

**HELPERS FOR DOMESTIC HELPERS**

St. John's Cathedral  
4-8 Garden Road  
Central  
Hong Kong

Tel: 852- 2523 4020 / Fax: 852-25371426

Email: [hdh@stjohnscathedral.org.hk](mailto:hdh@stjohnscathedral.org.hk)

**SUBMISSION BY HELPERS FOR DOMESTIC HELPERS TO THE  
PANEL ON MANPOWER OF THE LEGISLATIVE COUNCIL ON THE  
AGENCY FEE PROBLEM FOR FOREIGN DOMESTIC HELPERS**

**Introduction**

1.1 Helpers for Domestic Helpers ("HDH") is a non profit organisation that provides advice and assistance to foreign domestic workers ("FDW"). It is an outreach program of St. John's Cathedral and was founded more than 20 years ago by Mr. James Collins a barrister and a member of the congregation of St. John's Cathedral.

1.2 HDH deals with various issues affecting FDW including but not limited to labour and immigration issues and criminal cases.

1.3 In recent years, HDH has been dealing with an increasing number of complaints from FDWs about the extortionate fees and illegal commissions charged by employment agencies ("Agencies/Agent/Agency") both in the FDW's country of origin as well as in Hong Kong. While this has been a problem for many years, an increased awareness of its illegality has encouraged many more FDWs to come forward and seek advice on the issue. However, in spite of the pervasive problem of overcharging by Agencies, very few of these Agencies have been prosecuted.

1.4 HDH deals with an average of 135 new clients a month and about 68% of the cases involve illegal agency commissions. From our extensive experience in dealing with the problem, we have become familiar with the various modi operandi used by the Agencies to circumvent the laws.

**The laws on employment agency commission****(1) Philippines**

2.1 A reform package for overseas household workers implemented since 2006 prohibits Agencies from charging any placement fee. They may charge fees for training, orientation seminar and other miscellaneous fees but not commission for placing a domestic worker with an employer. In theory, the principal in the country of destination

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should pay commission to the Philippine agent for supplying the workers. Should an agency in the Philippines illegally charge a placement fee to a worker, a case may be filed against the agency at the Philippine Overseas Employment Administration in the Philippines or a complaint may be filed with the Overseas Workers' Welfare Office in Hong Kong.

(2) Indonesia

2.2 Under a decree (KEP 186/PPTK/VII/2008) by the Director General for Training and Placement of Manpower dated 10 July 2008, the cost structure for placement of Indonesian domestic workers to Hong Kong was set at Rp. 15,550,000 at a fixed exchange rate of HK\$1 to Rp. 1,000 or HK\$15,550. This includes training fees, service fees and other expenses for processing a worker's visa to Hong Kong.

(3) Hong Kong:

2.3 Under Part XII of the Employment Ordinance (Cap.57) and the Employment Agency Regulations, the maximum commission Agencies are permitted to charge is an amount not exceeding 10% of the first month's wages received after the FDW has been successfully placed in a job. Based on the current minimum allowable wage for FDWs of HK\$3,920, they should not be charged more than HK\$392.

2.4 Under clause 8 of the standard FDW contract in Hong Kong, the employer shall be responsible for fees and expenses for the departure of the FDW from his / her place of origin and entry to Hong Kong. These include medical examination fee, authentication fees by the relevant Consulate, visa fee, insurance fee, administration fees or other fees charged by the relevant government authorities.

**Illegal commissions and modus operandi of Agencies**

3.1 In reality, FDWs are being charged grossly excessive fees ranging from HK\$5,000 to HK\$21,000. In charging these fees, the Agencies circumvent the law by using various modi operandi as follows:

(1) Cash payment directly to Agencies without receipt

3.2 This is the simplest way Agencies collect placement commission with no paper trail as no receipts are issued for the payment for obvious reasons.

(2) Salary deduction by employer

3.3 The Agency enlists the support of the employer by asking the employer to deduct the commission from the FDW's wages each month over a number of months and pay the money to the Agency. The FDW is first asked to sign a receipt for full salary before the FDW is given a lesser amount after the Agency commission is deducted. FDWs are

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compelled to sign false receipts in order to protect their jobs.

(3) Bank deposit

3.4 The FDW is taken to a bank to open an account but the Agency keeps the bank records, ATM card and PIN number. The Agency then asks the employer to deposit the FDW's monthly salary into the account, withdraws the money and takes its commission before giving the remaining amount to the FDW. This is done in order to create documentary evidence that the FDW is receiving her full salary.

(4) Agency related "loans"

3.5 FDWs are required by Agencies to sign a loan agreement with certain lending companies. On arrival in Hong Kong, FDWs are taken by a representative of the Agency to the office of the lending company where they are required to sign documents. The FDWs are often not given the opportunity to read or given a copy of the papers they sign. In addition, in many cases, the FDWs do not actually receive any money from the lending company. They are only given a payment instruction along with a payment card with the name of the lending company and this card is used to make monthly instalment payments at 7-Eleven.

3.6 Due to recent challenges made by FDWs as to the legitimacy of the loans where they never actually receive any money, some lending companies have since changed their practices and are now handing cheques to the FDW as a formality. The cheque is issued in the name of the FDW after which the FDW is then taken by the Agent to a bank to cash the cheque and the cash is immediately taken by the Agent. In some cases, the FDW is given the details of a bank account in which to deposit the money.

3.7 Alternatively, FDWs sign loan documents in their home country and are required to make payments in Hong Kong. On arrival in Hong Kong or some days after, they each receive a letter from a Hong Kong lending company either by post or through their Hong Kong Agency containing payment instructions and a card to be used at 7-Eleven. If an FDW misses an instalment payment, representatives from the lending company harass the FDW as well as the FDW's employer to put pressure on the FDW to pay.

(5) Withholding termination payments

3.8 It is common for FDWs to be dismissed from their jobs within a few days or weeks of arrival in Hong Kong or after they have fully paid the commission to the Agency. If there are unpaid "loans" or commission, some Agencies ask the employer to pay the FDWs termination entitlements to the Agency and the Agency then keeps the money.

**Challenges in prosecuting unscrupulous agencies:**

(1) Lack of paper trail

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4.1 It is often difficult to prove that such illegal commissions were paid because Agencies do not issue payment receipts, for obvious reasons.

(2) Collusion with money lenders to cover up illegal commission

4.2 Colluding with money lenders allow Agencies to disguise illegal commission as personal loans taken by FDWs for their own use. Most money lenders involved are well aware of the purpose of the loan but are only concerned with maximising profit.

(3) Statute of limitation

4.3 The Employment Agencies Administration ("EAA"), the body that regulates Agencies, only pursues cases if complaints are filed within 6 months of the offence. Only a few FDWs are willing to jeopardise their job by filing a complaint against an Agency and most would only do so when their employment has been terminated.

(3) Weak monitoring and lacklustre investigation

4.4 Even in cases where there are several complaints against a particular Agency, the matter is rarely pursued by the EAA unless the complainants themselves provide strong evidence. In HDH's experience, the EAA would only conduct the minimum investigation and does not appear to conduct any thorough investigation to obtain evidence on its own.

4.5 There have only been a handful of Agencies that have been prosecuted for charging illegal fees. At least two of these cases were pursued with the help of information provided by HDH and its clients. However, it is not difficult for Agencies whose licence has been revoked for breaching the law to be resurrected under a new registered name.

(4) Immigration restrictions

4.6 Once a FDW's contract is terminated, the FDW is required to leave Hong Kong within 14 days. The FDW may be granted an extension of stay if the FDW provide an official document to the immigration Department proving that the FDW has a legitimate reason to stay, such as to attend labour or court proceedings or if a government department officer requires the FDW's presence in Hong Kong for an investigation. It is often difficult for a FDW to seek an extension of stay to pursue a case against an Agency because the EAA rarely provide such letters.

### Actions taken by HDH

5.1 HDH has helped numerous FDWs seek the return of excessive commission charged by Agencies. Some claims have been settled amicably out of court while others were filed with the Small Claims Tribunal. In a few cases where there is adequate

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evidence, awards were made in favour of the FDW. However, many cases are not pursued because the claimants are either still employed and are therefore unable to attend hearings or if they have lost their job, they were not granted an extension of stay.

5.2 HDH has also filed objections against the license renewal of two money lenders against whom HDH had received numerous complaints of harassment. The pattern of complaints strongly indicates that there is collusion between the moneylenders and Agencies in collecting illegal commission. A settlement agreement was reached with one of the moneylenders whereby HDH agreed to withdraw its objection against the money lender's license renewal in exchange for, among others, its cancellation of alleged "loans" to HDH clients. The money lender also promised not to accept loan applications from FDWs referred by Agencies and to amend its loan application form so that it stated the maximum commission that may be charged by Agencies. While the money lender has stopped processing loan application from FDWs in Hong Kong, it has circumvented the agreement with HDH by enforcing loans signed by FDWs with a particular lending company in the Philippines before the FDWs come to Hong Kong. In all of these cases brought to HDH, the FDWs alleged that they never received any money from the lending company in the Philippines.

5.3 HDH has also filed complaints with the Police Money Lenders Licensing Office against the two money lenders and others for: a) failure to provide loan documents in accordance with s18 and s19 of the Money Lenders Ordinance Cap. 163; b) enforcing allegedly bogus loans and; c) harassment of not only FDWs who fail to pay but also of their employers. None of the money lenders have so far been prosecuted. There appears to be lack of enthusiasm from the police in pursuing such cases. From HDH's dealings with the police in relation to complaints against money lenders, the police seem to be of the view that money lenders are justified in demanding payments from FDWs who have signed loan documents and agreed to pay even if no money was actually received by the FDWs.

### **Recommendations**

6.1 HDH would like to suggest the following recommendations to the Panel to try and reduce or eradicate the overcharging of FDWs by Agencies and the associated lending practices by moneylenders.

(1) **Proactive enforcement of the existing law**

6.2 Agencies are regulated under Part XII of the Employment Ordinance. This Part covers the licensing regime for Agencies, the powers given to the Commissioner for Labour, who is responsible for administering and monitoring the licensing regime for Agencies to regulate the activities of Agencies and sets out a number of prohibited acts and offences that can be committed by Agencies. Agencies are also regulated under the Employment Agency.

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6.3 Section 56 Employment Ordinance requires a licensed employment agent to maintain a record of all job applicants registered with the Agency, including job applicants who are non-resident in Hong Kong but who are placed in employment in Hong Kong by the Agency. These records must contain identifying information and should also include a record of the "fee and commission received" (s. 56(1)(ii)). The records have to be kept at the place of business of the Agency and must be available for inspection by the Commissioner for Labour. The records have to be kept for at least 12 months from the end of the accounting year for the Agency.

6.4 The Commissioner has wide powers to enter and inspect the place of business of an Agency without a warrant under s.58 **Employment Ordinance**. He can also require the production of documents and records, make copies of such documents and records, require those involved in the management and operations of the Agency to provide specified information and make inquiries of any other person connected or associated with the Agency.

6.5 If the commission of an offence is suspected, the Commissioner for Labour, any public officer authorized by him or a police officer of the rank of inspector or above can enter and search premises without a warrant, require the production of or seize articles, records or other documents. Furthermore, there is power to enter and search domestic premises with a warrant if an offense under the Employment Ordinance is suspected.

6.6 HDH would like to see these powers invoked and exercised in cases where there have been many complaints concerning a particular Agency.

6.7 The exercise of this power could also lead to a comparative analysis of an Agencies' bank statements and tax returns. There is a possibility that an Agency might well record a lower amount of agency fee allegedly collected from a FDW, but their bank statements (in particular the personal bank statements of their directors and senior staff) might well suggest that higher fees are being charged but the proceeds of these fees are being distributed covertly.

6.8 HDH believes that an Agencies' license could expressly require a condition or undertaking that the Agent would not charge a job seeker more than the legal maximum.

6.9 HDH is disappointed that despite referring many clients to the EAA, their complaints about overcharging rarely result in prosecution of an Agency or revocation of an Agency's license. The reason frequently given is that there is insufficient evidence. Yet it would appear to be obvious that an Agency is unlikely to issue receipts for commission illegally received or record an illegal charge in their books that can be publicly scrutinized and the very nature of an illegal, irregular or deceptive practice means that the veracity of any documents should be questioned and their evidential value assessed alongside the evidence of the complainant. In some cases, where an employer has diverted a FDW's salary (at the request or instruction of an Agent) to the Agent, then it would be possible to witness summons or subpoena the employer to give

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evidence of what he/she had done with the salary. This might help corroborate the FDW's evidence that the FDW had been overcharged.

- (2) Allow FDHs who agree to testify against Agencies to take up employment while the investigation is ongoing

6.10 Currently, of FDWs who are not working, only those who have completed a 2 year contract or those whose employment was terminated under exceptional circumstances (death, emigration or financial incapability of the employer or if there is evidence that the FDW has been abused or exploited) are allowed to apply for change of employment in Hong Kong. Otherwise, FDHs have to leave Hong Kong to process a new work visa. The EAA investigations can take a long time during which time FDWs, who are not working, simply cannot afford to remain in Hong Kong to be a witness against an Agency. The FDWs have commitments at home and limited savings (which have often been consumed in coming to Hong Kong to work in the first place) and cannot afford to spend half a year or more without any income. As a result, many FDWs return home and so it becomes impossible to bring a prosecution against an Agency.

- (3) HDH believes that there should be greater inter-departmental coordination

6.11 Coordination between the Labour Department, the EAA, the Police, the Department of Immigration and the Department of Justice will help ensure that, in suitable cases, investigations can be fully conducted and, if appropriate, prosecutions brought against offending Agencies.

- (4) Extending the time limit for prosecuting under the Employment Ordinance

6.12 HDH believes that the current six month limit for bringing a prosecution under the Employment Ordinance means that a large number of cases cannot be prosecuted because they are time-barred. This is because many FDWs do not become aware of the fact that they have been fleeced by the Agency and do not seek advice and help until after six months (often the period during which they are making these payments to the Agencies). Thus, many Agencies are never called to account for their practices. In addition, it is common, especially for Indonesian FDWs, to be denied rest days during the first 7 months of their employment and therefore, it is often too late by the time they learn of their rights or have the opportunity to take actions.

- (5) Increasing the penalty for overcharging

6.13 The maximum fine currently payable for contravention of s.57 Employment Ordinance is HK\$50,000. HDH believes that this is too low and does not act as sufficient deterrent to offenders as it probably does not reflect or take into account the very large sums of money that are earned by Agencies by overcharging FDWs. An increase in the fine to level 6 (HK\$100,000) together with more robust enforcement of the existing law and criminalising the offence with a penalty of imprisonment might act

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as a greater deterrent.

(6) Public education

6.14 HDH is aware that many employers are unaware that it is illegal for Agencies to charge their FDW large placement fees in the Philippines and in Hong Kong. From our conversations with employers, many seem to believe it is normal for Agencies to charge such fees and that the loans they took to finance the fees are legitimate. Once their FDWs learn and choose to exercise their right not to pay the illegal fees, some employers choose to fire their FDH as they choose to side with the Agency. Other employers are sympathetic, especially as they may have paid the equivalent of about two month's FDWs' salary in placement fees themselves. When members of HDH have spoken to law firms, church congregations and schools, there has been widespread ignorance of what is going on among our audiences. In one case, an employer who says he belongs to the Labour Party told HDH that if his FDH insisted on not paying the loan in connection with a placement fee, he would dismiss the FDH.

6.15 HDH would like to see more public awareness of the exploitation of FDH in this way. We believe that information could be included in the contract package provided to employers, although there is a risk that unscrupulous Agencies might remove such information before an employer reads and signs the contract of employment.

(7) Review of the threshold of the minimum salary required to hire a domestic helper

6.16 At the moment, an employer must have a household income of HK\$15,000 each month in order to qualify to employ a FDW. The prevailing rate charged by Agencies to employers for hiring a FDW through an Agency is \$3,500, few Agencies charge more. There are over 1,000 Agencies in Hong Kong competing for a limited number of employers. Due to stiff competition for employers and unlimited number of FDWs desperate for a job, the Agencies pass on most of the recruitment costs that should be paid by employers to the FDWs. Under the ILO Convention on Domestic Workers, the workers should not be made to pay for the cost of recruitment. In reality, the amounts FDWs pay to recruiters are several times higher than what employers pay. This could be addressed if Agencies are able to charge employers higher fees.

(8) Better regulation of moneylenders

6.17 Lack of stringent regulations of money lenders' operation creates a culture of impunity that allows them to undermine the rule of law by facilitating the collection of illegal commission by Agencies. They must be required to take reasonable steps to ascertain that the purpose of a loan is not illegal including those with loan agreements signed outside Hong Kong which money lenders in Hong Kong seek to enforce. Money lenders that knowingly profit from loans arranged for illegitimate purposes must be held legally responsible.

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6.18 In addition, money lenders employ outside collection agencies that resort to aggressive tactics to extract payments by harassing not only FDWs but also their employers by making frequent rude telephone calls and threatening to come to the employer's home if the FDW does not pay. Many FDWs submit to such pressure in order to protect their job even after learning that the loan may be considered void and unenforceable.

### Conclusion

7.1 The 2012 Trafficking in Persons Report by the US Department of State highlighted the situation of FDWs in Hong Kong subjected to debt bondage by Agencies and classified it as a form of human trafficking and forced labour. The Report made numerous recommendations for combating such acts including among others:

"develop a national action plan to commit resources and develop a clear overarching strategy; educate law enforcement, judges, authority officials, and the public on trafficking definitions in line with established international standards and grant victims permission to work and study while participating in trafficking investigations and prosecutions..."

7.2 Hong Kong prides itself in its commitment to observing the rule of law and yet, unscrupulous Agencies, often in collusion with money lenders, continue to exploit thousands of vulnerable FDWs with impunity. Greater effort must be made to prevent the laws from being circumvented through better enforcement and improved policies that will allow FDWs greater access to justice.

Prepared by:  
**Helpers for Domestic Helpers**  
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