

## **Legislative Council Panel on Housing**

### **Judicial Review on Public Housing Rents**

#### **Purpose**

In October and November 2002, two public rental housing tenants from the Kwai Chung Estate, namely Madam Ho and Mr Lam, applied for leave to apply for Judicial Review in respect of the decisions of the Housing Authority (HA) to defer the review of the rents of its rental estates in 2001 and 2002 respectively.

2. This paper briefs Members on the outcome of this Judicial Review.

#### **Background**

3. The Judicial Review centres upon the deferral of public housing rent review by the HA since 1999 and the requirements of the Housing Ordinance (Cap. 283) in this regard. As Members are aware, median rent-to-income ratio (MRIR) is used as a statistical indicator to gauge tenants' rental affordability. In 1997, the then Legislative Council passed a Private Member's Bill to amend the Housing Ordinance imposing a 10% ceiling on MRIR whenever HA decides to vary its domestic rents.

4. Since the second quarter of 2000, the MRIR has exceeded 10%. The MRIR for the first quarter of 2003 was 13.8%. Rising MRIR is caused by a complex combination of factors, including increase in households on Comprehensive Social Security Assistance (CSSA), improvement in living density, supply of new estates with higher rents, implementation of the Comprehensive Redevelopment Programme resulting in demolition of old flats with lower rents, exit of higher-income tenants through the Home Ownership Scheme and other loan schemes, increase in the number of elderly households and small households, and drop in household income.

5. At present, about two-thirds of the HA's domestic tenants, or 386 000 households, pay less than \$1,500 for rent. The lowest rent is \$241 per month. The highest rent of \$3,810 is in respect of a flat converted from the Home Ownership Scheme of over 60 square metres including a master suite and other Home Ownership Scheme facilities. The HA's rents are inclusive of rates, management fees and maintenance charges.

6. In fact, rents charged by the HA are insufficient to meet the recurrent operating expenses of its estates. The HA's rental housing operating account forecasts a deficit of \$1 billion for 2003-04, or \$1,570 per flat. This excludes the capital outlay in the form of land at nil premium, amounting currently to around \$158 billion.

7. For families in public housing who encounter economic hardship, the following safety net applies. First, the CSSA Scheme run by the Social Welfare Department covers rent in full for the poorest households. At present, one in five households (or 19%) in public housing are CSSA beneficiaries. Second, the HA's Rent Assistance Scheme cuts by half the rents paid by families beset with financial difficulties. As at May 2003, some 10 700 households were Rent Assistance Scheme recipients. Since 1992, the Scheme has benefited a total of 16 100 households. Tenants may also move to other public housing flats with lower rents.

## **Judicial Review**

8. The rent of Kwai Chung Estate was scheduled to be reviewed in December 2001. By a notice dated 31 October 2001, both Madam Ho and Mr Lam were informed by the HA that the rent review would be deferred to December 2002. On 31 October 2002, the HA decided to defer rent review again for another year till December 2003.

9. In 2002, Madam Ho and Mr Lam applied for Judicial Review against HA's decisions to defer rent review in 2001 and 2002 respectively and not to reduce rent despite that MRIR has exceeded the statutory limit. The following relief is being sought :

- (a) a Declaration that the decisions of the HA to maintain the rents of public housing flats at a level such that the MRIR exceeds 10% are ultra vires and unlawful;
- (b) an Order of Mandamus directing the HA to review the rents of the public housing flats of which Madam Ho and Mr Lam are tenants, so as to bring the rents of the said public housing flats to a level such that the MRIR does not exceed 10% as required by section 16(1A) of the Ordinance; and
- (c) such further or other remedy, relief or order as may be just and expedient in the circumstances.

10. The Court granted leave and subsequently heard the cases on 12 and 13 May 2003.

11. On 11 July 2003, Mr Justice Andrew Chung of the Court of First Instance ruled in favour of the applicants for the Judicial Review. Full text of the Judgment is at Annex. In gist, the Court found that :

- (a) the decision of the HA dated 31 October 2002 to defer the review of rent to 1 December 2003 and to extend the rent increase waiver correspondingly was not a decision falling within section 16(1A)(a) of the Housing Ordinance;
- (b) but the HA is under a duty to review rent regularly (which should be understood to mean, prior to the 1997 amendments to the Housing Ordinance, in cycles of every two years; and since the 1997 amendments, in cycles of every three years);
- (c) when the HA carries out its duty to review rent, the “MRIR ceiling” set by section 16(1A)(b) of the Housing Ordinance must be abided by; and
- (d) the applicants had a legitimate expectation to have their rents periodically and regularly reviewed.

## Way Forward

12. The Court has yet to make any order on relief. The HA will respond to the terms of the order for relief as the applicants may propose for the Court's consideration. The Judge has stated in his Judgement that if necessary he will hear the parties as to the precise terms of the orders. It would not be appropriate for the HA to comment further at this stage on the likely orders.

13. At this stage, the HA has to consider carefully the wide implications of the Judgment on its rental policy, future financial position and indeed many aspects of the public housing programme. We are studying the Judgment in detail and considering necessary follow-up actions with our legal advisers.

14. We respect the outcome of the legal proceedings, though we are disappointed at the rulings. Like any litigants, and in accordance with Court procedures, the HA has the right to appeal to the Court of Appeal within four weeks of the sealed order of the Judge. If the HA decides to appeal, it may, depending on the exact terms of the order, also apply for a stay of the said order.

15. The HA established an Ad Hoc Committee (the Committee) to review its domestic rent policy in March 2001. The Committee has concluded its initial deliberations and identified options for improving the existing rent policy. These cover, inter alia, improvements to the current method for measuring affordability, enhancement of the rent structure to provide a closer link between rents and value of the flats, and provision of more focused and targeted rent assistance to those who face genuine financial difficulties.

16. At the meeting held on 24 October 2002, the Committee decided to adjourn the review pending the outcome of the Judicial Review. The Committee's decision was made having considered that if the Court ruled in favour of the applicants, such a judgment would undermine the legal foundation of many of the Committee's initial findings. The Committee was also wary of the need to avoid any unfair prejudice to the proper adjudication of the cases by the Court, i.e. the principle of *sub judice*.