

**Legislative Council Panel on Administration of Justice  
and Legal Services: Meeting on 28 April 2003**

**Comments by Administration on submissions by the Law Society of Hong Kong on payment of compensation to persons wrongfully imprisoned (26 April 2003, LC Paper No. CB(2) 1886/02-03/02-03(01))**

In the LC Paper cited above the Law Society has made submissions on three issues. The Administration has the following comments.

**(1) Compensation should be payable to persons who have spent time in custody having been charged and refused bail but subsequently the prosecution dropped the charge against them before or at the trial**

**and**

**(2) Compensation should be payable to persons whose bail was refused because of objections by the prosecution but whom subsequently the court found to have no case to answer.**

2. It is useful to set out the administrative guidelines for the payment of *ex gratia* compensation –

(a) Compensation may be payable to a person convicted of a criminal offence who has spent time in custody and has received a free pardon because his innocence has been established or his conviction has been quashed following a reference to the Court of Appeal by the Chief Executive or an appeal out of time.

- (b) Compensation may be payable where a person has spent time in custody following a wrongful conviction or charge resulting from serious default by the police or other public authority. For example, refusal of bail because of incorrect information given to the court by the prosecutor or the police, or police suppression of material evidence which would have helped to exonerate a convicted person. Compensation may also be payable on this basis where the wrongful act was that of a judge or magistrate but, to preserve the perceived independence of the judiciary, payment in such cases should only be made on the recommendation of the judiciary itself.
- (c) Aside from guidelines (a) and (b), compensation may be payable in outstandingly deserving cases even where the loss was not caused by a wrongful act or omission by a public authority.
- (d) Compensation would not be paid simply because the prosecution was unable to prove its case beyond reasonable doubt in relation to a particular charge.
- (e) Compensation may be refused where there is serious doubt about the claimant's innocence, based on the argument that it would be repugnant to pay compensation out of public funds to a person who is probably guilty but, for example, whose conviction was quashed on a mere technicality.
- (f) Compensation may be refused or reduced proportionately where the claimant is wholly or partly to blame for his misfortune; for example, he deliberately withheld evidence which would have demonstrated his innocence.

- (g) From the perspective of public policy or administration, extending compensation beyond guidelines (a), (b) and (c) to persons who have suffered loss in the ordinary course of the criminal process (for example, to those to whom guideline (d) applies) would have substantial cost and other resource implications. There would be a much larger number of potential claimants and a tribunal or some other special machinery would be required to investigate each case and distinguish the claimants who are very probably innocent from those who were lucky to escape conviction.

3. Regarding both issues (1) and (2) in the Law Society's submissions, it may be noted that neither item is necessarily excluded from the guidelines and both may fall within either guideline (b) or (c) depending on the merits of the case.

**(3) The amount of *ex gratia* compensation payable to persons wrongfully imprisoned should be assessed by an independent assessor whose recommendation should be binding upon the Deputy Financial Secretary [now the Secretary for Financial Services and the Treasury]**

4. In the UK, the Home Secretary decides whether an applicant qualifies for compensation. The determination of the amount of both statutory and *ex gratia* compensation for persons who have been wrongfully imprisoned is made by an independent assessor. In Hong Kong, statutory compensation is determined by the court under section 6(1)(a) of the Hong Kong Bill of Rights Ordinance (Cap. 383) unless the case is suitable for an offer to settle and a claimant is willing to accept an *ex gratia* payment. It is considered unnecessary to have an independent assessment in every case of *ex gratia* compensation. Such assessment may be appropriate where in the circumstances some blame attaches to the public authorities, or in particularly large or complicated cases. In other cases the assessment could adequately (and

more cheaply and quickly) be made by a member of the Department of Justice who is experienced in these matters.

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