

**Department of Health mistakenly issuing a
Compulsory Testing Order and letters
to a foreign domestic helper arriving in Hong Kong
Investigation Report**

The complainants, a foreign domestic helper and her employer, complained to this Office against the Department of Health (“DH”) on 22 February 2023.

The Complaint

2. The helper received a Compulsory Testing Order (“CTO”) served by the Compulsory Testing Prosecution Office (“CTPO”) of DH on 30 June 2022, despite her taking the required test on 29 May 2022. In response to the complainants’ complaint of 1 July, the case handler of CTPO emailed them on 6 July to confirm that the helper had complied with the testing requirement with test record found and the CTO could be ignored. On 24 October, a letter titled Enquiries for Fixed Penalty Notice (“the 2nd Letter”) was served to her by CTPO for failing to comply with the testing requirement. The complainants complained to CTPO, and the case handler replied on 4 November to confirm again that the helper had complied with the requirement, she would not be fined and could ignore the 2nd Letter. However, she received another letter (“the 3rd Letter”) dated 19 January 2023 from CTPO claiming that she had not complied with the testing requirement. The repeated mistakes by CTPO had caused her enormous stress and anxiety.

3. The complainants were dissatisfied that CTPO had repeatedly issued the above three order/letters to the helper mistakenly despite CTPO’s confirmations of her compliance with the testing requirement.

Our Findings

4. We launched a full investigation against DH on 28 February 2023 and completed the investigation in August 2023. Our findings are as follows.

Procedure for Issuing and Following up a CTO

5. According to DH, the requirements for persons arriving in Hong Kong from other places to undergo a polymerase chain reaction-based nucleic acid test for COVID-19 (“PCR test”) could cut transmission chains as far and as early as possible, achieve the objective of early identification, early isolation and early treatment, and slow down the transmission of COVID-19 in the community. The Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (“the Regulation”) was enacted in November 2020 to provide a legal framework through which the Government, having regard to the development of the pandemic situation, may by a Compulsory

Testing Notice (“CTN”) published in Gazette specify a category or description of persons to undergo a PCR test.

6. Under the CTN dated 31 March 2022, persons who arrived in Hong Kong on or after 1 April 2022 and who had stayed in any places outside China during the relevant period and been placed under quarantine for less than 12 days were required to undergo a specified test for COVID-19 on the 12th day of arrival in Hong Kong (“specified test”).

7. DH would cross-check information of those persons subject to compulsory testing with test records in the Government database to ensure that they had undergone the specified test. CTPO would conduct follow-up actions including enquiries on and enforcement against suspected non-compliance cases. Enforcement actions include issuance of a CTO under the Regulation requiring the person to undergo testing within a specified time frame. CTPO staff would conduct further checks in around five days after expiry of the CTO to ensure compliance. If test record of the person could not be found, CTPO would classify the case as one of suspected non-compliance of CTO and continue with the investigation. Letters would be issued to persons suspected of non-compliance cases to request supplementary information regarding compliance with the compulsory testing requirements/CTO. A Fixed Penalty Notice (“FPN”) might be issued for the non-compliance.

8. After investigation, CTPO staff would manually input the case details and update the case status in an Excel file to show whether further action would be needed. The Excel file would serve as the master record for CTPO’s future actions. Apart from the Excel file, CTPO also used paper files to record case information and status.

Chronology of the Helper’s Case

9. The chronology of the helper’s case provided by DH is as follows –

	<u>Date</u>	<u>Event</u>
(1)	18 May 2022	The helper arrived in Hong Kong from the Philippines. She was required to undergo the specified test on 29 May.
(2)	29 May	She underwent the specified PCR test. The test centre, which was not under DH’s management, input a wrong passport number (with an extra digit) in the test record system.
(3)	28 June	Since the information of her passport number was unmatched, her test record was not found in the Government database, and CTPO issued a notice enclosed with a CTO requesting her to undergo a compulsory test by 5 July.

		<p>The notice stated that “a person who fails to comply with a requirement under a Compulsory Testing Notice commits an offence. You may be given a penalty notice (of) \$10,000”.</p> <p>The CTO stated that “Failure to comply with this Order is an offence and will render you liable on conviction to a fine of \$50,000 and imprisonment for 6 months”.</p>
(4)	1 July	The employer emailed CTPO to complain about the CTO.
(5)	6 July	<p>An officer of CTPO handling the helper’s case replied to the employer by email that the helper’s test record was found and the latter could ignore the CTO. The officer further explained that the helper provided her passport number, HKID card number and mobile phone number in the Philippines when entering Hong Kong while her passport number and her mobile phone number in Hong Kong were provided for the test on 29 May. But the staff in the test centre did not input her passport number correctly. Before issuing the CTO, CTPO’s multiple attempts to contact the helper for clarification by phone and SMS with her mobile phone number in the Philippines were not successful.</p> <p>However, the officer did not input the case details or update the case status in the Excel file to show that the helper’s test record had been found and no further action was needed. The inaction resulted in her case remaining active and outstanding in the master record.</p>
(6)	19 October	To further assess if an FPN should be issued to the helper, CTPO issued the 2 nd Letter requesting her to provide supplementary information about compliance with the compulsory testing requirement.
(7)	24, 29 October and 2 November	The employer emailed CTPO to query about the 2 nd Letter and request a written confirmation of the matter having been resolved and a written apology to the helper.
(8)	3 November	In response to the 2 nd Letter, the complainants completed the form “Provision of Supplementary Information Regarding Compliance with Compulsory Testing Requirement” and emailed it to CTPO, reaffirming that the helper had duly complied with the testing requirement on 29 May 2022, but a wrong passport number was input into the record system

		during the test.
(9)	4 November	The same officer of CTPO emailed the employer that she had already updated the case status, but her colleague had overlooked it and mistakenly issued the 2 nd Letter. The officer reassured the employer that the helper could ignore the letter and would not be fined. However, same as before, the officer did not update the case status in the Excel file to indicate that no further action was needed.
(10)	9 November	The officer prepared a minute in the paper case file to curtail the case and stated that FPN would not be issued, but she did not update the case status in the Excel file.
(11)	19 January 2023	CTPO issued the 3 rd Letter “Provision of Information in relation to Compulsory Testing Order” to the helper, asking for information in relation to her compliance with the CTO.
(12)	21 January	The employer replied to CTPO by email and WhatsApp to express dissatisfaction with the repeated wrong requests.
(13)	27 to 31 January	The employer and CTPO had had some telephone and WhatsApp communication, in which the employer requested a written confirmation of conclusion of the case by 1 pm of 31 January. CTPO had not followed up the request due to administrative oversight.
(14)	2 February	Following completion of clearance operation of all outstanding cases, CTPO updated the status of the helper’s case that no further action was needed.

DH’s Response

10. DH considered that there were two occasions/issues causing the confusion and misunderstanding in this case. Firstly, the test centre had mistakenly input the helper’s wrong passport number into the test record system on 29 May 2022, resulting in follow-up actions by CTPO, i.e. issuing the CTO, the 2nd Letter and the 3rd Letter requesting her to undergo the test or to provide further information to CTPO. DH considered that while the wrong passport number was not directly related to the issuing of the two Letters, an accurate passport number in the test record would have avoided triggering the necessary enforcement action.

11. Secondly, the officer, who has left DH since March 2023, had erroneously thought that she had already updated the status of the helper's case in the Excel file to indicate that no further action was required, but in fact she had not done so. Although the officer had later prepared a minute in the paper case file to curtail the case on 9 November 2022, she had not updated the Excel file case status, which was a crucial step for case curtailment. As a result, the helper's case remained active and outstanding and CTPO officers went on to issue the two Letters. Nevertheless, in view of the updating in the paper file, DH believed that the officer's omission in updating the case status in the Excel file was unintentional.

12. DH deeply regrets for the stress and inconvenience caused to the helper and the employer. It appreciates their cooperation and effort to comply with the anti-epidemic legislation and wishes that they would understand the importance for DH to follow up on the suspected non-compliance with compulsory testing.

13. In the past two years, CTPO has handled around 240,000 suspected non-compliance cases. Following relaxation of the quarantine measures, there has been a surge in the number of inbound travelers since August 2022, and a corresponding rise in the number of suspected non-compliance cases requiring investigation by CTPO. As it is important to follow up the cases in a professional and efficient manner, relevant letters, e.g. the 2nd Letter and the 3rd Letter in this case, would be issued by designated CTPO staff to give ample opportunities for persons under investigation to clarify or explain the suspected or potential non-compliance, before CTPO can draw a conclusion for each of the cases.

14. Prior to receiving this complaint, DH has noted the need for an enhanced computer system and workflow to record the assessment results and decisions of prescribed officers in time, based on which further enquiries will be conducted. DH, therefore, was dedicated to improving the CTPO record system to enhance efficiency and accuracy. DH explored the feasibility of developing an automated system named Post-arrival Compliance Monitoring System ("PCMS") in the third quarter of 2021. Following a study involving relevant stakeholders, the scope, functional requirements and financial implications were determined. Since August 2022, DH has been developing and fine-tuning PCMS to replace the Excel record system. The key function of this new system is to facilitate checking of data so that the outcome of compliance check would be more accurate and reliable. PCMS provides management functions for case handling officers to gather necessary non-compliance details of persons subject to compulsory testing, assess those cases for issuing CTO and/or FPN, and monitor the subsequent status of document delivery and compliance by persons till the end of the enforcement processes. After completion of PCMS development in February 2023, DH expects that manual errors will be kept to a minimal and recurrence of situation similar to the helper's case can be prevented, and user manual, system installation manual, etc. have been produced to facilitate staff to use PCMS in future.

15. On 29 December 2022, the Government lifted all compulsory PCR test requirements for inbound persons after arrival in Hong Kong. CTPO has been closed down and the PCMS is reserved for future use.

Our Comments

16. Imposing compulsory testing requirements on inbound person was an important anti-pandemic measure and not complying with the CTO is an offence and is liable to a fine and imprisonment. The public expects CTPO to take the enforcement work seriously. The helper's case reflected that there was a gap between what actually happened and public expectation. According to DH, her case was mishandled due to two main reasons: the input of wrong passport number at the test centre (**paragraphs 9(2) and 10 above**) and the case status not being updated in CTPO's Excel database (**paragraphs 9(5), (9) and 11 above**). The whole incident was caused by a series of human errors in the test centre and CTPO, and we consider the errors serious.

17. In particular, the concerned CTPO case officer's repeated inaction to update the Excel file is unacceptable. According to DH, the officer had found anomalies in the case status on two occasions on 6 July and 4 November 2022 but did not update the case status in the Excel file (**paragraph 9(5) & (9) above**). As CTPO relied on the case information and status in the Excel file to determine its actions to be taken (**paragraph 8 above**), such omissions unfortunately resulted in the issuing of the 2nd Letter and the 3rd Letter despite the paper record made (**paragraph 9(6), (10) & (11) above**). We cannot ascertain the reason why the concerned CTPO case officer did not update the Excel file but only updated the paper file. This may be due to unclear guideline provided to staff or insufficient staff training on updating the case status, or it may be due to the officer's carelessness or negligence, or a combination of them. Taking into consideration the prolonged stress and anxiety the complainants have endured since the issuing of the CTO on 28 June 2022, their grievance is understandable.

18. In addition, according to the established practice, CTPO should have checked the helper's compliance of the CTO issued on 28 June 2022 around five days after the deadline of 5 July (**paragraphs 7 and 9(3) above**). From the information provided by DH, we do not see any mechanism in CTPO to confirm compliance. Instead, CTPO had delayed taking follow-up action on the CTO and issued the 2nd Letter on 19 October (**paragraph 9(6) above**), i.e., more than three months after the deadline. Also, we note that while the helper's test record was found on 6 July 2022 (**paragraph 9(5) above**), her case was only closed on 2 February 2023, together with a backlog of other cases upon clearance operation (**paragraph 9(14) above**). The delay reflects that there was no mechanism in CTPO to monitor and oversee the progress of follow-up on outstanding cases.

19. DH completed the development of PCMS in February 2023 to replace the Excel

file to enhance efficiency and accuracy (**paragraph 14 above**). With hindsight, in view of the limitation of the manual Excel record system and the possible upsurge of the number of CTOs and the resulting follow-ups, we consider that DH should have started the development of PCMS soon after the Regulation was enacted in November 2020 (**paragraph 5 above**) and compressed the time of development, so that the upsurge could have been promptly and properly coped with. Now that compulsory testing requirements for inbound persons have been lifted and CTPO has been closed down (**paragraph 15 above**), PCMS might be left idle. We consider that DH have appropriately formulated user manual and system installation manual (**paragraph 14 above**) to ensure that staff could easily revive and use PCMS in future whenever necessary.

Conclusion

20. In view of the above analysis in **paragraphs 16 to 19**, we consider the complaint against DH **substantiated**.

Recommendations

21. While we note that, in view of the latest pandemic situation, the Government has lifted all compulsory testing requirements on inbound persons, we also note that the Chief Executive has committed that the Government would review and consolidate experience gained so as to ensure that the Government could tackle new challenges. In this connection, The Ombudsman recommends that DH:

- (1) provide the written confirmation for the conclusion of the helper's case as requested by the employer which was previously overlooked by CTPO (**paragraph 9(13) above**);
- (2) review the guideline and strengthen staff training on properly updating test records and case status; and
- (3) review and enhance the mechanism of monitoring progress of similar enforcement action in future,

so as to consolidate experience gained in this case for reference in future.

22. In response to Recommendation (1), DH issued a written confirmation to the employer on 28 July 2023 that the helper's case is closed and no further action would be taken.

Office of The Ombudsman
August 2023

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