellation rate	24.2%	8.6%	1.8%	18.5%	34.0%	15.5%

* Certain swimming clubs took the initiative to cancel some of the swimming lane bookings before issuance of booking confirmation letters by the swimming pools. The lane hours so cancelled are also included in the calculation of lane hours cancelled by clubs.

4.11 According to LCSD, after allocation of swimming lanes under CLAS, the NSAs will coordinate and distribute those lanes among affiliated clubs based on their own systems, and then the affiliated clubs will submit applications to LCSD (see **para. 2.9**). In other words, when submitting the applications, the affiliated clubs should have thoroughly considered the sessions and number of swimming lanes they required, after coordination by their NSAs. As such, they should not casually change or cancel the bookings.

4.12 However, among the five swimming pools under our examination, it is noted that in both 2017 and 2018 there were cases of swimming clubs cancelling bookings for the allocated swimming lanes, with the cancellation rate ranging from 1.4% at the lowest to 34% at the highest. Further, according to information from LCSD, in certain swimming pools and certain months the cancellation percentage was higher than 40%. The situation might reflect that the current allocation systems are insufficient to ensure the effective allocation of swimming lanes to the swimming clubs with actual needs.

4.13 To learn more about the cancellation of bookings by swimming clubs, and the use of those swimming lanes after cancellation of bookings, we extracted the booking data of those months with cancellation rate higher than 40% (involving two swimming pools and seven months) for further analysis. The details are given below.

Table 8: Months and swimming pools with over 40% of swimming lane bookings cancelled by swimming clubs

Venue	Month and year	Lane hours booked by clubs	Lane hours cancelled by clubs (cancellation percentage)	Lane hours rebooked after cancellation (rebooking percentage)
Lai Chi Kok Park Swimming Pool	September 2017	322	129 (40.1%)	70 (54.3%)
	July 2018	371	182 (49.1%)	60 (33%)
	August 2018	369	157 (42.5%)	74 (47.1%)
	September 2018	293	123 (42%)	32 (26%)
Victoria Park Swimming Pool*	October 2017	446	196 (43.9%)	0 (0%)
	September 2018	197	85 (43.1%)	15 (17.6%)
	October 2018	227	98 (43.2%)	25 (25.5%)

* Certain swimming clubs took the initiative to cancel some of the swimming lane bookings before issuance of booking confirmation letters by the swimming pools. The lane hours so cancelled are also included in the calculation of lane hours cancelled by clubs.

4.14 **Table 8** shows that in certain cases, the bookings for nearly half of the lane hours allocated under CLAS were cancelled by swimming clubs. After cancellation of bookings, at most only half of those swimming lanes were subsequently rebooked (most of the new bookings were made in the capacity of non-priority hirers). While those

swimming lanes would be released for public use after cancellation of bookings and thus no waste of resources was actually caused, the situation casts doubt on whether the swimming clubs really have such strong demands for swimming lanes, or whether CLAS has failed to achieve the purpose of effective coordination and allocation of swimming lanes, resulting in the cancellation of a large number of bookings by some affiliated clubs on one hand, and the inability to obtain enough, or even any, swimming lanes by some affiliated clubs (see **Chapter 5**) on the other hand.

4.15 Besides, we also compiled statistics about the top five swimming clubs with the highest number of aggregate lane hours cancelled in those five swimming pools in 2017 and 2018. Details are given in **Table 9**:

Table 9: Top five swimming clubs with the highest number of swimming lanes cancelled (by lane hours)

2017						
Swimming club	NSA	Lane hours booked	Lane hours cancelled	Cancellation percentage	No. of pools involved	Cancellation in two consecutive months or more
Club A	NSA X	2,617	575	22.0%	3	Yes
Club B		678	540	79.6%	2	Yes
Club C		820	263	32.1%	3	Yes
Club D	NSA Y	368	252	68.5%	1	Yes
Club E	NSA Z	340	209	61.5%	1	Yes

2018						
Swimming club	NSA	Lane hours booked	Lane hours cancelled	Cancellation percentage	No. of pools involved	Cancellation in two consecutive months or more
Club A	NSA X	2,280	544	23.9%	3	Yes
Club D*	NSA Y	532	363	68.2%	1	Yes
Club D*	NSA X	324	308	95.1%	1	Yes
Club F		1,983	231	11.6%	4	Yes
Club E	NSA Z	293	196	66.9%	1	Yes

* Club D was allocated swimming lanes through two different NSAs.

4.16 As shown in the table above, more than 500 lane hours were cancelled by the swimming club with the highest number of cancellations in each year. The overall cancellation rate of a swimming club in one year stood as high as 95%. All those swimming clubs had a record of cancelling their bookings in two consecutive months or more, with some involving different swimming pools.

4.17 In fact, it is not uncommon for swimming clubs to cancel bookings for the swimming lanes allocated under CLAS. According to information from LCSD, among the five swimming pools under our examination, applications for booking swimming lanes were received from 67 and 69 swimming clubs (through different NSAs) respectively in 2017 and 2018. However, 45 and 44 swimming clubs respectively had a record of cancelling their bookings in those two years, of which the affiliated clubs of HKASA made up the highest proportion. A swimming club recorded cancellation percentage at 100% in certain swimming pools, involving multiple months. Notably, one of the swimming clubs was allocated a large number of swimming lanes through different NSAs, only to cancel bookings for those lanes subsequently. The situation was very unsatisfactory.

REMARKS

4.18 We understand that after allocation of swimming lanes, some swimming clubs might have to cancel bookings due to unforeseeable circumstances. Nevertheless, upon examining the situation of swimming lanes allocated under CLAS actually hired by swimming clubs in the five swimming pools, we consider the cancellation of bookings by certain swimming clubs is an issue not to be overlooked. It calls into question whether CLAS is effective in allocating swimming lanes to swimming clubs with genuine need, and whether it can really achieve the purpose of training swimmers.

5

COMMENTS FROM SECTOR AND GENERAL PUBLIC

5.1 During our investigation, we received comments and suggestions from the NSAs, swimming clubs, swimming coaches, members of the sector and the general public about LCSD's existing mechanism for allocation of swimming lanes and its regulation of the use of swimming lanes. Their comments are summarised below.

COMMENTS ON CLAS

5.2 Comments from the five responding NSAs (see **note 2** in **para. 2.24**) are largely positive about the effectiveness of CLAS. HKASA remarked that the continuous and steady supply of swimming lanes for hire by the NSAs under CLAS is conducive to ensuring that Hong Kong athlete swimmers will have stable swimming lanes for training. HKTA also agreed that under CLAS the association and its affiliated clubs are assured of regular and sufficient swimming lanes for training, and the scheme is worthy of retention.

5.3 Moreover, HKASA considered that while CLAS has been implemented for years, there are discrepancies in the practice of swimming pools under LCSD, such as how they handle applications for hiring the secondary pools⁶ by ballot. HKASA suggested that LCSD should standardise the practice and provide the NSAs with its guidelines to the swimming pool offices on handling of swimming lanes, so as to enhance transparency. LCSD should also strengthen its monitoring of the swimming pools in various districts to see whether they have followed the headquarters' guidelines.

5.4 However, comments on CLAS from individual swimming clubs are diversified. On one hand, some swimming clubs considered CLAS to be proper

⁶ CLAS only covers the allocation of swimming lanes in the main pools, while the swimming lanes in the secondary pools are not included under the scheme.

because prior to its introduction swimming clubs were often in dispute over the booking of swimming lanes and had difficulty in organising productive training programmes, given the unsystematic allocation of swimming lanes.

5.5 On the other hand, some swimming clubs told us that the core committee members of certain NSAs are concurrently the persons in charge of certain swimming clubs. A conflict of interest will inevitably arise when the internal systems for allocating public swimming lanes are formulated by those NSA committee members.

5.6 Furthermore, some swimming clubs alleged that certain NSAs' allocation mechanism are unfair. Under such internal mechanism, some clubs with longer history in their NSAs can obtain swimming lanes more easily, even though they have not sent any swimmers to participate in competitions. Meanwhile, some small-scale clubs established recently and yet to become full members of the NSAs may not be allocated any swimming lanes despite that their swimmers attained better results than those in large clubs with full membership of the same NSA. It may hinder the further development of those small clubs. They were of the view that LCSD has delegated too much power to the NSAs in the allocation of swimming lanes, resulting in "undue advantage to the large-scale clubs at the expense of the smaller ones".

5.7 Some swimming clubs suggested that the current mechanism of hiring swimming lanes in the 50-metre main pools in the name of "affiliated clubs" should be changed into hiring in the name of "swimming clubs". Each club should register its trainees with LCSD, each trainee is restricted to register for training in one swimming pool under LCSD and cannot transfer to other swimming pools. Such arrangement could prevent the swimming lanes from being used for coaching lessons. Those swimming clubs also suggested that LCSD should take into account the results attained by a club's trainees in determining its allocation priority of swimming lanes. The lanes in the 25-metre training pools or secondary pools should be allocated on a first come, first served basis, or by ballot. There are also suggestions from some swimming clubs that LCSD should revoke the NSAs' privilege to allocate swimming lanes, and should adhere to allocation by ballot for the sake of fairness.

5.8 A swimming coach told us that CLAS was introduced to ensure proper deployment of resources under the scheme for training of talented swimmers, aiming at attaining good results for Hong Kong in various swimming events. The coach suggested that while CLAS should be retained, LCSD should no longer allow the NSAs to allocate swimming lanes. LCSD should establish an independent task force and

invite members of the sector to formulate specific criteria for fair and proper allocation of public swimming lanes.

5.9 The coach considered that the allocation of swimming lanes should take into account the results or rankings of swimming clubs, such that sufficient resources will be deployed to those clubs with high competence/performance for training more accomplished swimmers and attaining good results. To cater for the development of small swimming clubs, the coach suggested to establish a mechanism whereby small clubs can draw up proposals with details of their training programmes, the prospective number of competition participants and targets, for approval by the independent task force. If those clubs manage to achieve their targets, they should be allocated swimming lanes continuously to facilitate their steady development.

COMMENTS ON REGULATING USE OF SWIMMING LANES

5.10 Some swimming clubs reckoned that it is currently difficult for LCSD to discern whether the activities organised by swimming clubs are profit-making in nature or not and to take regulatory action. Some members of the sector also commented that commercial activities are inevitably involved in coaching lessons at present, which are hardly separable from the long-term training programmes. They suggested that LCSD should apply the commercial rates across the board for hire of swimming lanes to ensure fairness.

5.11 Furthermore, some swimming clubs remarked that certain affiliated clubs have appointed a company/person as agent to collect course fees, but the transactions are handled through a private company's account and suspected of being profit-making. More seriously, it is alleged that the directors of the affiliated clubs concerned are closely related to the persons in charge of the agents, or they are the same group of persons.

5.12 There are comments that LCSD should consider further classifying the use of swimming lanes into advanced training and general coaching lessons, and requiring trainees to reach a certain level before they can use the swimming lanes allocated under CLAS for advanced training. Some members of the sector also suggested that LCSD could engage coaches to provide training for swimmers in public swimming lanes, and decide whether to renew their contracts based on the performance outcomes.

5.13 We also received comments from members of the public that the number and density of users in the swimming lanes hired by swimming clubs are far lower than the public swimming areas, and there are coaching activities conducted by swimming clubs for their trainees in the public swimming areas. They suggested that the areas designated for block booking should accommodate more swimming clubs concurrently, or the time allowed for exclusive use by one club should be shortened, so that other clubs would have more chance of using the swimming lanes. Some members of the public also criticised that the rates for hiring swimming lanes currently charged by LCSD on organisations are too low. They asserted that LCSD should adjust the hire charges to reduce the possibility of making profits by swimming clubs.

5.14 Furthermore, some respondents mentioned that it is not unusual for swimming clubs in amicable relation to share the allocated swimming lanes. Their trainees only need to wear the swimming caps of a different club to circumvent the inspection and regulatory measures of LCSD. Also, a coach may register with different swimming clubs to act in such capacity, so it is difficult for LCSD to detect any transfer of swimming lanes.

5.15 Some members of the sector also alleged that certain affiliated clubs with lower rankings in its NSA will apply for swimming lanes in the name of swimming clubs with higher rankings, and then use those lanes in the latter's capacity. This is tantamount to transfer of swimming lanes. They suggested that LCSD should establish a monitoring team to standardise the procedures for hire of swimming lanes, and step up verifying the identity of users.

6

IMPROVEMENT MEASURES OF LCSD

6.1 Following the investigation into the allegation about certain swimming clubs using public swimming lanes for profit-making activities (see **paras. 3.18 - 3.22**), LCSD introduced improvement and enhancement measures in multiple areas after a review of CLAS in 2019.

STRENGTHENING REQUIREMENTS AND ENHANCING DECLARATION MEASURES

6.2 LCSD has stipulated more clearly that NSAs/sports clubs and their affiliated clubs to be eligible for priority allocation of swimming lanes under CLAS must be non-profit-making organisations, and the swimming lanes allocated under CLAS are bound by the following requirements:

- (a) The swimming lanes shall be used for non-profit-making activities and training purposes only;
- (b) Transfer of the swimming lanes for use by other organisations is strictly prohibited;
- (c) Proceeds from a non-profit-making activity organised with the swimming lanes shall only be spent on the same activity. Any surplus generated shall only be reserved for use by NSAs/sports clubs or their affiliated clubs for promoting sports development. Proceeds or surplus from these activities shall not be channelled directly or indirectly to any persons, affiliated club members or other organisations;

- (d) Proceeds from holding courses and activities shall be received by the clubs direct and not through agents;
- (e) The income and expenditure of all courses and activities organised with the swimming lanes shall be reflected annually in the accounts and financial reports of the clubs; and
- (f) The hirer shall, upon request of LCSD, submit to LCSD its audited accounts or statement of accounts audited by a certified public accountant and any other information requested by LCSD.

NSAs/sports clubs and their affiliated clubs joining CLAS shall declare and undertake in writing to comply with all the above requirements. Playing a monitoring role, NSAs/sports clubs shall regularly require their affiliated clubs to declare compliance with the above requirements and make verifications.

6.3 In this connection, LCSD has devised an “Application Form” customised for CLAS, and revised the Hire Terms to set out more clearly all the requirements applicable to CLAS and the new clauses above. Organisation applicants are required to sign an additional declaration to commit to compliance therewith.

6.4 For booking of swimming lanes through ordinary procedures, LCSD has revised the application forms concerned to require the organisation applicants to declare the nature of their organisation (e.g. non-profit-making or profit-making) and whether the activities to be organised are profit-making. It is clearly stated on the forms that only non-profit-making organisations using the swimming lanes for non-profit-making activities are eligible for hiring LCSD swimming lanes at normal rates.

IMPROVING ARRANGEMENT OF AGENT APPOINTMENT

6.5 LCSD currently requires NSAs/sports clubs and their affiliated clubs joining CLAS to enhance the arrangement of agent appointment and comply with the following requirements:

- (a) Any organisation needs to appoint an agent in relation to any hired facility shall do so through formal procedures with details of appointment put in writing, such as the period of appointment, scope

of work for the appointment, persons in charge, reporting, purchase of insurance, etc.;

- (b) NSAs/sports clubs shall monitor their affiliated clubs' compliance with the requirements;
- (c) If the hirer appoints any agent to act on its behalf in relation to any hired facility, the hirer shall procure and ensure the agent to return all income generated from the activities organised at the hired facility to the hirer; and
- (d) All income generated from and expenditure incurred for such activities shall be reflected in the hirer's audited accounts or statement of accounts audited by a certified public accountant.

ESTABLISHING IMPARTIAL, OPEN AND FAIR INTERNAL MECHANISMS FOR ALLOCATION OF SWIMMING LANES

6.6 To ensure that their internal mechanisms for the allocation of swimming lanes are impartial, fair and transparent, LCS D has required NSAs/sports clubs joining CLAS to:

- (a) introduce a mechanism for declaration of interest, so that members will withdraw from the discussion of issues with potential conflict of interest when necessary, so as to prevent actual or perceived conflict of interest;
- (b) expand the scope of representation of members involved in establishing the mechanism for allocation of swimming lanes, for better balancing the training and development needs of affiliated clubs of different scales;
- (c) enhance transparency by publishing on the Internet the mechanism for allocation of swimming lanes, including the scoring system, criteria and list of affiliated clubs that benefit from CLAS, in addition to announcing the specific details to their affiliated clubs;

- (d) establish a mechanism for processing complaints and appeals related to allocation of swimming lanes under CLAS and announce the number of complaints annually; and
- (e) review regularly their internal mechanisms for allocation of swimming lanes, including the scoring system, criteria and system operation.

STRENGTHENING MONITORING MECHANISM AND ENHANCING PENALTY SYSTEM

6.7 To step up monitoring the affiliated clubs, NSAs/sports clubs joining CLAS shall establish a system for random checks and inspections on the affiliated clubs regarding their use of LCSD's swimming lanes, thereby ensuring their compliance with the Hire Terms. Where breaches are found, NSAs/sports clubs shall strictly enforce the penalty of suspending the allocation of swimming lanes to ensure effective management of non-compliant affiliated clubs. LCSD will demand the NSAs/sports clubs concerned to complete reviewing their monitoring mechanism and penalty system, and submit a report to the Department.

6.8 Moreover, LCSD will establish a clearer penalty system against non-compliance with CLAS and other relevant clauses, including suspending or terminating the eligibility of NSAs/sports clubs or their affiliated clubs for joining CLAS.

6.9 Apart from the enhancement initiatives mentioned above, LCSD will continue to review annually with the relevant NSAs/sports clubs on the arrangement and use of CLAS to facilitate the planning of on-going water sports training and the promotion of long-term sports development. LCSD will also continue to monitor the implementation of the enhancement initiatives for CLAS; and continue to examine and further improve the Booking Procedure, the Hire Terms and relevant management guidelines to ensure the proper and effective use of swimming lanes in public swimming pools.

7

OVERALL COMMENTS AND RECOMMENDATIONS

OVERALL COMMENTS

7.1 Swimming is an exercise beneficial for overall health. Swimming is also one of the most popular and spectacular competitive sports in the world. LCSD, with 44 public swimming pools currently under its management, is responsible for handling substantial swimming lane resources. For effective promotion of swimming to achieve the policy objective of fostering a strong sporting culture in the community, supporting elite athletes and raising Hong Kong's profile as a centre for international sports events, how LCSD allocates its swimming lanes to various stakeholders is an important issue.

7.2 We agree that the provision of continuous and steady training venues is vital to the training of premier athlete swimmers to represent Hong Kong in competitions and accomplish outstanding results. Before CLAS was introduced by LCSD in 2005, some swimming clubs had difficulty in securing stable swimming lanes/venues for long-term training of swimmers. Subsequently, in response to opinion from various NSAs/swimming clubs, LCSD implemented CLAS to coordinate the demands for main pool swimming lanes among the NSAs/swimming clubs, thereby ensuring stable swimming lanes for the clubs to provide training for their swimmers. The original intention of CLAS is certainly justified.

7.3 However, many swimming clubs/members of the sector told us that the public swimming lane resources are overly concentrated in certain large-scale clubs, while those small clubs can hardly obtain any lanes (see **Chapter 5**). Yet, LCSD has not regulated how the NSAs allocate the swimming lanes. After allocation of swimming lanes, some clubs would subsequently cancel a large number of bookings (see **Chapter 4**). Notably, there were media reports that some clubs allegedly used the allocated public swimming lanes for organising profit-making swim lessons. The current operation of CLAS warrants our attention.

7.4 More than 90,000 lane hours are allocated annually to the NSAs and their affiliated clubs under CLAS, involving a massive amount of public swimming lane resources. We consider it imperative for LCSD, as the responsible department, to take effective regulatory action for ensuring that public resources are fairly allocated to users in need.

7.5 In sum, we have identified the following five inadequacies in LCSD's mechanism for allocation of swimming lanes in public swimming pools.

(I) Unclear Use of Public Swimming Lanes Allocated under CLAS

7.6 As discussed in **paragraph 7.2** above, LCSD introduced CLAS to coordinate the demands for main pool swimming lanes among the NSAs/swimming clubs, thereby providing stable venues for long-term training of swimmers. However, LCSD currently just regulates the usage of swimming lanes under the Hire Terms, without giving clear definition of "training" use.

7.7 According to the Hire Terms, non-swimmers and novices are not allowed to participate in any event in the main pool at depth exceeding 1.5 metres (see **para. 2.11**). In other words, other than activities for novices, it is in principle permissible to conduct all kinds of aquatic activities, ranging from training for full-time athlete swimmers to coaching lessons for non-novices, in the swimming lanes allocated under CLAS. Swimming clubs can simply refer to the coaching lessons as "training" and then hold them in those lanes. It is difficult to differentiate between the two types of activities and take regulatory action on the basis of the current Hire Terms.

7.8 LCSD stressed that CLAS was introduced to coordinate the demands for main pool swimming lanes among the NSAs/swimming clubs, thereby providing stable lanes for training of swimmers by swimming clubs. The use of swimming lanes for long-term training entails that upon taking into account the allocation pattern in the previous year, the NSAs/swimming clubs are continuously allocated swimming lanes in the same months and sessions for organising sustainable training courses of the same types. LCSD also stated that training in swimming is widely ranged from the beginner to elite levels and throughout the process the coach will teach and improve the techniques of trainees. Hence, all relevant courses for technique advancement can be referred to as advanced-level training courses. From a perspective of sporting practice and development, all levels of training are invariably essential. It is impossible to foster an elite athlete without wide-ranging, steady and persistent training at all levels.

The NSAs offer training at various levels. Since the implementation of CLAS, LCSD has not restricted the categories of training, nor is it limited for training of swimming squads.

7.9 However, our investigation has revealed that many swimming clubs would subsequently cancel bookings for the swimming lanes allocated to them under CLAS (see **Chapter 4**). Our view is that the training schedules of swimmers engaged in training programmes should be steady and persistent. For those clubs actually using the swimming lanes for long-term training, they are unlikely to frequently cancel bookings for the allocated swimming lanes. The situation calls into question whether the swimming clubs, after allocation of swimming lanes under CLAS, are able to use those public swimming lanes effectively and achieve the targets and purposes of introducing the scheme by LCSD.

7.10 We accept that the training of outstanding athlete swimmers takes time. Many athletes are initially identified in district/inter-school competitions at different levels. Prior to becoming full-time athletes, they probably need to use the swimming lanes in public swimming pools for steady training and technique improvement. Under CLAS, eligible swimming clubs are given priority allocation of public swimming lanes for long-term training. If they merely use those lanes for ordinary coaching lessons in similar nature as those provided by other private clubs or organisations, members of the public and other stakeholders would justifiably query why CLAS is unique and essential. As such, LCSD has to differentiate the use of swimming lanes allocated under CLAS from ordinary coaching lessons. Those lanes should be used to facilitate the development or technique improvement of talented swimmers, rather than used to organise ordinary coaching lessons.

7.11 In fact, regarding the use of swimming lanes allocated under CLAS, members of the sector had diversified understandings and suggestions (see **Chapter 5**). As CLAS has implemented for 15 years, the situation and development of the swimming sector might have changed significantly over the years. We consider it necessary for LCSD to liaise with the NSAs and stakeholders and review any restrictions to be imposed on the use of swimming lanes allocated under CLAS (for instance, whether the swimmers/swimming squads using those lanes are subject to any eligibility criteria, such as cumulative attendance rate in training programmes or reaching certain levels of swimming techniques). LCSD should also draw up relevant guidelines and hire terms which are compatible with the current training needs of the sector and public expectations.

7.12 Meanwhile, more than 90,000 lane hours in the main pools are allocated under CLAS annually. After clearly stipulating the use of main pool swimming lanes allocated under CLAS, we opine that LCSD should scrutinise jointly with the NSAs the number of swimming lanes required, and proactively consider reducing the number of lane hours available under the scheme. In particular, more swimming lanes in popular sessions should be released for booking by other organisations outside CLAS through established procedures in an open and fair manner, or for public use.

(II) Failing to Monitor Allocation of Swimming Lanes by NSAs

7.13 Under the current mechanism of CLAS, LCSD first coordinates with the NSAs on the allocation of number and sessions of swimming lanes in the main pools. The NSAs then distribute those allocated lanes among their affiliated clubs based on their internal mechanisms. LCSD generally refrains from interfering in matters within the scope of internal administration and professional knowledge of the NSAs. In other words, LCSD will not interfere in the specific arrangement for allocating swimming lanes to affiliated clubs by the NSAs based on their internal mechanisms.

7.14 According to information from LCSD, between 2014/15 and 2018/19, more than 260,000 to nearly 300,000 lane hours were hired annually by organisations. Of which, 120,000 to 140,000 lane hours were hired by HKASA and its affiliated clubs, representing around half of the total (see **para. 3.2**). Of the lane hours allocated under CLAS, almost 90% were concentrated in two NSAs. The situation was particularly obvious during the peak hours (i.e. from 4 pm to 8 pm) (see **paras. 3.7 - 3.10**). Meanwhile, information from HKASA shows that 54 of its affiliated clubs were allocated swimming lanes under CLAS in 2017/18. Among them, the aggregate lane hours taken up by the top ten affiliated clubs having been allocated the most swimming lanes represented nearly half of the lane hours allocated to HKASA under CLAS (see **para. 4.9**). Evidently, substantial swimming lane resources are controlled through CLAS by a handful of swimming clubs within HKASA.

7.15 We accept that the NSAs, being representatives of the sector, are probably best informed of the needs of their affiliated clubs. There are merits in delegating the NSAs to allocate the swimming lanes to affiliated clubs based on their respective mechanisms. However, as the administrator of swimming lanes in public swimming pools, LCSD should not only ensure that the swimming lanes allocated under CLAS are properly used, but also oversee that the swimming lanes are allocated under a fair

mechanism to stakeholders in need, so as to prevent any NSAs/swimming clubs from taking advantage of CLAS to gain overwhelming control over swimming lane resources. Regrettably, under the current mechanism, LCSD can hardly monitor how the NSAs allocate the swimming lanes obtained under CLAS to their affiliated clubs.

7.16 Many swimming clubs and coaches told us that the internal allocation mechanisms of certain NSAs are unfair. For instance, some swimming clubs are able to use their competitive edge (such as longer club history or larger membership) over other affiliated clubs within their NSA to obtain more swimming lane resources. Those small-scale or newly established clubs are allocated only a small number of swimming lanes, or none at all (see **para. 5.6**). Consequently, the large-scale clubs persistently control a large proportion of swimming lanes, while the smaller clubs can hardly gain further development due to the lack of swimming lane resources. We consider that the situation, if unchanged, will only create a vicious circle and hamper the development of the swimming sector.

7.17 We are aware that LCSD has required the NSAs to optimise their internal systems for swimming lane allocation and enhance transparency (see **para. 6.6**). We welcome the improvement measures introduced by LCSD on own volition. Nonetheless, we are concerned that those measures, which are basically requiring the NSAs to optimise their own internal allocation systems, may not actually achieve any monitoring effect. As noted by some respondents, many core committee members of the NSAs are the persons in charge of certain swimming clubs (see **para. 5.5**). While LCSD has required the NSAs to introduce a mechanism for declaration of interest (see **para. 6.6(a)**), it is entirely dependent on the self-discipline of the NSAs to properly implement the relevant mechanism. We are of the view that allowing the NSAs to continuously devise their own allocation systems can hardly eliminate the conflict of interest, or even the perception of underhand transfer of benefits. Without LCSD's intervention to address the issue of unfair allocation of swimming lanes by the NSAs under CLAS, we believe that the situation will not have any significant improvement ultimately.

7.18 We, therefore, recommend that LCSD consider setting up an independent panel/committee to review the objective mechanism/criteria for allocation of swimming lanes. The Department can consult the NSAs, swimming clubs, members of the sector and stakeholders to collectively draw up the objective mechanism and criteria for allocation of swimming lanes (allocated under CLAS or otherwise), thereby enhancing the transparency and fairness of the mechanism, and balancing the demands of various stakeholders.

7.19 In fact, we received views from swimming clubs or members of the sector regarding how swimming lanes should be allocated to different types of swimming clubs (see **paras. 5.7 - 5.9**). We consider it more objective and reasonable for LCSD to determine the allocation priorities of swimming clubs under CLAS based on such factors as the number of trainees, performance outcomes, attendance rates, etc., which can also reduce disputes. Under a fair and transparent mechanism for allocation, we aspire to see the healthy and sustainable development of swimming clubs of different types and scales, bringing benefits to the swimming sector.

7.20 Moreover, to prevent the allocation of swimming lanes from being overly concentrated in certain swimming clubs, LCSD should explore setting an upper limit on the number of lanes allocated to each club, especially for the peak hours or swimming lanes in popular main pools. This will give other interested swimming clubs or organisations more opportunities to hire the swimming lanes in those sessions and venues.

(III) Failing to Effectively Verify Whether Swimming Clubs Have Used Public Swimming Lanes for Profit-making Purposes

7.21 LCSD requires the swimming lanes in public swimming pools hired at normal rates be used by organisation hirers for non-profit purposes only (including swimming lanes allocated under CLAS). As detailed in **paragraph 2.23**, LCSD currently accepts that NSA-affiliated clubs use the swimming lanes hired under CLAS solely for non-profit purposes, simply on the ground that the Articles of Association of the NSAs require their affiliated clubs to be non-profit-making organisations. Nevertheless, as to how to ensure strict compliance with the relevant provision by the NSAs and swimming clubs, LCSD, the NSAs and their affiliated clubs merely relied on self-monitoring under a “mutual trust” system in the past. There has not been any stringent mechanism for verification and regulatory action.

7.22 In response to media reports that certain affiliated clubs of HKASA allegedly used public swimming lanes to hold swimming courses for profit-making purposes, LCSD requested HKASA to investigate the issue (see **para. 3.19**). Although the investigation outcomes have refuted the media allegations against the affiliated clubs concerned, we note that during the investigation HKASA could not obtain the financial reports of the three affiliated clubs regarding the income and expenditure of their swimming courses. The situation shows that the NSAs are not in a position to regulate

or individually review whether their affiliated clubs have derived profits from organising activities. Indeed, several NSAs told us that they are unable to review the financial reports or accounts of their affiliated clubs (see **para. 2.26**). It is only based on wishful thinking that LCSD accepts all activities organised by swimming clubs are not for profit simply on the grounds that they are non-profit-making organisations. This also reflects that LCSD has failed to effectively verify and enforce the provision that swimming clubs should only use public swimming lanes for non-profit activities.

7.23 Moreover, HKASA's investigation revealed that the affiliated clubs concerned had engaged agents to handle their internal administrative matters, including organisation of swimming courses and collection of fees. Nevertheless, the media already pointed out that those agents were closely related to the swimming clubs concerned (for instance, the person in charge of the agent was concurrently the person in charge or director of the swimming club concerned). In particular, the affiliated clubs concerned instructed their trainees to deposit course fees into their agents' bank accounts. Besides, there was a lack of clarity in the clubs' financial accounts, with no presentation of the income and expenditure derived from the activities organised with the public swimming lanes allocated under CLAS. The current practice of those swimming clubs is questionable, thus arousing public suspicions.

7.24 LCSD allocates more than 90,000 lane hours annually under CLAS to the NSAs and their affiliated clubs, and charges them at normal rates for hiring the lanes. The swimming clubs using those lanes for profit-making activities should have been charged at commercial rates, which is double the normal rates (see **paras. 2.5 - 2.6**). At a rough estimation based on the hire charge of a 50-metre lane during the non-peak season, the difference in annual revenue between the two is about \$7.5 million (\$83 per hour x 90,000 hours). The figure will be even larger if the lane hours hired through general procedures are included.

7.25 In fact, some swimming clubs and members of the sector told us that many coaching lessons/swimming courses organised by non-profit-making organisations may involve commercial elements to some extent, and thus are not entirely non-profit in nature. Some swimming clubs even suggested that LCSD should apply the commercial rates across the board for hire of public swimming lanes, so as to prevent swimming clubs from abusing their eligibility for priority booking of public swimming lanes and lower rates (see **para. 5.10**).

7.26 Nevertheless, LCSD contended that if it indiscriminately applies the commercial rates for all activities in the category of coaching lessons/swimming courses without considering whether the hirer is a non-profit-making organisation and whether the activity organised is profit-making, it will certainly cause unfairness to those non-profit-making organisations which are not holding activities for profit, and increase their financial pressure in holding those activities. This might also be criticised as a charge increase in disguise, and is deviated from the original intention of setting the hire charges.

7.27 On preventing swimming clubs from using the swimming lanes for profit-making purposes, we are aware that LCSD has introduced improvement measures to strengthen the declaration and review systems of relevant swimming clubs (see **para. 6.2**), including stipulating that LCSD has the right to require the clubs to submit their audited accounts or statement of accounts audited by a certified public accountant for scrutiny. We urge LCSD to step up monitoring the effectiveness of those improvement measures (such as diligently scrutinising the accounts of swimming clubs) and conduct timely reviews of those measures, thereby ensuring that all activities organised by swimming clubs under CLAS are non-profit in nature.

(IV) Too Lenient in Regulating Cancellation of Bookings for Public Swimming Lanes by Swimming Clubs

7.28 As discussed in **Chapter 2**, the NSAs should have conducted internal “coordination” before applying to LCSD for hiring of swimming lanes under CLAS for long-term training of swimmers. Consequently, after allocation of swimming lanes, there should not be frequent changes or cancellations by swimming clubs.

7.29 However, we found the opposite after scrutinising the situation of bookings and cancellations of swimming lanes allocated under CLAS in five public swimming pools (see **Chapter 4**). Of the five swimming pools, three recorded cancellation rates at higher than 10% in 2017 and 2018, with the highest at 34%.

7.30 Additionally, we scrutinised the cancellation of swimming lane bookings by individual swimming clubs (see **para. 4.15**). It is found that a handful of swimming clubs, notably with the highest frequency and number of cancellations, were the affiliated clubs having been allocated more swimming lanes within their NSAs. Information also shows that the cancellation rates of certain clubs reached 100%. Another club was allocated swimming lanes via different NSAs, only to cancel bookings for those lanes subsequently.

7.31 The training programmes and schedules for athlete swimmers should have been drawn up in advance. The relevant swimming clubs, having thoroughly considered their own training needs before applying for swimming lanes, should not need to make changes frequently. While some clubs might have to cancel bookings due to unforeseeable reasons, the number and frequency of cancellations should not have been so high.

7.32 Moreover, although some swimming clubs cancelled a large number, or even all, of their bookings for the allocated swimming lanes, we have not seen any rejection of their applications by LCSD. Nor has LCSD adopted any follow-up measures, such as restricting their subsequent applications. In other words, swimming clubs can cancel bookings at no extra cost or consequence. In such circumstances, it calls into question whether the so-called “coordination” under CLAS is effective, or whether it is merely a pretext for abuses by some swimming clubs to obtain priority allocation of public swimming lanes.

7.33 To ensure that CLAS is effective and fair in allocation of swimming lanes for use by swimming clubs, LCSD must tackle the problem of a large number of bookings being cancelled repeatedly by swimming clubs. We consider that LCSD should impose stringent restrictions on swimming clubs for cancellation of allocated swimming lanes. Any clubs apply to cancel their approved bookings must provide substantive and reasonable justification, or LCSD should reject such applications and require them to pay the hire charges in full. Further, LCSD should raise the cost of cancellation (such as charging an administration fee) to deter swimming clubs from obtaining lane hours under CLAS and cancelling them subsequently. This would allow organisations in genuine need to hire their required lane hours more easily.

7.34 Meanwhile, LCSD should also liaise with the NSAs to jointly devise a specific mechanism for cancelling the bookings of swimming lanes allocated under CLAS, including stipulating a maximum number of swimming lanes allowed to be cancelled by their affiliated clubs, the number of cancellations allowed and the procedures for cancellation. As a deterrent, LCSD should take decisive action to impose more rigorous penalties (such as restricting the number of applications for swimming lanes, or revoking the priority eligibility) on swimming clubs found to have lightly cancelled the allocated swimming lanes.

(V) Inadequate Regulatory Action against Unauthorised Transfer of Swimming Lanes

7.35 According to the Hire Terms, organisation hirers are prohibited from transferring the hired swimming lanes to other organisations. To prevent unauthorised transfer of swimming lanes, LCSD staff will verify the identity of users and relevant coaches upon admission of an organisation to the hired venue. Moreover, LCSD requires the trainees of organisation hirers to wear caps or other identifiers of their organisations for easy identification. Swimming pool staff will also conduct poolside inspection from time to time.

7.36 Nevertheless, we received a number of comments about swimming clubs evading the inspection of LCSD by various means (see **paras. 5.14 - 5.15**). In fact, in a way different from land sports facilities, most public swimming lanes are hired by the NSAs and their affiliated clubs. It is generally difficult for outsiders to understand and grasp how they share with, or transfer to, each other the allocated swimming lanes.

7.37 To address the unauthorised sharing or transfer of swimming lanes by swimming clubs, we consider it essential for LCSD to strengthen the relevant regulatory efforts and measures. For instance, it should step up monitoring the admission of swimming clubs to the hired venues and how they use the swimming lanes. Where any unauthorised sharing or transfer of swimming lanes is detected, LCSD should take stringent action to follow up.

CONCLUSION

7.38 We have to emphasise that this direct investigation is not against any NSAs, nor do we require LCSD to interfere in their internal affairs. Neither do we find it necessary for LCSD to scrap CLAS. In fact, since the introduction of CLAS in 2005, it has ensured long-term and stable training venues for the NSAs and swimming clubs. Given the successful training of Hong Kong athlete swimmers who have achieved outstanding results in local or international competitions of various types in recent years, it is undeniable that CLAS is fruitful and worthy of retention.

7.39 However, this investigation has revealed that the current problems of CLAS stem from LCSD's over-reliance on the NSAs to allocate swimming lanes and monitor on their own. The power of allocating swimming lanes is excessively

delegated to the NSAs. Certain swimming clubs are able to take advantage of their NSA's internal allocation system to obtain substantial resources of public swimming lanes, resulting in monopoly control. Meanwhile, the persons in charge of some swimming clubs are concurrently senior members of the NSAs concerned, thus giving rise to a perceived conflict of interest and drawing criticism. Regrettably, even when problems emerged, LCSD could only accept the information and explanations provided by the organisation concerned. Having difficulty in probing directly and deeply into the organisation's internal administration and operation or taking substantive follow-up action, LCSD was unable to properly rectify the problems.

7.40 We hope that LCSD can be prompted by this direct investigation to optimise CLAS, leading to more effective and fair allocation of precious swimming lane resources to stakeholders in need, and higher transparency of the allocation mechanism for better monitoring by the public.

7.41 Through our recommendations, including clearly defining the use of swimming lanes, devising an objective and transparent mechanism for allocation of swimming lanes, and improving the mechanism for cancellation of bookings, we expect that the regulatory effectiveness of LCSD could be enhanced.

OUR RECOMMENDATIONS

7.42 In the light of the findings of this direct investigation, The Ombudsman makes the following eight recommendations to LCSD:

- (1) to liaise with the NSAs and representatives of the sector for stipulating clearly the use of main pool swimming lanes allocated under CLAS (for instance, the swimmers/swimming squads using those lanes are subject to some eligibility criteria, such as cumulative attendance rate in training programmes or certain levels of swimming techniques), and draw up relevant guidelines and hire terms (see **para. 7.11**);
- (2) to stringently review the number of lane hours in the main pools allocated under CLAS, especially for those popular sessions, thereby releasing more swimming lanes for booking by other organisations through established procedures, or for public use (see **para. 7.12**);

- (3) to consider establishing an independent panel/committee and consulting the NSAs, swimming clubs, members of the sector and stakeholders to collectively draw up the allocation mechanism and criteria in an objective and transparent manner (see **para. 7.18**);
- (4) to explore setting an upper limit on the number of main pool swimming lanes allocated to each swimming club, especially for the peak hours or swimming lanes in popular main pools, so as to give other interested swimming clubs or organisations more opportunities to hire the swimming lanes in those sessions (see **para. 7.20**);
- (5) to step up monitoring the effectiveness of the improvement measures regarding the declaration and review systems of swimming clubs, and conduct timely reviews of those measures, thereby ensuring that all activities organised by swimming clubs under CLAS are non-profit making (see **para. 7.27**);
- (6) to impose restrictions on swimming clubs for cancelling their bookings of main pool swimming lanes allocated under CLAS, and explore ways to raise the cost of such cancellations by swimming clubs (see **para. 7.33**);
- (7) in the long run, to liaise with the NSAs to jointly devise a specific mechanism for cancellation of main pool swimming lanes allocated under CLAS, and impose more rigorous penalties on those swimming clubs found to have lightly cancelled their bookings (see **para. 7.34**); and
- (8) to strengthen the regulatory efforts and measures against unauthorised transfer of swimming lanes by swimming clubs (see **para. 7.37**).

ACKNOWLEDGEMENTS

7.43 The Ombudsman thanks LCSD for its full cooperation during our investigation. We are also grateful for the valuable views submitted by the NSAs,

swimming clubs, members of the sector and the general public regarding this direct investigation.

Office of The Ombudsman

Ref: OMB/DI/424

July 2020