

## **Chapter I Introduction**

### **Background**

1.1 It was in August 1999 when the first of the series of incidents relating to building problems in public housing was uncovered. Excessive uneven foundation settlement was found in a completed 40-storeyed block in Tin Chung Court Phase 1, a project under the Home Ownership Scheme (HOS) of the Hong Kong Housing Authority (HA) scheduled for occupation in March 2000. Three months later, in the course of a comprehensive building settlement monitoring exercise for all construction sites under HA, settlement problems were found in two HOS blocks in Yuen Chau Kok, Shatin which had been constructed up to 33 storeys. Within the following six months, building problems were unveiled in another two public housing projects undertaken by HA, including the use of non-conforming or rejected construction materials in the superstructures of Shek Yam Redevelopment Estate and Tung Chung Area 30 Phase 3. These successive building blunders aroused serious public concern on the building quality of public housing, calling for detailed investigation into the circumstances surrounding these incidents.

1.2 Between September 1999 and December 2000, the Legislative Council Panel on Housing held eight meetings to study the extent of the problems of these incidents. The Panel passed a motion urging the Administration to appoint a statutory committee to undertake a review of the operation of the entire construction industry and to follow up the investigations of the Tin Chung Court and Yuen Chau Kok cases. Although various authorities conducted investigations into the Tin Chung Court and Yuen Chau Kok cases, the Panel considered that a complete picture of the causes of the incidents was still lacking. Moreover, the Panel noted that with the exception of the investigation undertaken by the Ombudsman on the management of construction projects by HA, all the bodies conducting the investigations/reviews did not have the statutory power to require the attendance of witnesses or the production of documents. In order to get to the root of the building problems uncovered, the Panel recommended to the House

Committee that an independent and comprehensive inquiry into the four incidents be conducted by the Legislative Council.

1.3 On 5 January 2001, after taking into account the recommendation of the Panel on Housing, the House Committee considered that a select committee should be formed to inquire into the causes of the four incidents. It was agreed that the select committee should also study the overall policies and system of public housing.

1.4 On 7 February 2001, the Legislative Council passed a resolution to appoint a select committee to conduct an inquiry into the four incidents and to identify recommendations to improve the quality of public housing at institutional and policy levels. The resolution also authorized the select committee to summons the attendance of witnesses and order the production of papers by witnesses in the performance of its duties under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) (the Ordinance).

#### **Terms of reference of the select committee**

1.5 The said resolution passed by the Legislative Council sets out the terms of reference of the select committee as follows:

*"That this Council appoints a select committee to inquire into the building problems in the production of public housing units having regard to the circumstances surrounding the incidents in Tin Chung Court, Shatin Area 14B Phase 2, Tung Chung Area 30 Phase 3 and Shek Yam Estate Phase 2, and based on this to identify positive recommendations for a complete overhaul of the overall policies and system of public housing, which should include examining whether the Housing Authority should be reorganized, split or abolished, so as to raise the quality of public housing; and that in the performance of its duties the*

*committee be authorized under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of that Ordinance."*

### **Membership of the Select Committee**

1.6 Upon the recommendation of the House Committee, the President of the Legislative Council appointed on 16 February 2001 the Chairman, Deputy Chairman and members of the select committee, which has since been known as the "Select Committee on Building Problems of Public Housing Units" (the Select Committee). The membership of the Select Committee is as follows:

Hon Miriam LAU Kin-ye, JP (Chairman)  
Hon Albert HO Chun-yan (Deputy Chairman)  
Ir Dr Hon Raymond HO Chung-tai, JP  
Hon LEE Cheuk-yan  
Dr Hon LUI Ming-wah, JP  
Hon James TO Kun-sun  
Hon CHAN Yuen-han, JP  
Hon CHAN Kam-lam, JP  
Dr Hon Philip WONG Yu-hong  
Hon Howard YOUNG, JP  
Dr Hon TANG Siu-tong, JP  
Hon Abraham SHEK Lai-him, JP  
Hon Michael MAK Kwok-fung  
Hon LAU Ping-cheung  
Hon Audrey EU Yuet-mee, SC, JP

### **Areas of study and work plan**

1.7 The Select Committee noted that the four incidents took place over a time span of four years, from 1996 to 2000. To focus on the circumstances surrounding the four incidents, the Select Committee decided on the areas of its study and drew up a work plan with reference to the resolution passed by the Legislative Council. For the purposes of performing its duties and without limiting the scope of the matters it was appointed to consider, the areas of study are as follows:

- (a) building problems in the production of public housing units in Tin Chung Court, Shatin Area 14B Phase 2, Tung Chung Area 30 Phase 3 and Shek Yam Estate Phase 2, the parties concerned and the part they each play;
- (b) in the light of the building problems in (a) above, the working mechanisms within the relevant authorities responsible for, and parties concerned with, the production of public housing units and the interface of these authorities and parties; and
- (c) in the light of the building problems in (a) above, the policies, procedures, practices and institutional structure of the relevant authorities and the parties concerned, including HA, which may have a bearing on the quality of public housing.

1.8 The working schedule and details of the work at each phase of the inquiry are set out in **Appendix I(1)**. From 8 February 2001 to mid-January 2003, the Select Committee held a total of 70 hearings and 115 meetings. It also visited two public housing construction sites of the Housing Department (HD) to better understand the subject under study.

## **Invitation of public views**

1.9 As the subject under study by the Select Committee was of wide public concern, members of the public were invited to give views on the four incidents and on the way to improve the quality of public housing. An advertisement was placed respectively in a local English and Chinese newspaper and on the website of the Legislative Council on 22 March 2001. A press release to the same effect had also been issued. Letters were also sent to the local professional bodies in the construction industry and the relevant faculties of tertiary institutions inviting their written views. 25 public submissions were received. Parties which had made written submissions to the Select Committee were invited to give oral evidence to the Select Committee if they so wished. A list of the parties invited by the Select Committee to give views and who have submitted views to the Select Committee are in **Appendices I(2)** and **I(3)** respectively.

## **Practice and procedure**

1.10 Proceedings of the Select Committee are governed by the Rules of Procedure of the Legislative Council and relevant provisions in the Ordinance. In addition, the Select Committee has also made its own practice and procedure for procedural matters not expressly provided in the Rules of Procedure and the Ordinance. A set of such practice and procedure (in **Appendix I(4)**) was published at the beginning of the inquiry. They were supplemented as necessary as the inquiry progressed.

1.11 When making its own practice and procedure, the Select Committee has drawn reference from those adopted by previous select committees and has had regard to the following principles:

- (a) they should be fair and seen to be fair to those whose interests or reputations might be adversely affected by its proceedings;

- (b) there should be maximum transparency in its proceedings, so that the public's right to know would not be unduly undermined;
- (c) they should facilitate the ascertaining of the facts relevant to, and within the scope of, its inquiry in order for it to perform its duties in accordance with its terms of reference, which do not include the adjudication of the legal liabilities of any parties or individuals;
- (d) its proceedings should be conducted with efficiency and as much expedition as is practicable; and
- (e) the cost of the proceedings should be kept within reasonable bounds, taking into account that it is funded out of public money.

1.12 The Select Committee is mindful that the background and reasons for appointing a select committee are unique on each occasion. However, it may be useful for future reference to set out some of the more important supplementary practice and procedure it has adopted. These relate to measures taken to avoid possible prejudice to a person's interest in pending legal proceedings, handling of information contained in classified documents or obtained at closed hearings, provision to witnesses of verbatim transcripts of hearings, and opportunity for parties concerned to comment on its draft findings and observations.

Measures taken to avoid possible prejudice to a person's interest in pending legal proceedings

1.13 At the beginning of its inquiry, the Select Committee was advised that there were pending civil and criminal proceedings arising from the four incidents which were the subject of its inquiry. There were also other proceedings being conducted between parties for resolving disputes arising from the four incidents.

1.14 Rule 41(2) of the Rules of Procedure of the Legislative Council provides:

*"Reference shall not be made to a case pending in a court of law in such a way as, in the opinion of the President or the Chairman, might prejudice that case."*

This rule applies to the proceedings of the Select Committee by virtue of Rule 43 of the Rules of Procedure.

1.15 The Select Committee took the view that the mere fact that there are pending court proceedings should not prevent it from conducting the inquiry in accordance with the Legislative Council resolution. Nevertheless, the Select Committee adopted the following measures in order to comply with Rule 41(2) of the Rules of Procedure and to avoid possible prejudice to a person's interest in pending legal proceedings. First, the Department of Justice was asked to keep the Select Committee informed on the development of the criminal proceedings concerned. Secondly, the Chairman would explain to each witness that the function of the Select Committee was not to adjudicate on the legal liability of any party or individual and advise them of her power to disallow the making of any reference to a case pending in a court of law if such reference might, in her opinion, prejudice the proceedings. Thirdly, where it was considered necessary and justified, either on an application by a witness or on the Select Committee's own motion, closed sessions would be held to obtain evidence from a witness. Fourthly, the Department of Justice was provided with a copy of the draft findings and observations of the Select Committee to comment from the perspective of whether the contents of the draft might prejudice pending criminal proceedings. Fifthly, the report of the Select Committee should not contain any material which might prejudice a pending criminal jury trial.

Handling of information contained in classified documents or obtained at closed hearings

1.16 In order that the Select Committee could perform its function effectively and efficiently, the Select Committee considered it necessary to be apprised of all relevant information possessed by the Administration at the early stage of its work. In this connection, the Administration, upon the request of the Select Committee, provided information relevant to the various areas of study in the form of documentary records and/or answers to specific questions. Some of the information provided was contained in documents which were classified as restricted or confidential by the issuing authority. They included investigation reports, tender papers, contract documents and minutes of internal meetings. In respect of the two investigation reports, namely "Report of the Investigation Panel on Staff Discipline in the Tin Chung Court and Yuen Chau Kok Incidents" and "Report of the Investigation Panel on Accountability in the case of Tin Chung Court, Tin Shui Wai", compiled by the investigation panels led by Mr Stephen SELBY and Mr Philip NUNN respectively, the Select Committee agreed not to divulge their contents to any person outside the Select Committee. In respect of the rest, the Select Committee was requested to have due regard to the classification of the documents given to it by HD or Housing Bureau. The Select Committee is of the view that although there might be justifications for the classification, it should not be inhibited from using the information contained in them. Nevertheless, in fairness to the providers of the documents, the Select Committee adopted the practice that if information contained in such documents was to be used at a hearing, the source of the information would only be disclosed if it was necessary to do justice to the witness or to enable him to fairly understand a question.

1.17 As regards the handling of information obtained in closed hearings held under circumstances explained in paragraph 1.15 above, the Select Committee was of the view that such information should be used with care, and where possible, the identity of the witness who provided the information should not be disclosed. Where the Select Committee was inclined to refer to information obtained in closed hearings in the Select Committee's report, an



extract of the relevant part of the report in draft form should be provided to the witness concerned for comment.

Provision to witnesses of verbatim transcripts of hearings

1.18 During the course of the inquiry, the Select Committee was asked by some witnesses to provide copies of verbatim transcripts in respect of open or closed hearings attended by them or in which they were an interested party. In this respect, the Select Committee considered that the transcripts were primarily to assist the Select Committee in its deliberations and to serve as records of the evidence given at the hearings. For open hearings, all verbal evidence was tape-recorded and the recordings could be obtained by any member of the public at a charge. There was therefore no need for transcripts to be made available to anyone including a witness. However, the Select Committee agreed that where considered appropriate, it might permit copies of the transcripts of evidence taken in public be provided to witnesses and prospective witnesses on request. The procedures for provision of transcripts of evidence are set out in Annex II to Appendix I(4). For closed hearings, the Select Committee considered it inappropriate to provide transcripts to any persons including the witnesses concerned. All witnesses however were provided with the relevant parts of the draft transcripts of evidence for correction, subject to their signing of an undertaking that they would not make any copy of the draft and would return it to the Select Committee before a specified date.

Opportunity to comment on the draft findings and observations by parties concerned

1.19 The Select Committee has attached great importance to ensuring that the procedure is fair and seen to be fair to those whose interests or reputations might be adversely affected by its proceedings. Any party, person or organization against whom adverse comments were intended to be made in the Select Committee's report was given an opportunity to comment on relevant parts of the draft findings and observations of its report. The comments received were carefully considered by the Select Committee before its report was finalized.

## **Summons of witnesses**

1.20 Section 10(1) of the Ordinance provides that:

*"Where any person is lawfully ordered to attend to give evidence or to produce documents before the Council or a committee, he shall be notified by a summons issued under the hand of the Clerk by direction of the President."*

By direction of the President, the Clerk to the Legislative Council issued 81 summonses ordering the appearance of witnesses before the Select Committee to give evidence. A list of the witnesses is in **Appendix I(5)**.

1.21 Apart from the witnesses listed in Appendix I(5), the Select Committee had intended to summons three other persons to give evidence. They were Mr CHAN Kwai-lung, Assistant Director of Housing/Engineering at the time of the Tin Chung Court incident, Mr R. P. PANKHANIA and Mr Sammy CHEUNG Ping-yip, Senior Structural Engineer and Geotechnical Engineer of HD respectively at the time of the Yuen Chau Kok incident. Summonses were not issued because Mr CHAN could not be located and Mr PANKHANIA was residing overseas. Mr CHEUNG, who was attending an overseas training course at the time of this inquiry, provided evidence in writing to the Select Committee.

## **The First Report**

1.22 Under Rule 78(4) of the Rules of Procedure, the Select Committee shall, as soon as it has completed consideration of the matter referred to it, report to the Council thereon and the Select Committee shall thereupon be dissolved. As of the date of making this Report to the Council, the Select Committee has completed consideration of the matters specified in the Legislative Council resolution which appointed it, save for the circumstances surrounding the Tin Chung Court incident. In mid-October 2002 when the Select Committee was deliberating on its draft report, it obtained new

information in relation to the Tin Chung Court incident. As the information has bearing on the findings and observations of the Select Committee, the Select Committee needs more time to hold further hearings and to examine the new information. Moreover, since the report of the Select Committee should not contain any material which might prejudice a pending criminal jury trial, the Select Committee considers it inappropriate to make public the report on the Tin Chung Court incident before the completion of the relevant jury trials. In order not to delay reporting its work to the Council, the Select Committee decided to first report on its findings on the overall policies and system of public housing and the incidents on Shatin Area 14B Phase 2, Shek Yam Estate Phase 2 and Tung Chung Area 30 Phase 3, and its recommendations arising therefrom.

1.23 The First Report consists of eight volumes, as follows:

- Volume I Main Report, list of written evidence and minutes of proceedings; and
- Volumes IIA to IIG : Minutes of evidence in the form of verbatim transcripts in their original language in respect of the public hearings of the Select Committee.

1.24 In the First Report, Chapters II to IV explain the organizational structure and the working mechanisms for the planning and production of public housing units. Chapters V to VII set out the circumstances leading to the incidents on Shatin Area 14B Phase 2, Shek Yam Estate Phase 2 and Tung Chung Area 30 Phase 3 and the Select Committee's observations on each of these incidents. Chapter VIII outlines the Select Committee's general observations, in particular in relation to the policies, procedures, practices and institutional interface of the relevant authorities and the parties concerned. Chapter IX sums up the conclusions, in particular the personal responsibilities of the parties concerned and the Select Committee's recommendations on the way to improve the quality of public housing.

1.25 The Select Committee has based a significant part of its findings on the oral evidence of witnesses who have largely relied on their memory for their accounts of what occurred. Given the lapse of time, their different

perspectives owing to their different standpoints and roles and the different degrees of their involvement in subsequent criminal and other proceedings, the Select Committee has exercised great care in weighing the evidence obtained during the inquiry. In arriving at its views on the responsibility of the parties concerned, the Select Committee realizes that it has the benefit of hindsight and the parties concerned may find it harsh on them. However, the Select Committee is performing a public function and its conclusions and recommendations are intended to serve as a reference for those undertaking future similar public projects in order to avoid the making of similar mistakes and to improve the effectiveness of existing systems.

1.26 Finally, the Select Committee finds it necessary to categorically state that any findings contained in the First Report are not intended and should not be used to pre-empt, influence or in any way prejudice any proceedings pending in court or elsewhere.