

PROVISION OF HUMANITARIAN ASSISTANCE TO NON-REFOULEMENT CLAIMANTS BY THE SOCIAL WELFARE DEPARTMENT

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1. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), an international human rights instrument treaty under the purview of the United Nations, has been applied to Hong Kong since 1992. Article 3 of CAT provides that no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. An illegal immigrant (i.e. a foreigner who smuggled himself into Hong Kong, or a visitor who overstayed his limit of stay allowed by the Immigration Department (ImmD) or who was refused entry by ImmD upon arrival in Hong Kong) who makes a claim for non-refoulement protection in Hong Kong against torture risk or on all other applicable grounds cannot be removed unless his claim is withdrawn or has been finally determined as unsubstantiated. Hereinafter such persons are referred to as non-refoulement claimants (NRCs).

2. According to the Security Bureau (SB), on humanitarian grounds, the Government offers assistance, on a case-by-case basis, to meet the basic needs of NRCs during their stay in Hong Kong, regardless of the status of their applications/claims (e.g. whether their applications/claims have been rejected). The assistance is to provide support to prevent NRCs from being destitute during their presence in Hong Kong while at the same time not creating a magnet effect which could have serious implications on the long-term sustainability of such assistance and the immigration control of Hong Kong.

3. The Social Welfare Department (SWD) has been charged with the responsibility to provide humanitarian assistance to NRCs since November 2004, with an aim to offer assistance to NRCs who are deprived of basic needs during their presence in Hong Kong on humanitarian grounds. Since 2006, SWD has engaged contractors to provide humanitarian assistance to NRCs. As at 31 March 2020, the number of NRCs receiving humanitarian assistance was 10,711. In 2019-20, SWD

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expenditure on humanitarian assistance was \$477 million. According to SWD, the types and level of assistance are assessed on a case-by-case basis, based on the NRCs' vulnerabilities (e.g. individual needs and health conditions) and family size. The types and standard rates of humanitarian assistance in 2020-21 include, for example, monthly rent of \$1,500 per adult and \$750 per child, and monthly food assistance of \$1,200 per NRC.

4. Currently, through open tendering, SWD has commissioned:
 - (a) a non-governmental organisation (NGO) for the service contract for the provision of humanitarian assistance (e.g. rent and transportation) other than food assistance to NRCs (the NGO is hereinafter referred to as the service contractor). The current service contract covers the 2-year period from 1 February 2019 to 31 January 2021 with a total contract sum of \$342 million; and
 - (b) a local supermarket chain for the food contract for the provision of food to NRCs (the supermarket chain is hereinafter referred to as the food contractor). NRCs can buy food at the food contractor's food outlets by using an electronic token (e-token) distributed by the service contractor. The current food contract covers the period from 1 June 2019 to 31 July 2021 with a contract sum of \$252 million.
5. The Family and Child Welfare Branch of SWD is responsible for the day-to-day administration of the provision of humanitarian assistance to NRCs. The Audit Commission (Audit) has recently conducted a review of the provision of humanitarian assistance to NRCs by SWD (an NRC receiving humanitarian assistance provided by SWD is hereinafter referred to as a service user).

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6. *Service reporting by the service contractor.* Audit noted the following issues:
 - (a) *Need to improve timeliness in submission of reports and statements.* Audit examined the submission of reports and statements by the service contractor

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to SWD for the period 1 February 2017 to 31 March 2020 and noted that there were delays in submission of the reports and statements. For example, in the review period, the delays in submission of half-yearly statements ranged from 78 to 418 days (para. 2.6); and

- (b) ***Reporting requirements not facilitating performance monitoring.*** In the period 1 February 2017 to 31 March 2020, the monthly service statistics reports submitted by the service contractor to SWD only indicated the number of cases taken up within 3 working days, 4 to 10 working days or more than 10 working days. Accordingly, SWD could not ascertain from the monthly service statistics reports the number of certain non-compliant cases (e.g. cases not taken up within the required time frame of 7 working days for regular cases in the period 1 February 2019 to 31 March 2020) (para. 2.8).

7. ***Monitoring of the service contractor's performance by SWD.*** SWD has issued guidelines to its staff for monitoring the contractor's compliance with the service contract requirements. Audit examined the monitoring work conducted by SWD for the period 1 February 2017 to 31 March 2020 (paras. 2.12 and 2.13) and noted the following issues:

- (a) ***Scope for improvement in conducting spot checks on service users receiving rent assistance.*** According to the service contract, the service contractor should conduct monthly spot checks on 5% of the total number of service users receiving rent assistance in that month. Audit found that in January 2020, the service contractor conducted visits to 156 (5.5%) service users receiving rent assistance in the Hong Kong, Kowloon and Islands (excluding Kowloon City and Yau Tsim Mong) region. However, of the 156 visits, 74 (47%) were unsuccessful attempts (paras. 2.14 and 2.15); and
- (b) ***Scope for improvement in document review at offices of the service contractor.*** According to SWD's guidelines, SWD staff should visit the service contractor's offices, preferably unannounced, at least once within the contract period to conduct document review in order to evaluate the service contractor's performance under the service contract. Audit examined the records of the document review completed by SWD for the visits conducted in December 2019 and June 2020 (paras. 2.17 and 2.19) and noted the following:

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- (i) ***Need to expand coverage of cases selected for document review.*** Before a visit, SWD staff would request the service contractor to provide a list of cases covering 10 categories (e.g. new and re-activated cases) and randomly select cases to be inspected. However, the 10 categories of cases requested by SWD only covered a portion of service users in a region (paras. 2.18 and 2.20); and
- (ii) ***Inadequate guidelines on sampling.*** According to the checklist for the conduct of document review by SWD, when visiting the service contractor's offices, SWD staff should review 10 areas (for example, in respect of provision of accommodation and food to the service users). Audit noted that some of the 10 areas to be examined according to SWD's checklist were not covered by the case examination conducted in the two visits (paras. 2.17 and 2.21).

8. ***Case management by the service contractor.*** Audit noted the following issues:

- (a) ***Need to ensure new cases are always taken up in a timely manner.*** Audit examined the monthly service statistics reports in the period 1 February 2017 to 31 March 2020 and found that, contrary to the contract requirements, the time taken from the date of referral for provision of assistance by the service contractor was more than 10 working days in 106 (6%) cases and 6 (1%) cases for the period 1 February 2017 to 31 January 2019 and the period 1 February 2019 to 31 March 2020 respectively (para. 2.29);
- (b) ***Room for improvement in providing assistance to service users who have access to external resources and support.*** Audit examined the cases selected for examination during the visits conducted by SWD in December 2019 and June 2020 and found room for improvement in conducting the vulnerability and needs assessment by the service contractor. For example, in two cases, the actual rents paid by the service users exceeded the standard rate of rent assistance by about \$800 and \$1,200 respectively. Upon enquiry by the service contractor in the vulnerability and needs assessment, the service users refused to disclose the source of financial support (para. 2.32); and

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- (c) ***Need to strengthen controls on rental deposits.*** Audit examination of the monthly rental deposit reports found that rental deposit forfeited by the landlords amounted to \$9.7 million (involving 4,027 forfeitures) and \$1.9 million (involving 860 forfeitures) in the period 1 February 2017 to 31 January 2019 and the period 1 February 2019 to 31 March 2020 respectively. In a number of cases, the forfeiture of rental deposits could have been prevented if controls had been strengthened (e.g. by reminding the service users concerned not to move out from the premises without the requisite notification) (para. 2.36).

Provision of humanitarian assistance under the food contract

9. ***Service reporting by the food and service contractors.*** Audit noted the following issues:

- (a) ***Need to improve timeliness in submission of reports by the food contractor.*** Audit examined the submission of reports by the food contractor to SWD for the period 1 February 2017 to 31 March 2020 and found delays in submission of monthly reports by the food contractor, ranging from 1 day to 9 days (paras. 3.7 and 3.8);
- (b) ***Need to review the performance reporting requirements under the food contract.*** According to the food contract, the food contractor is required to submit to SWD:
 - (i) effective from 1 June 2019, a list of halal foods by items monthly (and every two months according to another clause in the food contract). Upon Audit's enquiry, SWD informed Audit that the food contractor should only be required to submit the list of halal foods every two months, instead of each month (paras. 3.6(a)(v) and 3.10); and
 - (ii) statements for every two months (i.e. bi-monthly statements) showing the total monthly invoice value, cumulative total contract price and contract balance. Upon Audit's enquiry, SWD informed Audit that as the relevant information in the bi-monthly statements had been obtained in the invoices submitted by the food contractor

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each month, therefore the food contractor was not required to submit the bi-monthly statements (paras. 3.6(d) and 3.11); and

- (c) ***Need for the service contractor to perform checking on the food contractor's monthly reports in a timely manner.*** As specified under the service contract, the service contractor is required to check and certify correct the monthly statistical reports submitted by the food contractor for SWD to arrange payment directly to the food contractor. Audit examined the submission of monthly certification reports by the service contractor for the period 1 February 2017 to 31 March 2020 and found delays in submission of the monthly certification reports by the service contractor, ranging from 1 working day to 28 working days (paras. 3.13 and 3.14).
10. ***Monitoring of the food contractor's performance by SWD.*** According to the guidelines "Protocol for contract monitoring on the supply of food by electronic purchase to SWD" (the Protocol) issued by SWD in August 2019, on-site visit to five designated food outlets should be unannounced and conducted by SWD per contract period and the food outlets to be inspected are selected randomly by a computerised system (para. 3.19). Audit noted the following issues:
- (a) ***Outlets covered in on-site visits not selected in compliance with guidelines.*** Audit examined the on-site visits conducted by SWD on 13 December 2019 and 19 June 2020 and found that of eight food outlets visited by SWD staff, five were not selected by the computer program (paras. 3.20 and 3.21); and
- (b) ***Room for refinement to the selection criteria.*** Audit noted that as at 31 December 2019, districts with more than 20% of service users residing included Yau Tsim Mong, Sham Shui Po and Yuen Long. In light of the geographical distribution of service users, SWD should consider refining the criteria for selecting food outlets of the food contractor for conducting on-site visits to increase coverage of districts with high proportion of service users residing therein (paras. 3.22 and 3.23).
11. ***Administration of the use of e-tokens.*** Starting from March 2018, sanctions are imposed on service users who misuse or abuse the use of food assistance, e.g. bulk purchases of non-staple food (It is expected that the e-token should mainly be used to purchase staple food. Therefore, using the e-token to make a single purchase of non-staple food exceeding a specified amount is regarded as one of the

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misuses of e-tokens by the service users) (Note 12 to para. 3.5(c) and para. 3.30). Audit noted the following issues:

- (a) ***Need to review the effectiveness of sanctions imposed on service users.*** Audit examined 15 cases with sanctions imposed on service users for their misuse of e-tokens during the period from 1 February 2019 to 31 March 2020. In 9 cases, there were repeated misuse of e-tokens by the service users, with the number of sanctions previously imposed on them ranging from 2 to 9 each (para. 3.32);
 - (b) ***Need to sanction service users in a timely manner.*** In the 15 cases mentioned in (a) above, 7 cases were related to bulk purchases of non-staple food made by service users. The sanctions were imposed 1 to 3 months (averaging 2.4 months) after the misuse events (para. 3.34); and
 - (c) ***Need to consider establishing a referral mechanism for suspected misuse cases identified by SWD.*** Audit examined SWD's checking results on bulk purchases of non-staple food in the period from 1 February 2019 to 31 March 2020 and found that SWD identified 2,380 e-tokens with suspected bulk purchases of non-staple food. However, there was no documentary evidence showing that SWD had referred such suspected misuse cases to the service contractor for investigation. During the same period, based on the sample checking of e-tokens conducted by the service contractor, the contractor imposed 7 sanctions on service users using e-tokens to make bulk purchases of non-staple food (paras. 3.29 and 3.36).
12. ***Need to keep in view negative balances in e-tokens and devise a solution to address the issue.*** According to SWD, cases of negative balances of e-tokens (i.e. the amount spent by the service user using the e-token exceeded its face value) were noted in September 2019. While the food contractor had performed enhancement to the computer system to minimise the recurrence in September 2019, there were still occasional cases of negative balances in the period from October 2019 to April 2020 (8 cases ranging from -\$12.9 to -\$507.8) (paras. 3.39 and 3.40).

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Other administrative issues

13. *Need for clarification on the definition of service users for calculating the administrative cost.* Starting from 2017, the contract sum under the service contract with the service contractor comprises two components: (a) assistance paid to service users, including rent, travelling expenses and other basic necessities. The amount is reimbursed to the service contractor at half-monthly intervals based on the expenditure reported by the service contractor in the half-monthly expenditure reports; and (b) administrative cost for administering and delivering the different types of assistance to NRCs. The amount is calculated by multiplying the number of service users at month end by the agreed monthly unit rate under the contract. The number of service users is based on the number of service users reported by the service contractor to SWD in the monthly master list of service users as at the last day of each month (para. 4.2).

14. Audit examined the master list of service users for March 2020 submitted by the service contractor to SWD, and found that of 10,711 service users stated in the master list, 14 service users did not receive humanitarian assistance in March 2020. Of these 14 service users, 3 had obtained similar services to the services under the service contract from other sources in this month. According to the service contract, for those service users who have obtained services from other sources similar to those under the service contract, the service contractor should immediately cease to provide services under the service contract (i.e. provision of assistance and casework services) to them (paras. 4.4 to 4.6).

15. *Need for continued efforts to enhance competition in tendering for the service contract.* The service contractor has been engaged in the provision of humanitarian assistance since 2006. In each tender exercise, only one tenderer submitted a tender, which was conforming. Audit noted that tenderers' experience had been stated as an essential requirement in the tender documents. This might have hindered other organisations to participate in tendering. In this connection, Audit noted that according to Financial Circular No. 2/2019 entitled "Pro-innovation Government Procurement", to encourage competition in procurement and minimise entry barriers, as a general rule, tenderers' experience should not be set as an essential requirement (paras. 4.8 to 4.10).

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16. *Need to continue to review the level of assistance.* Audit noted that the existing level of humanitarian assistance to NRCs was last revised in February 2014. Upon enquiry, SWD informed Audit in September 2020 that SWD, in consultation with SB, would conduct review on the level of assistance as and when appropriate, taking into consideration a basket of factors including whether the assistance would create a magnet effect which might have serious implications on the overall sustainability and immigration control, as well as the price level of the assistance items, etc. (para. 4.15).

Audit recommendations

17. **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 Social Welfare should:**

Provision of humanitarian assistance under the service contract

- (a) **step up efforts to ensure that the service contractor submits reports and statements in a timely manner in accordance with the service contract and review the reporting requirements to ensure that they facilitate monitoring of the service contractor's performance (para. 2.10);**
- (b) **request the service contractor to provide in the monthly statistics reports figures showing separately the number of successful and unsuccessful attempts in conducting spot checks on service users receiving rent assistance, and review the requirements on the service contractor to conduct spot checks (para. 2.26(a) and (b));**
- (c) **select samples from more categories of cases (i.e. not limited to the current 10 categories) in conducting document reviews of the service contractor (para. 2.26(c));**
- (d) **stipulate in the guidelines the need to select cases covering all the 10 areas to be examined in accordance with the checklist for document review (para. 2.26(d));**

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- (e) **request the service contractor to report the reasons for delays in providing services to service users and take improvement measures to ensure that new cases are always taken up within the time frame as required in the service contract (para. 2.39(a));**
- (f) **issue more guidelines to the service contractor for handling cases with financial support provided to the service users from other sources in performing the vulnerability and needs assessment and explore measures to strengthen controls on assistance provided in the form of paying rental deposits for service users (para. 2.39(b) and (c));**

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- (g) **remind the food contractor to submit monthly reports in a timely manner in accordance with the food contract and improve accuracy of the monthly statistical reports (para. 3.16(a));**
- (h) **review the reporting requirements regarding the list of halal foods by items and bi-monthly statements and, based on the review results, communicate the requirements to the food contractor and SWD staff (para. 3.16(b));**
- (i) **remind the service contractor to conduct the verification of the monthly statistical reports submitted by the food contractor and issue the monthly certification reports in a timely manner (para. 3.16(c));**
- (j) **ensure that SWD staff conduct on-site visits to food outlets of the food contractor in accordance with the Protocol and consider refining the criteria for selecting food outlets for conducting on-site visits to increase coverage of districts with high proportion of service users residing therein (para. 3.27(a) and (b));**
- (k) **keep in view the effectiveness of the sanctions imposed on service users who have misused e-tokens (in particular those who have repeatedly done so) and remind the service contractor to make greater efforts to impose sanctions on service users in a timely manner (para. 3.41(a) and (b));**

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- (l) **consider establishing a mechanism for SWD to refer cases of suspected misuse of e-tokens to the service contractor for further investigation and imposition of sanctions if necessary, and the need to increase the number of samples selected by the service contractor for investigating into cases of suspected abuse of e-tokens (para. 3.41(c) and (d));**
- (m) **in view of increasing number of suspected cases of bulk purchases of non-staple food identified by SWD, explore the feasibility of implementing controls to prevent such purchases (para. 3.41(e));**
- (n) **keep in view the severity of the issue arising from negative balances in e-tokens, and request the food contractor to devise an effective solution to address the issue (para. 3.41(f));**

Other administrative issues

- (o) **provide clarification on the definition of service users for the purpose of calculating the administrative cost payable to the service contractor and provide more guidelines to the service contractor in this regard (para. 4.11(a));**
- (p) **consider not specifying tenderers' experience as an essential requirement with a view to encouraging tender competition in future tender exercises for the service contract (para. 4.11(b)); and**
- (q) **in consultation with SB, continue to review the level of assistance to NRCs as and when appropriate to ensure that the Government meets the aim of providing the assistance (para. 4.16).**

Response from the Government

18. The Secretary for Security and the Director of Social Welfare agree with the audit recommendations.