

**Electrical and Mechanical Services Department's  
repeated requests for a supplier's submission of information on  
electrical products regarding safety requirements  
Investigation Report**

The complainant made a complaint to this Office against the Electrical and Mechanical Services Department (“EMSD”) in October 2022.

**The Complaint**

2. The complainant was a company selling Japanese smart toilet seats. In June 2021, the complainant participated in an exhibition, displaying its products at an exhibition centre in Hong Kong, during which EMSD conducted an inspection and required the complainant to produce the certificates of safety compliance of two models of smart toilet seats. In August, the complainant submitted the information to Staff A of EMSD by email. In September, Staff B of EMSD required that the complainant submit the information again because Staff A, who then retired, had not communicated with Staff B in detail regarding the complainant's previous submission.

3. In October 2022, the complainant was required by EMSD to submit the certificates of safety compliance of four models of smart toilet seats. Nonetheless, the complainant was told by EMSD staff during the investigation in 2021 that the certificates submitted in July 2021 for two of those models already met the statutory requirements. Moreover, except for the measurement, two of those models had the same specifications as the other two, and the relevant information had been included in the complainant's submission in 2021.

4. Based on the above, the complainant considered that the handover of work and communication among EMSD staff had been ineffective and insufficient and that the staff had failed to check work records, resulting in EMSD's repeated requests for submission of the information already provided by the complainant. Such handling had wasted the complainant's time.

## **Our Investigation**

5. This Office initiated an inquiry with EMSD in October 2022. Having examined the relevant information, The Ombudsman decided to launch a full investigation in March 2023. We completed the investigation in June 2023 with the following findings.

## **Our Findings**

### ***Relevant Legislation and Regulatory Mechanism***

6. Electrical products supplied in Hong Kong are subject to the statutory control under the Electricity Ordinance (“the Ordinance”) and its subsidiary regulation, the Electrical Products (Safety) Regulation (“the Regulation”). Pursuant to section 4 of the Regulation, all electrical products shall comply with the essential safety requirements for electrical products. Besides, section 7 of the Regulation provides that no person shall supply an electrical product unless a certificate of safety compliance has been issued in respect of the product and the product complies with the applicable safety requirements.

7. EMSD has worked with the industry and published the Guidance Notes for the Electrical Products (Safety) Regulation (“Guidance Notes”), which are intended for helping electrical product suppliers understand the statutory requirements. The Guidance Notes set out the international/national safety standards, the attainment of which will be deemed as satisfying the safety requirements in the Regulation.

### ***Sequence of Major Events***

8. On 12 June 2021, EMSD carried out an enforcement operation (“Operation A”) at an exhibition centre in Hong Kong to check whether the household electrical products supplied by the exhibitors met the requirements of the Ordinance and the Regulation. Staff A of EMSD, who was in charge of the operation, instructed Staff B to inspect the complainant’s booth. During the inspection, the complainant failed to produce the certificates of safety compliance of two models of smart toilet seats. Pursuant to the Ordinance, Staff B immediately issued a “request-for-information” letter to the complainant, requiring submission of relevant documents within 10 days. The letter clearly stated that any person who supplies electrical products without a certificate

of safety compliance commits an offence. After the inspection, Staff B passed the information collected from the complainant's representative on that day to Staff A for follow-up action.

9. On 30 June, EMSD sent a letter to remind the complainant that it had not yet received the certificates of safety compliance issued in respect of the products concerned.

10. On 2 July, Staff A informed the complainant by email that EMSD had received the documents submitted.

11. On 7 July, Staff A emailed the complainant, explaining why the documents submitted on 2 July were inadequate.

12. On 13 July, the complainant submitted supplementary documents to Staff A by email. Staff A replied to the email on the same day, pointing out the inadequacy of the supplementary documents submitted.

13. On 19 July, the complainant emailed Staff A, indicating that it was arranging for its products to be tested on international standards that satisfy EMSD's requirements, and seeking approval for deferring the submission to August.

14. On 24 August, the complainant emailed Staff A, submitting the reports of the tests conducted on the smart toilet seats concerned between July and August.

15. While taking his approved pre-retirement leave between 24 August and 10 September, Staff A still attended to office's work. After examining the complainant's submission, he considered that the documents did not meet the requirements of the Regulation because the certificates of safety compliance were not issued prior to the supply of the products (i.e. before the exhibition on 12 June 2021). On 10 September 2021, Staff A relayed the investigation result to Staff B, who then checked the relevant documents and confirmed that the complainant's submission lacked a valid statement of conformity and one of the test reports was issued after the exhibition. After reporting the case to his supervisor, Staff B was assigned as investigator of the case and to collect evidence.

16. Between 13 and 14 September, Staff B telephoned the complainant, requiring further submission of documents.

17. On 14 September, the complainant emailed Staff B, indicating that it had been informed of Staff A's retirement, thus re-submitting the test reports previously sent to Staff A on 24 August. Staff B replied to the email on the same day, notifying the complainant that the submission lacked a statement of conformity. The complainant then sent the supplementary information.

18. On 16 September, Staff B emailed the complainant, explaining that the statement of conformity submitted earlier was inadequate. The complainant then further provided supplementary information.

19. On 21 September, EMSD wrote to the complainant, inviting the latter to an interview and to give a statement on 28 September. In December, the Court issued a summons to the complainant and the case was heard in January 2022.

20. Regarding a marketing research report on electronic toilet seats to be issued in the Consumer Council's Choice Magazine, EMSD launched an enforcement operation ("Operation B") in September 2022 to examine whether the suppliers of the electronic toilet seats mentioned in the research report had fulfilled the requirements under the Ordinance and the Regulation. Led by Staff C, the operation covered about 50 models of products from more than 10 suppliers.

21. On 10 October, Staff C asked the complainant to submit the certificates of safety compliance, user guides and other information of four models of smart toilet seats for Operation B. The complainant gave a reply to Staff C on the same day, explaining that it had already submitted the certificates of safety compliance of those four models in 2021.

### **The Complainant's Response to EMSD's Reply**

22. Having received EMSD's written reply regarding our preliminary inquiry in December 2022, the complainant emailed this Office, expressing the following.

23. According to the complainant, when Staff B called its representative on 14 September 2021, he said the previous case officer, Staff A, had retired and that he was not aware of the certificates submitted by the complainant on 24 August 2021, nor had

he seen them. Staff B could not open Staff A's email box and Staff A had not accounted for the progress of his investigation. Hence, the complainant re-submitted the certificates that had been submitted on 24 August to Staff B by email. The complainant questioned why Staff A failed to properly hand over the case to Staff B before retirement, causing the latter to understand the case from scratch. Besides, the complainant had reservation on EMSD's explanation that Staff A still attended to office's work while he was on leave. The complainant had asked Staff B why the model numbers of electrical products conforming to the standards were not available on EMSD's website. Staff B replied that smart toilet seat was a new type of electrical products, which was not among the prescribed products on EMSD's website. If necessary, the complainant may apply to the Director of Electrical and Mechanical Services ("the Director") for the inclusion of such products.

24. Moreover, the complainant had already submitted the certificates of safety compliance to EMSD in August 2021 for Operation B, and those were not old certificates but obtained after testing the electrical products based on the latest international standards in July 2021. The complainant queried whether Staff C had carefully checked the information or he had abused his power.

25. The complainant explained that it was an importer, not manufacturer of electrical products. Therefore, it could not be completely sure about the technical contents regarding the safety standards of electrical products. The complainant considered that the complaint received by EMSD against its products during Operation A was made by its competitors in the industry and that there would be more similar complaints to come. The complainant emphasised its discontent with EMSD's failure to record properly the company's submission, which resulted in duplicated efforts to handle the matter, a waste of time and inconvenience to the public.

### ***EMSD's Further Explanation about Operation A***

26. According to EMSD, when its staff commence collecting evidence and processing prosecution, they usually would not disclose the details of the irregularities involved to the offender before interviewing the offender under caution or taking a caution statement. Hence, EMSD staff had not explained the details of the irregularities relating to the two models of products concerned between 12 June and 27 September 2021.

27. Before his retirement, Staff A had handed over the work to his colleagues. While he was on leave, he did assist the staff member who was acting in his post to handle the follow-up work of Operation A. EMSD had checked the tele-conversation between the complainant and Staff B on 14 September 2021 (it was 13 September on EMSD's record) as mentioned by the complainant. EMSD explained that Staff B telephoned the complainant with a view to obtaining from the complainant valid certificates of safety requirements issued before 12 June 2021, and the call had nothing to do with Staff A's pre-retirement leave. Nevertheless, as EMSD staff would not disclose the details of the irregularities involved to the suspected offender before interviewing the offender under caution or taking a caution statement, Staff B had not explicitly required the complainant to submit the certificates of safety compliance issued before 12 June 2021 during the tele-conversation, and he could not recall what exactly had been discussed. EMSD was of the view that its staff should have made it clear to the complainant that its previous submissions could not meet the requirements of valid certificates of safety compliance and that re-submission was required. Having examined the relevant evidence and the information provided by the complainant, EMSD apologised to the complainant in case Staff B had made an inappropriate response during the tele-conversation, causing the complainant's discontent with the Department's work. EMSD has reminded all the staff concerned to make proper responses to the public when discharging official duties so as to avoid misunderstanding of the Department's work.

### ***EMSD's Further Explanation about Operation B***

28. According to EMSD, Operation B covered more than 10 suppliers and involved about 50 product items. Staff C had required all the suppliers of these 50 product items on the Consumer Council's list (including the complainant) to submit information. Prior to the operation, Staff C had examined the prosecution case that the complainant was involved in 2021 and confirmed that the safety tests reports that the complainant submitted for four models of products were not in accordance with the latest edition of the International Safety Standard IEC60335-2-84 published on 29 October 2019, but based on the 2013 edition. For following up further and obtaining updates on the products concerned, Staff C emailed the complainant on 10 October 2022, requiring provision of the certificates of safety compliance and information such as the user guides of the four models of products concerned.

29. EMSD explained that it was the usual practice of responsible manufacturers in the industry to refer to the latest edition of the International Safety Standards when testing products of the same model so as to ensure that their products could meet the relevant safety requirements. Manufacturers would also from time to time update the user guides of their products to ensure safe and effective use of the products by customers. Regardless of the reason for revising a product model, an updated certificate of safety compliance is required. Hence, the Guidance Notes state clearly that suppliers should obtain certification document from the product manufacturer to prove that the electrical products concerned have been tested according to the applicable international standards and issued a certificate of safety compliance. Moreover, prior to supplying household electrical products, suppliers may make enquiries (such as the applicable international standards) by calling 1823, the 24-hour public enquiry hotline, or by email to EMSD. Currently, the most effective way for suppliers in the industry to fulfil their legal responsibility is to request the manufacturers to provide the certificate of safety compliance of the electrical products imported.

30. EMSD was of the view that Staff C had made appropriate arrangements in Operation B according to the Department's established mechanism. However, when requiring the complainant to submit information, Staff C could have made it clear and explained in detail why the documents submitted in 2021 was inadequate so that the misunderstanding could be avoided. EMSD indicated that it would apologise for any misunderstanding or inconvenience caused by its staff during the operation.

### ***EMSD's Further Explanation for Relevant Safety Standards***

31. EMSD pointed out that the international safety standards applicable to the four models of smart toilet seats concerned included IEC60335-1, IEC60335-2-84 and IEC62233 published by the International Electrotechnical Commission ("IEC"). The requirements of IEC60335-2-84 are set out in Item 1.2 under Section C.1 of the Guidance Notes.

32. The latest edition of IEC60335-2-84 was published on 29 October 2019. IEC suggested that countries and regions may apply the aforesaid standard 12 to 36 months from the date of publication (i.e. between 29 October 2020 and 29 October 2022) depending on the situation. Based on IEC's suggestion, the 2019 edition of the International Standard IEC60335-2-84 took effect from 29 October 2019 and the implementation started from 29 October 2020, with a grace period of 36 months from the date of publication (i.e. until 28 October 2022). Moreover, advisory notes for

suppliers under Section A.5 of the Guidance Notes specify that “in general, a period of 3 years after a new edition of standard was published, such edition of standard is advised to be adopted unless there is an effective date specified in the standard therein, coping with the latest safety requirements.” The suggested three-year period in the advisory notes is a grace period. Hence, suppliers should ensure that the smart toilet seats (including the products in question) they manufactured or imported after 28 October 2022 could pass the tests based on the 2019 edition of the International Standard IEC60335-2-84.

33. As regards suppliers’ responsibilities, paragraph B.7(1) of the Guidance Notes states that any person who supplies electrical products should ensure that all electrical products concerned are covered by valid certificates of safety compliance and are in compliance with the applicable safety requirements. The certificates should be made available within a reasonable period for inspection upon request by the Director. Suppliers should, therefore, have the certificates of safety compliance concerned readily available for checking by EMSD. Paragraph B.7(9) of the Guidance Notes also provides that suppliers should ensure that their electrical products conform to the latest safety standards as detailed in the Guidance Notes. There may be cases where residual stocks of electrical products exist, such that they are issued with the certificates of safety compliance with reference to some safety standards which have since been revised. For the convenience of the public, the certificates of safety compliance issued before the new standards take effect for residual stocks, whether new or second-hand, will continue to be accepted unless the products made to the unamended standards pose unacceptable risks to the consumers.

34. Overall, suppliers should check with the manufacturers the latest edition of safety standards before importing the products. Suppliers can also make enquiries with EMSD about the requirements of the relevant safety standards before supplying electrical products.

### ***Others***

35. As EMSD pointed out, the law requires that companies in the industry should make sure they act (including import, distribution and sale of household electrical products) in accordance with the statutory requirements in Hong Kong. Hence, before supplying the smart toilet seats, the complainant had the duty to make sure they met the relevant requirements under the Ordinance. Based on EMSD’s experience, there might be new suppliers participating in the exhibition concerned. Although these



suppliers were obliged to understand the relevant requirements, EMSD had distributed via the event organiser publicity leaflets to the exhibitors to enhance their understanding of the statutory requirements and their responsibilities prior to the inspections under Operation A. The publicity leaflet set out the requirements for the certificates of safety compliance, provided the contact information of EMSD, and reminded exhibitors that details could be found in the Guidance Notes. Enquiries from exhibitors could be made to EMSD by email or by telephone. On 7 July 2021, EMSD provided the complainant with a copy of the leaflet for reference.

36. According to the complainant, EMSD inspected the company's exhibition booth on 12 June 2021 upon receipt of a complaint about the company's products. The complainant claimed to learn from a reliable source that the complaint was made by competitors in the industry. Against this allegation, EMSD clarified that Operations A and B were both large-scale enforcement actions against all suppliers of electrical products involved. As regards the complainant's allegation that EMSD had failed its obligation to keep proper records of the submission by the complainant as a member of the public, EMSD reiterated that Operations A and B were both enforcement actions, and it was the complainant's responsibility as a supplier to submit the certificates of safety compliance upon request.

## **Our Comments**

37. According to the information provided to this Office, the complainant was mainly dissatisfied that after the company's submission to Staff A of EMSD in August 2021, Staff B called in September 2021 to require re-submission of the documents on the grounds that Staff A had retired from his post without explaining the details of information that the complainant had already submitted. The complainant found such handling of EMSD unreasonable and that the handover of work among staff had been ineffective. The subsequent development of the case shows that there was indeed inadequacy in the complainant's submission. Nevertheless, the crux is whether EMSD staff had, during the tele-conversation, required the complainant to re-submit the information that the latter had already provided to another staff. In the absence of objective evidence, we could not know what had actually been communicated between the complainant and Staff B, but we notice that in the email sent to Staff B on 14 September 2021, the complainant's representative indicated that the complainant had learned about Staff A's retirement during the tele-conversation with Staff B and therefore re-submitted the document which had already been sent to Staff A. This

shows that what the complainant perceived from the tele-conversation tallied with the complaint subsequently filed. We have examined EMSD's written record about the tele-conversation on 13 September 2021 (it was 14 September in the complainant's account) and found that Staff B only made a brief record about having called the complainant's representative and that the representative would provide information. There were no details about the purpose of calling the complainant, the main points discussed during the tele-conversation and what information the complainant had to re-submit. In handling this complaint, EMSD had asked Staff B about his conversation with the complainant's representative, but he could not recall the details.

38. EMSD explained that Staff B contacted the complainant on 13 September 2021 because the latter's submission to Staff A could not prove that the two models of smart toilet seats in question had been issued certificates of safety compliance before 12 June. Hence, EMSD was actually requiring the complainant to submit supplementary information, not repeatedly demanding the same information from the complainant. Nevertheless, EMSD emphasised that its staff could not disclose the details of irregularities to the supplier during the process of collecting evidence for prosecution purposes. Hence, Staff B did not make it clear during the tele-conversation that the complainant must submit certificates of safety compliance issued before 12 June 2021. Under such circumstances, we have doubts as to how EMSD staff conveyed to the complainant the message that the certificates of safety compliance previously submitted were not valid and what supplementary documents the complainant should provide. Besides, we have examined the correspondence between EMSD and the complainant regarding Operation A and found that EMSD had already informed the complainant in the "request-for-information" letter dated 12 June 2021 that supplementary information was required because the complainant had failed to produce certificates of safety compliance on the day EMSD conducted the inspection. The letter also stated that any person who supplies electrical products without the **issuance** of a certificate of safety compliance commits an offence. Therefore, the complainant should have known that EMSD was requiring the company to prove that the certificates of safety compliance of the two models of smart toilet seats were issued before 12 June 2021. Under such circumstances, we find it hard to comprehend why EMSD still emphasised that its staff could not make it clear to the complainant during the tele-conversation on 13 or 14 September 2021 that the complainant must submit the certificates of safety compliance issued before 12 June 2021 because neither the interview under caution nor the caution statement had been conducted or taken.

39. While we agree that suppliers have the responsibility to understand and act according to the applicable regulatory mechanism, it is not unreasonable that the complainant could not understand that what EMSD staff required it to submit in mid-September 2021 were the valid certificates of safety compliance issued before 12 June 2021, and misunderstood that EMSD had repeatedly required submission of the same information given the above circumstances. In our opinion, the communication between EMSD and the complainant had been deficient.

40. EMSD explained that none of the safety test reports that the complainant submitted in August 2021 for the four models of products concerned under Operation B were in accordance with the latest edition (i.e. 2019 edition) of IEC60335-2-84. Instead, the tests were conducted according to the safety standards of the 2013 edition. Staff C, therefore, followed up the complainant's case in October 2022 and requested updates on the products in question. EMSD also explained that apart from the new requirements of the international safety standards, manufacturers would update the user guide of products from time to time to ensure safe and effective use of their products by consumers. Regardless of the reason to modify their products, manufacturers must obtain an updated certificate of safety compliance for the products. We have examined Staff C's email to the complainant, in which the staff had not clearly indicated that the latest information on the products in question should be submitted. In our opinion, one of the purposes of Operation B was to obtain the latest information about the products in question. If Staff C had specified the purpose to the complainant, the latter would not have thought that Staff C failed to check the certificates previously submitted and repeatedly required submission of the same information. In this regard, EMSD reviewed the case and considered that its staff should have clearly explained in detail the inadequacy of the complainant's submission in 2021 to avoid misunderstanding.

41. Lastly, we are of the view that the complainant's suggestion about publishing on EMSD's website the models of smart toilet seats conforming to the requirements has its merits. EMSD may consider giving careful consideration if it finds the suggestion feasible.

## **Conclusion**



42. Based on the analysis in **paragraphs 37 to 40**, The Ombudsman considers the complaint against EMSD **partially substantiated**.

**Recommendations**

43. The Ombudsman recommends that EMSD remind its staff to explain clearly the information being asked for when requiring industry practitioners to provide information, so as to avoid creating an impression that the Department keeps requiring the same information.

**Office of The Ombudsman**  
**June 2023**

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