

Information Paper for LegCo Panel on Housing

Ex-gratia Allowances for Displaced Housing Authority Commercial Tenants

Purpose

This paper outlines the current basis of ex-gratia allowances (EGAs) paid to Housing Authority (HA)'s commercial tenants displaced by redevelopment.

Background

2. The HA operates commercial (including retail) premises as part of a range of ancillary facilities to provide essential services to residents of HA estates. As a general principle, commercial facilities are operated on a commercial basis. Therefore, lettings are set at market rent without subsidy and the terms of tenancy are broadly comparable with those in the private sector.

3. The majority of HA's commercial tenants are on fixed term tenancies¹, which provide for early termination by either party on three months' notice. There is no provision for payment of compensation in the event of tenancy termination or non-renewal. The Housing Ordinance does not provide for any such obligation either.

Arrangements for commercial tenancies upon redevelopment

4. As a result of the Comprehensive Redevelopment Programme, shops in the public housing estates affected by redevelopment have to move out. To facilitate these commercial tenants to prepare for removal of business, the HA usually informs them of the redevelopment and removal arrangements well in advance. Tenants are always given at least 18 to 24 months' formal notice of clearance, but for most premises tenants are given informal notification five or even ten years ahead. Although the HA has no contractual or statutory obligation to compensate displaced tenants, including any liability for severance pay, as a considerate landlord HA has since 1976 made monetary payments, on an ex-gratia basis, to assist them in making reprovisioning arrangements. Since 1987, tenants on fixed-term tenancies paying market rents are granted an EGA equivalent to 15 times the exclusive monthly rent specified

¹ A small proportion of HA commercial tenancies are the so-called 'graded' shops which are older tenancies originated from clearance of Government land many years ago. No more tenancies of this type can be created; in fact the numbers have been substantially reduced, from over 11,000 in 1977 to currently around 900. It is envisaged that all 'graded' shops will be cleared under Comprehensive Redevelopment Programme by 2005/06.

in the tenancy agreement at the date of formal announcement of the demolition of the block concerned, or for those who opt to surrender their tenancy in advance of formal announcement, at the time of surrender.

5. This formula was first used in the mid 1980's as a simple mechanism to arrive at an amount considered to be adequate to cover the notional costs or expenses of disturbance by business as a result of removal. These costs include removal expenses, simultaneous rents for both old and new premises during the removal period, agent fees for securing replacement accommodation, loss on forced sale of fixtures and fittings, temporary loss of profit and miscellaneous disturbance items such as telephone or stationary expenses. The allowance is self-adjusting in line with rental movements. In April 2000, the HA agreed that if less than 30 months' formal notice of clearance is given, the EGA would be increased to 18 months' rent.

6. In addition to payment of EGA outlined above, HA also assists displaced tenants to secure replacement premises. Displaced tenants are offered the opportunity to bid through restricted tender for premises within existing HA markets. Successful tenants will be granted a three-month rent-free period in premises so acquired. Displaced tenants can also opt for a lump sum, introduced in 1989, in lieu of this restricted tender opportunity. The lump sum, which is reviewed regularly, is based on the average rental foregone of the rent-free period granted by restricted tender over the past two years, further grossed up by one-third to encourage tenants to take this option instead of reprovisioning. The current amount at \$73,000 was determined in the last review in November 1999.

Conclusion

7. Commercial facilities of the HA operates along commercial principles, without any subsidy to commercial tenants. The HA and its commercial tenants have entered into a tenancy agreement which provides for early termination of tenancy by either party on three months' notice without compensation. While the HA is under no contractual obligation for compensation for its commercial tenants upon redevelopment of public housing estates, an ex-gratia payment has been provided to assist them in reprovisioning their businesses sheerly out of goodwill. This arrangement is considered generous when compared with prevailing private sector practice which offers compensation to tenants only if there is a legal obligation to do so.