

**Complaint against Food and Environmental Hygiene Department and
Lands Department about the handling of prolonged occupation of
a bicycle parking space by a suitcase**

Investigation Report

A member of the public complained to this Office against the Food and Environmental Hygiene Department (“FEHD”). After a preliminary inquiry, we found that the Lands Department (“LandsD”) was also involved in the matter under complaint. Subsequently, we conducted a full investigation into the matter against FEHD and LandsD.

The Complaint

2. In December 2018, the complainant lodged a complaint with 1823 that a suitcase (“the Suitcase”) had been occupying a bicycle parking space for a long period of time (“the Problem”). On 13 February 2019, FEHD replied to the complainant via 1823 that it was responsible for handling waste dumped in public places, and it was not within its purview to tackle the Problem; since the Suitcase was chained on a bicycle (“the Bicycle”), FEHD referred the case to the local District Office (“DO”) under the Home Affairs Department to coordinate joint operations to tackle the Problem with relevant departments.

3. On 25 February 2019, 1823 replied to the complainant that it was not within DO’s purview to tackle the Problem and the matter should be handled by the Water Supplies Department (“WSD”).

4. Dissatisfied that the Problem was dragging on without a resolution, the complainant requested this Office to follow up on the matter.

Our Findings

Purviews of Relevant Departments

5. LandsD is empowered by the Land (Miscellaneous Provisions) Ordinance (“LMPO”) to post a notice requiring the occupation of unleased land to cease before a date specified in the notice (“the Statutory Notice”). In the case of non-compliance,

an authorised officer may remove the occupier from the land and take possession of any property or structure thereon and instigate prosecution against the occupier who failed to comply with the Statutory Notice without any reasonable excuse.

6. FEHD is empowered by the Public Health and Municipal Services Ordinance to issue a Notice to Remove Obstruction if any article or thing is found to be so placed as to cause obstruction to any street cleansing operation. FEHD may issue a Fixed Penalty Notice to a littering offender under the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance, or instigate prosecution against that person pursuant to the Public Cleansing and Prevention of Nuisances Regulation.

Joint Operations for Bicycle Clearance

7. Under the District-led Actions Scheme, DO, together with the local District Lands Office (“DLO”) and other relevant departments, has formed the Inter-departmental Task Force on Bicycle Problem in the North District to carry out joint operations (“Joint Operations”), relying on the provisions of LMPO, for clearance of illegally parked bicycles in the district, including those in bicycle parking areas.

8. Insofar as a Joint Operation in a bicycle parking area is concerned, the division of duties among the departments is as follows:

- (1) DO is responsible for coordinating with the Transport Department (“TD”), the Hong Kong Police Force (“the Police”), DLO and the local District Environmental Hygiene Office (“DEHO”) under FEHD to carry out the Joint Operation.
- (2) Prior to a clearance operation, details on the temporary closure of the bicycle parking area, including the date and location, will be provided in the Traffic Advice, letters and press release issued by TD, the Police and DO respectively, while hand bills will also be distributed.
- (3) On the day of closing the bicycle parking area (i.e. two days before the clearance operation), DLO will post a Statutory Notice on each abandoned and illegally parked bicycle to warn its owner of the operation to be carried out by the authorities.
- (4) On the day of clearance operation, DLO will oversee on-site and keep a

record by taking photographs for all removed bicycles (and other articles). FEHD is responsible for deploying a contractor to remove the bicycles as considered necessary by DLO.

9. Since July 2018, in order to deal with more illegally parked bicycles, the frequency of Joint Operations has been increased from two to three times a month, with 10 clearance locations each time remaining unchanged.

Response from FEHD

10. The core function of FEHD is maintaining environmental hygiene. Where waste is found dumped in a public place, FEHD will immediately deploy its contractor to clear the waste. If any article or thing is so placed as to cause obstruction to its cleansing operations, or any person is caught littering, FEHD will take enforcement action. It will also remove and dispose of dilapidated bicycles which are suspected to be abandoned in public places.

11. The location concerned in this case (“the Location”) is a public bicycle parking facility provided by TD. It is not within FEHD’s purview to regulate the daily and ordinary use of public bicycle parking spaces (including prolonged occupation of those spaces by bicycles). However, FEHD will take part in Joint Operations and assist relevant enforcement departments, including DLO, the Police and TD, to clear away illegally parked bicycles which are chained on roadside railings or have been occupying parking facilities for a long period of time.

12. Between December 2018 and February 2019, DEHO staff conducted many inspections at the Location and found that the Suitcase was chained on the Bicycle, but no waste dumping or environmental hygiene problem was observed.

13. Since the Problem did not cause any concern for environmental hygiene, DEHO requested DO and DLO on 13 and 26 February 2019 respectively to handle the Problem concurrently with Joint Operations.

14. DO and DLO replied to 1823 and DEHO on 22 and 26 February 2019 respectively that the Location was managed by WSD, which was not covered by Joint Operations. On 26 February, DEHO requested 1823 to refer the case to WSD.

15. Subsequently, DLO confirmed that the Location was a public road, not an area

managed by WSD. On 1 March 2019, DO informed DEHO that the Problem would be dealt with in the Joint Operation scheduled for 8 March 2019.

16. During the Joint Operation on 8 March 2019, DEHO assisted in DLO's enforcement action, and removed 31 bicycles according to DLO's instructions. However, DEHO's contractor was unable to remove the Bicycle and the Suitcase because the Statutory Notice posted by DLO on the Bicycle was found to have been removed before the Joint Operation.

17. FEHD admitted inadequacies on the part of DEHO as the complaint about the Problem was received in late December 2018 and it was not until 13 February 2019 that DEHO informed the complainant of the outcomes of its follow-up action and referred the case to other relevant departments (including DO) for further action. FEHD had reminded the staff concerned to strictly follow departmental guidelines to timely inform complainants of case progress and refer matters to relevant departments for further action.

Our Comments

18. FEHD has explained why it was not within its purview to tackle the Problem. Moreover, the Suitcase which was chained on the Bicycle did not cause any environmental hygiene problem, so FEHD could not deem the Suitcase as garbage or waste and dispose of it accordingly. We consider FEHD's explanation not unreasonable.

19. Nevertheless, DEHO failed to promptly inform the complainant the outcomes of following up on the Problem, and failed to request, at an early stage, DO to handle the Problem concurrently with Joint Operations. There was delay in DEHO's action. FEHD has admitted deficiencies on the part of DEHO and instructed its staff to make improvements.

20. Based on the analysis in paragraphs 18 and 19, The Ombudsman considers the complaint against FEHD **partially substantiated**.

Response from LandsD

21. LandsD explained that the number of land control cases within its purview was very substantial. Those cases included complaints about prolonged illegal occupation

of unleased or unallocated land, erection of lease-breaching structures on private agricultural land, unauthorised rebuilding, alteration, extension and addition of squatter huts, etc. In order to handle such large number of cases of wide community concern in a timely manner, LandsD had to set priorities for its land control actions.

22. Since the **fixed** and free-standing unauthorised structures erected on Government land would often evolve into prolonged occupation of the land, such structures were accorded high priority for enforcement by LandsD. **Movable** articles placed on Government land or other forms of short-term occupation were not accorded high priority for enforcement.

23. The purpose and design of the LMPO mainly target such situations as prolonged occupation of Government land and illegally erected structures. Non-persistent occupation of Government land or articles movable at any time are not the target of the Ordinance.

24. To comply with the requirements under the LMPO, LandsD should serve the Statutory Notice on the persons concerned not less than 24 hours in advance. In other words, LandsD cannot remove the articles from the site immediately.

25. According to established procedures, DLO will post the Statutory Notice on each abandoned and illegally parked bicycle two days before the clearance operation. On the day of clearance operation, any bicycle without the Statutory Notice affixed on it will be regarded by DLO as not having been issued the Statutory Notice previously. As such, the contractor will not seize that bicycle.

26. LandsD sought legal advice^{Note} from the Department of Justice in October 2001 on its powers and restrictions regarding clearance of illegally parked bicycles in public places.

27. DLO followed the guidelines to carry out a Joint Operation in collaboration with DO at the Location on 8 March 2019, including posting the Statutory Notice on the abandoned articles suspected of occupying Government land on 6 March 2019. Upon expiration of the period prescribed in the Statutory Notice, such articles would be considered as illegally occupying Government land and arranged for removal by FEHD's contractor.

^{Note} Claiming legal professional privilege, LandsD disagreed to allow this Office to disclose details of the relevant legal advice.

28. During the joint operation on 8 March, the workers discovered that the Statutory Notice previously affixed on the Bicycle had disappeared. According to current practice, DLO could not be certain that the Statutory Notice had been posted on the Bicycle previously, so it did not arrange removal of the Bicycle.

29. In mid-April, DLO found that the Bicycle and the Suitcase had been successively removed.

Our Comments

30. LandsD has explained that DLO will carry out Joint Operations in collaboration with DO to remove illegally parked bicycles in public places. Upon the request of DO, LandsD took part in the Joint Operation on 8 March 2019. It has also explained why it did not arrange removal of the Bicycle during the Joint Operation on 8 March 2019. We accept LandsD's explanation that it handled the matter according to established procedures.

31. However, we notice that under the current policy of LandsD, if the Statutory Notice posted on a bicycle has been removed before a Joint Operation, that bicycle will not be considered as having been issued the Statutory Notice previously, and will not be removed on the day of Joint Operation. In other words, offenders can circumvent the Department's enforcement action by simply removing the Statutory Notice. We consider it an enforcement loophole. LandsD should contemplate a review of its practice.

32. After perusing the relevant legal advice, we reckon that DLO is not precluded by the legal advice from arranging removal of a bicycle in case of sufficient evidence that the Statutory Notice has been posted on that bicycle previously.

33. Based on the analysis in paragraphs 30 to 32, The Ombudsman considers the complaint against LandsD **unsubstantiated**, but there are areas for LandsD's improvement.

Recommendations

34. We consider the prolonged occupation of bicycle parking spaces will cause unfairness to users in need of those spaces. This Office recommends that:

- (1) **FEHD** review its procedures for handling complaints about occupation of bicycle parking areas by articles or bicycles to avoid recurrence of late referrals as occurred in this case; and
- (2) **LandsD** consider seeking legal advice again on whether further enforcement action is permissible in such case that its staff can specifically identify a pre-existent article, even though the Statutory Notice has been removed. If it is considered permissible according to legal advice, the Department should draw up internal guidelines for its staff to identify all articles on which the Statutory Notice has been posted, so as to prevent any offenders from circumventing enforcement action by removing the Statutory Notice from their illegally placed articles.

Office of The Ombudsman
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