

## **LEGCO QUESTION NO. 18**

(Written Reply)

Date of sitting : 15 June 2005

Asked by : Hon Li Kwok-ying

Replied by : Secretary for Justice

### Question :

In her speech during the debate on the 2005 Policy Address at the Council meeting on 27 January this year, the Secretary for Justice pointed out that the Law Society of Hong Kong (“Law Society”) and the Consumer Council had studied the operation of claims companies, but there was insufficient evidence to prove that these companies had caused harm to the community, or that control by way of legislation was necessary. However, it has been reported that the Law Society has earlier said that financing accident victims in instituting legal proceedings by claims recovery agents constitutes an act of maintenance or champerty, which should be prosecuted by the Department of Justice. In this connection, will the Government inform this Council:

- (a) whether it has studied if the Law Society has changed its position on whether these claims companies have caused harm to the community; if the study reveals such a change, whether the authorities have asked the Law Society about the reasons for the change as well as the specific harm to the community; if the study reveals otherwise, the rationale for that;
- (b) whether it has assessed if claims companies have been involved in champerty and illegal promotional practice and whether the problem of excessive fee-charging is serious; if the assessment results reveal that such acts are illegal and the problem is serious, of the details and how the authorities will follow up; if the assessment results revealed otherwise, the details of that; and
- (c) as claims companies solicit business by claiming that they will charge on a “no win, no fee” basis, and the Law Reform Commission of Hong Kong is studying this form of fee-charging, whether the authorities know the latest progress of the study, and whether such matters as how to

regularize the operation of claims companies will be covered by the study; if they will not be covered, the reasons for that?

Reply :

Madam President,

This question relates to organizations that assist victims of personal injuries to claim compensation on the basis that they will only charge a fee if the victim succeeds in his claim. These organizations are referred to in the question as “claims companies”. However, I will adopt the description used by the Law Society and Bar Association, namely “recovery agents”.

There are three parts to this question and I will answer them in the same order.

- (a) In July 2002, the Law Society established a working party to investigate the activities of unqualified persons. This included what was then a relatively unknown category of recovery agents involved particularly in the field of personal injuries. A circular was issued to members of the Law Society advising them of the reservations held by the Law Society if solicitors were to accept instructions from recovery agents. These included the impairment of the solicitor’s independence and the client’s freedom of choice of solicitor under such arrangements as were believed to be made by recovery agents, and concern that victims of accidents were not receiving the full level of compensation because of the contractual obligation to pay over a percentage frequently as high as 25% to the recovery agents.

In November 2004, the Law Society established a second working party specifically to look at the activities of recovery agents in relation to personal injury claims. This was done because of an awareness of growth in the activities of recovery agents in personal injury claims and concerns at the social implications arising. Advice was obtained from leading counsel on the legality of a number of recovery agents’ contracts with accident victims and a circular issued to Law Society members.

The circular emphasized the likelihood of misconduct if solicitors were to act for victims of accidents in claims financed by recovery agents.

I understand that this latest circular does reflect a more robust approach towards the policing of solicitors' actions in respect of recovery agents than in the past. According to the Law Society this is because there is a growing awareness of the activities of recovery agents, concern at their lack of professional indemnity cover against their negligence, allegations of misconduct on the part of those working for them, and concern that there were instances of conflict of interest in the prosecution of claims resolved in favour of the recovery agents to the detriment of the accident victims. There have been allegations as yet unproven that claims had been settled for amounts less than was appropriate and that accident victims who were entitled to legal aid were diverted from such assistance so as to better serve the commercial interests of the recovery agents who would receive up to 25% of the compensation on recovery.

- b) The Department of Justice has studied the activities of recovery agents. It has also received information on them from the Law Society, Bar Association and the Consumer Council. With regard to the possibility that some recovery agents have been involved in champerty or illegal promotional practices, I will deal with this in a moment when I discuss possible prosecutions.

So far as publicity methods are concerned, we understand that recovery agents canvass for business at various places to which accident victims go to seek assistance. They also distribute leaflets and advertise through the internet, newspapers and television. Recovery agents may also employ "claims consultants" to canvass for business.

With regard to the fees payable to recovery agents if the claim is successful, we understand that these generally range from 20% to 25% of the compensation recovered.

The follow-up action in relation to these activities falls into three categories.

- (i) The first is public education of the possible risks involved in using the services of recovery agents, and of the availability of legal aid. The Consumer Council published an article on the former in "Choice" magazine and has encouraged the Legal Aid Department to promote its services as an alternative to those of recovery agents.

As part of its annual program of activities, the Legal Aid Department through its professional staff has been paying regular visits, and delivering talks, to NGOs promoting the availability of legal aid. It has also published an article in the LAD News, the target readers of which are the general public, explaining the advantages of undertaking litigation with the assistance of legal aid while drawing the public's attention to the possible pitfalls of seeking help from recovering agents to pursue a claim in court.

The Social Welfare Department continues to advise all applicants for Traffic Accident Victims Assistance of their right to claim compensation against any party at fault, through a solicitor or the Legal Aid Department.

- (ii) The second possible action is to bring a prosecution against a recovery agent if there is sufficient evidence that it has committed any offence. The Department of Justice does not investigate possible offences and only considers bringing a prosecution if evidence is referred to it by law enforcement agencies or others. My department has advised the Law Society, Bar Association and Consumer Council that, if they discover any evidence of criminal conduct by recovery agents, this can be referred to the police. So far, there has been no case in which sufficient evidence of an offence by a recovery agent has been produced to my department to warrant a prosecution. I understand that the Consumer Council is in the process of referring one recent complaint to the Police. It remains to be seen whether there is sufficient evidence to bring a prosecution in that case.
- (iii) The third type of action has been to consider whether legislation should be introduced to regulate recovery agents. The Department of Justice was informed by the Consumer Council in

February of this year that it had not received any complaints from members of the public about the activities of recovery agents. We have now been informed that there has been one recent complaint. However, I do not consider that there is sufficient justification for legislating at the present time. My department will nonetheless continue to monitor the situation.

With regard to the position of the Law Society, as the regulatory body for practising solicitors, it is entirely appropriate for it to issue advice to its members on their professional duties in relation to victims represented by recovery agents.

- (c) The Law Reform Commission study of conditional fees (or “no win, no fee arrangements”) is progressing well. It is expected that a consultation paper on the subject will be published within the next few months. At this stage, I am not able to say whether or not the paper will discuss the possible regulation of claims companies.