

**For information**

**LEGISLATIVE COUNCIL PANEL ON HOME AFFAIRS**

**Write-off of an Irrecoverable Loss**

**PURPOSE**

This paper informs Members of the Government's proposal to write off an irrecoverable loss of \$869,818.89 being an overpayment of housing allowances to a former "ex-Council contract" (ECC) staff of Leisure and Cultural Services Department (LCSD). LCSD plans to seek the approval of the Finance Committee (FC) to write off the loss as soon as practicable.

**JUSTIFICATIONS**

***Overpayment of housing allowances***

2. The former ECC staff concerned was first employed by the former Urban Council (UC) on contract terms on 21 September 1998 and was entitled to a Non-accountable Cash Allowance (NCA) under the terms of employment with the UC. Following the dissolution of the UC and upon the establishment of LCSD on 1 January 2000, he continued to be employed on the then UC terms until the prevailing UC contract expired on 14 December 2000. He was then offered appointment on ECC terms by LCSD as from 15 December 2000.

3. For ECC staff of LCSD whose contracts were signed on or after 1 June 2000, and who were employed at a basic salary equivalent to that of a civil servant at the Master Pay Scale Point 34 or above and receiving housing benefits prior to the commencement of contract, they should only be entitled to a housing allowance equivalent to Home Financing Allowance (HFA) or Rent Allowance (RA) for a maximum aggregate period of 120 months, subject to their meeting the eligibility criteria of the respective schemes. However, it was found in 2004-05 that for the period of December 2000 to February 2005, this former ECC staff had received a total housing allowance of \$869,818.89, comprising both an NCA of \$765,838.89 between 15 December 2000 and 31 August 2004; and an HFA of \$103,980.00 between 1 September 2004 and 28 February 2005. The NCA payment of \$765,838.89 should not have been made because the former ECC staff concerned, who was previously in receipt of NCA under the terms of employment with UC, was no longer entitled to NCA under the ECC terms signed with LCSD. Besides, the payment of HFA

amounting to \$103,980.00 should have only been made subject to his meeting the eligibility criteria stipulated in the relevant Civil Service Regulations. However, no evidence was provided in support of his entitlement to such housing benefits.

***Actions taken to recover the overpayment***

4. LCSO subsequently referred the case to the Department of Justice (DoJ) for taking legal action against the former ECC staff concerned to claim the overpayment of \$869,818.89. On 1 August 2008, the District Court ruled in favour of the defendant<sup>1</sup>. In accordance with legal advice, the Government decided not to appeal.

***Other investigations and disciplinary actions taken***

5. In parallel with the recovery action, LCSO consulted DoJ and referred the case to the Police in November 2006 for investigation of any possible deception or theft. Upon completion of investigation, the Police advised LCSO that no action would be taken against the former ECC staff concerned.

6. LCSO also conducted an internal investigation into the case and found that four officers were directly responsible for the overpayment of the housing allowances. One of them, a General Grades officer, had retired before the overpayment was discovered. Disciplinary actions were taken against the other three officers, namely two General Grades officers and one Departmental Grade officer. They were given either verbal or written warning having regard to the circumstances of the case and their level of involvement in the matter.

7. Taking into account the Court's judgment on the case, the disciplinary actions taken against the responsible officers as well as relevant legal advice, we decided earlier this year that no surcharge action under the Public Finance Ordinance (Cap.2)<sup>2</sup> should be taken against the staff involved in making the overpayment.

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<sup>1</sup> The Court commented that if the staff had been duly informed of the interpretation of the eligibility criteria for the housing benefits under the ECC terms at the material time, he would have purchased a property and took out a mortgage in order to benefit from the HFA which he was fully entitled to. The claim against the staff was thus dismissed by the Court.

<sup>2</sup> According to section 32 of the Public Finance Ordinance (Cap. 2), if it appears to the Financial Secretary (FS) that any person who was employed as a public officer and was responsible for any improper payment of public moneys, FS may surcharge the person such sum as he may determine, if he is satisfied, in all the circumstances of the case, including but not limiting to the nature of disciplinary proceedings taken against such person, that it is fair and reasonable to do so.

***Enhanced Control Procedures***

8. To prevent recurrence of similar cases, LCSD has critically reviewed the internal control procedures for payment of housing allowance for officers employed on ECC terms and introduced enhanced measures to ensure that all relevant applications would be processed in full compliance with the terms and conditions of the employment contracts and the established mechanism. These measures include centralising the vetting of the applications and escalating the level of approving authority for housing benefits of ECC staff to the Departmental Secretary.

9. Having regard to the results of actions taken to recover the overpayment and the ruling of the Court as set out in paragraphs 4 to 7, we consider that we have exhausted all possible means of recovery. As such, we conclude that the loss of \$869,818.89 is irrecoverable and should be written off.

10. In proposing this write-off, we have also assessed the housing benefits to which the former ECC staff concerned was actually entitled. According to ECC terms, while the staff concerned was no longer eligible for NCA, he was entitled to housing benefits equivalent to HFA/RA with effect from the commencement of his employment contract signed with LCSD, subject to his meeting the eligibility criteria for HFA/RA. Should the ECC staff concerned apply for housing benefits with proof of his eligibility for HFA/RA for the period between December 2000 and February 2005 in accordance with the ECC terms, he would be eligible to receive the relevant housing allowance to which he was entitled and the Government would have to pay him housing benefits equivalent to an amount of \$826,226.80, which was only marginally smaller than the overpayment of \$869,818.89. In such circumstances, the amount overpaid ( $\$869,818.89 - \$826,226.80 = \$43,592.09$ ) would have been relatively smaller.

***Authority for write-off***

11. For cases not involving fraud or negligence, the Financial Secretary (FS) is empowered under section 38 of the Public Finance Ordinance (Cap. 2) to write off losses of public moneys, stores, etc. without financial limit. For cases involving fraud or negligence, FS may exercise his power of write-off subject to such conditions, exceptions and limitations FC may specify. The current limit of delegated authority specified by FC for cases involving fraud or negligence is \$500,000 in each case, or in respect of any one cause. Since the current case involves negligence of some LCSD staff as mentioned in paragraph 6 above and the amount exceeds the financial limit, the approval of FC is required for the write-off.

**PROPOSAL**

12. The total amount proposed to be written off is \$869,818.89, with breakdown as follows:

<i>Item</i>	<i>Amount (\$)</i>
Overpayment of NCA	765,838.89
Overpayment of HFA	103,980.00
<b>Total:</b>	<b>869,818.89</b>

**WAY FORWARD**

13. Members are invited to note our proposal on seeking the approval of FC to write off the amount as soon as practicable.

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**Home Affairs Bureau**  
**Leisure and Cultural Services Department**  
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