

For discussion on
22 May 2017

Legislative Council Panel on Home Affairs

Write-off of an Irrecoverable Loss

PURPOSE

This paper consults Members on 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).

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 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, while the payment of HFA amounting to \$103,980.00 should only have been made subject to his meeting the eligibility criteria stipulated in the relevant Civil Service Regulations. However, at the material time, the staff concerned had not provided any information in support of his eligibility to HFA.

Actions taken

4. The Government took the case to court and demanded the return of \$869,818.89 from the aforementioned ECC staff. On 1 August 2008, the District Court dismissed the Government's claim and so the amount is considered as irrecoverable.

5. In parallel with the recovery action, LCSD consulted the Department of Justice 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 LCSD that no action would be taken against the former ECC staff concerned.

6. LCSD 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 had retired before the overpayment was discovered. Summary disciplinary actions were taken against the other three officers 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 that no surcharge action under the Public Finance Ordinance (Cap.2)¹ should be taken against the staff involved in making the overpayment.

Enhanced control procedures

¹ 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.

8. To prevent recurrence of similar cases, LCSD has, after the overpayment is discovered, 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 include centralising the vetting of the applications and escalating the level of approving authority for housing benefits of ECC staff. The measures were implemented from 2006 for the processing of all eligible application for the housing benefits of ECC staff.

The proposed write-off

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 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 the 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 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 slightly less 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 a smaller amount.

PROPOSAL

11. 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
Total:	869,818.89

PUBLIC CONSULTATION

12. We submitted an information paper to the Legislative Council Panel on Home Affairs on the write-off proposal on 23 June 2016. Members of the Panel have been invited to note our proposal on seeking the approval of the Finance Committee (FC) to write off the irrecoverable loss. Members have raised no comments on the proposal. The proposal was submitted for approval of FC at its meeting on 12 July 2016, but the item was not discussed at the meeting due to time constraint.

WAY FORWARD

13. Members are invited to support our proposal on seeking the approval of FC to write off the amount.

**Home Affairs Bureau
Leisure and Cultural Services Department
May 2017**