

Handling of illegally parked bicycles at an uncovered Public Transport Interchange by the Home Affairs Department, Transport Department and Lands Department Investigation Report

In December 2021, the complainant complained to this Office against the Home Affairs Department (“HAD”), Transport Department (“TD”) and Lands Department (“LandsD”).

The Complaint

2. Allegedly, the complainant lodged a complaint via 1823 in early September 2021 about the illegally parked bicycles at an uncovered Public Transport Interchange (“the Spot”). 1823 referred his complaint to LandsD and the local District Office (“DO”) of HAD for follow-up. The situation, however, did not improve. In December 2021, the DO replied to the complainant via 1823 that no further action could be taken as TD and LandsD had yet to delineate the management responsibility for the Spot.

3. The complainant was dissatisfied that **TD** and **LandsD** should have taken so long to delineate the responsibility for handling the problem, and that **HAD**, as the coordinating department, had not properly coordinated the departments to resolve the problem.

Our Findings

4. Having conducted preliminary inquiries, we launched a full investigation into the case. On 30 August and 25 November 2022, we issued the draft investigation report to HAD, TD and LandsD respectively to seek their comments and further information. Having considered the views and supplementary information from the complainant and the departments concerned, we completed the investigation in January 2023.

Relevant Handling Procedures and Mechanism

5. The relevant departments handle illegally parked or abandoned bicycles (“illegally parked bicycles”) on unleased Government land and Public Transport Interchanges (“PTIs”) in accordance with the current mechanism, as follows:

- (a) For illegally parked bicycles on unleased Government land, the local DOs would organise and coordinate regular inter-departmental joint clearance operations (“joint operations”) involving relevant departments (including District Lands Offices (“DLOs”), the Food and Environmental Hygiene Department (“FEHD”) and the Hong Kong Police Force (“HKPF”). The departments would take enforcement action in accordance with HAD’s “Guidelines for Conducting Joint Operations for Clearing Illegally Parked Bicycles” (“Operation Guidelines”). Pursuant to the Land (Miscellaneous Provisions) Ordinance, the local DLO would post notices on the illegally parked bicycles, and FEHD would remove those bicycles that remain in-situ upon expiry of the notice.
- (b) Bicycles illegally parked on land other than unleased Government land are normally handled by the department responsible for managing the facilities on that piece of land. With respect to bicycles illegally parked at covered PTIs, TD would coordinate with the relevant departments and conduct joint operations, during which it would invoke Sections 4(A) and 32(1) of the Summary Offences Ordinance (“SOO”) to remove illegally parked bicycles that cause obstruction, inconvenience and danger.
- (c) In order to more efficiently handle bicycles causing serious obstruction to the public despite being illegally parked temporarily, a separate mechanism has been devised to target the blackspots of illegal bicycle parking in seven designated districts in the New Territories¹. Under the mechanism, the local DO would coordinate joint operations with TD and HKPF, in which TD would invoke Sections 4(A) and 32(1) of the SOO to remove illegally parked bicycles that cause serious obstruction, inconvenience or danger to the pedestrians and vehicles in

¹ The seven designated districts in the New Territories are Northern District, Tai Po, Sha Tin, Yuen Long, Tuen Mun, Islands and Sai Kung. The Spot was not among them.

public places.

Major Sequence of Events

6. In September **2020**, the local DO, at the request of a District Council member, proposed that the Spot be included as a target location during the joint operation scheduled for that month.

7. On the day of the joint operation (i.e. 22 September), staff members of the DLO of LandsD arrived at the Spot and confirmed that the bicycles were parked at a PTI, thus the matter should fall within TD's purview. As such, DLO would not take enforcement action against those bicycles.

8. On 13 November, DO organised another joint operation and proposed again that the Spot be included as one of the target locations. It also consulted via email the local DLO, which replied on 23 December and suggested postponing the date of the operation because it was arranging an auction for confiscated articles to vacate storage space.

9. On 5 March **2021**, DLO informed DO of the target locations for the coming joint operation, and the Spot was not among them. The operation was carried out in two rounds in March.

10. On 13 May, DO coordinated another joint operation and included the Spot as a target location again. It asked DLO to confirm the locations and date of the operation. On 15 June, DLO emailed DO to inform it of the date and target locations, excluding the Spot from the list. DLO also verbally informed DO that the Spot would not be included as a target location in the operation.

11. On 18 June, DO made a written referral of the complaint about illegal parking of bicycles at the Spot to TD for follow-up. Then on 21 June, it emailed DLO, requesting it to select other target locations for the joint operation.

12. On 23 June, DLO replied to DO that the target locations for the joint operation had been selected (not including the Spot), and notices were attached to the bicycles illegally parked at those locations.

13. On 24 June, FEHD and DLO conducted a joint operation, which did not cover

the Spot.

14. On 12 July, TD replied to DO that the Spot was situated on unleased or unallocated Government land, so, DLO and FEHD should take joint follow-up action.

15. On 21 July, DO coordinated another joint operation to be held on 3 August. The Spot was again put on the list of target locations. DLO confirmed the target locations on 2 August but the Spot was not included. The joint operation was carried out on 3 August as scheduled.

16. On 9 and 11 August, DO received from TD and 1823 respectively referrals of complaints lodged by another member of the public and the complainant separately about illegally parked bicycles at the Spot.

17. On 12 August, DO asked DLO to confirm the jurisdiction for the Spot and conduct joint operation. On the following day, DO again referred the complainant's complaint to DLO and TD via 1823 for them to confirm the jurisdiction for the land in question.

18. On 17 August, TD replied to DO, indicating that the Spot was not under its jurisdiction. DO sent TD's reply to 1823 and requested that the case be followed up by DLO.

19. On 1 September, the complainant lodged another complaint via 1823 about the bicycle problem at the Spot. 1823 then referred it to DLO and DO for follow-up.

20. On 10, 19 and 29 September and 20 October, DO sent multiple reminders to DLO to urge it to confirm whether the Spot was unleased or unallocated Government land, and whether it agreed to participate in joint operations. It also requested DLO to discuss with TD directly.

21. On 22 October, DLO replied to DO. It argued that the Spot, being a PTI, should come under TD's management. DO sent DLO's reply to TD and requested that it follow up on the matter. TD replied that the PTI was not covered and, therefore, not within its jurisdiction. DO then wrote to both TD and DLO and urged them to coordinate directly.

22. On 23 October, TD pointed out to DLO that the PTI was not covered and,

therefore, not within its jurisdiction.

23. On 1 December, the complainant complained to 1823 again about the bicycle problem. 1823 then urged DO, DLO and TD to review the complaint and take appropriate action. The three departments replied as follows: TD reiterated that the Spot was unallocated Government land and, therefore, not within its jurisdiction; DLO said that the Spot was located within a PTI and proposed that the problem be followed up by DO; DO stated that since DLO and TD had yet to reach a consensus on the jurisdiction of the Spot, it was difficult for DO to take further action. DO also proposed that DLO and TD take a one-off enforcement action.

24. On 21 December, 1823 urged DO, DLO and TD to revisit the case and take appropriate action. On 29 December, it further requested DLO and TD to confirm the management responsibility for the Spot as soon as possible. TD stressed that the Spot was unleased or unallocated Government land, while DLO contended that TD was the managing department of PTIs, so the bicycle problem at the Spot should be handled by TD. Nevertheless, DLO agreed to assist and participate in joint operations.

25. On 14 January **2022**, DLO indicated to DO that it was seeking the headquarters' views on the case. As such, it would not take enforcement against those bicycles at the Spot.

26. On 18 January, DO emailed DLO to seek its consent to conduct a joint operation. DLO agreed to conduct a one-off joint operation at the Spot but reiterated that TD should be the managing department of PTIs and should deal with the bicycle problem there.

27. On 27 January, DLO and FEHD conducted a joint operation and removed 40 illegally parked bicycles at the Spot.

TD's Response

28. PTIs can either be covered or uncovered:

- Government-owned **covered** PTIs are normally allocated to the Government Property Agency and TD would coordinate with the relevant departments with respect to their day-to-day management and repairs. Illegally parked bicycles left inside covered PTIs that cause

obstruction would be handled in accordance with the procedures deliberated and agreed upon amongst the relevant departments, including enforcement action by TD pursuant to Sections 4(A) and 32(1) of the SOO.

- Government-owned **uncovered** PTIs are usually located on unleased or unallocated Government land. For effective traffic management, prior to the commissioning of such PTIs, TD would gazette the carriageways involved as restricted areas. Nevertheless, the class of the land where such uncovered PTIs are located remains unchanged and their day-to-day management and procedures for removing illegally parked bicycles are the same as those for ordinary roads.

According to the Operation Guidelines formulated by HAD (see **para. 5(a)**), with respect to the bicycles illegally parked on unleased Government land, the local DO would coordinate and organise joint clearance operations, which are conducted jointly by the local DLO, HKPF and FEHD. Enforcement action would be taken by the local DLO pursuant to the Land (Miscellaneous Provisions) Ordinance.

29. TD pointed out that it is responsible for removing bicycles illegally parked within covered PTIs. Since the Spot is situated on unleased or unallocated Government land, clearance operations for removing illegally parked bicycles thereon should be conducted in accordance with the Operation Guidelines. According to the division of labour under the Guidelines, bicycles illegally parked on unleased or unallocated Government land should be removed by the local DLO. TD added that in general, uncovered PTIs are classified as unleased Government land and their day-to-day management is no different from that of ordinary public roads. The relevant departments would take up duties in accordance with their functions and powers. Formulation or implementation of any traffic control measures would not change the land class or make the relevant department the authority for the land in question.

30. TD also said that it had handled the bicycle problem at the Spot in accordance with the established guidelines and provided proper support, including furnishing DO and DLO with information and suggestions. Records showed that TD first received DO's referral of complaints about illegally parked bicycles at the Spot in June 2021. It was not until then that it learned of LandsD's different view on handling the illegally parked bicycles at the Spot. It acted at once upon receipt of DO's referral, and replied to DO in July that year, pointing out that the Spot was on unleased land, so the problem

should be handled according to the Operation Guidelines.

31. TD stated that it always had a clear understanding of the land class of and management responsibilities for the Spot, as well as the roles and powers of the various departments in tackling the bicycle problem. TD opined that the bicycle problem in question had persisted only because there was misunderstanding as to the land class of the Spot. It is a single incident. Unclear delineation of powers and responsibilities was out of the question.

LandD's Response

32. LandsD considered that TD, as the supervising and policy department for PTIs, should be responsible for their management, including handling illegally parked bicycles so as to ensure their smooth operation. As such, TD should handle bicycles illegally parked at PTIs that cause obstruction to the public in the same way as it has been handling those in public places (such as subways and flyovers) that have caused obstruction, i.e. it should take enforcement action pursuant to the SOO.

33. Furthermore, under the current arrangement, prior to the commissioning of a PTI, TD would gazette the land involved as restricted area, and automatically become its management and user department. Application to LandsD for land allocation is not required. Gazetted PTIs on Government land, just like other government facilities that do not require land allocation (such as public open space, vehicle parking spaces and footbridges), are situated on unleased and unallocated Government land. Their management and maintenance should be taken up by the relevant department.

34. LandsD pointed out that covered PTIs and open-air PTIs are no different in statutory status, operation, management and use. Covered or not, the powers and responsibilities involved should not be different. Rather, analysis should focus on the nature and functions of PTIs.

35. On this case, the PTI on the Spot was constructed by the tenant of the adjacent land lot in accordance with the land lease conditions. It was then returned to the Government for management, repair and maintenance, matters which were subsequently taken up respectively by TD and the Highways Department. TD as the management department for PTIs should tackle the problem of illegal parking of bicycles at the PTI on the Spot. Delineation of powers and responsibilities was in no way unclear.

36. However, for the sake of public safety and upon DO's request, DLO eventually provided support and participated in the DO-coordinated joint operation mounted in January 2022, took over and removed the bicycles illegally parked at the Spot.

HAD's Response

37. HAD stated that with respect to street management issues (including illegal parking of bicycles), the Department and the various DOs play mainly a coordinating role in district administration, including referring public complaints to law enforcement departments, or organising joint operations under the established mechanism. If law enforcement departments fail to reach a consensus on management and enforcement responsibilities, the local DO would try its best to mediate and coordinate so that the departments could clarify their responsibilities and reach a consensus.

38. In this case, DO first received complaints about illegally parked bicycles at the Spot in September 2020. The Spot was immediately included as a target location for joint operations. During a joint operation conducted in that month, DLO staff indicated on the site that they would not take action to remove those illegally parked bicycles at the PTI. Since the verbal opinion provided by the DLO frontline staff based on the on-site environment might not be comprehensive, DO at once requested DLO to provide as soon as possible written justifications for not handling the bicycles.

39. DLO subsequently neither stated outright that it would not handle the illegally parked bicycles at the Spot nor explained its reasons. To resolve the issue, DO suggested repeatedly to DLO by email that the Spot be included in future joint operations. HAD explained that including the Spot as a target location during joint operations was a way of coordination, similar in nature to follow-up action through letters or emails. It was a proactive and proper way to address the problem by encouraging and urging the department to respond and take the matter seriously. To resolve the problem, DO also took the initiative to enquire of TD between March and May 2021 by telephone, but TD immediately denied that the Spot was within its purview.

40. Upon receiving the complainant's complaint in August 2021, DO continued to follow up with DLO to confirm whether the Spot was unleased land and urge DLO and TD to look into the jurisdiction over the Spot. It was not until October 2021 that DO learned from TD and DLO that the crux of the disagreement was whether the Spot should be deemed unleased Government land under LandsD's management, or part of

the PTI under TD's. With DO's untiring persuasion and coordination, DLO eventually participated in the joint operation in January 2022 to remove the illegally parked bicycles at the Spot.

41. While LandsD and TD were clarifying the responsibility for handling the bicycle problem, DO had liaised and coordinated with them closely in a proactive manner. It had also repeatedly advised and requested the responsible department to take enforcement action. Since the Spot was not under DO's jurisdiction and HAD was not the enforcement authority, DO could only persuade the relevant departments to sort out the jurisdiction issue as soon as possible. It had organised a joint operation upon obtaining consent from the enforcement department.

42. HAD considered that enforcement departments should sort things out amongst themselves in case of controversy over jurisdictional matters. Where necessary, they should escalate the issue to the policy bureau or more senior level of the Government for determination.

43. HAD undertook to keep a close watch on the enforcement actions by the relevant departments on illegally parked bicycles. It would organise timely joint operations and help the departments to reach a consensus on the mode of the operations.

Our Comments

Complaints against TD and LandsD

44. The Spot is a PTI located on unleased and unallocated Government land. TD and LandsD had different views on which department should be responsible for handling the problem of illegally parked bicycles at the Spot. TD considered that the problem should be tackled by DLO because the Spot was located on unleased Government land, while DLO argued that since the Spot was a PTI, the problem should be dealt with by the management department for PTIs, i.e. TD.

45. From the sequence of main events, we could see that DLO had already pointed out in as early as September 2020 that it would not take action against the illegally parked bicycles at the Spot because it was located on a PTI under TD's purview (see **para. 7**). TD learned of the divergent views over jurisdiction via DO in June 2021 (see **paras. 11 and 30**). The argument over the responsibility for removing the bicycles had hitherto lingered on for more than a year. This was extremely undesirable. We are

concerned whether the situation would give the public an impression of the Government being indolent in its duties.

46. DLO conducted a one-off joint operation in January 2022 upon our intervention (see **para. 27**) and the bicycle problem at the Spot seemed to have been resolved for the moment. Nevertheless, who should be responsible for removing illegally parked bicycles at the Spot in the future is still a question in need of urgent answer.

47. This Office is of the view that departments should first handle the problem at hand when they cannot reach a consensus on the division of responsibilities and labour so as to minimise the impact on the public. Meanwhile, they should proactively identify a feasible solution to resolve the divergent opinions once and for all. For instance, they can draw up a work proposal acceptable to all, and/or convene an inter-departmental management meeting for direct discussion. If a consensus still proves elusive, the problem should be escalated to a higher level of the Government (such as the relevant departmental secretaries or bureaux) for determination.

48. However, with regard to the argument over the responsibility and division of labour in this case, despite repeated reminders from DO and 1823, DLO and TD just kept using written correspondence to reiterate its own stance and failed to explore resolution by other means or channels. This would invite doubts about their sincerity and determination in resolving the problem. The situation was disappointing.

Complaint against HAD

49. DO was the coordinator in resolving the problem of illegally parked bicycles in the district. While it did take some follow-up actions, it was questionable whether its actions had been proactive and effective.

50. First of all, DLO raised objections verbally about the responsibility for handling the bicycles at the Spot for the first time during the joint operation in September 2020. Its views involved the division of responsibilities and labour amongst departments, which is a matter of principle that calls for prompt clarification. Relevant records, however, did not show any prompt follow-up action by DO with DLO after the joint operation. Although HAD pointed out that DO staff had verbally asked the DLO on-site to provide justifications for not handling the problem (see **para. 38**), there was no relevant record for verification. Even if it was really the case, a mere verbal request

was not adequate. We consider that a written request for response should be issued on such important matters of principle to facilitate follow-up actions and forestall subsequent arguments.

51. HAD indicated that after the joint operation in September 2020, DLO had not stated again its stance on whether it would remove the illegally parked bicycles at the Spot (see **para. 39**). Yet, we noticed that DO had neither urged DLO for a reply nor asked TD for its views. DO referred the matter to TD only months later in June 2021, and requested that DLO and TD clarify the jurisdiction for the Spot (see **paras. 11 and 17**). Time for resolving the problem should have been significantly shortened if DO had detected a divergent opinion between the two departments and began coordination work promptly.

52. On the other hand, during the said period, the DO had tried thrice to include the Spot as a target location in the joint operations conducted in March, June and August 2021 (see **paras. 8, 10 and 15**). According to DO, this was a way of coordination intended to urge DLO to respond and take the matter seriously (see **para. 39**). We do not dispute DO's good intention. However, given that the responsibility for handling those bicycles was yet to be clarified, it would be more direct and efficient if DO had pointed out the issue and asked for DLO's response straight away, instead of using such indirect method in the hope that DLO would change its stance. Besides, DO was only doing what it has always been doing, i.e. sending an email proposing the target locations (including the Spot) to DLO prior to an operation for it to confirm. DLO might not have been aware that DO actually wanted it to respond to the issue of jurisdiction for the Spot. In fact, in the aforementioned three operations, DLO had invariably refused to enforce against the bicycles illegally parked at the Spot. DO's attempts to urge the departments to sort things out by unilaterally including the Spot as a target location in those operations were like trying to catch fish by climbing up a tree and destined to fail.

53. After the complainant had lodged his complaint in August 2021, DO and 1823 had repeatedly urged DLO and TD to clarify the responsibility for removing the bicycles at the Spot. Yet, as mentioned in **paragraph 48**, DLO and TD had insisted on their own views on the responsibility for enforcement and division of labour and failed to reach a consensus. The so-called discussion had all along only been written correspondence in which each insisted on its own views. The problem had been dragging on since September 2020. We believe that DO, as the coordinator in the matter, should have noticed the situation and taken decisive and effective action earlier. For instance, it could have convened an inter-departmental senior level meeting for the

two departments to talk through the matter face-to-face.

Conclusion

54. In light of our comments set out in **paragraphs 44 to 53** above, The Ombudsman considers that there are inadequacies on the part of TD and DLO in handling the problem of illegally parked bicycles at the Spot. The complaint against them is, therefore, **substantiated**. Although DO had tried to coordinate between TD and DLO with regard to the issue of jurisdiction, its actions had not been proactive or decisive enough. The complaint against it is, therefore, **partially substantiated**.

Recommendation

55. On this case, we recommend that LandsD and TD convene a high-level meeting to discuss the matter. If they still fail to reach a consensus regarding the division of labour for handling illegally parked bicycles at uncovered PTIs, they should take the matter to relevant secretaries and policy bureaux for deliberation.

Concluding Remarks

56. We are glad to learn that TD and LandsD had accepted and implemented our recommendation. Information showed that HAD, TD and LandsD had held a senior inter-departmental meeting to discuss the matter. Later on, the Steering Committee on District Administration followed up on the issue at a meeting and reached a consensus on the division of labour² in handling bicycles illegally parked at uncovered PTIs located on unleased Government land.

² According to consensus on the division of labour, the inter-departmental unit formed by the local DO, TD and HKPF would first conduct a site visit, if the illegally parked bicycles are found to be:

- (a) causing serious obstruction, inconvenience or danger, they would meet the criteria for invoking sections 4A and 32(1) of the SOO. The local DO, TD and HKPF would conduct a joint operation pursuant to the powers conferred by the Ordinance.
- (b) in a state other than as described above, the local DO would organise and coordinate a joint operation with LandsD and FEHD, during which LandsD would take enforcement action in accordance with the Land (Miscellaneous Provisions) Ordinance.

57. According to the division of labour agreed upon and with DO's coordination, DLO and FEHD conducted a joint operation at the Spot at the end of 2022. As a result, 37 bicycles that were illegally parked there were removed.

Office of The Ombudsman
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