

**Measures taken by Food and Environmental Hygiene Department and
Home Affairs Department in handling complaints about
obstruction and noise caused by a wholesale market
Investigation Report**

In March 2023, two members of the public (“the complainants”) complained separately to this Office against the Food and Environmental Hygiene Department (“FEHD”) and the Home Affairs Department (“HAD”).

The Complaints

2. Allegedly, a large quantity of waste, miscellaneous articles, goods, and wooden pallets were deposited on the pavements and carriageways in the vicinity of a wholesale market after 9 pm every day, causing obstruction to pedestrians and vehicles (“the Obstruction Problem”). The cleansing workers of FEHD contractor would clear the waste and miscellaneous articles, including removing some of the pallets to the underneath of a bridge on a nearby street, only in the morning, leaving some pallets unattended. The complainants repeatedly complained to FEHD via 1823 about the Obstruction Problem. FEHD replied that no pallet was found during its morning patrols, and if any pallet was found, it would post a Notice to Remove Obstruction (“the Notice”) requiring the removal of the pallet. The complainants found that the pallets were only slightly shifted to spots nearby and there was no improvement to the Obstruction Problem. Moreover, traders used electric pallet trucks to move the goods around at night, generating excessive noise and causing nuisance to nearby residents (“the Noise Problem”).

3. One of the complainants alleged that in a meeting between members of a district concern group and the representatives of FEHD and HAD on 30 June 2021, the departments’ representatives undertook to improve the aforesaid problems, including taking immediate enforcement action against the pallets placed on the road. The departments concerned also agreed to follow up on the Noise Problem, including considering the introduction of legislation to regulate the noise generated by electric pallet trucks. However, the Noise Problem persisted.

4. In sum, the complainants were critical that:

- (1) FEHD had failed to take effective enforcement actions against the

Obstruction Problem, namely:

- (a) failing to patrol the wholesale market area at night;
 - (b) disregarding the illegal occupation of the pavements and carriageways by pallets in the vicinity of the wholesale market;
 - (c) taking no further action against the pallets affixed with the Notices once they were removed slightly to spots nearby; and
 - (d) the cleansing workers' removing the pallets before the cleansing operation which gave rise to a suspicion of wasting public funds to do favours for the offenders.
- (2) HAD had failed to proactively coordinate departments to resolve the Obstruction Problem and the Noise Problem.

Our Findings

Relevant Legislation

5. Pursuant to section 22(1)(a) of the Public Health and Municipal Services Ordinance (“PHMSO”), it is an offence to obstruct or permit any article or thing to be so placed as to obstruct or to be likely to obstruct FEHD’s scavenging operation. Where the owner of such article or thing is not present, FEHD may issue the Notice under section 22(2) of the PHMSO requiring the owner to remove the same within four hours, otherwise FEHD may seize and detain the article or thing.

6. For shops causing obstruction by illegally placing goods in public places, the Hong Kong Police Force (“HKPF”) may issue a warning notice under section 32(1) of the Summary Offences Ordinance (“SOO”) requiring the owner(s) of those goods to cease the obstruction within a specified period. FEHD may prosecute the offender(s) under section 4A of the SOO or issue a Fixed Penalty Notice (“FPN”) to the offender(s) under section 3 of the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance.

7. If the obstruction involves unlicensed hawking, FEHD may institute prosecution and seize the goods and equipment respectively under section 83B and section 86(1) of the PHMSO.

Response from FEHD

Handling Various Street Obstruction Problems in the Wholesale Market

8. Street obstruction problems are a street management issue under the purview of multiple departments, each department concerned has to take necessary action according to its own jurisdiction. As FEHD's major function is to ensure environmental hygiene, it gives priority to tackling illegal hawking and obstruction to street cleansing operations.

9. Generally, FEHD would not provide cleansing services in the wholesale market area after 11:30 pm. FEHD understood that different traders in the area were engaged in wholesale activities on an on-going basis in small hours. After the activities, miscellaneous articles, discarded pallets and waste would be left on the pavements and at the roadside in the area. The local District Environmental Hygiene Office ("DEHO") would normally complete the cleansing operations in the area by 7:30 am. If a cleansing operation was obstructed by any unclaimed article, DEHO staff would affix the Notice on the article. Since July 2020, DEHO had stepped up street cleansing twice a week in the daytime in both the inner and outer areas of the wholesale market. In addition, DEHO staff were deployed to patrol the wholesale market area from time to time both in the daytime and at night. If littering or other offences against public cleanliness were detected, FPNs would be issued to the offenders.

10. Between June 2020 and May 2023, FEHD received a total of 11 complaints about the deposit of waste and placing of pallets on the pavements near the wholesale market which caused obstruction in small hours.

11. Moreover, some traders at a section of the wholesale market facing a street would use their stall places for retail purposes in the daytime, which might amount to illegal hawking and cause street obstruction. Since November 2022, DEHO had conducted inter-departmental joint operations with HKPF monthly to combat the irregularities and traffic offences. During the operations, FEHD staff took enforcement actions against shopfront extensions and illegal hawking and cleansed the street.

12. Between March 2021 and February 2023, DEHO staff carried out a total of 2,618 patrols in the wholesale market area at different times of the day (including 108

patrols after 9 pm). The regulatory/enforcement actions taken by DEHO included:

- (1) 218 operations against shopfront extensions and for street cleansing;
- (2) 13 joint operations with HKPF;
- (3) 177 FPNs issued for offences against public cleanliness;
- (4) 926 Notices affixed on articles causing obstruction to cleansing operation, and 45 articles seized;
- (5) 227 FPNs issued for offences of shopfront extension; and
- (6) 19 and 20 prosecutions instituted against unlicensed hawking and street obstruction respectively.

13. Since April 2023, FEHD had adjusted its enforcement strategy against obstruction caused by goods of the wholesale market in the daytime. DEHO, supported by additional manpower from HKPF, would seize the goods causing obstruction on the spot and issue FPNs to the offenders.

14. The situation of the wholesale market was complex in view of its own historical background. DEHO had been liaising with the traders and operators of the wholesale market and urging them to remove voluntarily the waste produced by wholesale activities. In addition, DEHO launched publicity and education campaigns, including the display of posters, to remind the public not to dispose of waste illegally in public places. It also issued advisory letters to the traders and nearby shops periodically to remind them to keep the environment clean and avoid causing obstruction by handling their articles properly.

Response to the Complainants' Allegations

15. DEHO representatives had not made any promise regarding the Obstruction Problem at the meeting mentioned in **paragraph 3**, although it had agreed to follow up on the matter. Subsequent to the meeting, DEHO staff stepped up patrols and clearance of waste and discarded pallets in the wholesale market area and on the nearby pavements.

16. On **paragraphs 4(1)(a) and (b)**, DEHO's patrols of the wholesale market covered both daytime and night-time (**paragraph 12**). Regarding the night-time operation of the wholesale market, DEHO's enforcement action normally targeted shopfront extensions and illegal hawking. Since DEHO did not provide late-night cleansing services for the wholesale market area, no obstruction was caused to cleansing operations by the articles (including pallets) placed on the pavements at night, and hence there was no breach of section 22(1)(a) of the PHMSO. The loading and unloading activities of traders at night generally did not involve unlicensed hawking.

17. On **paragraph 4(1)(c)**, during the early morning patrols and street cleansing operations, DEHO staff would watch out for any person who caused obstruction by placing pallets or other articles on the pavements, with a view to identifying their owners and taking enforcement action. If unattended pallets or other articles causing obstruction were found, DEHO would normally try to locate the owners from the shops nearby. However, it was DEHO's experience that often no one would admit to be the owner. The types, quantities and locations of the articles would vary from day to day, making it difficult for DEHO to track down the owners and take enforcement action. As such, DEHO would more often affix the Notices on articles causing obstruction to cleansing services, and remove the articles after the specified period.

18. On **paragraph 4(1)(d)**, uniformed supervisory staff, including FEHD Foremen and Overseers, supervised and oversaw cleansing workers' daily performance of duty. FEHD Foremen and Overseers were authorised to affix the Notices on articles, while workers were not. Prior to our investigation of this complaint, DEHO was not aware that cleansing workers had removed the pallets for the offenders who left the pallets unlawfully. Made aware of it by this complaint, DEHO arranged plain-clothes supervisory staff to conduct investigations at the wholesale market. On 15 June 2023, DEHO found worker(s) picking up pallets for some other persons during working hours, which was a suspected discipline case. In accordance with the established procedures, DEHO initiated disciplinary inquiries against the relevant worker(s) and supervisor(s), and posted a notice at the sign-in area reminding workers to behave properly and ethically at all times. The notice would be circulated periodically to warn workers against dereliction of duty and waste picking during working hours.

Response from HAD

19. HAD is not an enforcement authority. The street management issue (including the Obstruction Problem) of the wholesale market came under the purview

of multiple Government departments. Upon receiving relevant complaints, the local District Office (“DO”) of HAD would refer the case to the departments concerned and coordinate inter-departmental joint operations where necessary. The Noise Problem was handled jointly by the Environmental Protection Department (“EPD”) and HKPF under the Noise Control Ordinance.

20. Between June 2020 and June 2023, DO received 26 complaints about illegal occupation of roads, noise and environmental hygiene problems of the wholesale market. DO referred those complaints to FEHD, HKPF and EPD respectively. DO’s coordination for joint operations by the department was not needed.

21. DO liaised with relevant departments and trader representatives through various channels, including the District Management Committee (“DMC”), District Council (“DC”) and Area Committee (“AC”), and pressed for rigorous enforcement against the environmental hygiene problems in the wholesale market. The DMC was chaired by a District Officer, and the president of the wholesale market association was one of the AC members. The AC’s Working Group on Community Inspection (the “Working Group”) would patrol the wholesale market from time to time, and report the patrol and inspection results in a timely manner.

22. The concern group mentioned in **paragraph 3** was formed by resident representatives voluntarily, and its members included representatives from the Working Group. On 30 April 2021, DO arranged a site visit to the wholesale market for the concern group and relevant Government departments, and then held a meeting on 30 June. Apart from the AC members and resident representatives, the meeting was also attended by DO, FEHD and HKPF staff. The concern group expressed views on the noise nuisance caused to nearby residents by the cold stores in the wholesale market, and pointed out that workers driving electric pallet trucks on the road would pose a danger to other road users. The concern group urged HKPF to discuss the regulation of electric pallet trucks with the Transport Department. At the meeting, DO representatives undertook to keep a watch on the obstruction and noise problems and continue updating the enforcement authorities on the problems.

23. At the AC meetings in July and October 2021, DO invited the departments to continue discussing the situation of the wholesale market. Some participants suggested that publicity leaflets be distributed to advise workers to reduce noise nuisance. At the AC meeting in July 2022, some participants suggested that the Government introduce legislation in the long run to require metal rollers of electric pallet

trucks be coated with plastic so that the noise generated during their contact with road surface could be reduced.

24. On 22 October 2021, DO, together with HKPF and the AC, distributed publicity and education leaflets at the wholesale market, advising traders to minimise causing nuisance to nearby residents when moving goods. On 17 November 2021, the AC issued an advisory letter to the wholesale market association.

25. Afterwards, DO continued to discuss the situation of the wholesale market at the DMC, DC and AC levels. DO, together with FEHD and HKPF inspected the wholesale market area on 20 March 2023, and visited the wholesale market again on 11 April 2023 for publicity and education purposes.

Our Site Inspection

26. On 17 August 2023, our staff member conducted a site visit at the wholesale market area at around 10 pm and observed the following:

- (1) The carriageway was lined with a large quantity of cartons and bamboo baskets (some of which were placed on pallets) containing fruits, with only one vehicular lane left in each direction to and from the wholesale market;
- (2) The cartons and baskets containing fruits occupied about half of the pavement, but no serious obstruction was caused to pedestrians;
- (3) There were stacks of pallets and fruit crates underneath a footbridge on a nearby street, but no obstruction was caused to pedestrians;
- (4) A small amount of waste was found but the overall environmental hygiene condition was satisfactory; and
- (5) Some trucks were unloading goods at the roadside underneath a footbridge on a nearby street, and continuous noise was caused by workers moving the goods to the wholesale market by electric pallet trucks.

Our Comments

Complaint against FEHD

27. The location in question is a large-scale wholesale market in the urban area, with new-build residential projects in the vicinity. The traders' loading and unloading activities at night inevitably would affect the traffic, pedestrians and residents in the neighbourhood to a certain extent. This Office understands that in addition to taking enforcement measures against irregularities, Government departments have to strike a balance between the operation of the wholesale market and its impacts on the public.

28. According to the meeting minutes of the DMC, DC and AC, HKPF has a role to play in combating the irregularities in the wholesale market area, such as enforcement against parking offences, obstruction caused by goods (including occupation of carriageways), etc. HKPF was also involved in carrying out joint operations with FEHD (**paragraph 12**) and following up on the Noise Problem. However, The Ombudsman Ordinance stipulates that we cannot investigate any complaint against HKPF unless the complaint is related to the Code on Access to Information. This Office, therefore, refrains from commenting on the relevant actions of HKPF.

29. On **paragraphs 4(1)(a) and (b)**, FEHD has clarified that it only agreed to follow up on the Obstruction Problem at the meeting with the concern group, and DEHO took enforcement action continuously in the wholesale market area, including enforcement action taken against cleanliness offences committed at night-time (**paragraphs 9, 12 and 15**).

30. FEHD has explained why DEHO generally did not take enforcement action against articles (including pallets) placed on the pavements at night (**paragraph 16**). Since it is impracticable for DEHO to provide street cleansing services round the clock, this Office considers it understandable that DEHO arranged early morning services in the wholesale market area after the traders had loaded and unloaded goods at night. Over the past two to three years, DEHO and DO did receive complaints about environmental hygiene problems caused by the operation of the wholesale market (**paragraphs 10 and 20**). Our site visit revealed that the environmental hygiene of the wholesale market was generally satisfactory that night (**paragraph 26(4)**). The operation of the wholesale market involves livelihood issues, given that it has to meet the public needs on the one hand, and causes a certain degree of inconvenience to local residents on the other. While relocation of the wholesale market has been proposed, the department concerned has to balance the interests and needs between the traders in

the wholesale market and the residents before such proposal is implemented.

31. Regarding the allegation that DEHO would not take enforcement action once the pallets were slightly shifted to spots nearby (**paragraph 4(1)(c)**), it is difficult for us to comment in the absence of specific information. As for DEHO posting the Notices on unattended pallets first rather than removing them immediately (**paragraph 17**), this Office considers it an enforcement approach adopted by DEHO in the light of its regulatory experience, which is hardly unreasonable.

32. On **paragraph 4(1)(d)**, DEHO has said that it had not been aware of the workers' suspected misbehaviour of picking up pallets for other persons (**paragraph 18**). In our view, DEHO had dealt with the problem properly after knowing it. However, we are uneasy about the misconduct and disciplinary problems in the incident, which involved supervisors and frontline workers. DEHO should not only handle the incident seriously, but also enhance staff awareness of integrity and personal ethics.

33. Based on the analysis in **paragraphs 27 to 32**, The Ombudsman considers the complaint against FEHD **unsubstantiated**.

Complaint against HAD

34. This Office considers DO to have handled the matter properly by liaising and exchanging views continuously with stakeholders of the wholesale market through such channels as the DMC and AC, as well as referring the Noise Problem and the Obstruction Problem to the relevant departments for further action.

35. According to the meeting minutes of the DMC, DC and AC, HKPF and FEHD had maintained communication on the various street obstruction problems in the wholesale market and conducted joint operations regularly. Whether DO's coordination for joint operations was needed depends on the actual circumstances. In fact, this Office is not aware of any information indicating that DO had ever refused to coordinate any joint operation.

36. At the meeting in **paragraph 3**, DO agreed to continue updating the relevant departments on the Noise Problem. Afterwards, DO raised the matter at the DMC and AC meetings and communicated with the traders of the wholesale market for publicity and education purposes in accordance with the consensus reached by stakeholders at the meetings (**paragraphs 23 and 24**). This Office considers DO to have duly followed

up on the problem. The regulation of electric pallet trucks involves legislative issues and falls outside the purview of HAD.



37. Based on the analysis in **paragraphs 35 and 36**, The Ombudsman considers the complaint against HAD **unsubstantiated**.

Concluding Remarks

38. The Obstruction Problem and the Noise Problem arising from the night-time operation of the wholesale market would certainly have impacts on the neighbourhood. In our view, FEHD and HAD should keep a close watch and follow up on the problems and maintain communication with stakeholders to balance their interests and needs as far as possible, and at the same time minimise the impact on the residents. In the long run, the Government should proactively consider relocating the wholesale market in the light of the changes in urban landscape and development, thereby resolving the problems entirely.

Office of The Ombudsman
September 2023

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