

## **Housing Department’s processing of applications for “Priority Scheme for Families with Elderly Members” Investigation Report**

The complainant complained to this Office against the Housing Department (“HD”) on 28 April 2021 and provided supplementary information on 14 May 2021.

### **The Complaint**

2. The complainant’s mother was the tenant of a rental housing flat of the Hong Kong Housing Society (“HKHS”), and the complainant a family member listed in the tenancy. The complainant moved out ten odd years ago due to poor relationship with his mother. In May 2020, the complainant applied to HD for a public rental housing (“PRH”) flat. In August 2020, HD informed the complainant in writing that his PRH application was cancelled because his mother had purchased a flat (“the Flat”) in their joint names in July 2020 under the “Priority Scheme for Families with Elderly Members” (“FEP”) of the “Sale of Green Form Subsidised Home Ownership Scheme Flats (“GSH”) 2019” (“GSH 2019”).

3. The complainant explained to HD that he had no intention to purchase the Flat and he was not aware of the purchase. HD staff told him that HD would neither allow him to withdraw from the GSH application nor reinstate his eligibility for PRH unless he made a report to the Police or his mother agreed to the forfeiture of the preliminary deposit.

4. The complainant was dissatisfied that HD:

- (1) had failed to confirm with him his intention to join his mother in purchasing the Flat when it processed the GSH 2019 application; and
- (2) unreasonably disallowed him to withdraw from the GSH 2019 application unless he made a report to the Police or the preliminary deposit paid by his mother be forfeited, putting him in a difficult situation.

### **Our Follow-up Action**

5. On 27 May 2021, we started a preliminary inquiry against HD. After examining HD’s reply and the facts of the case, we decided to conduct a full

investigation. Having considered HD's explanation, we concluded our investigation on 12 November 2021. Our findings are as follows.

## **Our Findings**

### ***Sale of Home Ownership Scheme (“HOS”) Flats 2019 (“HOS 2019”)***

6. The Hong Kong Housing Authority (“HKHA”) launched HOS 2019 in May 2019. Applications to purchase flats under HOS 2019 by households of PRH estates under HKHA or of rental housing estates under HKHS should be made together with all the family members listed in the tenancy. The applicant is required to sign and make a declaration in the application form to confirm that he or she understands if the applicant or his/her family members have been successful in the application for more than one subsidised housing scheme, the applicant and his/her family members can only opt for one of the schemes and all other applications will be cancelled. The applicant should complete and sign the application form before submitting it to his or her respective estate office. After verifying the application, the estate office would submit the relevant documents to the HOS Sales Unit (“Sales Unit”) for processing.

### ***GSH 2019***

7. To streamline the application arrangements, eligible applicants who did not succeed in their HOS 2019 applications could opt for carrying over their Green Form applications to the next HKHA's Subsidised Sale Flats Sale Exercise, which was GSH 2019, without having to submit a separate application and pay the application fee. Information submitted in the application form of HOS 2019 would be used to verify the applicants' eligibility and priority for flats selection in GSH 2019. If there was any change in the family composition of the applicants, they should inform HKHA the soonest possible so that the latter could update the particulars of the family members.

8. The application guide of GSH 2019 (“2019 Application Guide”) stipulates that:

- (1) during the flat selection stage, applicants are required to sign a declaration that all the information provided in the application form is true and correct, and that they should report any changes (including family composition) after submission of the applicant form; and
- (2) after signing an agreement for sale and purchase of a flat (“SP

Agreement”), any application for PRH by the applicant and his/her family member(s) listed in the application form would be cancelled and no PRH flat would be allocated.

### ***FEP***

9. To encourage families to live with their elderly member(s), eligible families consisting of two persons or above will be accorded priority in flat selection if they join FEP. The eligibility criteria include:

- (1) The elderly member who lives with the family must have reached the age of 60 on the closing date of application and must be a family member listed in the PRH/rental estate tenancy;
- (2) The elderly member must become an owner or a joint owner of the purchased flat, and he/she should be mentally capable;
- (3) The applicant must sign a joint declaration with the elderly member at the time of signing the SP Agreement, undertaking that they are willing to live together in the purchased flat;
- (4) If the elderly member is married, his/ her spouse must also be included in the same application unless supporting documents are submitted to prove that they are legally divorced, or the spouse does not have the right to land in Hong Kong or is deceased; and
- (5) Except for permanent departure, death or other compassionate reasons recommended by the Director of Social Welfare, the name of the elderly member cannot be deleted in future from the record of owners kept by HD.

10. According to the 2019 Application Guide, applicants joining FEP must share the ownership of the purchased flat with one of the elderly members who was aged 60 or above, and they might also choose one of the adult members listed in the same application form as a joint owner at the same time. The applicant, the elderly member aged 60 or above and the family member intending to become a joint owner were all required to turn up in person or be represented for flat selection and completion of relevant formalities.

### *Sequence of Major Events*

11. According to the information provided by HD, the major events are as follows:
- (1) On 10 June 2019, an estate office of HKHS received a Green Form application (“the Application Form”) signed by the complainant and his mother, stating that they jointly applied for HOS 2019 and FEP, and agreed to the carry over of their Green Form application to HKHA’s next Subsidised Sale Flats Exercise, which was GSH 2019.
  - (2) As the complainant and his mother did not succeed in their application for HOS 2019, HKHA informed the complainant’s mother in writing on 18 December 2019 that their HOS 2019 application would be carried over to GSH 2019.
  - (3) On 23 April 2020, HD’s Application Sub-section received the complainant’s PRH application.
  - (4) On 7 July 2020, the Sales Unit issued a Flat Selection Notification to the complainant’s mother, inviting her to select a flat under GSH.
  - (5) On 14 July, the complainant’s mother purchased a flat under GSH (i.e. the Flat) and signed an SP Agreement in respect of the Flat (“the Agreement”) and related declaration on the same day.
  - (6) On 31 August, the Application Sub-section wrote to the complainant, informing him that his PRH application was cancelled on 28 August on the grounds that he was a family member of a household under HKHA’s Subsidised Sale Flats.
  - (7) On 30 September, the complainant requested the Sales Unit to delete his name from the household of the Flat and his PRH application be reactivated.
  - (8) On 9 November, the complainant submitted a letter to the Sales Unit in person and requested the latter to exercise discretion to accede to his request for deletion from the household of the Flat.

- (9) On 17 November, the Sales Unit wrote to the complainant to explain why his request for deletion from the household of the Flat was denied.

### ***HD's Explanation***

#### Complaint Point (1)

12. Records revealed that the complainant and his mother signed the Application Form as a family member and an applicant respectively and confirmed that they had read and understood the 2019 Application Guide and declared that all the information provided in the form was true and correct. They also declared in the Application Form that they understood that application(s) for PRH from all family member(s) listed in the form would be cancelled and no PRH flat would be allocated after signing of the Agreement under HKHA's Subsidised Sale Flats.

13. According to the standard procedures, estate office staff will verify, upon receipt of a HOS/GSH application, the information provided by the tenant in the application form against the information on the tenancy agreement concerned. The staff will check whether the tenant is eligible for the application; whether the application form contains information of all family members listed in the tenancy; whether all family members listed in the form have signed and made the declaration; whether the information of family members tallies with that on the tenant's household record; and whether the tenant's signature in the form tallies with that in the tenancy agreement.

14. HD explained that tenancy agreements of PRH and rental housing estates are made between tenants and HKHA/HKHS. Hence, the tenants should be well aware that they had to vacate the rental unit currently occupied by them and return it to HKHA/HKHS, and they should undertake to comply with this requirement after purchasing an HOS/GSH flat. The tenants should ensure that the information they provide in the HOS/GSH application form is true, and they should sign the application form only if they understand all the terms and conditions stated in the form and the application guide. Hence, estate office staff would mainly check the tenant's signatures in the application form and the tenancy agreement to confirm their consistency.

15. HD pointed out that it was stated in both the application guides of HOS 2019 and GSH 2019 that the applicant should inform HD of any changes in family composition the soonest possible so that HD could update the information accordingly.

In its letter dated 18 December 2019, HD informed the complainant's mother that her HOS 2019 application had been carried over to GSH 2019 (see **para. 11(2)**). HD also reminded her that she should inform the Sales Unit in writing by the prescribed date if she intended to proceed with her application by way of GSH 2019, which was of a category different from HOS 2019 and would affect the priority for flat selection. As of the day of flat selection, the Sales Unit had not received any notification of changes in the application information on the complainant and his mother or their eligibility.

16. As no income and asset limit has been set for Green Form applications for HOS/GSH by PRH and rental housing tenants, HD did not need to conduct means tests or interview the complainant or his mother. In this case, the complainant's mother was the applicant as well as the family member who was aged 60 or above under FEP. According to the 2019 Application Guide (see **para. 10**), in the absence of a joint owner, only the complainant's mother was required to attend the flat selection on 14 July 2020 and sign the Agreement and related declaration. HD considered that such arrangement was in line with the established sales arrangement and it could avoid causing inconvenience to other family member(s) who did not intend to become a joint owner.

#### Complaint Point (2)

17. As the complainant had indicated to a staff member of HD that he had no knowledge of the application for purchase of the Flat, the HD staff suggested the complainant make a report to the Police if he suspected that someone had violated the laws of Hong Kong.

18. As the complainant and his mother purchased the Flat as a household under FEP, and he was the only family member in the application, his name could not be deleted from the respective household record. If the complainant wished to proceed with his PRH application, his mother could consider cancelling the Agreement. Otherwise, it would result in the complainant's enjoyment of double housing benefits. It was under such circumstances that the HD staff concerned asked the complainant to consider cancelling the Agreement, as a feasible solution to the problem.

#### ***Our Comments***

#### Complaint Point (1)

19. The complainant insisted that he had never applied for HOS 2019 and GSH

2019. However, the copy of the Application Form provided to us by HD was signed by the complainant's mother as "applicant" and the complainant as "family member".

20. According to HD, when the estate office concerned received the Application Form, it followed the standard procedures to verify only the tenant's signature (i.e. the signature of the complainant's mother) to check if it tallied with that in the tenancy agreement (see **para. 13**). In processing the application, HD had not interviewed the complainant or invited him to attend the flat selection on 14 July 2020 (see **para. 16**).

21. While we understand HD had its reasons to make the arrangements mentioned in **paragraphs 14 and 16**, we notice the following:

- (1) The Application Form showed that the complainant and his mother agreed to join FEP (see **para. 11(1)**);
- (2) FEP aims to encourage families to live with their elderly family members. Eligible families choosing to join FEP will be accorded higher priority in flat selection under HOS and GSH (see **para. 9**);
- (3) Upon successful purchase of a GSH flat on 14 July 2020, the complainant's mother signed a declaration, in the presence of a Housing Officer of HD, regarding the participation in FEP ("the FEP declaration") as follows:

"I/We \_\_\_\_\_ and \_\_\_\_\_<sup>1</sup> (Name of the elderly member) fully understand that we shall live together in the GSH flat \_\_\_\_\_ under FEP of GSH upon purchase of the flat"; and

- (4) On the day of flat selection, the complainant's mother also signed a declaration that the complainant's PRH application (Application no. xxxxxxxxx)<sup>2</sup> was foregone after the successful purchase of the GSH flat.

22. The extract of FEP declaration in **paragraph 21(3)** shows that family households joining FEP are required to declare that they understand they must live in the GSH flat purchased with the elderly member joining the scheme. Nevertheless, in this case, HD only asked the complainant's mother to sign the declaration as the elderly

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<sup>1</sup> [xxx] is the name of the complainant's mother, which is omitted here.

<sup>2</sup> The application number is omitted here.

member of the household without requiring the complainant to sign it as family member. Such arrangement obviously failed to achieve the purpose of the declaration. It also reflected HD's slipshod processing of the application for the Flat.

23. Given that families joining FEP will be accorded higher priority in flat selection, the shortcoming in HD's processing of applications may cause unfairness to other GSH applicants who do not join FEP. Take this case as an example, the complainant's mother successfully purchased the Flat as she was accorded higher priority in flat selection. However, the complainant had indicated that he would not be living in the Flat with his mother, which went against the objective of FEP. Had HD arranged the complainant to sign a declaration to confirm that he understood the requirements of FEP when processing the Application, this complaint could have been avoided and the aforementioned unfairness would not occur.

24. Moreover, the declaration mentioned in **paragraph 21(4)**, which indicated that the complainant would give up his PRH application, included the relevant application number. That means HD was aware of the complainant's PRH application before his mother attended the flat selection. Hence, it is difficult to understand why HD did not arrange the complainant to sign the declaration but asked his mother to sign it on his behalf. Given that the complainant submitted his PRH application individually, his mother had no right to forego his application on his behalf even if she was the applicant of the GSH 2019 application. In our opinion, it is necessary for HD to review the arrangement regarding the signing of the aforesaid declaration so as to improve the administrative procedures and ensure the legitimacy and validity of the declaration.

#### Complaint Point (2)

25. HD has clarified that the complainant had told its staff that he had no knowledge of the GSH application and requested to have his name deleted from the household record of the Flat. HD staff, therefore, suggested that the complainant consider making a report to the Police if he suspected that somebody had broken the law, or his mother could cancel the Agreement to let him regain eligibility for PRH application. We consider that HD's suggestion should not be regarded as maladministration because the Department had made such suggestion according to the actual situation and the prevailing public housing policy.

26. Our concern is that while HD was the executive authority of GSH 2019, any signs of untrue statements made in the application and during the signing of the

Agreement would cast doubts on the legality of both the approving process and the Agreement. Moreover, apart from the complainant's interest, the interest of other applicants and HD, the executive department guarding public housing welfare, might also be affected or harmed. The fact that the HD staff simply asked the complainant to make a report to the Police without trying to look into the problems mentioned in this paragraph indicates HD's failure to handle the situation meticulously, and to duly perform its duty.

## **Recommendations**

27. The Ombudsman recommends that HD:

- (1) seek legal advice on the legitimacy and validity of the declaration and the Agreement with regard to the problems revealed in this case; and
- (2) review the issues mentioned in **paragraphs 22 to 24** and consider improving the administrative procedures to ensure that FEP declarations and declarations to cancel the relevant PRH application carry their true meanings.

## **HD's Response to Our Draft Investigation Report**

28. The salient points of HD's response to our draft investigation report are as follows:

29. It was stated in both the application guide and application form of HOS 2019 and GSH 2019 that application(s) for PRH of family members listed in the application form should be cancelled if the applicants successfully purchased a flat, and any changes in the particulars of family members or the family circumstances should be reported to HKHA in writing.

30. The Application Form contained the complainant's signature in the declaration to indicate that he understood the requirements mentioned in the preceding paragraph. Hence, HD did not accept the complainant's argument that his PRH application was made in his own capacity and his mother was in no position to forego his PRH application.

31. HD obtained legal advice that even if the complainant had not signed any

declaration, the requirements mentioned in **paragraph 29** were still effective because the complainant and his mother had both signed the Application Form. That HD required the applicant to sign a declaration when signing the Agreement was simply to confirm again the relevant requirements.

32. HD considered that the crux of matter in this complaint was not whether the complainant had signed the declaration, but the authenticity of the complainant's signature in the Application Form. Unless the applicant and all other family members sign the application in the presence of a notary officer or HD staff, or HD interviews all the applicants and their family members listed in the application forms, the possibility for signatures on the application form not being authentic cannot be eliminated.

33. The numbers of application forms received for HOS 2019 and GSH 2019 were about 310,000 and 48,000 respectively, and there were about 236,000 and 72,000 application forms received for HOS 2020 and GSH 2020/21. Given the huge numbers of applications for HOS and GSH, it is infeasible to include witnessing of signing application forms or interviewing applicants and their family members in the procedures as suggested in the preceding paragraph.

34. Moreover, HD pointed out that while it may prevent family members listed in the application form from denying having joined the applicant in making the application after the purchase of an HOS/GSH flat, requiring the applicant and all family members concerned to attend the flat selection may be impracticable as most family members may not be available because of study, work or business trips. Such requirement may cause great inconvenience and unfairness because it may affect the priority accorded to the applicants in flat selection and they may even lose their opportunity for flat selection.

35. For safeguarding the interest of all parties concerned, HD considered that the most suitable approach to deal with cases where family members deny having joined the application after signing an SP Agreement is to take follow-up action according to the merits of each case.

36. The complainant had told HD that he would communicate directly with his mother about her GSH application, and the Department, therefore, expected that he would handle the family problem between himself and his mother. HD admitted that there was room for improvement in handling the complainant's case as it could have looked into the case further when the complainant repeatedly requested to have his name deleted from the household record of the Flat.

## **Our Comments on HD's Further Response**

37. We understand HD may have difficulties requiring the applicants and all family members to sign the application form of HOS/GSH in the presence of a notary officer or HD staff, or arranging interviews with the applicants and all family members, or requiring all of them to attend the flat selection (see **paras. 32 to 34**). Nevertheless, we have not requested HD to adopt these three procedures in the processing of applications. Nor have we taken it as maladministration on the part of HD because it failed to include such procedures.

38. While HD considered that the complainant's mother could sign the declaration on her son's behalf to forego his PRH application (see **para. 30**), we are concerned about HD's administrative arrangement for the signing of the declaration during flat selection. One major issue in this case is that the FEP declaration aims to ensure that family members of the household concerned understand they must live with the elderly member in the GSH flat purchased. Nevertheless, the FEP declaration could not achieve the aim in this case because HD only required the complainant's mother, as the elderly member, to sign the declaration without asking also the complainant, as a family member of the household, to sign the declaration (see **para. 22**).

39. In our view, had HD's administrative procedures been able to ensure that the FEP declaration carries its true meaning, this complaint and the unfairness mentioned in **paragraph 23** could have been avoided. Hence, it is necessary for HD to review the administrative procedures for signing the declaration. We learn that HD will review the application form, application guide and declaration of HOS and GSH to improve the administrative procedures.

40. Another major issue in this case is that the complainant had repeatedly said he did not make the GSH application, which indicates that untrue statements might have been made in the application and during the signing of the Agreement. HD, however, had not looked into the matter further. That shows the Department's failure to handle the case meticulously (see **para. 26**). We learn that HD, after seeking legal advice, will further investigate the complainant's case. Subject to the information and evidence collected, HD may consider referring the case to the Hong Kong Police Force and taking appropriate follow-up action on the Agreement.

## **Conclusion**

41. After giving due consideration to HD's response, the Ombudsman finds the complaint **substantiated** and maintains the recommendations in **paragraph 27**.

**Office of The Ombudsman**  
**November 2021**