

**Food and Environmental Hygiene Department failing to resolve
obstruction problem caused by illegal extension of shops**

Investigation Report

We received a complaint against the Food and Environmental Hygiene Department (“FEHD”).

The Complaint

2. The complainant resided at a housing estate (“Housing Estate A”). Allegedly, many fruit and vegetables shops at the ground level of Housing Estate A illegally extended their business operation into public areas, thus causing obstruction to pedestrians (“the Problem”). Despite the complainant’s complaint to FEHD on 16 March 2020, the Problem persisted.

Our Findings

3. After our preliminary inquiry with FEHD, we decided to conduct a full investigation into the case in September 2020. After examining the response and information provided by FEHD, we have completed our investigation. Our findings are as follows.

Relevant Enforcement Policy

4. Illegal extension of business by shops is a street management issue involving relevant government departments, including the Hong Kong Police Force (“HKPF”), the Fire Services Department (“FSD”) and FEHD, which are responsible for taking enforcement actions within their own jurisdiction against different types of illegal activities.

5. Insofar as FEHD is concerned, the Department can take enforcement action by summons or fixed penalty notices (“FPNs”) against:

- (1) placement of articles causing obstruction to scavenging operations or on-street illegal hawking under the Public Health and Municipal Services Ordinance, Cap. 132; or

- (2) placement of merchandise causing obstruction, inconvenience or danger to any person in public place under the Summary Offences Ordinance, Cap. 228 or Fixed Penalty (Public Cleanliness and Obstruction) Ordinance, Cap. 570.

6. For complicated cases that involve the jurisdictions of different departments and for “black spots” of street obstruction, the District Offices under the Home Affairs Department would coordinate inter-departmental joint operations.

7. According to FEHD’s guideline on “Enforcement Action against Illegal Shop Extension” (“the Guideline”), the Department will:

- (1) take rigorous enforcement actions against habitual offenders in shop extension blackspots recording frequent complaints by immediate prosecution without prior warning; and
- (2) step up efforts to collect evidence for initiating prosecution against illegal hawking and exercising the power to seize the related equipment and commodities.

FEHD’s Explanation

8. Housing Estate A is a private property. The shops at the ground level often placed goods and commodities at their shopfronts under the covered walkway¹ of the building as well as the open area² beyond the covered walkway.

9. To tackle the Problem, besides daily sector patrol, FEHD carried out pre-planned operations. On average, FEHD conducted 8 pre-planned operations each month. HKPF would participate in the pre-planned operations to combat the Problem once or twice per month. FSD conducted inspections to ensure clearance of the emergency vehicular access near Housing Estate A.

10. Given the persistent occurrence of shop front extension and illegal hawking, FEHD’s staff would issue FPNs against offenders of shop front extension and arrest illegal hawkers without prior warning.

¹ The covered walkway is within the private lot and managed by Housing Estate A’s management office.

² The open area is a public space where FEHD could take enforcement action against obstruction.

11. Between 1 January and 30 September 2020, FEHD took the following enforcement actions:

No. of Actions	Jan-Mar 2020	Apr-Jun 2020	Jul-Sep 2020	Total	Monthly average
No. of FPNs against obstruction	29	38	30	97	10
No. of arrest actions against illegal hawkers	17	20	17	54	6
No. of seizure actions against abandoned articles	2	1	6	9	1
No. of prosecutions against serious obstruction to scavenging operation	2	4	0	6	<1

12. Between October and November 2020, FEHD stepped up its enforcement action by:

- (1) arranging 20 pre-planned operations with HKPF;
- (2) issuing 40 FPNs to the shop operators committing obstruction offences;
- (3) making a total of 11 arrests for illegal hawking;
- (4) taking a total of 18 seizure actions against abandoned articles;
- (5) instigating 2 prosecutions against serious obstruction to scavenging operations; and
- (6) issuing 30 FPNs to littering offenders.

13. With a view to improving the ground situation of the area under complaint, since 9 November 2020, apart from daily sector patrol and reinforcement by regular pre-planned operations with HKPF, FEHD had, on a daily basis, deployed staff to conduct static patrol on the pavement of the area which is a foremost part of public place adjoining the private lot extended from the immediate shop front at Housing Estate A during the peak trading period of the stalls from 1600 hrs to 1800 hrs for stronger deterrent effect.

14. In the wake of conducting a series of stepped-up enforcement actions in October and November 2020, the Problem had been improved as compared with the situation in the first half of the year.

15. FEHD explained that it had taken every effort to deal with the Problem under the existing available manpower notwithstanding additional workloads had been induced by the impact of COVID-19, which began in early 2020.

16. In future, FEHD plans to launch more frequently pre-planned joint operations with relevant departments including HKPF and/or FSD to tackle the Problem. FEHD will also review the effectiveness of the pre-planned operations, including reviewing the operation schedules to reduce predictability of the operations by the shop operators. Furthermore, FEHD will continue to strictly observe the Guideline to combat the Problem.

Our Site Inspection

17. We conducted site inspections on 5 September and 16 November 2020. Our inspections revealed the following:

- (1) There were 10 odd shops selling fruits and vegetables at the site. Most of the operators placed their goods at the shop front and occupied a significant portion of the pavement.
- (2) The pavement was crowded with sluggish pedestrian flow.
- (3) Many styrofoam boxes were placed on the pavement causing serious obstruction.
- (4) Fruits and vegetables were displayed and sold on the pavement along the fences opposite the shops, thus further aggravating street obstruction.

Our Comments

18. FEHD admitted that the Problem had been persistent. Our inspections on 5 September and 16 November also confirmed that the Problem remained.

19. **Paragraph 11** above shows that between January and September 2020, FEHD on average issued only 10 FPNs to 10 odd shops for obstruction, and took only 6 arrest actions against illegal hawking each month. In view of the persistence of the Problem, FEHD should have taken more stringent enforcement actions to maximise the deterrent effect. The Department's enforcement actions taken before October 2020 against the Problem were far from effective.

20. We note that FEHD has stepped up its enforcement actions by conducting more operations and taking more prosecution actions after September 2020 (see **paras. 12 to 13** above). We consider it necessary for FEHD to continue with its stepped-up enforcement actions to resolve the Problem in a long-term manner.

Conclusion

21. In light of the above, The Ombudsman considers the complaint against FEHD **partially substantiated**.

Recommendation

22. The Ombudsman recommends that FEHD step up enforcement actions against offenders causing street obstruction and illegal hawking, including instigating prosecution and seizing the unclaimed articles more rigorously in order to resolve the problem in a long-term manner.

Office of The Ombudsman
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