

# **Failure to handle properly a complaint about damaged and faded national flags and regional flags by Home Affairs Department, Chief Secretary for Administration's Office and 1823 Investigation Report**

In February 2023, the complainant lodged a complaint with this Office against the Home Affairs Department (“HAD”), the Administration Wing (“AW”) under the Chief Secretary for Administration’s Office, and 1823 under the Efficiency Unit (“EU”).

## **The Complaint**

2. Upon finding some faded and damaged national flags and regional flags flying on the external walls of some private buildings (“the Problem”), the complainant lodged a complaint about the Problem with 1823 on 6 October 2022 (“Case I”). 1823 referred the case to HAD, AW, the Food and Environmental Hygiene Department (“FEHD”) and the Buildings Department (“BD”). FEHD replied to the complainant that the Problem was not within its purview. HAD and AW gave the same reply via 1823. The complainant did not receive any response from BD.

3. Since the Problem persisted, the complainant lodged another complaint with 1823 on 30 November 2022 (“Case II”). The complaint was referred to AW, HAD and BD. On 20 December, 1823 replied to the complainant that HAD, AW and BD had stated that the Problem was outside their purview.

4. In light of the above, the complainant was dissatisfied that:

- (1) 1823 had not appropriately referred his complaints to the relevant department(s);
- (2) HAD, as the channel of communication between the Government and the public, and as the authority for district affairs, had failed to take follow-up action on the Problem at the district level; and
- (3) AW had failed to follow up on the Problem in accordance with the Stipulations for the Display and Use of the National Flag and National Emblem and the Regional Flag and Regional Emblem (“the Stipulations”) made by the Chief Executive under the National Flag and

National Emblem Ordinance (“NFNEO”) and the Regional Flag and Regional Emblem Ordinance (“RFREO”) (collectively “the two Ordinances”).

## **Our Findings**

### ***Relevant sections and requirements of the two Ordinances and the Stipulations***

5. Relevant sections and requirements of the two Ordinances and the Stipulations are as follows:

- (1) Section 4 of the NFNEO and section 4 of the RFREO respectively provide that no person shall display or use a national flag or a regional flag that is damaged, defiled, faded or substandard.
- (2) The Stipulations are made by the Chief Executive under sections 3(2), 3(2A) and 3(3A) of the NFNEO and section 3(1) of the RFREO.
- (3) Section 6 of the Stipulations states that any damaged, defiled, faded or substandard national flags and national emblems must be returned to the designated collection points (*viz.* the 19 community centres and community halls under HAD) for regular central handling by the Government. After an event in which national flags or national emblems are used, the organiser must recover the national flags or national emblems used on the site of the event for keeping or reuse. Used national flags and national emblems that are damaged, defiled, faded or substandard must be returned to the aforementioned designated collection points.

### ***Promotion and Publicity***

6. The Constitutional and Mainland Affairs Bureau (“CMAB”) is responsible for the promotion and publicity relating to the national flag, national emblem and national anthem. The Bureau publicises relevant information via different channels and the media with a view to introducing to the public the background of these national symbols and signs and the requirements for using them so that they can understand how to properly display and use the national flag and national emblem.

### *Sequence of Events*

7. The major sequence of events of this case is at **Annex**.

### *Response from EU*

8. 1823 would refer complaints about the flying or display of the national flag or regional flag to the relevant departments for follow-up as per the complaints' content.

9. Soon after the National Day on 1 October 2022, 1823 received a complaint about the Problem (i.e. Case I), and believed it might be related to the National Day celebration activities. Consequently, 1823 referred the case to HAD, which is responsible for coordinating district activities, and AW, which is responsible for matters relating to the display of the national flag and regional flag. After being informed by the Sham Shui Po District Office ("DO") under HAD and by AW that the Problem was outside their jurisdiction, 1823 followed the established mechanism and requested the relevant officers of the two departments on 26 October to review the case (items 3, 5 and 6 in Annex). AW repeated its previous reply to 1823 (item 6 in Annex). Meanwhile, DO referred the case to the Hong Kong Police Force ("the Police") and indicated to 1823 that it believed the Police would reply to the complainant later (item 8 in Annex).

10. Having received AW's suggestion that the Problem should be followed up by BD on 25 October, and having considered that the case might involve unauthorised affixing and display of articles in public places, 1823 referred the case to BD and FEHD on 27 October (item 7 in Annex). That same day, 1823 received BD's reply that the Problem did not fall within the ambit of the Buildings Ordinance but did not relay BD's reply to the complainant. On the one hand, as HAD had already referred the case to the Police and indicated that it believed the Police would reply to the complainant later (item 8 in Annex), 1823 believed that the Police would follow up on Case I. On the other hand, FEHD staff selected the option on the computer system that the Department had replied to the complainant direct (item 9 in Annex), instead of following the mechanism to select the option "Back to 1823" and notify 1823 that the case was not within FEHD's responsibility. Consequently, 1823 misunderstood that FEHD had taken up Case I and would follow up on it.

11. The complainant lodged another complaint about the Problem with 1823 again on 30 November 2022 (item 10 in Annex) without mentioning Case I. The 1823 staff

member, therefore, was not aware that there had been a previous complaint regarding the Problem. The staff member then opened a new case on the complaint (i.e. Case II) and referred it to AW and HAD according to the usual procedures.

12. Upon receiving the replies from AW and DO on 12 and 16 December respectively that the Problem was not within their purview (items 12 and 14 in Annex), 1823 followed the established mechanism to ask AW and HAD on 19 December to review Case II (item 15 in Annex). That same day, AW reiterated its reply of 12 December (including the suggestion that 1823 refer the case to BD for follow-up). Later that day, BD replied to 1823, pointing out that Case II was very similar to Case I. Having reviewed its records, 1823 found that the same complaint (i.e. Case I) had been referred to the Police and FEHD, and that FEHD had replied to the complainant direct. On 20 December, 1823 replied to the complainant that HAD, AW and BD had expressed that the Problem was not within their purview (item 16 in Annex). The next day, DO notified 1823 that Case II had been referred to the Police (item 17 in Annex). Therefore, 1823 believed that the Police would follow up on Case II.

13. EU was of the view that the 1823 staff members had properly referred Cases I and II to the relevant departments. Upon receiving the refusals from HAD/DO and AW to take up the cases, the 1823 staff members had adhered to the established mechanism and asked the relevant officers of those two departments to review the cases.

14. That said, EU conceded that if the 1823 staff member handling Case I had relayed BD's reply to the complainant (**paragraph 11**), the latter's misunderstanding that BD had failed to reply to his complaint would have been avoided. EU had reminded its staff to learn from this complaint case and reply to complainants properly.

15. To EU's understanding, the buildings in question had already handled the faded and/or damaged national flags and regional flags concerned.

### ***Our Comments***

16. EU had explained 1823's reasons for referring Case I to HAD, AW, BD and FEHD, and why 1823 believed that the Police and FEHD had followed up or would follow up on the case. We consider its explanation not unreasonable.

17. Nevertheless, as shown in paragraph 10, some staff members might have failed to correctly select the options provided on the computer system. On the other hand,

EU had admitted 1823's failure to relay BD's reply regarding Case 1 to the complainant (**paragraph 14**) and found it unsatisfactory.

18. We are aware that 1823 receives a huge number of calls every day, and as the complainant did not mention Case I when he lodged a complaint with 1823 again on 30 November 2022, it was not unreasonable that 1823 had treated Case II as a new one and made referrals afresh. It was also understandable that 1823 thought the Police would handle Case II upon learning that DO referred the case to the Police on 21 December. However, it would have been better if 1823 had reminded DO to notify the complainant of the referral. This case reveals that while 1823 had handled the case in accordance with the established mechanism, there might be inadequacies in the mechanism. While it was procedurally correct for 1823 to refer cases to departments for follow-up, the department(s) receiving the referrals in fact had not taken up the cases and 1823 was left in the dark and did not follow up on the cases further. This case calls into question whether 1823, under the present mechanism, can fully discharge its function as a "one-stop agent" for the Government in handling public enquiries and complaints.

19. In light of the analysis in **paragraphs 16 to 18**, The Ombudsman considers the **complaint against 1823 unsubstantiated, but there are other inadequacies found.**

### ***Response from HAD***

20. HAD is not the department which enforces the two Ordinances. The Problem was not within its jurisdiction, either.

21. Upon 1823's request to review Case I (item 6 in Annex), DO referred it to the Police on 28 October 2022 for the latter to investigate whether the Problem would contravene the two Ordinances. In November 2022, the Police replied to DO that the display of the flags in question could not be deemed as an act of desecrating the national flag or regional flag proscribed by the two Ordinances. The Problem posed no immediate danger to the public or traffic, either. As such, the Police would not take further action.

22. Since Cases I and II were reported at different points in time, DO considered that the display of the flags might have changed. It, therefore, referred Case II to the Police on 21 December 2022 (item 17 in Annex).

23. In light of the complainant's concern, DO deployed staff in early March 2023 to several private buildings at the location concerned to post and distribute leaflets relating to the Stipulations, calling for the building management organisations and residents of the buildings to comply with the Stipulations and to return used national flags and regional flags to the designated collection points for disposal. DO would continue to monitor the flying of national flag and regional flag within the district and would refer the matter to the relevant departments for follow-up where necessary.

### *Our Comments*

24. We are of the view that had HAD taken the action mentioned in **paragraph 23** earlier, it might have helped the person(s) who had flown the national flags or regional flags to better understand the Stipulations and handled the Problem properly. However, HAD has no statutory power to follow up on the Problem and the Government has not formulated any guidelines requiring the Department to take actions on the problematic national flags and regional flags flown at private buildings. Hence, it was reasonable for DO to refer Case I and Case II to the Police on 28 October and 21 December 2022 respectively so that the Police could investigate the matter under the two Ordinances. Nevertheless, when DO referred Case I to the Police on 28 October (item 8 in Annex), it neither stated clearly that the Police should reply to the complainant nor provided the Police with the complainant's contact means. Yet, it told the complainant that the Police would reply to him. When DO referred Case II to the Police in December 2022 (item 17 in Annex), it failed to inform the complainant of the arrangement and did not follow up with the Police the investigation result. DO's handling of the two cases was unsatisfactory.

25. Based on the above analysis, The Ombudsman considers the **complaint against HAD unsubstantiated, but there are other inadequacies found.**

### *Response from AW*

26. According to CMAB, section 4 of the NFNEO is a directional provision and does not empower government departments to remove damaged, defiled, faded or substandard national flags or regional flags displayed at private buildings. The Stipulations, drafted by AW, have been uploaded to the website of the Protocol Division for public reference. The website provides a link to HAD's website to facilitate public search of the details of the 19 designated collection points at the community halls and community centres under HAD.

27. Members of the public who wish to display the national flag or regional flag in public places shall first submit applications to the departments responsible for the management of the venues concerned. Nevertheless, the two Ordinances and the Stipulations do not require prior application for displaying the national flag or regional flag in private places. If it comes to AW's knowledge that damaged, defiled, faded or substandard national flags or regional flags are being displayed at private buildings, it will refer the case to the relevant department(s) for follow-up. AW opined that if the location of display was a building of a local organisation, the case should be tackled by the local District Office of HAD. In the past, AW had contacted local communities/organisations via HAD to remove damaged, defiled, faded or substandard national flags or regional flags.

28. AW considered that the national flags and regional flags involved in Cases I and II were flown on the external walls of private buildings and likely to have been displayed by the local communities. It, therefore, proposed that the cases be referred to HAD and BD for follow-up.

29. For more thorough handling of similar complaints in the future, if similar situations come to the attention of AW, it would first refer them to the relevant departments for follow-up. AW would then collate the details of the follow-up actions by the relevant department and consolidate a reply to the complainants.

### ***Our Comments***

30. AW had clarified that the two Ordinances and the Stipulations do not require prior application for displaying the national flag or regional flag in private places. Neither do the two Ordinances empower government departments to remove damaged, defiled, faded or substandard national flags or regional flags displayed at private buildings. However, AW confirmed that if it is aware of similar situations in the future, it would refer the cases to the relevant departments for follow-up first and, when necessary, collate the details of their follow-up actions for replying to the complainants.

31. As far as this complaint is concerned, the national flags and regional flags in question were flown at private buildings and activities held by the local communities might be involved. It was, therefore, reasonable for AW to assume that the Problem should be handled by BD and HAD, and to ask 1823 to refer Case I to the two departments.

32. The national flag and national emblem, the regional flag and regional emblem are solemn symbols and signs of the country and the Hong Kong Special Administrative Region. Given that the Stipulations were drafted by AW, AW should implement measures to ensure that the relevant departments fully understand the division of their labour for proper execution of the Stipulations. AW has confirmed that if it had been aware that defiled or faded national flags and regional flags were being displayed at private buildings, it would have referred such cases to the relevant departments for follow-up. When both BD and HAD indicated to 1823 that the Problem was not within their purview, AW should have directly contacted the “relevant department(s)” which it thought to be capable of following up on the Problem and asked those “relevant department(s)” to take necessary actions. Alternatively, it should have escalated the case to the relevant bureau(x) for resolving the Problem, so that the issues of damaged and faded national flags and regional flags not involving criminality could be dealt with properly. However, AW just kept passing the responsibility of case referral to 1823 and stating simply that the Problem should be tackled by BD, HAD or other relevant departments (items 5, 6, 12 and 15 in Annex). It had made no efforts to find out whether those departments were willing to take up the case or follow up on the case progress with them. Furthermore, it did not even know that the Police had followed up on Case I and considered that no criminality was involved. As a result, the Problem remained unresolved. The handling of the matter by AW was indeed inappropriate.

33. This case reveals that the Government has been relying on event organisers to consciously observe the Stipulations and recover the used national flags and national emblems after an event (**paragraph 5(3)**). When drafting the Stipulations, AW did not include a handling mechanism and delineate the responsibilities for handling the damaged, defiled, faded or substandard national flags or regional flags flown at private buildings when they were not related to any local activities or criminality. This is indeed undesirable. The case also reveals that members of the public/organisations may lack thorough understanding of the ways to handle the aforementioned issues.

34. Based on the analysis set out in **paragraphs 30 to 33**, The Ombudsman considers the **complaint against AW partially substantiated**.

## **Recommendations**

35. We recommend that:



- (1) 1823 use this case as an example to strengthen training for hotline staff. In addition to reminding them to relay departments' replies to complainants (**paragraph 14**), 1823 should enhance their awareness in handling issues arising from the display of damaged, defiled, faded or substandard national flags or national emblems at private places.
- (2) 1823 remind departments that upon receipt of referrals that are not within their purview, they should inform 1823 (regardless of whether direct replies have been issued to the complainants), such that 1823 can take follow up actions (**paragraph 17**).
- (3) HAD learn from this case and remind staff to heed whether complaint details are complete when making case referrals, with a view to ensuring that the department receiving the case referrals can reply to the complainants direct. The complainants should also be notified of the referral arrangement (**paragraph 24**).
- (4) AW escalate the issue of displaying damaged, defiled, faded or substandard national flags and national emblems at private places not related to any events to the relevant bureau(x) for resolution at the policy bureau level. AW should also coordinate the relevant departments for formulating guidelines and division of responsibilities, which should be extended to cover the display of the regional flag and regional emblem (**paragraphs 5(3) and 33**).
- (5) AW collaborate with CMAB to step up public education and publicise the requirements pertaining to the display of the national flag and national emblem, the regional flag and the regional emblem, as well as the correct ways to dispose of damaged, defiled, faded or substandard national flags, national emblems, regional flags and regional emblems (**paragraphs 6 and 33**).

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**(Paragraph 7 of Investigation Report, 2023/0135)****Failure to handle properly a complaint about damaged and faded national flags and regional flags by Home Affairs Department, Chief Secretary for Administration's Office and 1823****Major Sequence of Events**

	<b>Date</b>	<b>Event</b>
<b>Case I</b>		
(1)	6 Oct 2022	Complainant lodged a complaint via the 1823 online form about faded and damaged national flags and regional flags displayed at a private building (“the Problem”) (“Case I”).
(2)	11 Oct	1823 referred Case I to Home Affairs Department (“HAD”) and issued an interim reply to complainant.
(3)	14 Oct	Sham Shui Po District Office (“DO”) replied to 1823 that managing the display and use of the national flag and regional flag is not within HAD’s purview.
(4)	19 Oct	1823 referred Case I to the Administration Wing (“AW”) under the Chief Secretary for Administration’s Office and relayed DO’s reply to the complainant by email stating that the case had been referred to AW.
(5)	25 Oct	AW replied to 1823 that external walls of private buildings were under the purview of Buildings Department (“BD”) and that the national flags and regional flags in question might have been displayed by local organisations. It, therefore, suggested that Case I be referred to BD, HAD or other relevant departments.
(6)	26 Oct	1823 requested HAD and AW to review Case I.  AW replied to 1823 that it had replied on 25 Oct that the case should be referred to Highways Department and HAD.
(7)	27 Oct	1823 referred Case I to Food and Environmental Hygiene Department (“FEHD”) and emailed complainant that AW had

		<p>expressed that the case was not within its purview, and that 1823 had already referred the case to FEHD and BD.</p> <p>BD replied to 1823 that Case I did not involve construction works and was, therefore, not subject to the Buildings Ordinance.</p>
(8)	28 Oct	<p>DO referred Case I to Hong Kong Police Force (“the Police”) via email, with a copy to 1823.</p> <p>DO emailed complainant, with a copy to 1823, stating that Case I had been referred to the Police. DO believed the Police would reply to him later.</p>
(9)	1 Nov	<p>FEHD informed 1823 that it had provided the final reply to complainant direct. The Police replied to DO that its site inspection did not reveal any immediate danger or criminality and no further action would be taken.</p>
<b>Case II</b>		
(10)	30 Nov	<p>Complainant lodged a complaint about the Problem via the 1823 online form (“Case II”).</p>
(11)	1 Dec	<p>1823 referred Case II to AW and issued an interim reply to complainant.</p>
(12)	12 Dec	<p>AW replied to 1823 that external walls of buildings are BD’s responsibility and suggested Case II be referred to BD or other relevant departments for follow-up.</p>
(13)	14 Dec	<p>1823 referred Case II to HAD and relayed AW’s reply to complainant by email that the case was not under its purview, and that 1823 had already referred Case II to HAD.</p>
(14)	16 Dec	<p>DO replied to 1823 that Case II was not under HAD’s purview and asked 1823 to refer the case to the relevant department(s).</p>
(15)	19 Dec	<p>1823 asked HAD and AW to review the case. In its reply, AW reiterated its reply of 12 Dec.</p> <p>1823 referred Case II to BD and issued an interim reply to complainant.</p> <p>BD replied to 1823, indicating that Case II was similar to Case I and not under its purview or subject to regulation of the</p>

		Buildings Ordinance. It suggested that Case II be referred to the relevant department.
(16)	20 Dec	1823 emailed complainant to relay the replies of DO, AW and BD.
(17)	21 Dec	DO referred Case II to the Police by email and asked it to provide the investigation result so that DO could reply to 1823. HAD copied the email to 1823.
(18)	11 Jan to 10 Feb 2023	Complainant lodged a complaint with this Office.
(19)	15 Feb	This Office commenced a full investigation against HAD, AW and EU.
(20)	2 March	1823 asked FEHD for its reply to complainant on 1 Nov 2022 and asked DO whether it had received the Police's reply. DO informed 1823 of the Police's reply to DO on 1 Nov 2022.
(21)	3 March	1823 enquired of the Police about whether it had replied to complainant.
(22)	6 March	1823 emailed complainant to explain case handling process and result, including the replies from FEHD and the Police.