

Food and Environmental Hygiene Department's failure to provide oath-taking or declaration services for hawker licensing matters Investigation Report

The complainant complained to this Office against the Food and Environmental Hygiene Department ("FEHD") on 20 May 2021 and provided supplementary information between 24 June and 21 July 2021.

The Complaint

2. In December 2019, the complainant enquired of FEHD via 1823 which district offices of FEHD offered oath-taking services for the Assistance Scheme for Hawkers in Fixed-pitch Hawker Areas ("Assistance Scheme"). In its reply via 1823 in January 2020, FEHD indicated that it would not provide oath-taking services regarding the Assistance Scheme and suggested that the complainant make an oath at a Home Affairs Enquiry Centre ("Enquiry Centre") of the Home Affairs Department ("HAD"). Later in the month, the complainant proposed that FEHD appoint those staff responsible for the Assistance Scheme as Commissioner for Oaths so as to provide oath-taking services. FEHD replied to the complainant in February and October 2020 that it would give due consideration to his proposal and it was examining relevant legislation and policies. As of June 2021, FEHD still had not provided oath-taking services regarding the Assistance Scheme.

3. The complainant referred to the information provided by HAD that FEHD would provide oath-taking services, but FEHD still asked members of the public to make an oath at the Enquiry Centres regarding the Assistance Scheme. Dissatisfied with FEHD's failure to provide oath-taking services regarding the Assistance Scheme, the complainant filed a complaint with this Office.

Our Findings

4. On 23 July 2021, we commenced a full investigation against FEHD. We received its reply on 27 August. Having examined FEHD's reply, we requested information from the Administration Wing and HAD about this complaint on 10 September. The Administration Wing and HAD replied to us on 4 and 22 October respectively. We issued a draft investigation report to FEHD on 6 December 2021 for comment and received its reply on 12 January 2022. We completed this investigation report on 20 January 2022.

HAD's Declaration or Oath-taking Services

5. On 27 March 1991, the then Director of Administration issued an internal memorandum (“the Memo”) stating that from 2 April 1991 onwards, the Enquiry Centres of HAD would only administer “declarations or oaths for private use” and that all “official declarations or oaths” should be administered by the Government departments concerned.

6. “Declarations or oaths for private use” and “official declarations or oaths” are not defined in the existing internal guidelines on declaration or oath-taking services provided by the Government. HAD has been of the understanding that declarations or oaths required of by Government departments are “official declarations or oaths” and those required of by non-governmental bodies are “declarations or oaths for private use”. HAD has adopted the said interpretation when defining these two categories of declarations or oaths on its website. It has also uploaded a list of “Official Declarations Administered by Government Department” (“the List”) for public information. The information on the List is provided by Government departments and HAD requests them to provide updates every six months.

7. Members of the public who request to make official declarations or oaths at Enquiry Centres will be advised to submit their applications to the relevant departments direct and make the required declarations or oaths in one go. Where a requestor insists that the Enquiry Centre provide declaration or oath-taking services, staff may exercise their discretion and accede to the request out of dedication to serving the public.

8. The Administration Wing added that the Memo was drafted by the former City and New Territories Administration. As HAD had ceased administering declarations or oaths required of by other Government departments for many years and the departments were well aware of such arrangement, the Administration Wing revoked the Memo in December 2016 after consulting HAD.

Response from FEHD

Declaration or oath-taking services currently provided by FEHD

9. The Markets Sections of FEHD’s 19 District Environmental Hygiene Offices (“DEHOs”) and the Department’s seven Cemeteries and Crematoria Sections currently provide oath-taking services regarding market stall tenancy and burial-related matters.

While FEHD is not obliged to provide oath-taking services under the current legal framework, it takes a client-oriented approach and provides such services as they are related to its routine work.

Issuance of Hawker Licences

10. In June 2013, FEHD launched the five-year Assistance Scheme to provide financial assistance to the licensed hawkers in 43 fixed-pitch hawker areas in the territory so that they could relocate and reconstruct their stalls. Under the Assistance Scheme, eligible hawkers might surrender their hawker licences and stalls to FEHD for an ex-gratia payment. The scheme ended in June 2018.

11. Among the hawker stalls surrendered under the Assistance Scheme and other vacant hawker pitches, FEHD selected 435 fixed hawker pitches for reallocation. Those pitches were open for applications between 30 September and 20 October 2019, and pitch selection commenced on 10 December 2019. The Hawker Pitch Allocation Office (“Allocation Office”) informed eligible applicants in writing that they should attend pitch selection at prescribed time and date and bring along relevant documentary proof for verification of their eligibility.

12. Under the prevailing “one-family-one-licence policy”, only one hawker licence will be granted to one family. Hence, when processing a hawker licence application, the Allocation Office will require from the applicant proof of identity and documentary proof of the claimed relationship between the applicant and his or her immediate family members. For example, copies of the identification document of the applicant’s parents and spouse and the applicant’s original certificate of marriage. Other than general documentary proof, the Allocation Office also accepts valid documents such as deeds signed by lawyers, documentary proof issued by Mainland notaries, adoption documents and parentage verification reports issued by relevant Mainland authorities. Where an applicant cannot produce approved documentary proof, the Allocation Office usually accepts oaths as proof.

FEHD’s Response to the Complaint

13. FEHD said the Assistance Scheme ended in June 2018 and it believed that the complainant’s complaint stemmed from the unavailability of oath-taking services for hawker pitch allocation at the Allocation Office. FEHD admitted to have told the complainant that it did not provide oath-taking services for hawker licensing matters

and asked him to consider making a declaration or an oath at the Enquiry Centres of HAD if necessary. FEHD pointed out that during the reallocation of the 435 vacant hawker pitches (see **para. 11**), it had not received any complaint from applicants about the Allocation Office's not offering oath-taking services.

14. FEHD explained that it had not provided oath-taking services for allocation of fixed hawker pitches and hawker licensing matters in the past because hawker pitch reallocation and issuance of new hawker licences were not routine works. FEHD had only twice reallocated hawker pitches and issued new licences in 2008 and 2019, which involved a limited number of pitches and licences. FEHD added that if an applicant could not provide general documentary proof, the Allocation Office would accept other valid documents (see **para. 12**). Hence, it was for the applicant to decide whether or not to make a declaration or an oath. FEHD contended that it had not "required" applicants to make an oath in case they could not provide the necessary documents. Besides, the oath made could be used by the applicants for other purposes.

15. That said, FEHD admitted that it had issued internal memoranda between 1990 and 2000, reminding its staff that officers in the rank of Health Inspector or above, when handling hawker licensing matters, might witness the signing of declarations by applicants if necessary, and that applicants should not be asked to make declaration at HAD's Enquiry Centres. Nevertheless, FEHD's Headquarters had not formulated such work guidelines for staff to take reference from and follow.

16. Having considered that declaration or oath-taking services for hawker licensing matters should be useful for applicants thereby enhancing the service quality, FEHD was planning to provide such services at the Allocation Office and Hawkers Sections of DEHOs.

HAD's Comments

17. In HAD's opinion, if the complainant in this case needed to make a declaration or an oath for FEHD's Assistance Scheme, the declaration or oath should fall into the category of "official declarations or oaths" and therefore should be administered by FEHD.

18. HAD pointed out that its website provides information to members of the public on the demarcation of responsibilities between HAD and other Government departments. Moreover, HAD has instructed its staff at Enquiry Centres to allow

flexibility when handling public requests for “official declarations or oaths”. HAD found the existing mechanism and arrangements generally adequate for meeting public demand for declaration and oath-taking services.

Latest Development

19. As regards **paragraph 16**, having sought legal advice, FEHD considered that its staff may witness the signing of declarations by applicants regarding hawker licensing matters. FEHD issued an internal guideline in September 2021 to remind staff that officers in the rank of Health Inspector or above and handling hawker licensing matters may provide declaration services. Those staff are also reminded not to ask applicants to make declarations or oaths at HAD’s Enquiry Centres.

Our Comments

20. FEHD did not dispute HAD’s description in **paragraph 6** regarding the demarcation of responsibilities among Government departments in providing declaration or oath-taking services. Under the prevailing arrangements, “official declarations or oaths” refer to declarations or oaths required of by Government departments and should be administered by relevant departments, not HAD’s Enquiry Centres.

21. According to FEHD, the main reason for not providing declaration or oath-taking services for hawker licensing matters is that hawker pitch allocation and issuance of new fixed hawker pitch licences are not routine works. Besides, FEHD has not required applicants to make an oath in case they could not provide general documentary proof (see **para. 14**).

22. We find FEHD’s interpretation of “official declarations or oaths” not literally incorrect but rather narrow, and such interpretation may be different from the understanding of an ordinary person. “Official declarations or oaths” are different from “declarations or oaths for private use” - the former are required of by Government departments while the latter are required of by non-governmental bodies. It is more reasonable to distinguish these two categories by the type of organisations for which the declarations or oaths are made. If the applicant was making the declaration or oath because he could not produce documentary proof to FEHD regarding hawker licensing matters, we share HAD’s view (see **para. 17**) that the declaration or oath should fall into the category of “official declarations or oaths” and therefore should be administered

by FEHD.

23. FEHD has indicated that allocation of vacant hawker pitches and issuance of new licences for fixed hawker pitches are not routine works (see **para. 14**). While acknowledging the nature of the work involved, we must point out that under the current arrangements, it should not be a relevant consideration when a Government department determines whether it should provide declaration or oath-taking services. The “additional” consideration given by FEHD reflects its misinterpretation of and confusion about the current arrangements.

24. In fact, FEHD has admitted that years ago it had issued internal memoranda reminding staff to provide declaration services when handling hawker licensing matters and not to ask the applicants to go to HAD’s Enquiry Centres for doing so (see **para. 15**). This shows that FEHD had acknowledged back then its role and obligation on the provision of such services when handling hawker licensing matters. We find it unsatisfactory that declaration or oath-taking services were unavailable because FEHD had not formulated work guideline for staff throughout the years. Nevertheless, we notice that prior to our intervention FEHD had sought legal advice and started to consider introducing such services, reflecting the Department’s receptiveness to comments and initiative to enhance its services.

25. In view of the above analysis, The Ombudsman considers this complaint **partially substantiated**. We are pleased to learn that FEHD issued an internal guideline on the provision of declaration services for hawker licensing matters in September 2021 (see **para. 19**).

26. While this complaint concerns only hawker licensing matters, we recommend that FEHD review other areas of work to assess the need for providing declaration or oath-taking services and make appropriate arrangements.

27. This complaint reflects that in determining whether a declaration or an oath is for “official use” or “private use”, Government departments may have different interpretations. Out of dedication to serving the public, HAD has been exercising its discretion and administering declarations or oaths required of by other Government departments. We find HAD’s efforts commendable. However, for clearer demarcation of responsibilities, we consider it incumbent upon relevant Government departments to provide more guidelines on the definition of declarations or oaths for “official use” and “private use” for reference by Government departments offering such

services. We will separately follow up on the matter with relevant Government departments.

Recommendation

28. The Ombudsman recommends that FEHD take reference from this case, review different areas of work to assess the need for providing declaration or oath-taking services and make appropriate arrangements.

FEHD's Response to Our Draft Investigation Report

29. In FEHD's opinion, existing guidelines do not provide clear definitions or the criteria regarding declarations or oaths for "official use" and "private use". Therefore, there is no uniform practice among Government departments on the handling of public requests for declaration or oath-taking services. FEHD considered that even though this Office shares the view of HAD (see **para. 22**), the final and correct meaning of "official use" and "private use" regarding declarations or oaths could only be determined after our follow-up with relevant Government departments (see **para. 27**). Hence, FEHD was of the view that we should not see its interpretation as being "too narrow".

30. Moreover, FEHD held that in the absence of clear guidelines on how to distinguish between declarations or oaths for "official use" and those for "private use", it was not unreasonable for the Department not to have provided declaration or oath-taking services when processing applications for vacant hawker pitches. Besides, during the reallocation of vacant hawker pitches and issuance of new licences for fixed hawker pitches in 2008 and 2019 which were of limited scale, FEHD received only the subject complaint from this complainant. The Department then actively followed up on the case including seeking legal advice. Prior to our intervention, it had taken the initiative to explore how to introduce relevant declaration or oath-taking services so as to enhance its service.

31. Nevertheless, FEHD agreed to our recommendation mentioned in **paragraph 28**.

Our Further Comments

32. In our opinion, although the existing guidelines provide only simple definitions of declarations or oaths for "official use" and those for "private use" (see **para. 6**),

individual departments' interpretation should not deviate from the understanding of an ordinary person. As we have mentioned in **paragraph 22**, a more reasonable approach is to distinguish these two categories of declarations or oaths by the type of organisations for which the declarations or oaths are made. FEHD's interpretation of "official declarations or oaths" (see **para. 14**) was only from the point of view whether it has "required" the applicant to make an oath in the absence of general documentary proof. FEHD has failed to consider the general purpose of the declaration or oath, which is to apply to a Government department for a hawker licence. From a reasonable man's perspective, FEHD's interpretation is certainly too narrow.

33. Our comments in **paragraph 27** and our subsequent follow-up actions with relevant departments shall in no way be taken by FEHD as its reasonable excuse. In recommending that relevant departments review the need to provide more guidelines on the definition of declarations or oaths for "official use" and those for "private use", we seek to avoid discrepancies in various Government departments' interpretations of these two categories as well as improve the relevant administrative arrangements. It does not mean that FEHD's current interpretation is reasonable.

34. Furthermore, FEHD has admitted that it had issued internal memoranda years ago to remind its staff to provide declaration services when handling hawker licensing matters, and not to ask the applicant to go to HAD's Enquiry Centres for such purposes (see **para. 15**). This shows that FEHD had acknowledged back then its obligation of providing such services when handling hawker licensing matters. The Department, however, fell short of formulating relevant guidelines for frontline staff to follow throughout the years, resulting in the unavailability of declaration services for hawker licensing matters.

Conclusion

35. Having considered FEHD's response, The Ombudsman maintains her view in **paragraph 25** that the complaint is partially substantiated. We will follow up with FEHD on the implementation of our recommendation mentioned in **paragraph 28**.

Office of The Ombudsman
January 2022