



香港申訴專員公署
Office of The Ombudsman, Hong Kong



主動調查報告
Direct Investigation Report

就獨居公屋租戶服刑的通報機制及安排
Notification Mechanism and Arrangements for
Imprisoned Singleton Public Rental Housing Tenants

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Executive Summary Direct Investigation Report

Notification Mechanism and Arrangements of Housing Department and Social Welfare Department for Imprisoned Singleton Public Rental Housing Tenants

Introduction

While handling a complaint case, this Office found inadequacies in the mechanism and arrangements of the Housing Department (“HD”) regarding imprisoned singleton public rental housing (“PRH”) tenants (including those who are Comprehensive Social Security Assistance (“CSSA”) recipients), which may result in the PRH flats concerned being left vacant for a prolonged period of time but went unnoticed. In this connection, The Ombudsman initiated a direct investigation against HD and the Social Welfare Department (“SWD”) to examine the notification mechanism and related arrangements for imprisoned singleton PRH tenants.

Our Findings

SWD’s Existing Arrangements

2. CSSA recipients who are in custody or imprisoned in a correctional institution will no longer be eligible for receiving CSSA. When SWD becomes aware of a CSSA recipient’s custody or imprisonment in a correctional institution through regular data checking with CSD, it will inform the recipient of the suspension of CSSA payments, including the rent allowance.

HD’s Existing Arrangements

3. Currently, there is no established mechanism for HD to learn that a PRH tenant is sentenced to a correctional institution. HD will not take any further action unless the tenant or his/her relatives and friends take the initiative to inform the Department, or when there are other signs, such as rent arrears or loss of contact with the tenant. Obviously, HD’s work and role are relatively passive. If a tenant continues to pay rent punctually, the flat concerned may remain vacant for a prolonged period without being noticed.

4. The Hong Kong Housing Authority (“HKHA”) has put in place a Letter of Assurance (“LA”) mechanism. Singleton PRH tenants who are serving a relatively long sentence and have not breached any tenancy conditions (such as having no rent arrears) will be issued an LA by HKHA upon request when HKHA recovers their PRH flats. They would be allocated a PRH flat upon release from prison without the need to queue again as long as they still meet the relevant criteria.

5. Where a singleton tenant defaults on rent payment during imprisonment and HD can neither contact him/her nor learn about his/her imprisonment in any other way, it will follow up the case in accordance with established procedures to recover the flat concerned at the end of the third month of rent arrears. During this processing period, the flat will remain vacant. The tenant will only discover upon release from prison that his/her PRH flat has been recovered, and can only be offered another unit after going through the PRH application process and with full settlement of rent arrears and other outstanding sums.

6. Where the tenant in rent arrears is a CSSA recipient and cannot be contacted, HD will send an enquiry memorandum to SWD in the middle of the second month of rent arrears. However, it can take further action only when notified by SWD that the tenant is already in prison. There is room for improvement in the efficiency of handling such cases. Moreover, HD will not issue the LA to those tenants who are unable to clear their rent arrears, and the tenants may become homeless upon release from prison.

Overall Comments

7. We consider it incumbent upon PRH tenants to pay rent on time. They also have a duty to inform HD immediately of any changes to their occupancy status (such as when a singleton tenant is in prison) which would result in their PRH flats being left vacant.

8. Nevertheless, if singleton PRH tenants fail to inform HD, it often takes at least two to three months before HD can learn about their imprisonment. It is also possible that HD may never be informed and the flats involved would be left vacant. HD's role is somewhat passive under the present mechanism. We consider there to be room for improvement.

9. If PRH tenants default on rent payments, HD would activate the procedures to recover the flats. Upon their release from prison, their PRH flats would have been recovered by HKHA. The tenants have to clear all outstanding rent payments before they are allowed to submit another PRH application. We consider such arrangements unfavourable to ex-inmates' reintegration into society.

10. Since the rent allowances of PRH tenants who are CSSA recipients are directly transferred to HKHA by SWD, any rent arrears with respect to their PRH flats may imply a change in the tenants' CSSA eligibility (e.g. due to imprisonment). This has a direct bearing on the utilisation of PRH flats. We consider that HD needs to find out as soon as possible the reason for any change in a tenant's CSSA eligibility so that prompt action can be taken to recover the flat for reallocation. It can also prevent the situation where a tenant loses both his/her PRH flat and the chance of getting an LA because of rent arrears, which may create another social problem.

Recommendations

11. In the light of the above, The Ombudsman makes four recommendations for improvement to HD:

- (1) to devise an alternative system to issue Conditional Letters of Assurance (“CLAs”). Singleton PRH tenants who default on rent payments because of imprisonment and are willing to terminate the tenancy and surrender their flats to HKHA can still apply for a CLA, provided that their rent arrears are due to special reasons beyond their control (for example, SWD suspends CSSA allowances, including the rent allowance) and no other breach of tenancy conditions is involved. This would allow them to be allocated a PRH flat in the future once all rent arrears/outstanding sums are settled;
- (2) to strengthen the existing notification mechanism with SWD, so that SWD can provide HD directly with the details about PRH tenants’ imprisonment upon suspension of rent allowance payments and obtaining consent from the imprisoned singleton PRH tenants;
- (3) to step up publicity for inmates through the Correctional Services Department (“CSD”) and to remind imprisoned singleton PRH tenants to inform HD promptly for its follow-up action; and
- (4) to study with CSD the feasibility of setting up a regular notification mechanism such that appropriate arrangements can be made as soon as possible for singleton PRH tenants serving prison terms.

Office of The Ombudsman
November 2019

1

INTRODUCTION

BACKGROUND

1.1 This Office earlier received a complaint against the Housing Department (“HD”) and Social Welfare Department (“SWD”). The complainant stated that he was a Comprehensive Social Security Assistance (“CSSA”) recipient, living alone in a public rental housing (“PRH”) flat, whose rent had been paid by SWD. After the complainant was imprisoned, SWD suspended the rent payment for his PRH flat and the Hong Kong Housing Authority (“HKHA”) eventually terminated the tenancy on the grounds that he had violated the tenancy agreement by defaulting on rent payment. Hence, he had no place to live upon release from prison. Later, the complainant was given a written recommendation by SWD for compassionate rehousing, and he was then allocated another PRH flat after HD had verified his eligibility. With the complainant’s accommodation arranged, the case was settled.

1.2 However, in handling this complaint, we found inadequacies in HD’s mechanism and arrangements regarding imprisoned singleton PRH tenants (including those who are CSSA recipients). As it may result in the PRH flats concerned being left vacant for a prolonged period of time but went unnoticed, the situation warrants our attention. In particular, if HD can learn about the imprisonment of tenants who are CSSA recipients timely, appropriate arrangements can be made so as to avoid losing their eligibility for PRH due to rent arrears, and also to ensure reasonable utilisation of PRH resources.

1.3 On 5 March 2019, The Ombudsman initiated a direct investigation against HD and SWD, pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance, targeting at the notification mechanism and related arrangements for imprisoned singleton PRH tenants, and to study the follow-up actions taken by the two departments regarding those tenants in prison, identify any systemic problems behind the case, with a view to making recommendations for improvement to the departments.

SCOPE OF INVESTIGATION

1.4 The scope of this direct investigation covers:

- the arrangements for PRH rent payment for CSSA recipients;
- SWD's procedures for handling CSSA recipients who are imprisoned singleton PRH tenants;
- HD's procedures for handling PRH tenants in rent arrears;
- HD's arrangements for imprisoned singleton PRH tenants;
- HD's existing mechanism for combating abuse of PRH resources; and
- a notification mechanism between HD and the Correctional Services Department ("CSD") for cases of singleton PRH tenants sentenced to correctional institutions.

PROCESS OF INVESTIGATION

1.5 This Office has examined the related policies and guidelines of HD and SWD, the departments' considerations when formulating those policies and the problems arising from the execution of those policies.

1.6 We issued the first and second drafts of our investigation report to HD and SWD for comments, and received the responses and supplementary information from the two departments on 25 March, 1 April, 9 May, 9 July and 22 July 2019. This final report, incorporating the departments' comments, was completed on 12 November 2019.

2

SWD'S EXISTING ARRANGEMENTS

PRH RENT PAYMENT ARRANGEMENTS FOR CSSA RECIPIENTS

2.1 Under the CSSA Scheme, for CSSA recipients residing in PRH flats under HKHA, SWD will directly transfer their rent allowance to HKHA through monthly autopay. When a recipient is no longer eligible for receiving CSSA, all CSSA payments, including the rent allowance, will be suspended.

PROCEDURES FOR HANDLING CASES OF IMPRISONED CSSA RECIPIENTS

2.2 CSSA recipients who are in legal custody or imprisoned in a correctional institution will no longer be eligible for receiving CSSA. When SWD becomes aware of a CSSA recipient's legal custody or imprisonment in a correctional institution through regular data checking with CSD or notification from the Welfare Officers of CSD or the CSSA recipient's relatives and friends, SWD will issue a notice of suspension of CSSA to the recipient. Normally, SWD will send the notice to the correctional institution where the recipient is imprisoned to inform him/her of the arrangements of the suspension.

PRH RENT AND TENANCY MATTERS OF IMPRISONED SINGLETON CSSA RECIPIENTS

2.3 SWD and HD have agreed on the arrangements for CSSA recipients who do not have relatives' support to handle their PRH rent and tenancy matters owing to special circumstances. For those cases, HD can send a prescribed memorandum to SWD to enquire about the arrangement for the recipient's rent allowance so that HD can handle his/her PRH tenancy matters. Such arrangement applies to those recipients who are imprisoned in a correctional institution but have no relatives to handle their PRH rent and tenancy matters on their behalf.

3

HD'S EXISTING ARRANGEMENTS

PROCEDURES FOR HANDLING CASES OF IMPRISONED PRH TENANTS

3.1 Currently, there is no mechanism in place for HD to find out if a tenant is sentenced to a correctional institution.

3.2 Nonetheless, where HD loses contact with a singleton PRH tenant and it suspects or learns through other means that the tenant is not living in the PRH flat due to imprisonment or other reasons, HD staff will normally send a written enquiry to related Government departments/organisations (e.g. CSD) on an individual case basis to ascertain the whereabouts of the tenant, and take necessary follow-up action.

PROCEDURES FOR HANDLING PRH TENANTS IN RENT ARREARS

3.3 According to Estate Management Division Instruction, where a tenant (whether a CSSA recipient or not) is in rent arrears, HD will issue a computer-generated rent chasing letter, in the first month of rent default. If the tenant still fails to pay the rent in the following month, HD will issue the First Warning Letter and Final Warning Letter, respectively on the next working day after the 7th and the 21st of the second month.

3.4 Apart from issuing the rent chasing letters and warning letters, the estate offices will deploy frontline staff to contact those tenants not responding to the letters through other means, such as conducting flat visits (including those outside office hours), and calling the principal tenants and their adult family members to urge an early settlement of rent arrears. After the Final Warning Letter is issued, if any tenant still fails to fully settle the rent arrears by the end of the second month, HKHA will issue a notice-to-quit ("NTQ") requiring the tenant to surrender the flat. After the NTQ is issued, if before its expiry the tenant clears all rent arrears and undertakes to pay rent punctually in future, the Department may exercise discretion and withdraw the NTQ.

PROCEDURES FOR HANDLING CSSA RECIPIENTS IN RENT ARREARS OF PRH

3.5 If, after exhausting all possible means, HD is still unable to contact a tenant who is a CSSA recipient, it will send a memorandum to SWD one week after issuing the First Warning Letter in the second month. The memorandum serves to enquire on the status of direct rent payment, and SWD should reply within five working days.

MEASURES TO COMBAT ABUSE OF PRH RESOURCES

3.6 HD checks the occupancy status of PRH flats through such measures as day-to-day inspections by estate offices, the biennial flat visits, rent arrears, water and electricity meter readings, and residents' verbal or written reports or complaints. Furthermore, HD staff will refer suspected cases of non-occupation or tenancy abuse to the Public Housing Resources Management Sub-section for in-depth investigation, so as to prevent abuse of PRH resources.

ARRANGEMENTS FOR IMPRISONED SINGLETON PRH TENANTS IN PRISON

3.7 According to Estate Management Division Instruction, estate office staff will generally visit the tenants concerned at the correctional institutions and encourage them to surrender voluntarily their PRH flats as far as practicable. Should the tenants refuse to surrender their PRH flats voluntarily, HD will recover the flats according to established procedures.

3.8 HKHA has put in place a Letter of Assurance ("LA") system. For singleton PRH tenants serving a relatively long sentence (normally three months or more), and whose contact details are known to HD, HD in general will liaise with the tenants concerned proactively and advise them to voluntarily terminate their tenancies and surrender the flats. Upon recovery of the PRH flats, HKHA will issue the LA to those tenants at their request, provided that they have not breached the tenancy agreement, such as having no rent arrears. Nevertheless, HKHA will not accept any application for the LA if the NTQ is already or will be issued, or the flat has already been recovered by HKHA, unless the NTQ issued is subsequently withdrawn or cancelled by HKHA. Holders of the LA, after serving their prison terms, can be allocated a PRH flat without the need to queue up on the Waiting List again as long as they still meet the relevant criteria. Subject to availability of PRH resources, HD will allocate a flat to them as soon as practicable.

4

PROBLEMS IN EXISTING MECHANISM AND ARRANGEMENTS

4.1 Under the existing arrangements between HD and SWD, there is no established mechanism for HD to learn that a singleton PRH tenant has been sentenced to a correctional institution. HD will not take any further action unless the tenant or his/her relatives and friends take the initiative to inform the Department, or when there are other signs, such as rent arrears, loss of contact with the tenant, or non-occupation of the flat. HD's work is relatively passive. If a tenant continues to pay rent punctually, the flat concerned may remain vacant for a prolonged period without being noticed.

4.2 Where a singleton PRH tenant defaults on rent payment during imprisonment, under the existing arrangements (see **para. 3.3**), if HD cannot contact the tenant, and there are no other ways to learn about his/her imprisonment, it will issue an NTQ at the end of the second month of rent arrears, requiring the tenant to surrender the flat. The flat will then be recovered at the end of the third month of rent arrears. During this processing period, the flat will remain vacant. The tenant will only discover upon his/her release from prison that the PRH flat has been recovered. He/she can only be offered another unit after going through PRH application and with full settlement of rent arrears and other outstanding sums.

4.3 Where the tenant in rent arrears is a CSSA recipient, HD will only make enquiry with SWD after exhausting all possible means to contact the tenant but in vain and issuing the First Warning Letter in the second month (see **para. 3.5**). It is only until then that HD can take further action, including visiting the tenant concerned at the correctional institution. There is room for improvement in the efficiency of handling such cases. Moreover, HKHA will not issue the LA to those tenants who are unable to clear their rent arrears, and they may become homeless when released from prison. On the other hand, if the imprisoned PRH tenants do not have rent arrears, for example, when their relatives and friends have paid the rent for them, HD will neither make further enquiries with SWD, nor be able to learn sooner that the flats have become vacant.

4.4 In another scenario, where the tenant in rent arrears is not a CSSA recipient, and HD suspects or learns through other means that the tenant is serving a prison sentence and not living in the PRH flat, HD staff will send a written enquiry to CSD on an individual case basis (see **para. 3.2**). However, in such cases HD's further action will depend on when it becomes aware of the tenant's imprisonment. It can thus be seen that HD's role and the procedures are somewhat passive. Furthermore, the tenants concerned must first clear all the rent arrears before they can be issued the LA.

5

OVERALL COMMENTS AND RECOMMENDATIONS

OVERALL COMMENTS

5.1 We consider it incumbent upon PRH tenants to pay rent on time. They also have a duty to inform HD immediately of any changes to their occupancy status (such as when a singleton PRH tenant is in prison) which would result in their PRH flats being left vacant.

5.2 Nevertheless, as discussed in **Chapter 4**, if singleton PRH tenants fail to inform HD, it often takes two to three months before HD can learn about their imprisonment. It is also possible that HD may never be informed and the flats involved would continue to be left vacant. If these tenants default on rent payments, HD would activate the procedures to recover the flats. Upon their release from prison, their PRH flats would have been recovered by HKHA. Besides, they have to clear all outstanding rent payments and go through PRH application before they are offered another unit. We consider such arrangements unfavourable to ex-inmates' reintegration into society.

5.3 From an administrative point of view, HD's role is somewhat passive under the present mechanism. Before taking further actions, HD has to wait until there is any default on rent payment or notification from the tenants themselves or their relatives and friends, or when HD loses contact with the tenants concerned or there are irregularities in the water/electricity consumption patterns of the PRH flats involved. We consider there to be room for improvement in this mechanism.

5.4 From the perspective of utilisation of PRH resources, since PRH flats are very precious social resources and the number of PRH applicants on the Waiting List keeps growing, HKHA should endeavour to avoid prolonged vacancy of PRH flats. It can be seen from **Chapter 4** that, in various scenarios, HD's failure to learn early about the imprisonment of singleton PRH tenants might result in vacancy of their flats involved for at least two to three months. This is undesirable. In particular, for PRH tenants who are CSSA recipients, since their rent allowances are directly transferred to HKHA by SWD, any rent arrears with respect to their PRH flats may imply a change in the tenants' CSSA eligibility (e.g. due to imprisonment). This has a direct bearing on the utilisation of PRH flats. We consider that HD needs to find out as soon as possible the reason for any change in a tenant's CSSA eligibility so that prompt follow-up action can be taken to recover the flat for reallocation. It can also prevent the situation where

a tenant loses both his/her PRH flat and the chance of getting an LA because of rent arrears, which may create another social problem.

5.5 In this light, we make the following recommendations to HD.

FORMULATE AN ALTERNATIVE SYSTEM OF ISSUING “CONDITIONAL LETTER OF ASSURANCE”

5.6 To handle these special cases, we recommend that HD devise an alternative system to issue a “Conditional Letter of Assurance” (“CLA”). Singleton PRH tenants who default on rent payments because of imprisonment and are willing to terminate the tenancy and surrender their flats to HKHA can be issued a CLA on a discretionary basis. Besides, if these tenants have rent arrears for special reasons beyond their control (for example, SWD suspends CSSA allowances, including the rent allowance) and no other breach of tenancy conditions is involved, they can still apply for a CLA. This would allow them to be allocated another PRH flat in the future after all rent arrears/outstanding sums are settled.

5.7 We consider that the CLA should help imprisoned singleton PRH tenants to secure a PRH flat allocation as soon as possible upon release from prison. This is conducive to ex-inmates’ reintegration into society.

STRENGTHEN THE EXISTING NOTIFICATION MECHANISM WITH SWD

5.8 This Office recommends that HD strengthen the existing notification mechanism with SWD under which SWD can, upon suspension of rent allowance payments and obtaining consent from an imprisoned singleton PRH tenant, provide HD directly with the details about his/her imprisonment. HD can then establish contact with the tenant concerned promptly and provide assistance on accommodation upon his/her release from prison. Meanwhile, the vacant PRH flat can also be recovered promptly for allocation.

PROACTIVELY REMIND IMPRISONED SINGLETON PRH TENANTS

5.9 Meanwhile, HD can step up publicity for inmates through CSD to remind imprisoned singleton PRH tenants to inform HD promptly for its follow-up action, so as to prevent situations of prolonged vacancy of PRH flat or rent arrears which may both result in flat recovery. Imprisoned singleton PRH tenants can contact HD via the Welfare Officers of CSD if they have questions relating to the occupation or utilisation of their flats, or if they need HD’s assistance.

STUDY THE FEASIBILITY OF SETTING UP A NOTIFICATION MECHANISM WITH CSD

5.10 HD should study with CSD the feasibility of setting up a regular notification mechanism, which includes the requirements for data matching procedures, consideration and selection of appropriate information for conducting such procedures, etc. This should ensure that data are collected strictly on a need basis, with a view to setting up a mechanism that complies with legal requirements and the wishes of PRH tenants.

5.11 In our view, if a regular notification mechanism can be established, HD should be able to promptly learn about the imprisonment of singleton PRH tenants, regardless of whether they have rent arrears or whether they are CSSA recipients. It can then provide early assistance in terms of accommodation upon the tenants' release from prison. In the meantime, the PRH flats involved can also be quickly recovered for reallocation in accordance with the current policy.

5.12 This Office hopes that through the above recommendations, unnecessary rent arrears of imprisoned singleton PRH tenants can be prevented, and they can be allocated another PRH flat as soon as possible upon their release from prison. This is conducive to their rehabilitation. HD can also recover the vacant PRH flats early for reallocation and facilitate their turnover.

RECOMMENDATIONS

5.13 In sum, The Ombudsman makes the following recommendations to HD:

- (1) to formulate an alternative system to issue CLAs (see **paras. 5.6 and 5.7**);
- (2) to strengthen the existing notification mechanism with SWD so that SWD can provide HD directly with the details about PRH tenants' imprisonment upon suspension of rent allowance payments and obtaining consent from the imprisoned singleton PRH tenants (see **para. 5.8**);
- (3) to step up publicity for inmates through CSD and to remind imprisoned singleton PRH tenants to inform HD promptly for its follow-up action (see **para. 5.9**); and
- (4) to study with CSD the feasibility of setting up a regular notification mechanism such that appropriate arrangements can be made as soon as possible for singleton PRH tenants serving prison terms (see **paras. 5.10 and 5.11**).

5.14 We are glad to learn that HD has held meetings with SWD and CSD separately to discuss ways to improve the existing notification mechanisms, so that HD can promptly learn about cases involving imprisonment of singleton PRH tenants.

ACKNOWLEDGEMENTS

5.15 The Ombudsman thanks HD and SWD for their cooperation in the course of this investigation.

Office of The Ombudsman

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