

DEPARTMENT OF HEALTH'S EFFORTS IN SMOKING CONTROL

Executive Summary

1. In Hong Kong, it is the Government's policy to discourage smoking, contain the proliferation of tobacco use and minimise the impact of passive smoking on the public. The Department of Health (DH) is the government department responsible for implementing the Government's smoking control efforts through a multi-pronged approach, comprising legislation, enforcement, publicity, education and smoking cessation services. There are two ordinances for governing smoking control, namely the Smoking (Public Health) Ordinance (SPHO — Cap. 371) and the Fixed Penalty (Smoking Offences) Ordinance (FPSOO — Cap. 600). The SPHO provides a legal framework for restricting the use, sale and promotion of tobacco products in Hong Kong:

- (a) ***Smoking ban at designated areas.*** Any persons who smokes or carries a lighted cigarette, cigar or pipe at a statutory no smoking area (NSA) designated by the SPHO commits an offence and is liable on summary conviction to a maximum fine of \$5,000. Statutory NSAs include indoor workplaces and public places (e.g. restaurants and bars), some outdoor public places (e.g. public transport facilities) and public transport carriers;
- (b) ***Regulation on sale of tobacco products.*** No person shall sell any cigarettes, cigars, pipe tobacco or cigarette tobacco unless the packet and the retail container bear a health warning in the form and manner prescribed by the SPHO; and
- (c) ***Regulation on tobacco advertisements.*** No person shall print, publish, display, broadcast, exhibit by films, or place on the Internet any tobacco advertisements as defined by the SPHO.

The FPSOO introduced a fixed penalty system for smoking offences to enhance the efficiency and effectiveness in enforcing the smoking ban. The FPSOO provides for a fixed penalty of \$1,500 payable for smoking offences at statutory NSAs under the SPHO.

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2. The DH has implemented various promotional activities relating to smoking control, such as distributing no-smoking signs and publicity materials, providing health talks and producing announcements in the public interest. It also provides funding to the Hong Kong Council on Smoking and Health (COSH) which conducts publicity campaigns to encourage smokers to quit smoking, and garners public support for establishing a smoke-free Hong Kong. Moreover, the DH operates an integrated Smoking Cessation Hotline (the Quitline) to provide professional counselling and information on smoking cessation. It also subvents six non-governmental organisations (NGOs) and a university to deliver smoking cessation services and smoking prevention programmes.

3. The DH's smoking control efforts are implemented through the Tobacco Control Office (TCO), which was set up under the DH in 2001. In 2016-17, the TCO's expenditure on smoking control amounted to \$101.3 million while the DH's subventions to COSH, the six NGOs and the university (see para. 2) amounted to \$83.2 million. The Audit Commission (Audit) has recently conducted a review of the DH's efforts in smoking control.

Enforcement work of the TCO

4. ***Handling of smoking complaints.*** The TCO makes use of a record system, which is a computerised spreadsheet, for recording details of complaint cases (para. 2.6). Audit found that:

- (a) ***Need to develop a computer system to properly record and monitor the performance in complaints handling.*** Details of complaint cases had not been completely recorded in the record system. Of the 18,354 complaint cases received by the TCO in 2017, the interim reply dates of 7,003 (38%) cases, the first inspection dates of 7,542 (41%) cases, the inspection results of 8,334 (45%) cases, and the final reply dates of 6,401 (35%) cases had not been recorded in the record system (para. 2.7); and
- (b) ***Need to disclose the TCO's guidelines on the timeframes for handling complaints.*** For the 10,812 complaints received in 2017 with first inspection dates recorded, the first inspections had been conducted on average eight calendar days after receiving the complaints. Although the TCO has set internal guidelines on the timeframes (e.g. for issuing interim replies and conducting first inspections) for handling complaint cases, it

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does not consider these guidelines to be performance pledges. It therefore has not disclosed any of these guidelines (paras. 2.11 and 2.12).

5. ***Enforcement of smoking offences.*** Audit found that:
- (a) ***Need to provide additional guidelines to determine the frequency of inspections on complaints and inspections at locations requiring enhanced inspections (LREIs).*** The number of inspections conducted by Tobacco Control Inspectors (TCIs) on complaints and at LREIs was left to the individual judgment of the TCIs and thus varied considerably. For example, in an audit sample of 493 complaints received by the TCO in August 2017, 1 inspection had been conducted for each of the 191 complaints while 5 inspections had been conducted for each of the 7 complaints. In August 2017, of the 353 LREIs inspected by TCIs, 1 inspection had been conducted at each of the 109 LREIs while 5 inspections had been conducted at each of the 26 LREIs (paras. 2.17, 2.18, 2.22 and 2.23);
 - (b) ***Need to conduct more inspections at venue types having higher incidences of smoking offences.*** Audit's analysis of the 8,066 complaint inspections and LREI inspections conducted by the TCO at 2,387 venues in August to October 2017 revealed that for some types of venues (e.g. bus interchange and amusement game centre), the percentage of inspections with smoking offences detected were generally higher. The TCO needs to consider conducting more inspections at the types of venues where there are higher incidences of smoking offences (paras. 2.25 and 2.26); and
 - (c) ***Need to carry out more "overnight" inspections.*** TCIs carried out inspections at different time sessions, namely "morning and afternoon", "afternoon and evening", "evening" and "overnight" sessions. Of the 8,066 inspections conducted in August to October 2017, "overnight" inspections had the highest percentage of inspections with smoking offences detected but accounted for only 1.6% of all the inspections conducted (paras. 2.27 and 2.28).
6. ***Fixed penalty system.*** Under the FPSOO, when witnessing a smoking offence at a statutory NSA, a TCI can issue a fixed penalty notice (FPN) to the offender, demanding a fixed penalty of \$1,500. Furthermore, authorised officers of

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the Food and Environmental Hygiene Department (FEHD), the Housing Department (HD) and the Leisure and Cultural Services Department (LCSD) as well as police officers are also empowered to issue FPNs (paras. 2.35 and 2.36). Audit found that:

- (a) ***Need to properly handle omissions or errors in FPNs.*** For the FPNs issued in 2013 to 2017, 306 had been withdrawn due to various reasons. The reason of “omission or error in the FPN” accounted for 139 (45%) of the 306 withdrawals. The FPNs withdrawn due to this reason were issued by enforcement departments other than the TCO. Instead of withdrawing an FPN, the TCO would decide on a case-by-case basis to issue an amendment notice, which would rectify the omission or error, to the offender. The TCO needs to disseminate to other enforcement departments its practice of issuing amendment notices rectifying omissions or errors in FPNs issued to offenders (paras. 2.38 to 2.40); and
 - (b) ***Need to facilitate local and non-local offenders to settle FPNs.*** As at 31 December 2017, for the FPNs issued in 2013 to 2017, the unsettlement rate of FPNs of non-local offenders visiting Hong Kong (21.5%) was much higher than that of local offenders residing in Hong Kong (1.3%). Furthermore, the unsettlement rate of FPNs of local offenders rose from 0.4% in 2013 to 3.2% in 2017. The TCO needs to explore more ways to facilitate offenders, in particular non-local offenders, to settle FPNs (paras. 2.41 and 2.42).
7. ***Need to address tobacco advertisements at convenience stores and newspaper stands.*** Under the SPHO, tobacco advertisements are banned. In recent years, the TCO had received complaints about tobacco advertisements at convenience stores and newspaper stands (i.e. 8, 8 and 4 complaints in 2015, 2016 and 2017 respectively). Such advertisements were in the form of displaying packets of cigarettes in display units. Given that there are other similar tobacco advertisements at convenience stores and newspaper stands, the TCO needs to enhance the publicity to the trade on the legal requirement of banning tobacco advertisements, and take enforcement actions against tobacco advertisements where warranted (paras. 2.45, 2.46 and 2.48).

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8. ***Scope for improvement in the conduct of surprise checks.*** The inspection work of the TCO's enforcement teams is subject to supervisory checks by 4 Executive Officers of the TCO. Audit examined the 51 supervisory checks conducted in the 12-month period from November 2016 to October 2017 and found that: (a) in 20 (39%) checks, the Executive Officers were unable to find the enforcement teams at the inspection venues; (b) among the 21 enforcement teams, the number of supervisory checks conducted on the teams ranged from 0 to 9; and (c) no supervisory checks were conducted before 9:30 a.m. or after 7:30 p.m. while the enforcement teams were required to conduct inspections round the clock (paras. 2.51 and 2.53).

Facilitating the work of venue managers

9. ***Need to improve the display of no-smoking signs.*** The TCO has advised venue managers of statutory NSAs (e.g. management companies) to display sufficient no-smoking signs in prominent positions to remind people that smoking is prohibited at statutory NSAs. To this effect, the TCO has prepared no-smoking signs, which can be freely obtained from the TCO by venue managers. The Food and Health Bureau has also required bureaux and departments to post sufficient no-smoking signs, showing the fixed penalty level, at statutory NSAs under their control and management. Audit selected four types of statutory NSAs (see (a) to (d) below) to inspect the display of no-smoking signs (paras. 3.8 to 3.10). Audit's findings were as follows:

- (a) ***Enclosed public places.*** Enclosed public places include enclosed staircases and enclosed pedestrian pavements. Audit visited 4 enclosed staircases and 4 enclosed pavements in three districts in the territory and found that there were no display of no-smoking signs and evidence of smoking as cigarette butts were found on the stairs or ground (paras. 3.12 and 3.13);
- (b) ***Outdoor escalators.*** Audit visited 20 outdoor escalators (located in public housing estates of two districts and in Wan Chai) each for half an hour. Audit found that at only 5 (25%) of the 20 escalators, no-smoking signs were displayed. Furthermore, Audit spotted 6 persons smoking at 5 of the 15 escalators at which no-smoking signs were not displayed, but did not spot any persons smoking at the 5 escalators at which no-smoking signs were displayed (paras. 3.14 and 3.15);
- (c) ***Public pleasure grounds (PPGs).*** Audit visited 9 PPGs managed by the LCSD (located in three districts) each for one hour. Audit found that at all

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of the 9 PPGs, no-smoking signs/banners were displayed, the vast majority of which were the LCSD's own signs/banners. Unlike the TCO's signs/banners, the LCSD's signs/banners did not show information on the fixed penalty for violation and the complaint hotline of either the LCSD or the TCO. Furthermore, at 8 (89%) of the 9 PPGs, Audit spotted 33 persons smoking. At all of the 9 PPGs, cigarette butts were found (para. 3.16); and

- (d) ***Public transport facilities (PTFs).*** The TCO is responsible for displaying no-smoking signs and banners at PTFs. Audit visited 9 PTFs (located in three districts) each for one hour, and spotted 12 persons smoking at 6 (67%) of the 9 PTFs where no-smoking signs and banners were displayed (para. 3.17).

10. ***Need to step up enforcement efforts.*** As shown in paragraph 9, there were incidents where people were found smoking at statutory NSAs under the management of government departments (e.g. outdoor escalators in public housing estates managed by the HD and PPGs managed by the LCSD). Audit analysed the FPNs issued by the FEHD, the HD and the LCSD in 2013 to 2017 and found that the number of FPNs issued by the FEHD and the LCSD was much lower than that of the TCO and the HD. For example, in 2017, the FEHD issued 52 FPNs at statutory NSAs under its management, the LCSD issued 54 FPNs at statutory NSAs under its management, while the TCO issued 517 FPNs and 495 FPNs at statutory NSAs under the management of the FEHD and the LCSD respectively. In the same year, the HD issued 410 FPNs at statutory NSAs under its management (para. 3.22).

Smoking cessation services and other management matters

11. ***Provision of smoking cessation services through subvented organisations and a DH clinic.*** Audit found that:

- (a) ***Scope for improving the monitoring of subvented organisations' performance.*** The DH monitored the performance of the seven subvented organisations (see para. 2) mainly by reviewing the performance reports submitted regularly by them, and by holding meetings with them to discuss their performance. According to the TCO, it had conducted ad-hoc inspections at the organisations. For example, in 2015 to 2017, as part of the international training programmes on smoking control organised by the

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TCO annually, TCO staff (and training programme participants) paid visits to the smoking cessation clinics operated by two organisations. As the TCO's inspections are only conducted on an ad-hoc basis, the TCO needs to take measures to better plan its inspections at the seven subvented organisations taking into account the frequency of inspections and the need to conduct surprise inspections. The TCO also needs to conduct the inspections in a more comprehensive manner. For example, it needs to ascertain whether proper systems are in place for reporting performance and controlling the use of DH subventions (paras. 4.5 and 4.6); and

- (b) *Need to review the way forward of a DH clinic.* The DH provides smoking cessation services to members of the public through a primary care out-patient clinic. DH records indicated that, in 2009 to 2017, the number of referrals by the DH Quitline (see para. 2) to the DH clinic had decreased from 619 in 2009 by 606 (98%) to 13 in 2017, and the number of new cases had decreased from 354 in 2009 by 348 (98%) to 6 in 2017. Given the small number of referrals and new cases of the clinic in recent years and the fact that similar smoking cessation services are being provided by DH subvented organisations, the DH needs to conduct a review on the way forward of the clinic's smoking cessation services (paras. 4.8 and 4.10).

12. *Scope for setting additional performance indicators.* Audit noted that in the DH's Controlling Officer's Reports for 2013 to 2017, there was only one performance indicator (i.e. the number of publicity or educational activities delivered by COSH) that was relevant to the DH's smoking control efforts. The DH needs to set and publish additional performance indicators (paras. 4.14 and 4.15).

Operation of COSH

13. *Governance of COSH.* COSH is a statutory body established in 1987 pursuant to the Hong Kong Council on Smoking and Health Ordinance (Cap. 389). As at 31 December 2017, COSH consisted of 17 members, including the Chairman, the Vice-Chairman and 15 other members (including 2 government officials, i.e. the Deputy Director of the DH and the Assistant Director (Publicity and Promotions) of the Information Services Department (ISD)). Under COSH, five committees and a Secretariat have been set up to assist it in carrying out its functions (paras. 5.2 and 5.3). Audit found that:

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- (a) ***Need to enhance attendance rates at meetings.*** In 2013-14 to 2017-18 (up to January 2018), for meetings of the Council and the Executive Committee, the overall attendance rates were above 70% and 90% respectively. However, for some meetings of the other four committees, the overall attendance rates were below 70%. Furthermore, the attendance rates of some members (e.g. 5 members in 2016-17) were below 50% and, in particular, 1 member did not attend any meetings in 2016-17 (paras. 5.7 and 5.9);
 - (b) ***Need to address issues relating to the attendance of government officials at meetings.*** The Deputy Director of the DH had participated in the meetings of the Council/Executive Committee in which the annual budget and the application for supplementary grant were discussed and approved for submission to the Government. In February 2018, the TCO informed Audit that the Deputy Director's presence in the meetings did not imply that COSH's programme and budget proposals would invariably be approved by the DH subsequently. As a good governance practice, COSH and the DH need to ensure that members of the Council/Executive Committee fully understand the roles and functions of the Deputy Director in the Council/Executive Committee. Furthermore, Audit noted that in 2013-14 to 2017-18 (up to January 2018), a Principal Information Officer of the ISD had represented the ISD's Assistant Director to attend all the meetings of the Council and the Education and Publicity Committee. COSH, however, had not laid down rules for alternate members to attend meetings (paras. 5.11 to 5.14); and
 - (c) ***Need to disclose remunerations of senior staff.*** In March 2003, the Director of Administration issued a Circular Memorandum, promulgating a set of guidelines for the control and monitoring of remuneration practices in subvented bodies by the Government. COSH had published on its website a message that the remuneration packages of its staff at the top three tiers had been reviewed and recommended to remain unchanged. COSH, however, did not publish on its website information such as the number, rank and remuneration packages of its staff at the top three tiers (paras. 5.17 and 5.18).
14. ***Implementation of programmes by COSH.*** COSH implements three types of programmes, namely community education programmes, publicity programmes,

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and research and conference programmes (para. 5.23). Audit examined two major programmes and found that:

- (a) ***Interactive Education Theatre Programme.*** In every school year, COSH cooperates with a local professional troupe to produce a show. The troupe stages a show performance at each of the primary schools participating in the Programme to inform students of the harmful effects of smoking, and to equip them to promote a smoke-free lifestyle and encourage their family members to quit smoking. In the five school years 2012/13 to 2016/17, some 230 schools had participated in the Programme, accounting for about 46% of all primary schools. However, about 270 (54%) schools had not participated in the Programme (paras. 5.25 and 5.27); and
- (b) ***“Quit to Win” Smoke-free Community Campaign.*** COSH recruits district organisations as district partners and offers financial support to them for organising smoke-free promotion activities. However, Audit noted that no district organisations had been recruited for a number of districts in recent years to participate in the Campaign. For example, no district organisations had been recruited for the 5 Campaigns since 2012-13 for 3 districts (paras. 5.28 and 5.30).

Audit recommendations

15. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Director of Health should:**

Enforcement work of the TCO

- (a) **closely monitor the implementation of the Tobacco Control Office Information System to ensure that there is no undue delay in enhancing the monitoring of performance in complaints handling (para. 2.14(a));**
- (b) **take measures to ensure that data relating to complaints handling are entered into the Tobacco Control Office Information System in a timely and complete manner for proper monitoring of performance in complaints handling (para. 2.14(b));**

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- (c) consider disclosing the TCO's guidelines on the timeframes for handling complaint cases together with the extent that the timeframes have been achieved (para. 2.14(c));
- (d) provide additional inspection guidelines to facilitate TCIs to determine the frequency of complaint inspections and LREI inspections (para. 2.33(a));
- (e) consider conducting more inspections at the types of venues having higher incidences of smoking offences (para. 2.33(b));
- (f) consider conducting more "overnight" inspections (para. 2.33(c));
- (g) disseminate to other enforcement departments the TCO's practice of issuing amendment notices rectifying omissions or errors in FPNs issued to offenders (para. 2.43(a));
- (h) explore more ways to facilitate offenders, in particular non-local offenders, to settle FPNs (para. 2.43(b));
- (i) enhance the publicity to the trade on the legal requirement of banning tobacco advertisements and the legal definition of such advertisements, and take enforcement actions against tobacco advertisements where warranted (para. 2.49);
- (j) take measures to deal with the situations where the enforcement teams could not be found at inspection venues during surprise checks (para. 2.54(a));
- (k) lay down guidelines to facilitate Executive Officers to conduct surprise checks (para. 2.54(b));

Facilitating the work of venue managers

- (l) identify enclosed public places and outdoor escalators at which there are no display of no-smoking signs, and encourage venue managers of these venues to display no-smoking signs (para. 3.19(a));

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- (m) **advise venue managers to display no-smoking signs containing messages relating to the smoking ban (e.g. the fixed penalty for violation and the TCO's complaint hotline) (para. 3.19(b));**
- (n) **at statutory NSAs of which the venue managers are government departments, urge the managers to follow the requirements of the Food and Health Bureau (para. 3.19(c));**
- (o) **provide the FEHD, the HD and the LCSD with information on recurrent complaints about smoking at the statutory NSAs managed by them on a more frequent basis so as to facilitate them to initiate enforcement actions more effectively, and conduct more joint operations with these departments so as to provide more training to their authorised officers (para. 3.24);**

Smoking cessation services and other management matters

- (p) **take measures to better plan the TCO's inspections at the organisations subvented by the DH for providing smoking cessation services and conduct more comprehensive inspections (para. 4.11(a));**
- (q) **review the way forward of the smoking cessation services provided by the DH clinic to members of the public (para. 4.11(b));**
- (r) **consider setting and publishing additional performance indicators so as to enhance the transparency and accountability of the DH's efforts in smoking control (para. 4.16); and**

Operation of COSH

- (s) **consider requiring COSH to publish details concerning remunerations of the staff at the top three tiers of COSH (para. 5.20).**

16. **Audit has also *recommended* that the Director of Food and Environmental Hygiene and the Director of Leisure and Cultural Services should review the enforcement operations at the statutory NSAs under their**

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management and step up enforcement efforts at these NSAs where warranted (para. 3.25).

17. Audit has also *recommended* that COSH should:
- (a) monitor the overall attendance rates of members at Council/committee meetings and take measures to improve the overall attendance rates where warranted (para. 5.19(a));
 - (b) take measures to improve the attendance rates of members with low attendance rates at Council/committee meetings (para. 5.19(b));
 - (c) in conjunction with the DH, take measures to ensure that members of the Council/Executive Committee fully understand the roles and functions of the DH's Deputy Director in the Council/Executive Committee (para. 5.19(c));
 - (d) in conjunction with the ISD, review and revise the arrangement whereby the ISD's Assistant Director is represented by a Principal Information Officer in all Council/committee meetings (para. 5.19(d)); and
 - (e) enhance the efforts to recruit schools that have not participated in the Interactive Education Theatre Programme to join the Programme, and to recruit district organisations from those districts where no organisations have been recruited in recent years to participate in the "Quit to Win" Smoke-free Community Campaign (para. 5.31).

Response from the Government and COSH

18. The Director of Health, the Director of Food and Environmental Hygiene, the Director of Leisure and Cultural Services and COSH agree with the audit recommendations.