

# **Complaint about blindly granting more time to mini-storage premises operators to abate fire hazards and failing to inform the public of those non-compliant mini-storage premises**

## **Investigation Report**

In October 2018, Company X complained to us against the Fire Services Department (“FSD”).

### **The Complaint**

2. Subsequent to a blaze that took place at a mini-storage premises (“MSP”) in June 2016, FSD conducted inspections to MSPs and identified some common fire hazards. FSD would issue Fire Hazard Abatement Notices (“FHANs”) to operators of those MSPs which were found to have any of the said fire hazards. Those who failed to abate the fire hazards specified might be prosecuted.

3. Allegedly, a large number of operators of existing MSPs were reluctant to comply with FHANs because compliance with FHANs would substantially reduce the rentable storage space and the income of the business. Company X was dissatisfied that, notwithstanding that a specific period was stated in the FHANs for compliance, FSD granted extension of time (“EoT”) for compliance with FHANs readily, especially for those cases where the abatement measures involved a change in an MSP’s layout and provision of sufficient number of windows.

4. Given the readiness of FSD to grant EoT, many MSPs only needed to make pretence of willingness for compliance by undergoing piecemeal rectifications. As at April 2018, less than 2% of MSPs with fire hazards identified had fully complied with FHANs.

5. In April 2018, Company X urged FSD to tighten the time allowed for MSPs’ compliance with FHANs. In May and June 2018, Company X wrote further to FSD, reporting three MSPs operated by two operators (hereinafter referred to as “Operator A” and “Operator B”) with fire hazards<sup>1</sup>. FSD did not address Company X’s concerns, but only replied that EoT was granted on a case-by-case basis and that appropriate enforcement action would be taken against MSP operators who failed to comply with FHANs without reasonable excuse.

6. Company X was also dissatisfied that FSD had not made available to the general public a list of MSPs with outstanding FHANs. Company X considered that with such a list, the public could make informed choices between compliant MSPs and non-compliant MSPs.

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<sup>1</sup> Company X reported on two cases but one turned out to involve two MSPs run by the same operator.

7. In sum, Company X was dissatisfied with FSD for:

- (1) blindly granting EoT to MSP operators for compliance with FHANs; and
- (2) failing to inform the public of those MSPs that have outstanding FHANs.

## **Our Findings**

8. Having examined the information and explanation provided by FSD and met with the Department's representatives, we completed our investigation in September 2019. Our findings follow.

### ***FSD's Explanation***

9. 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 commonly found in MSPs. These fire hazards, which were closely related to MSP's design, construction and mode of operation, 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.

10. 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. Since mid-July 2016, FSD has been issuing FHANs to MSP operators under the existing Fire Services (Fire Hazard Abatement) Regulation to operators of MSPs with the said fire hazard(s). A FHAN would state the type of fire hazard identified and the deadline for abatement (usually 60 days). An MSP operator may apply for EoT. If EoT is granted, a fresh FHAN would be issued as soon as practicable. Failure to comply with a FHAN without reasonable excuse may result in prosecution.

11. FSD had to start quickly the handling of MSP cases through internal redeployment of manpower resources. It initially focused on completion of inspection and issue of FHANs. Thereafter, its focus turned to handling of operators' submission of proposals and EoT requests. Each case officer was required to prioritise their work using their professional judgement. And the principle was to handle cases that had the most significant fire risks first. If the circumstances of cases were the same or similar, the cases would then be handled "chronologically" according to the date of inspection.

12. As at end of July 2019, a total of 3099 FHANs (excluding "fresh" FHANs issued upon approval for EoTs, paragraph 10 above) had been issued to 874 MSPs. Of the

FHANs issued, 979 had been fully complied with, 898 were discharged as the MSPs concerned had ceased operation, and 41 resulted in conviction of the MSPs concerned. FSD was taking follow-up actions on the remaining 1181 FHANs (including discussions with MSP operators for rectification proposals, monitoring of rectification works or pending prosecution).

13. As regards Company X's allegations as stated in paragraph 7 above, FSD explained the following:

Complaint Point (1): blindly granting EoT

14. FSD explained that the actual time required for completion of rectification works for abatement of fire hazards that existed in an MSP depended on a number of factors, such as the size and complexity of the layout of an MSP, the cooperation of customers in vacating the storage cubicles and so on. Among the five types of common fire hazards in MSPs, abatement of undesirable arrangement of storage cubicles and insufficient number of windows (paragraphs 9(1) and 9(4) above) was more likely to take more time since it often called for complex rectification works that would require the engagement of suitable professionals/contractors, followed by discussions with and approval by FSD (especially if alternative proposals were involved). More time would be required for cases where, for instance, consent from the owner of the premises had to be sought and/or approval from the Building Authority was required.

15. FSD set the deadline for compliance with FHANs at 60 days despite that it was considered to be typically insufficient especially if multiple fire hazards and substantial rectification works were involved because, from FSD's experience, most recipients of FHANs would only start taking action at a time near the deadline. FSD therefore devised the EoT mechanism in order to exert reasonable pressure on the MSP operators concerned.

16. FSD's officers adopted the risk-based approach (paragraph 11 above) in handling EoT applications. In cases where multiple fire hazards had been identified and thus more than one FHAN was issued, the guiding principle was to reduce the overall existing fire risks as soon and as far as practicable, before an MSP could fully comply with all the FHANs. Top priority was generally given to the abatement of the most imminent fire hazard, that is, locking of exits in MSPs (paragraph 9(3) above).

17. After our commencement of investigation into this complaint, FSD had revised its "law enforcement guidelines for MSPs" ("the Guidelines") in August 2019. The Guidelines state the levels of officers that have to be involved at different stages of the EoT approval mechanism and explain how officers should assess whether a EoT is justified. In general, an MSP operator would be required to provide evidence showing that the operator has taken positive action (such as a document showing that the operator has engaged a consultant). An officer would also be required to conduct inspection(s) and record the progress of the rectification works, if it has already commenced. In case of absence of concrete evidence and nil progress of rectification works, and an officer

still considers it justifiable to grant EoT (for example, on grounds that an MSP operator has adopted a positive attitude by seeking advice on rectification proposal from the officer), the officer would have to set out his/her reasons clearly in a report for the approving officer's consideration.

18. In the event that an MSP operator requests the fourth EoT, it would be granted only where the operator has submitted an acceptable or a nearly acceptable (i.e. with only easily surmountable deficiencies) proposal. There should also be reasonable progress for abating other fire hazards present in the MSP.

19. As regards the MSPs which Company X had reported to FSD as having fire hazards (paragraph 5 above), FSD had taken actions including the following:

- (1) FSD had already inspected one of the MSPs and issued three FHANs to Operator A prior to receiving Company X's report. Two EoTs were granted in view of its compliance with one of the FHANs and removal of a storage cubicle to clear the exit from blockage. The two remaining FHANs were related to undesirable layout and insufficient number of windows, for which Operator A had prepared a total of six rectification proposals for FSD's consideration after discussions with FSD. A third EoT was granted in view of Operator A's willingness to cooperate and the efforts it had made to comply with those two FHANs.
- (2) Subsequently, Operator A informed FSD that the MSP would cease operation in about six months' time. A warning letter was issued to Operator A after expiry of the third EoT. Thereafter, the case was put on a list pending prosecution action. Operator A was not immediately prosecuted in view of the positive steps already taken thereby reducing the overall fire risks. Operator A closed down before commencement of prosecution.
- (3) In August 2018, FSD issued separate FHANs to Operator B for the different fire hazards identified in the two MSPs Operator B ran. FSD's follow-up inspections found progress of rectification acceptable as some of the FHANs (including the locking up of exits) had been complied with. Since the overall fire risks in the two MSPs were assessed to have been reduced to a certain extent, FSD granted EoT to Operator B in January 2019, who subsequently submitted rectification proposals for abating the fire hazards related to undesirable layout and insufficient number of windows. In June 2019, FSD informed Operator B that the said proposals were deemed acceptable.

Complaint Point (2): not informing the public of MSPs with outstanding FHANs

20. In July 2018 and February 2019, two MSP operators applied for granting of leave for judicial review against FSD's decision for issuing FHANs. Both applications have yet to be decided by the Court of First Instance.

21. Noting that the result of the judicial review proceedings may have implications on the validity of FHANs as well as the whole scheme of issuing FHANs to MSP operators, FSD considers it inappropriate to publicise information of MSPs with outstanding FHAN(s).

22. FSD also considers it unjustified to disclose information about MSPs before they are convicted because a FHAN is only a warning notice which would not lead to criminal prosecution if complied with. Making known to the public the names of those MSPs would have an adverse effect on the interest of the MSP operators concerned. FSD cannot easily disregard their interest.

23. Furthermore, FSD does not issue FHANs only for the five types of fire hazards commonly identified in MSPs (paragraph 9 above). It also issues FHANs in respect of many other common fire hazards such as floating obstructions and defective fire service installations. For all those cases, FSD would not inform the public of the responsible parties. Based on the same principle, FSD considers it inappropriate to inform the public of the names of MSPs with outstanding FHAN(s).

24. In order to facilitate the public's understanding of the five types of fire hazards commonly present in MSPs, FSD has held press briefings and published relevant information on the Department's website. Besides, FSD would issue a letter to an MSP which has fully complied with FHANs. An MSP may make use of such a letter as proof of its having complied with FHANs.

25. FSD acknowledged the existence of fire risks in MSPs with outstanding FHAN(s). To alert frontline firefighters of potential fire hazards in MSPs, a list of MSPs had been provided to all fire stations since commencement of the territory-wide inspection in 2016 (paragraph 9 above).

### ***Our Comments***

26. 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.

27. On the two complaint points that Company X made against FSD, we have the following comments.

#### **Complaint Point (1)**

28. 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. Hence, besides issuing FHANs swiftly, FSD needed also to ensure that MSP operators comply with FHANs as soon as practicable.

29. FSD has explained the rationale behind setting the deadline for compliance with FHANs at 60 days and the EoT mechanism (paragraphs 15 to 18 above). We accept that FSD had to strike a balance between the conflicting needs for timely enforcement of FHANs and for giving reasonable time for MSP operators to complete modifications to their premises required for compliance with FHANs. We consider the balance struck by FSD not unreasonable. We also accept in principle why more time is usually needed to comply with the FHANs related to undesirable layout and insufficient number of windows (paragraph 14 above).

30. Having examined the way FSD had handled the MSPs on which Company X had reported (paragraph 19 above), we consider the Department's decision to grant Operator A and Operator B EoTs not unreasonable, as both Operators had indeed complied with some of the FHANs issued to them, and been assessed to have taken steps to comply with the FHANs related to undesirable layout and insufficient number of windows.

31. There is no evidence showing that FSD had been granting EoT to MSP operators too loosely, at least not in the cases of Operators A and B. The Ombudsman therefore considers complaint point (1) unsubstantiated.

#### Complaint Point (2)

32. We have reservations about FSD's explanations for keeping confidential the identities of those MSPs with outstanding FHANs as stated in paragraphs 22 to 23 above. The fire in 2016 was unquestionably tragic and we consider it important for FSD to inform the public of MSPs with significant fire risks, such as those that have already been prosecuted in court.

33. That said, we accept that it is not appropriate to disclose information about MSPs with outstanding FHANs while court proceedings (paragraphs 20 to 21 above) are still in progress.

34. Besides, we have to acknowledge that FSD has indeed made efforts in enhancing public's understanding of the fire hazards in MSPs (paragraph 24 above).

35. The Ombudsman, therefore, considers complaint point (2) unsubstantiated.

#### **Recommendations**

36. Despite that the complaints against FSD are unsubstantiated, The Ombudsman urges the Department to:

- (1) remind officers to adhere to the Guidelines in handling EoT requests (paragraphs 17 and 18 above);
- (2) subject to the outcome of the said judicial review proceedings and taking into consideration the interest of all stakeholders, consider making known to the public more information about MSPs that have significant fire hazards (paragraph 32 above).

**Office of The Ombudsman**  
**September 2019**