

LCQ14: Recovery Agents

Following is a question by the Hon Miriam Lau Kin-ye and a written reply by the Secretary for Justice, Mr Wong Yan Lung, SC, in the Legislative Council today (January 27):

Question:

Some members of the transport industry have relayed to me that the activities of recovery agents have become more rampant in recent years, and these agents abet the injured in traffic accidents to exaggerate the degree of injuries sustained so as to claim for a higher amount of compensation, resulting in insurance fraud becoming an undesirable trend. As a result of an increase in the amount of compensation payout, insurance companies have also significantly increased the insurance premiums (e.g. the insurance premiums for taxi have been increased by 50% within a short period of time). Some insurance companies even plan to cease to underwrite insurance for commercial vehicles. Moreover, those injured in traffic accidents may have to pay high service charges to recovery agents. In this connection, will the Government inform this Council:

(a) whether it has looked into the causes for the activities of recovery agents becoming more rampant in recent years, and whether they include the failure of many of those injured in traffic accidents in meeting the eligibility criteria for the Supplementary Legal Aid Scheme (SLAS), which has resulted in their seeking help from recovery agents; if so, whether the authorities will consider reviewing and relaxing the eligibility criteria for SLAS;

(b) of the latest progress in combating activities of recovery agents by the authorities, and the specific plan for the next two years; of the latest progress of the review of the need to introduce legislation to regulate recovery agents; and

(c) whether it has assessed if the number of prosecutions instituted in respect of combating activities of recovery agents in the past three years is on the low side; if the number is on the low side, of the reasons for that, whether it is because it is more difficult to prove such activities, and how the authorities overcome such difficulties?

Reply:

President,

(a) There are multiple causes for the activities of recovery agents. According to the findings of the 2008 Reports of the Consultancy Study on the Demand for and Supply of Legal and Related Services, one of the reasons for the use by households of claims agents was that they could not afford or did not want to spend money or time resolving their problems through other means. Affordability is therefore only one of the many reasons for the public to engage the services of recovery agents. Another reason is the lack of awareness of the nature of recovery agents by members of the public.

The Home Affairs Bureau and the Legal Aid Department are in the process of formulating proposals for the five-yearly review of the criteria of assessing the financial eligibility of legal aid applicants. The Administration will consult the Legal Aid Services Council and the Legislative Council Panel on Administration of Justice and Legal Services by mid-2010.

(b) The Administration is addressing the problems caused by recovery agents by enhancing public education and law enforcement through investigation and prosecution.

In the case of HKSAR v Cheung Oi-ping and Winnie Lo (DCCC 610/2008), a recovery agent and a solicitor were convicted of offences related to champerty and maintenance and sentenced to 15 months' and 16 months' imprisonment respectively. The convicted solicitor has lodged an appeal and a hearing date has not been fixed yet.

In the verdict dated June 25, 2009, the trial judge has clearly spelt out the elements of the common law offences of champerty and maintenance. In dealing with these offences, the court has to look at the facts of each case to determine whether an offence has been committed. The court has to take into account the competing public policy considerations, such as the risk to the integrity of the court's system and access to justice.

Therefore, attempting to provide rigid statutory definitions of champerty and maintenance may not be required or desirable. The Administration will continue to monitor the development of the relevant common law offences and review the need for legislation

accordingly.

(c) Apart from the successful prosecution in DCCC 610/2008, five suspected cases are under Police investigation. Where fraud (including insurance fraud) is involved and substantiated, those perpetrating the fraud may also be prosecuted for fraud-related offences.

One of the reasons for the low number of reports received by the Police is that the general public may not be aware of the nature of the offences of maintenance and champerty and that the relevant activities of recovery agents are unlawful. As a result, some victims might still be under the mistaken belief that recovery agents are able to help them and are thus unwilling to co-operate with the Police in their investigations.

The Department of Justice has stepped up publicity through the media to enhance public understanding of the activities of recovery agents and the offences of maintenance and champerty. The public is reminded to be vigilant with regard to the activities of recovery agents which may be unlawful and may also jeopardise their own interest. The frequency of broadcasts of these messages has been increased since the successful prosecution in DCCC 610/2008 in June 2009. The number of time slots for TV and radio channels have increased by 64% and 11% respectively.

The Law Society has since June 15, 2009 operated a telephone helpline to assist claimants pursuing personal injury compensation to seek proper legal assistance directly from lawyers and to avoid engaging the services of recovery agents. Over 100 solicitors have joined the programme to provide up to one-hour legal consultation free of charge.

Ends/Wednesday, January 27, 2010