

# **Mechanisms Used to Review and Monitor Eligibility of Existing Tenants in Subsidised Public Housing Executive Summary of Direct Investigation Report**

## **Background**

Public rental housing (“PRH”) units are Government-subsidised rental accommodation provided for people who cannot afford the rents of private housing. Over the past few years, the shortage of PRH supply has become more acute, with over 250,000 applicants on the Waiting List as at June 2014<sup>1</sup>. The Hong Kong Housing Authority (“HKHA”) and the Hong Kong Housing Society (“HKHS”) are two independent organisations providing PRH units. Guided by different policy objectives and service principles, the two organisations have formulated separate mechanisms to vet the eligibility of applicants. They also have a co-ordination system in place to prevent existing PRH tenants from obtaining double housing subsidies.

2. Nevertheless, in handling public complaints, the Office of The Ombudsman found that some families have simultaneously occupied two PRH units under Housing Department (“HD”), the executive arm of HKHA, and HKHS respectively, yet both organisations have failed to take prompt action to rectify the problem. Furthermore, some tenants who should have vacated their PRH units under existing regulations for various reasons (such as divorce or transfer) were allowed to continue residing in the same units. Those loopholes, if not plugged, will compromise the fair allocation of valuable PRH resources and prolong the waiting time of those applicants on the Waiting List.

3. Against this background, The Ombudsman initiated a direct investigation into this issue.

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<sup>1</sup> As at the end of June 2014, there were 125,400 general family applications and 130,400 non-elderly one-person applications under the Quota and Points System on the Waiting List.

## **Our Findings**

### ***HD and HKHS Need to Improve Their Reporting and Co-ordination System***

4. To address the problem of dual tenant status, HD indicated that it would issue a monthly statement to notify HKHS of any double housing benefit cases involving HKHS tenants. However, as noted in a number of cases, HKHS failed to detect the problem of dual tenant status after months, if not years. Even when HKHS had been notified of such cases, the problem still persisted for years because HKHS did not take timely action to follow up. Since the two organisations have no written agreement to delineate their respective responsibilities in dealing with different situations, neither HD nor HKHS took any positive steps to monitor the progress of the cases. The co-ordination system has failed to achieve the desired results and is not “working effectively” as claimed by HD.

### ***HD and HKHS Too Tolerant in Handling Cases***

5. In a number of cases, we found that HD and HKHS officers were too lax in handling cases of dual tenant status, giving an impression that the two organisations delayed in taking actions, thus causing wastage of public resources and unfairness to those in urgent need of PRH on the Waiting List. During our investigation, both organisations noted that it was desirable to handle the tenancy issue in a “humane” manner, especially cases with complicated family problems, hence they would exercise discretion in special circumstances. We have no objection to that. However, this does not mean that the two organisations should unconditionally tolerate dual tenancy status or allow tenants to continue to occupy PRH units against the rules. The two organisations should strike a balance in meeting the interests and housing needs of various sectors of the community, and avoid creating unfairness to those in genuine need of subsidised housing. Many cases in this report revealed that the two organisations had unconditionally accorded “preferential treatment” for extended periods to tenants who contravened the rules. Some tenants who should have vacated their units were allowed to continue occupying the units, and violations of undertakings under the Families with Elderly Persons Priority Scheme were ignored. Some cases actually took six to eight years to resolve, and any follow-up actions taken in the interim were few and far in between. As a result, ineligible tenants were not removed from their PRH units, and some households could occupy large-size PRH units exceeding the normal standards. Such cases reflected the lack of determination

on the part of HD and HKHS in tackling irregularities, thereby indirectly condoning the abuse of PRH resources.

### *HD's Failure to Carefully Enforce Policy on Granting of New Tenancy ("GNT")*

6. According to HKHA's website, GNT Policy is mainly for allowing the surviving spouse to take over the tenancy of a PRH unit unconditionally upon the death of a principal tenant. Where there is no surviving spouse, the new tenancy may be granted to an authorised household member who has passed the Comprehensive Means Test. In fact, in a number of cases cited in our investigation report, HD granted a new tenancy to other household members when the principal tenant was still alive, resulting in household splitting. We consider that such a policy which allows a principal tenant to transfer during his/her lifetime to another PRH unit through other means, with a new tenancy for the original unit granted to the remaining household members, will create unfair situations (see **paras. 11 to 14**). It is imperative for HD to carefully scrutinise those grounds other than death of the principal tenant, before considering any GNT.

7. Nonetheless, HD informed us subsequently that under GNT Policy, tenants may also request HD to grant a new tenancy on grounds "other than death of the principal tenant", such as emigration or transfer of the principal tenant. However, we note that HD neither clearly defined the scope of those "other grounds", nor set out any guidelines for staff in examining applications for GNT under "other grounds". Upon our enquiry, HD explained that by granting a new tenancy to the other household members of a living principal tenant, those families, if so wish, can take the initiative to split the household through other means before any serious domestic disputes occur (Note: when there are serious disputes, such as domestic violence, HD will allow household splitting), so as to prevent the problem from deteriorating. We have reservations about HD's explanation above. First, there is no mentioning of GNT Policy provided for "preventing tenants' family relationships from deterioration" in either HKHA's website or HD's internal policy documents. HKHA's press release on the policy on 4 February 1999 also did not mention the GNT Policy was applicable to cases where "the principal tenant was still alive". Second, unless assessments are made before and after any GNT, HD can hardly assume that GNT Policy has helped tenants resolve their domestic disputes. Last, one of the principles of the policy on household splitting is indeed aimed at preventing tenants from obtaining extra PRH resources without sufficient compassionate grounds. HD, therefore, should carefully

examine any grounds other than death of the principal tenant to prevent existing tenants from abusing GNT Policy to effectively achieve household splitting.

***HKHS Lacks Concrete Measures to Ensure PRH Is Only for People of Low Assets/Income Levels***

8. In 2002, HKHS had studied the feasibility of implementing the Well-off Tenants Policy. The idea was, however, eventually scrapped owing to, *inter alia*, HKHS's lack of statutory powers to check the household income of its tenants. This hardly conforms to HKHS's objective of providing PRH to low-income/assets families. In fact, at present, HKHS tenants do not violate the tenancy agreement even if they own private properties or huge assets. HKHS could only "persuade" such tenants to vacate their units, and that is clearly not strong enough.

9. HKHS has failed to take effective measures (such as adding suitable clauses to the tenancy agreement) to prevent well-off tenants or those who own private properties from occupying PRH units endlessly. This indeed ran counter to HKHS's objective and original intent of providing PRH to those of low assets/income levels, and was unfair to those in genuine need of subsidised housing.

***Government (Transport and Housing Bureau) Has No Mechanism to Monitor HKHS's PRH Operations***

10. The Transport and Housing Bureau ("THB") indicated that Government currently has neither the statutory powers nor a mechanism to monitor the work of HKHS. THB does not have any policy documents relating to the monitoring of PRH provision by HKHS either. We have reservations about such attitude of THB. Government has granted land on concessionary terms to HKHS for building PRH, such that HKHS could fulfil its mission of providing affordable housing for the low-income/assets households in line with Government's housing policies. Therefore, Government has the responsibility to ensure proper use of the land thus granted to HKHS. We consider that THB has a duty to discuss with HKHS, with a view to drawing up a written agreement to ensure that the objectives of granting land on concessionary terms are achieved.

### ***Principal Tenants of PRH Apply for Another PRH Unit and GNT Policy***

11. At present, both HKHA and HKHS allow existing principal tenants of PRH to apply for another PRH unit, either on his/her own or jointly with other household members listed in the tenancy agreement. We consider that since existing principal tenants (usually the original PRH applicants) have basically been allocated a PRH unit, they should not have any genuine or urgent need for housing. Furthermore, if a principal tenant is no longer suitable to live in the current unit due to special societal or health reasons, they can consider seeking transfer based on such grounds. They can also apply to have a son/daughter and his/her spouse added to the tenancy to take care of them, if they so desire. If PRH resources are abundant, it would be understandable and acceptable to allow principal tenants, who have already been allocated a PRH unit, to apply for PRH again at will (whether on their own or jointly with other persons) without any compassionate grounds. However, when there is now an acute shortage of PRH, to do so would be questionable, as it would affect the chance of getting an early allocation for those PRH applicants on the Waiting List who are in genuine and urgent need of housing.

12. In fact, regarding the granting of new tenancies, HD has on the one hand stressed that PRH tenancy right could not be automatically inherited and household splitting requests would be vetted rigorously; but on the other hand allowed principal tenants to circumvent the PRH Waiting List mechanism through other PRH application means (such as the Families with Elderly Persons Priority Scheme). This not only has the effect of making inheritance of tenancy right a real fact, but also allows these tenants to get a PRH allocation faster than other normal PRH applicants, resulting in gross unfairness. HD is duty bound to report the unfairness to HKHA for timely review of the GNT Policy. As for HKHS, it allows an authorised family member of the tenant over 18 years old who has passed the assets test to apply for PRH without having to wait for their turn like other PRH applicants. This is also unfair to those registered on the Waiting List.

### ***Means Test under GNT Policy***

13. Under GNT Policy, even if the household that inherits the tenancy right of a PRH unit owns a property or huge assets, it would still be granted a new tenancy as long as its household income does not exceed three times the Waiting List Income Limit (“WLIL”). Similarly, a household with an income more than three times the WLIL would still be granted a new tenancy if its net assets value does not exceed 84

times the WLIL. According to statistics published by the Census and Statistics Department, the median monthly domestic household income of a four-person household in the third quarter of 2014 was less than \$40,000. In comparison, the monthly income limit for a four-person household under GNT Policy (with the three-time WLIL set for the year 2014/15) at \$71,730 is much higher. Given this situation, the fact that tenants whose income level exceeds the prescribed limit can still continue to enjoy public housing seems to have deviated from the original intent that subsidised housing, i.e. PRH units, should be provided to those who cannot afford private accommodation.

14. As mentioned above, only when both the household income **and** net asset value exceed the prescribed limits would a tenant be required to vacate his/her PRH unit. A tenant can still stay in the PRH unit even if he/she owns a private property. We consider that whether those tenants with private properties should, both as a matter of principle and a policy requirement, surrender their PRH units to HD for re-allocation to families with genuine housing need is an issue that Government should completely review.

## **Recommendations**

15. In view of the above, The Ombudsman makes the following recommendations to the authorities concerned:

- (1) **HD** and **HKHS** should enhance their reporting mechanism regarding double housing benefits. Apart from regular reports of cases of dual tenant status involving both organisations, HD should draw up a written agreement with HKHS to open a channel for communication such as regular meetings or update reports so that demarcation of responsibilities for various types of cases can be defined. Where necessary, HD and HKHS can examine together complicated cases that warrant immediate follow-up actions (e.g. serious delay in vacating the units) to determine the timeframe of the cases and the schedule to bring them up;
- (2) **HD** and **HKHS** should step up staff training and educate their staff to adhere to the principles while giving consideration to the difficulties faced by tenants who have contravened the rules. They should stop being too tolerant, and firmly acknowledge that they are accountable to

applicants still waiting for PRH units on the Waiting List. Moreover, HD and HKHS should enhance their staff's knowledge about the guidelines relevant to cases involving irregularities and improve their skills in handling complicated cases, thus ensuring timely and proper handling of such cases;

- (3) for approved transfer cases and cases where the tenants' dual tenant status have been confirmed, **HD** should take the initiative to delete the tenants concerned from the old tenancies, instead of waiting for them to submit their applications for deletion;
- (4) **HD** and **HKHS** should set out clearer guidelines and notices to tenants to explain that there will be set timeframes for actions after repeated warnings are issued (e.g. notice of termination of tenancy). The two authorities should also ensure staff's strict compliance with those guidelines;
- (5) except in special circumstances, **HKHA** and **HKHS** should consider not allowing principal tenants to apply for another PRH unit in order to prevent existing PRH tenants from unfairly getting another unit through submitting other types of applications to circumvent the general Waiting List application procedures;
- (6) in enforcing GNT Policy, **HD** should carefully examine cases where the principal tenant is still alive. Clear guidelines should be given to staff to prevent tenants from abusing the policy for the purpose of household splitting;
- (7) although **HKHS** has no statutory powers to vet tenants' household income, it can consider adopting administration measures by adding to the tenancy agreement a requirement of income and assets declaration and requiring tenants whose income and assets exceed the prescribed limits after moving into the flat to pay the well-off-tenant rent;
- (8) **THB** should actively discuss with **HKHS** feasible measures and draw up a written agreement to ensure that PRH units provided by **HKHS** is in line with Government's original intent of concessionary land grant and the relevant requirements in the land lease; and

- (9) **HD** should collect and maintain the data on tenants whose income/assets exceed the prescribed limits and recommend HKHA to review the GNT Policy, including considering the need to require members of the household who inherit the tenancy to be subject to both the income and assets limits.

**Office of The Ombudsman**  
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