

# **Complaint about imposition of unreasonable requirements for compliance by the mini-storage industry**

## **Investigation Report**

In November 2018, an association (“the Association”) complained to us against the Fire Services Department (“FSD”).

### **The Complaint**

2. In light of a blaze that took place at a mini-storage premises (“MSP”) in June 2016, FSD has since mid-July 2016 imposed a new set of requirements (“the Requirements”) for compliance by the mini-storage industry. FSD would issue Fire Hazard Abatement Notices (“FHANs”) to MSP operators who failed to abide by the Requirements, and initiate prosecution against non-compliance with FHANs.

3. The Association considered the imposition of the Requirements unreasonable because:

- (1) FSD had not consulted stakeholders including the Association in the course of devising the Requirements.
- (2) FSD had unjustifiably singled out the mini-storage industry to apply the Requirements.
- (3) The Requirements disregard the nature and real operation of the mini storage industry, and is overly stringent as compared with international standards.

### **Our Findings**

4. Having examined the information and explanation provided by FSD, we completed our investigation in May 2019. Our findings follow.

### ***FSD’s Explanation***

5. FSD pointed out that the blaze in June 2016 and a territory-wide inspection conducted shortly afterwards had revealed five specific types of fire hazards<sup>Note</sup>

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<sup>Note</sup> The five types of fire hazards were:

- (1) undesirable arrangement of storage cubicles;
- (2) insufficient exit signs and/or directional signs;
- (3) undesirable types of locking devices for escape doors;
- (4) obstruction to/insufficient number of windows; and
- (5) insufficient coverage of the hose reel system.

commonly found in MSPs which exhibited unique features in terms of design, construction and mode of operation.

6. The said fire hazards would not only pose a serious threat to human lives and properties, but also hamper FSD's efficiency and firemen's safety in the discharge of their firefighting and rescue duties in the event of fire. FSD considered it necessary to specify the measures that MSP operators ought to take to abate the specific fire hazards to ensure fire safety in MSPs, taking into account the Department's expertise in firefighting and rescue operations, the experience gained from the said blaze and the comprehensive risk assessment on the unique features of MSPs. In addition to local fire safety standards, references were made to standards applicable to other countries such as Singapore and the UK.

7. The Requirements were devised in July 2016 accordingly and subsequently published on FSD's website with the title "Potential Fire Hazards in Mini-Storages and Related Abatement Measures".

8. Since mid-July 2016, FSD has been issuing FHANs under the existing Fire Services (Fire Hazard Abatement) Regulation to operators of MSPs which failed to meet the Requirements. The FHANs stated the fire hazards identified and the deadlines for abatement of the fire hazards. Failure to comply with a FHAN without reasonable excuse may result in prosecution.

9. FSD has all along been maintaining communication with the mini-storage industry including two major trade associations whose members operate about two-thirds of all MSPs. Shortly after the territory-wide inspection referred to in paragraph 5 above, from July 2016 to October 2017, FSD held 12 meetings/seminars with the industry to explain the Requirements and discuss proposals for enhancing the fire safety of MSPs.

10. Having noted that MSP operators had practical difficulties in complying with FHANs as substantial rectification works might be required, FSD had on a case-by-case basis granted extension of time for MSP operators to comply with FHANs, and accepted alternative proposals put forth by MSP operators where appropriate.

11. As at end of January 2019, about 13% of the number of MSPs to which FHANs had been issued had fully complied with all the FHANs issued to them (some of them had adopted alternative proposals acceptable to FSD).

### ***Our Comments***

12. FSD should have fire safety as its utmost concern. While trying to take care of the difficulties faced by the mini-storage industry, the Department must not compromise fire safety.

13. On the Association's allegations at paragraph 3 above, we have the following views:

- (1) It is FSD's duty to issue a statutory order (that is, a FHAN) to require people who are responsible to abate any fire hazards identified. The tragic fire of June 2016 and the subsequent territory-wide inspection of MSPs conducted by FSD showed that the fire hazards presented by most MSPs were serious and imminent. Immediate actions to abate such fire hazards were clearly called for to protect the public as well as the safety of fire-fighters. We, therefore, consider FSD's swift devising of the Requirements to address the fire hazards peculiar to the mini-storage industry and the corresponding enforcement actions appropriate and indeed necessary. We accept that the difficulties that MSP operators may face in complying with the Requirements should not be ignored. Yet, this must be secondary to the need to protect the life and property of the public in the first place. Besides, we note that FSD had indeed maintained close communication with the industry especially during the initial stage when the Requirements were introduced (paragraph 9 above) and allowed for flexibility in accepting alternative proposals where appropriate for complying with FHANs (paragraph 10 above). Given the context of the imminent need to abate the serious fire hazards, we consider FSD to have made necessary consultation with the trade.
- (2) FSD is duty-bound to ensure fire safety in all types of premises. Given the fire hazards peculiar to MSPs due to the uniqueness of their internal layout and mode of operation (paragraph 5 above), we consider it justifiable of FSD to devise the Requirements specific for MSPs.
- (3) The decision on what safety standards should be adopted for MSPs is a matter of professional judgement for FSD, and professional judgement is not subject to our scrutiny, as long as the decision-making process is appropriate and the decision made is not clearly unreasonable. In this connection, we note that FSD had in the course of devising the Requirements made reference to both local and international standards (paragraph 6 above), and been flexible in enforcing the FHANs where appropriate (paragraph 10 above).

14. With the views above, The Ombudsman considers the Association's complaint unsubstantiated.

**Office of The Ombudsman**  
**May 2019**