

**Food and Environmental Hygiene Department's
monitoring of the issuance of certificates for
columbarium niches in Islands District
Investigation Report**

In August 2022, the complainant complained to this Office against the Food and Environmental Hygiene Department (“FEHD”).

The Complaint

2. The complainant wished to apply for a niche at an Islands District columbarium for his lately deceased father. According to the 1823 website: “Niches at the columbaria in the Islands District are only available for indigenous villagers, or residents of the District for a continuous residing period of at least 10 years, or their children. The applicant must produce a certificate from the respective rural committee (“the Certificate”) to certify that the deceased was an indigenous villager, a local resident or a child of such person of the island concerned.”

3. The complainant claimed that his father had lived with his grandparents on the island in question since his childhood for not less than 10 years continuously. He considered his father eligible for a columbarium niche on the island and requested the rural committee of the island (“the RC”) to certify his father’s eligibility.

4. The RC’s chairman refused the complainant’s request on the grounds that only a resident who had resided on the island for a continuous period of 7 years immediately before his/her death was eligible for a niche on the island (“the Niche”). Moreover, the RC claimed that children of indigenous villagers were not eligible for a Niche. It also disagreed with the eligibility criteria stated on the aforesaid website. On 27 August 2022, the complainant telephoned an FEHD staff who replied that as far as he understood, the application criteria for niches did not specify any continuous residing period, nor was the eligibility restricted to the minor children of eligible residents.

5. The complainant considered FEHD to have the following improprieties:

- (1) FEHD had authorised, but did not monitor, the issuance of the Certificates by the RC and it was unfair to an applicant who could not seek redress even his/her application was unreasonably refused by the

RC (Allegation (1)); and

- (2) FEHD had failed to provide another application channel or an appeal mechanism in case the RC refused to issue the Certificate, rendering the applicant to have no means to seek help (Allegation (2)).

Our Findings

6. After examining the information provided by the complainant, this Office decided to initiate a full investigation into this complaint in September 2022. Our investigation was completed in March 2023 with the following findings.

Relevant Policy and Provisions

7. In 1988, the former Regional Council exercised the power under section 3 of the then Public Cemeteries (Regional Council) By-laws to endorse the policy of only accepting indigenous villagers or *bona fide* residents of the Islands District to apply for columbarium niches in the Islands District. The policy was aimed at providing local residents with convenient facilities based on geographical considerations. In 1991, the former Regional Council exercised the power under section 24 of the Cremation and Gardens of Remembrance (Regional Council) By-laws to direct that the gardens of remembrance (with columbaria therein) in the Islands District be set aside or allocated for local residents, thereby providing them with convenient service for disposal of human remains.

8. Pursuant to the Provision of Municipal Services (Reorganization) Ordinance, the two By-laws in the previous paragraph were repealed on 1 January 2000 and respectively substituted by the Public Cemeteries Regulation and the Cremation and Gardens of Remembrance Regulation.

9. Section 19(a) of the Cremation and Gardens of Remembrance Regulation empowers the Director of Food and Environmental Hygiene to direct that any particular garden of remembrance or any part thereof (including any columbarium therein) be set aside or allocated for the reception or disposal of ashes of particular persons or of persons belonging to any particular community, race or religion.

10. The criteria for allocation of niches in the Islands District are as follows:

(1) Cheung Chau Garden of Remembrance

The deceased must be certified by Cheung Chau Rural Committee as an indigenous villager of the Islands District, or a *bona fide* resident of Cheung Chau for a continuous residing period of not less than 10 years, or the child of a local resident.

(2) Other Gardens of Remembrance in the Islands District (Lamma Island and Peng Chau)

The deceased must be certified by the respective rural committee as an indigenous villager of the Islands District, or a *bona fide* resident of the Islands District for a continuous residing period of not less than 7 years, or the child of a local resident.

11. Established in 2000, FEHD has since adopted the above policy to handle applications for public columbarium niches in the Islands District. The eligibility for a niche must be certified by a rural committee confirming that the deceased had fulfilled the relevant criteria.

FEHD's Response

12. Rural Committees established pursuant to relevant legislation have been an important consultation channel on rural affairs for the Government. Given that each rural area has distinctive historical background and customs, its rural committee is conversant and familiar with local affairs, but also the specific situation and relevant information of villagers residing in the area, including the resident status of the deceased villagers. Rural Committees, therefore, are the most appropriate organisations to certify that a deceased person was an indigenous villager or a *bona fide* resident. The former Regional Council had properly tasked, as a policy, the rural committees in the Islands District to examine the eligibility for niches and issue the Certificates. FEHD has adopted the same policy, that a certificate issued by the respective rural committee confirming the deceased being an indigenous villager or a *bona fide* resident is a prerequisite for burial or allocation of a niche. The arrangement has been in place for years and operating effectively. Similar arrangements have been applicable to applications to the Home Affairs Department (“HAD”) for burial sites within Permitted Burial Grounds or the Lands Department for building New Territories Exempted Houses.

13. Information shows that the RC took reference from the Rural Representative Election Ordinance (“RREO”) to set the criteria of “bona fide resident for a continuous residing period of at least 7 years”. Pursuant to sections 15(4) and 15(5A) of RREO, an eligible elector must be a resident of the village/market town for 3 years immediately before the date of application for registration. Based on the same principle, the RC considered *bona fide* residents to be those who had resided on the island immediately before death with the island deemed to be their principal place of residence. Apart from Tung Chung Rural Committee^{Note} which had yet to handle similar cases, all other rural committees adopted the same way for counting the continuous residing period which should be the period of time that the deceased had resided on the island concerned immediately before death.

14. FEHD has not established any appeal mechanism for the issuance of Certificates by rural committees. Upon receiving requests for assistance from members of the public, FEHD would liaise with the rural committees and provide feasible assistance according to specific circumstances.

15. According to the RC, it refused to issue a Certificate to the complainant because he could not produce any document to prove that the deceased was an indigenous villager of the island, and the deceased who had moved out years ago was not deemed to be a *bona fide* resident of the island. FEHD considered the RC to have handled the complainant’s application according to the existing mechanism.

16. When answering the complainant’s telephone call on 26 August 2022, an FEHD health inspector explained to him in detail the application criteria for public columbarium niches in the Islands District. He also stated that the Niches were allocated to the indigenous villagers of the island in question, or the *bona fide* residents of the island for a continuous residing period of not less than 7 years, or their minor children and that there was no requirement of continuous residing period for not less than 10 years prior to the application, but the children born to the eligible persons were not entitled to the burial right automatically. The health inspector suggested the complainant refer to the application guidelines for the niches at Mui Wo Lai Chi Yuen Columbarium which had been in commission since 2021, because the application

^{Note} There are eight rural committees in the Islands District, namely Lamma Island (North) Rural Committee, Lamma Island (South) Rural Committee, Mui Wo Rural Committee, South Lantau Rural Committee, Peng Chau Rural Committee, Tai O Rural Committee, Tung Chung Rural Committee and Cheung Chau Rural Committee.

criteria were the same for both columbaria. He also reiterated that “children” meant minor children of *bona fide* residents having resided in the district continuously for not less than 7 years. Finally, the health inspector suggested the complainant further liaise with the RC and submit supporting documents for application of the Certificate. Moreover, he also suggested the complainant contact HAD for enquiries about the operation of the RC.

17. After reviewing the information on the 1823 website, FEHD noted that the website did not separately state the application criteria for the columbarium niches on Cheung Chau and other islands (see **paragraph 2 above** for details). FEHD requested 1823 to update the website information on 7 November 2022 to provide clearer guidelines for the public. The updated content reads:

“Niches at Cheung Chau Columbarium are only available for indigenous villagers, or *bona fide* residents of Cheung Chau for a continuous residing period of not less than 10 years, or their minor children. Niches at other columbaria in the Islands District are only available for indigenous villagers of the Islands District, or *bona fide* residents of the District for a continuous residing period of at least 7 years, or their minor children. The applicant must produce a certificate from the respective rural committee to certify that the deceased was an indigenous villager, a local resident or a minor child of such person of the island concerned.”

18. FEHD considered the health inspector to have explained clearly to the complainant the application criteria for columbarium niches in the Islands District. Since the complainant’s father was not within the definition of “minor child”, the health inspector suggested he further liaise with the RC and submit supplementary documents showing that his father was a *bona fide* resident. Overall, the health inspector had replied to the complainant’s enquiry properly.

19. FEHD explained to this Office that the definition of “child” was based on local law, that is, a minor under the age of 18. Moreover, the information of the 1823 website cited in **paragraph 2** was provided by FEHD, and the complainant had not filed a formal complaint or request for assistance with FEHD regarding the refusal.

Our Comments

20. In **paragraphs 7 to 10 above**, FEHD explained the policy for burial or

allocation of niches in the Islands District for local residents, and the role played by the rural committees.

21. FEHD also clarified the criteria for allocation of the Niches at the garden of remembrance of the island concerned, i.e. the deceased must be certified by the RC as an indigenous villager of the island, or a *bona fide* resident of the island for a continuous residing period of at least 7 years, or the child of a local resident (see **paragraph 10(2) above**). In **paragraph 13 above**, FHED further explained that the RC defined “*bona fide* residents for a continuous residing period of at least 7 years” with reference to the principle under the RREO. Accordingly, the RC considered *bona fide*, long-term residents of the island to be those who had resided on the island for a period immediately before death with the island deemed to be their principal place of residence. The same principle has been adopted by the other rural committees in the Islands District in handling similar cases.

22. The RC considered the complainant to have failed to produce documentary proof that his father was an indigenous villager of the island. Moreover, his father was no longer deemed to be a *bona fide* resident of the island for having moved out years ago before his death. Hence, the RC refused to issue the Certificate. The RC’s decision to accept or reject the complainant’s application was a matter of judgement about facts, in which this Office would not intervene as rural committees are outside our remit. FEHD, after obtaining information from the RC, considered the RC to have handled the complainant’s application according to the existing mechanism (see **paragraph 15 above**), and we have no grounds to question FEHD’s view. Allegation (1), therefore, is unsubstantiated.

23. While rural committees are not subordinate to FEHD and thus not subject to its monitoring, and no appeal mechanism concerning the issuance of Certificates by the rural committees is available, FEHD, would, upon receiving requests for assistance from members of the public, liaise with the rural committees and provide feasible assistance according to specific circumstances (see **paragraph 14 above**). Consequently, applicants may approach FEHD for help in case the rural committees refuse to issue the Certificates. Since the complainant had not filed a request for assistance or complaint with FEHD (see **paragraph 19 above**), we cannot comment on whether he really had no means to seek help. Overall, Allegation (2) is unsubstantiated.

24. As for 1823’s website information provided by FEHD, the original content about the application criteria for niches in the Islands District was unclear (see

paragraph 2 above). It was unsatisfactory on the part of FEHD to have not discovered and rectified the problem earlier. Even after FEHD revised the information on 7 November 2022 (see **paragraph 17 above**), the 1823 website did not clearly specify that “a continuous residing period” means the period that the deceased had continuously resided in the district immediately before death, and might still cause confusion. FEHD should make further revision.

Conclusion

25. Based on the analysis in **paragraphs 20 to 24 above**, The Ombudsman considers the complaint against FEHD **unsubstantiated but with other inadequacies found**.

Recommendation

26. This Office recommends that FEHD liaise with 1823 to further revise the website information to clearly specify that “a continuous residing period” means the period that the deceased had continuously resided in the district immediately before death, and review other leaflets, brochures, etc. published for public reference to ensure the accuracy and consistency of information.

Response from FEHD

27. FEHD accepted the recommendation in **paragraph 26 above**. After confirming with relevant stakeholders, FEHD would update the information held by 1823, relevant websites and brochures to provide the public with clearer information.

Concluding Remarks

28. This Office is pleased that FEHD has accepted our recommendation for improvement.

Office of The Ombudsman

March 2023

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