



Labour Department (Headquarters)

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8 August 2013

Clerk to Panel on Manpower
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn.: Miss Betty Ma)

Dear Miss Ma,

Panel on Manpower Meeting on 20 January 2012
Follow-up to the Motion on the Establishment of
“Compensation for Pain arising from Occupational Deafness”

This letter reports to the Legislative Council Panel on Manpower the result of the study conducted by the Occupational Deafness Compensation Board (ODCB) regarding a proposal on the establishment of “Compensation for Pain arising from Occupational Deafness” and the views of the Administration.

Background

At its meeting on 20 January 2012, the Panel on Manpower passed a motion moved by the Hon. LEUNG Yiu-chung, requesting the Administration to provide an implementation timetable and relevant details for the establishment of “Compensation for Pain arising from Occupational Deafness”. Legislative Council Members supporting the motion suggested that the Administration should make reference to the provision of monthly compensation for pain, suffering and loss of amenities under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) and grant periodic compensation for pain and suffering to persons with occupational deafness (OD persons). In our reply to the Panel on Manpower on 17 February 2012, we advised that the ODCB would be invited to conduct a comprehensive and detailed study on the proposal and we would report to the Panel on Manpower upon receipt of the study result from the ODCB.

Accordingly, the ODCB set up, in March 2012, a Study Group (SG) to conduct a study on the establishment of "Compensation for Pain arising from Occupational Deafness". The SG comprises a specialist in Otorhinolaryngology, an audiologist, as well as representatives of employers, employees, the ODCB and the Labour Department (membership list at Appendix 1). In the course of the study, the SG listened to the views of OD persons and relevant bodies, made reference to the practices and experience of other places in providing compensation for occupational deafness, and assessed the implications of establishing "Compensation for Pain arising from Occupational Deafness" for the finance and operation of the ODCB. Since many OD persons mentioned about their affliction by tinnitus, the SG also looked into this area. The SG has now completed its study and submitted its findings and recommendations to the Administration.

Study Result and Recommendations of the ODCB

Having reviewed the Occupational Deafness Compensation Scheme and the related employees' compensation system of Hong Kong, the call and justifications for establishing periodic compensation for pain and suffering, and made reference to the practices and experience of other places in providing relevant compensation to OD persons, the ODCB has reached a consensus that there are insufficient justifications for establishing "Compensation for Pain arising from Occupational Deafness". The reasoning of the SG is set out at Appendix 2.

With a view to rendering more appropriate and long-term assistance to OD persons, the ODCB recommends enhancing assistance for them through improving its rehabilitation programmes, including, *inter alia*, stepping up its efforts in providing rehabilitation services to facilitate more OD persons to participate in various rehabilitation activities regularly so that they can better adapt to their life with hearing loss and re-integrate into society; providing regular hearing tests and ear examination services for OD persons to monitor their hearing loss condition; as well as enhancing the provision of information on the acquisition and use of hearing assistive devices and tinnitus maskers. Given that many OD persons mentioned about their affliction by tinnitus, the ODCB will also invite these persons to participate in the research on tinnitus, as well as its relief or treatment methods. For the details of the recommendations, please refer to Appendix 2.

Views of the Administration and Way Forward

The Administration has carefully considered the study result of the SG. Having regard to the need to strike an appropriate balance between safeguarding the rights and benefits of OD persons and ensuring a fair and proper use of social resources, the Administration endorses the conclusion of the SG that there are insufficient justifications for establishing "Compensation for Pain arising from

Occupational Deafness". The Administration accepts the SG's recommendation that the ODCB should render more appropriate and long-term assistance to OD persons through improving its rehabilitation programmes and initiating research on tinnitus, as well as its relief or treatment methods. In addition, the Administration will continue with its regular review on the amount of compensation payable under the Occupational Deafness (Compensation) Ordinance (Cap. 469) so as to strengthen the protection for employees with occupational deafness. The Labour Department will commence work on the relevant review in early 2014.

Yours sincerely,



(Ms Teresa Fong)

for Commissioner for Labour

c.c. Chairman, Occupational Deafness Compensation Board (Fax: 2581 4698)

Occupational Deafness Compensation Board

**Membership list of the Study Group on
“Compensation for Pain arising from Occupational Deafness”**

Chairman

Dr YUEN Po-wing, Anthony	Chairman of the ODCB and specialist in Otorhinolaryngology
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Members

Ms TUNG Mi-wah, Elsa	Employer representative of the ODCB
Mr CHOW Luen-kiu, MH	Employee representative of the ODCB
Dr AU Kin-kwok, Dennis	Audiologist
Ms BUT Wing-tung, Christine	Labour Department representative
Ms NG Wai-ying, Erica	Representative of the ODCB

Occupational Deafness Compensation Board

Gist of the study result of the Study Group on “Compensation for Pain arising from Occupational Deafness”

Background

The Occupational Deafness Compensation Scheme (the Scheme) was set up in 1995 under the Occupational Deafness (Compensation) Ordinance (ODCO) (Cap. 469) to provide for compensation to employees who suffer from noise-induced deafness by reason of employment in specified noisy occupations. According to the ODCO, an employee is entitled to compensation in the form of lump sum payment in respect of the degree of his permanent incapacity resulting from noise-induced deafness.

2. At its meeting on 20 January 2012, the Legislative Council Panel on Manpower passed a motion moved by the Hon. LEUNG Yiu-chung, requesting the Administration to provide an implementation timetable and relevant details for the establishment of “Compensation for Pain arising from Occupational Deafness”. LegCo Members supporting the motion suggested that the Administration make reference to the provision of monthly compensation for pain, suffering and loss of amenities under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) and grant periodic compensation for pain and suffering to persons with occupational deafness (OD persons).

3. In response to the invitation of the Administration, the Occupational Deafness Compensation Board (ODCB), which is responsible for administering the Scheme, set up a Study Group (SG) in March 2012 to look into the justifications for and viability of establishing “Compensation for Pain arising from Occupational Deafness” and to put forth recommendations to the Administration. The membership of the SG comprises a specialist in Otorhinolaryngology, an audiologist, as well as representatives of employers, employees, the ODCB and the Labour Department.

4. In the course of the study, the SG listened to the views of OD persons and relevant bodies; made reference to the practices and experience of Singapore, Japan, South Korea, the Mainland, New South Wales and Victoria of Australia, New Zealand, Ontario of Canada, the Washington State and the New York State of the United States, and the United Kingdom in providing compensation for occupational deafness; and assessed the implications of establishing “Compensation for Pain arising from Occupational Deafness” for the finance and operation of the ODCB. Since many OD persons mentioned about their affliction by tinnitus, the SG also looked into this area.

Recommendations of the SG

Call for establishing “Compensation for Pain arising from Occupational Deafness”

5. Having reviewed the Scheme and the related employees’ compensation system of Hong Kong, thoroughly considered the call and justifications for establishing periodic compensation for pain and suffering, and made reference to the practices and experience of other places in providing relevant compensation to OD persons, the SG reached a consensus that there are insufficient justifications for establishing “Compensation for Pain arising from Occupational Deafness”. The major considerations are as follows:

- (a) As compared with pneumoconiosis or mesothelioma, occupational deafness shall have lesser impact on one’s earning capacity. In general, those persons who suffer from OD may continue to work, and they do not need regular medical treatment like that required by pneumoconiosis or mesothelioma patients for their loss of lung function. Since the patients concerned have different sufferings, it would be inappropriate to make a direct comparison between the compensation items under the two schemes.
- (b) An overview of the experience of the places studied reveals that it is a very rare practice to provide for statutory compensation for pain and suffering pursuant to an employees’ compensation system. Among the places studied, none of them at present has in place a statutory compensation item on pain and suffering arising from occupational deafness which is applicable to general employees. Notwithstanding that statutory compensation for pain and suffering is provided under one of the Commonwealth schemes of Australia, the coverage of the scheme is confined to Government employees, members of the Defence Force and employees of licensed self-insurers. It is noteworthy that New South Wales of Australia repealed the provisions on statutory compensation for pain and suffering under the Workers Compensation Act 1987 in June 2012. As revealed by the experience of New South Wales, the provision of statutory compensation for pain and suffering with no objective assessment criteria pursuant to an employees’ compensation scheme would give rise to disputes and difficulties in implementation, impose heavy financial burden on the scheme and impact on its financial sustainability in the long run.

- (c) Of the places covered by the SG's study, the majority of them make reference to the *Guides to the Evaluation of Permanent Impairment of the American Medical Association* (AMA Guide) when assessing the degree of permanent impairment of their employees. However, only a few of them provide compensation for tinnitus based on their individually devised assessment criteria, where there is no specific provision for compensation for tinnitus in the remaining places. It is clearly spelt out in the latest edition of the AMA Guide that tinnitus is primarily a subjective symptom which is difficult to verify even its presence and that tinnitus cannot be measured objectively. At present, there is neither scientific method nor standardised (or generally accepted) mechanism for assessing tinnitus. This comment on tinnitus is in line with the expert opinion obtained by the SG.
- (d) The SG takes the view that given the difficulty in making a determination of compensation for pain and suffering or tinnitus based on objective criteria, it is not a fair and appropriate way of utilising social resources should such compensation items be introduced into the Scheme.
- (e) The establishment of "Compensation for Pain arising from Occupational Deafness" would impose long-term and heavy burden on the finance and administration of the ODCB. If each OD person were to be paid a monthly compensation of \$1,000 as suggested by the Hong Kong Occupational Deafness Association, a crude estimate suggests that the annual total expenditure of the ODCB would increase by some \$37 million, resulting in an annual deficit of over \$20 million. On the operation front, owing to the difficulty in making a determination of compensation for pain and suffering based on objective criteria, the ODCB would be faced with numerous disputable cases and as such create a heavy administrative burden.
- (f) Similar to the mechanism of providing compensation for permanent incapacity under the Employees' Compensation Ordinance (ECO) (Cap. 282), employees suffering from noise-induced deafness are entitled to lump sum compensation in respect of their percentage of permanent incapacity under the ODCO. The proposal of providing periodic compensation for pain and suffering arising from occupational deafness deviates greatly from the current mechanism of providing one-off compensation under the ODCO and the ECO. The introduction of such compensation item would significantly impact on the relevant mechanism.

Proposed assistance for OD Persons

6. The SG is of the view that simply providing pecuniary compensation may not genuinely help OD persons resolve or alleviate the affliction and problems arising from hearing loss. In order to render more appropriate and long-term assistance to OD persons, the SG recommends that the ODCB should enhance assistance for OD persons through improving its rehabilitation programmes, including:

- (a) Stepping up its efforts in providing rehabilitation services to facilitate more OD persons to participate in various rehabilitation activities regularly so that they can better adapt to their life with hearing loss and re-integrate into society;
- (b) Providing regular hearing tests and ear examination services for OD persons to monitor their hearing loss condition, and enhancing the provision of information on the acquisition and use of hearing assistive devices and tinnitus maskers; and
- (c) Further improving and streamlining the application procedures for hearing assistive devices, particularly for consumables.

7. The SG also recommends that the ODCB should consider initiating research on tinnitus, as well as its relief or treatment methods. The ODCB may also invite OD persons to participate in the research voluntarily.

8. Although the SG recommends against establishing compensation for pain and suffering or tinnitus which can hardly be determined based on objective criteria, it considers that the Administration should continue with its regular review on the amount of compensation payable under the ODCO so as to strengthen the protection for employees with occupational deafness.

Concluding remarks

9. Having reviewed the Scheme and the related employees' compensation system of Hong Kong, the call and justifications for establishing periodic compensation for pain and suffering, and made reference to the practices and experience of other places in providing relevant compensation to OD persons, the SG reached a consensus that there are insufficient justifications for establishing "Compensation for Pain arising from Occupational Deafness". In order to render more appropriate and long-term assistance to OD persons, the SG recommends that the ODCB should strengthen its implementation of rehabilitation programmes and consider initiating research on tinnitus and its relief or treatment methods. The SG also considers that the Administration should continue with its regular review on the amount of compensation payable under the ODCO with a view to strengthening the protection for employees with occupational deafness.