

**Bills Committee on
Occupational Deafness (Compensation)
(Amendment) Bill 2009**

**Administration's Response to Issues Raised
by Deputations in the Meeting of 28 July 2009**

Introduction

At the meeting held on 28 July 2009, various labour/concerned organisations and employer associations expressed views on the Occupational Deafness (Compensation) (Amendment) Bill 2009 ("the Bill") verbally or in writing. This paper sets out the response of the Administration to these views for Members' reference.

A. Providing compensation for employees suffering from monaural hearing loss

2. Some organisations suggested that flexibility should be introduced into the proposed transitional arrangement for compensating persons suffering from monaural hearing loss (MHL) so that those MHL persons who had not made application previously with the Occupational Deafness Compensation Board (ODCB) could also be netted in the transitional arrangement. These organisations suggested that there might be claimants who had not made applications to the ODCB because they had previous hearing test results showing that they had MHL which could not meet the eligibility criteria for compensation. However, as these people might have already left employment, they would not be able to submit application to the ODCB then. For these special cases, the Administration considers that as long as the principles of fairness and reasonableness underpinning the present Occupational Deafness Compensation Scheme

(ODCS) are not compromised, greater flexibility could be introduced into the transitional arrangement. Under these principles, these claimants would still have to meet the eligibility criteria stipulated in the Ordinance as other claimants do. But in view of their special circumstances, it would be necessary to work out some reasonable and plausible ways to determine the level of occupational deafness of each of these persons sustained as a result of their employment in noisy occupations. We will need to sort out a number of technical matters to ensure that the compensation system will remain intact and reasonable before we can consider making the transitional arrangements more flexible. To this end, we are consulting ODCB which is responsible for the administration of the ODCS.

3. Some organisations opined that the proposed level of compensation for MHL should be increased. The Administration wishes to explain that the current Bill proposes that the percentage of permanent incapacity for the claimants suffering from MHL would be 50% of the percentage calculated in accordance with Schedule 4 of the Ordinance, by correlating the average hearing loss of the claimant's worse ear at specified frequencies with the column "40 to below 45 dB" for the better ear of the Schedule. The Administration has set the proposed percentage of permanent incapacity for MHL with reference to the experiences of other places and the existing percentage of permanent incapacity adopted for binaural hearing loss.

B. Increasing the maximum reimbursable amount for expenses incurred in purchasing, repairing and replacing hearing assistive devices

4. Various organisations expressed different views on the setting of the ceiling of reimbursable amount for expenses incurred in purchasing, repairing and replacing hearing assistive devices (HADs). They respectively suggested that the ceiling of the overall reimbursable amount

for the expenses of HADs should be removed or increased and that the ceiling of the reimbursable amount for expenses of HADs for first-time application should be raised.

5. The benefit item of reimbursement of expenses in connection with HADs was introduced in 2003. At present, a small proportion of persons with occupational deafness (OD persons) have exhausted their reimbursable amount. Having taken into account the needs of these OD persons, market trends in the provision of HADs, and the operational experiences of the ODCB, we propose to adjust the maximum reimbursable amount upwards from \$18,000 to \$36,000.

6. As the income of the ODCB mainly comes from a levy collected from employers by the Employees' Compensation Insurance Levies Management Board (ECILMB), it is necessary to set a ceiling for the benefit items so that both ODCB and employers would have a more realistic estimation on their financial liability. For the same reason, we do not consider it appropriate to remove the ceiling of the reimbursable amount for HADs. However, in the light of how OD persons would make use of HADs and market changes in the provision of HADs, we would from time to time evaluate and review the situation to ensure this benefit item could cater for the needs of the OD persons.

7. On the other hand, the setting of a first-time maximum reimbursable amount on the expenses of HADs is to help ensure that applicants who have little experience in using HADs would make a prudent choice in their first-time purchase. As for the hearing aids, since electronic devices may have different kinds of add-on functions, there may be great differences in the prices of hearing aids in the market. However, taking digital hearing aids as an example, hearing aids in the price range of \$6,000 to \$8,000 are largely equipped with some rather comprehensive sets of functions. Therefore the maximum reimbursable amount of \$9,000 for first-time application provided under the existing provisions should be

appropriate.

C. Providing further compensation for claimants whose hearing loss deteriorate as a result of continued employment in the specified noisy occupations

8. Some organisations considered that those who had been awarded compensation and then continued working in any specified noisy occupation in Hong Kong should not be required to work in noisy occupations for five years or more in aggregate before they could apply for further compensation. As occupational deafness is caused by prolonged exposure to a high level of noise at work, research findings reveal that the level of noise-induced hearing loss grows fastest in the first 10 years and slows down thereafter. The Occupational Deafness (Compensation) Ordinance (ODCO) also stipulates that an employee is entitled to compensation only if he has had at least ten years of employment in aggregate in any of the specified noisy occupations or at least five years of employment in aggregate in any of the specified occupations that are particularly noisy. Hence it is proposed in the Bill that an employee should have at least five years of employment in aggregate in any of the specified noisy occupations before he can apply for further compensation.

9. Some organisations suggested using different parameters for calculating the amount of further compensation. These suggestions include adopting the multiplying factor relating to the age of a claimant when he submitted the application where compensation was awarded; taking the average earnings of the claimant's previous successful application or the average earnings of the claimant's current application, whichever is the higher; or adopting the factor of 96 times of the monthly wages of the claimant across the board in calculating the compensation.

10. The Administration wishes to point out that under the existing

employees' compensation system in Hong Kong, for an employee who is injured or contracts occupational diseases at work, the amount of compensation to which he is entitled for the permanent incapacity so sustained is basically calculated with reference to his age and earnings at the time he sustains the injury or disease. This serves to compensate the prospective loss of earnings of the employee in the years ahead. The ODCO follows this rationale in determining the amount of compensation. The Administration does not agree to the suggestions which run counter to the prevailing principles of employees' compensation in the local context.

D. Introducing technical amendments to improve the operation of the reimbursement of expenses for HADs

11. Some organisations opined that ODCB should follow the practice of the Hospital Authority in purchasing hearing aids for OD persons in bulk contracts so that the price of the hearing aids could be kept down. We observed that in terms of quantity, there might be some significant differences between the number of hearing aids reimbursed by ODCB and the quantity handled by major medical institutions every year. Hence ODCB would have limitations in achieving similar discounts through bulk purchase. Moreover, the existing arrangement enables OD persons to freely choose suitable hearing aids for themselves. If bulk purchase is to be adopted, the brands and types of the hearing aids so purchased would inevitably limit the choices of OD persons. On the other hand, a mechanism has already been put in place by ODCB to ensure that the prices of hearing aids purchased as one of the benefit items under the ODCO would not be higher than that normally sold in the market.

12. Some organisations suggested that the scope of the reimbursement of HAD expenses should be extended to cover the expenses of portable transmitters. The Administration would like to point out that, under Schedule 6 of the ODCO, apart from the three specified items of

HADs (i.e. hearing aid, telephone amplifier specially designed for use by persons with hearing difficulties and desktop telephone with flashing light or other visual device to indicate ringing), ODCB may also, upon the advice of the Occupational Deafness Medical Committee (ODMC), determine that an applicant can be reimbursed for the expenses of any device the use of which by a person suffering from noise-induced deafness to be reasonably necessary in connection with such deafness. In the past, ODCB has approved applications relating to portable transmitters.

E. Occupational requirements for compensation

13. Some organisations suggested that a claimant who has not been employed under a continuous contract should also be entitled to compensation as long as he has been working in any of the specified noisy occupations. There are also views that the one-year's limit for making applications should be relaxed so as to allow sufficient time for the workers to make application after having left the specified noisy occupation. We would like to point out that sensorineural hearing loss can be caused by various factors other than prolonged exposure to excessive noise during employment in noisy occupations. These factors include ageing, endocrine diseases such as diabetes, ototoxic medications, viral infection, meningitis, brain tumours, and noise exposure during pastimes. Occupational deafness is one of the categories of sensorineural hearing loss. Since modern medicine cannot ascertain the definite cause of a deafness case solely on the result of a hearing test, the existing occupational requirements (i.e. applicants are required to have at least a certain number of years of employment in aggregate in any of the specified noisy occupations and have an employment under a continuous contract in any of the specified occupations within the 12 months preceding the date of the application) stipulated under the ODCO would help to ascertain as far as possible that the deafness of an applicant is mainly caused by his employment in noisy occupation. This is in line with the objectives of the

ODCO in providing compensation for loss of hearing resulting from noise exposure at work.

F. Adjusting the specified overall rate and proportions of distribution of the Employees' Compensation Insurance Levy

14. Some organisations expressed their concern on the adjustment of the overall rate and the proportion of distribution of the Employees' Compensation Insurance Levy (the Levy). The Administration has all along been monitoring closely the financial positions of each statutory board. We will from time to time evaluate and review their respective financial situation. The present proposal to adjust the overall rate and proportions of distribution of the Levy is made after having comprehensively considered the operational needs and the financial positions of the three related boards. The proposal can ensure long-term financial viability of the statutory boards and their ability to perform their statutory functions. It is a win-win proposal supported by both employers' and employees' organisations. The proposed adjustment in the overall Levy rate, if accepted, would establish a practice where the overall Levy rate can be adjusted in the light of the circumstances. We will keep in view the financial situation of the statutory boards and formulate improvement or adjustment measures as necessary to ensure that they are able to perform their respective functions.

G. Compensation arrangements

15. Some organisations opined that compensation should be paid to OD persons on a monthly basis. The Administration is of the view that the main objective of the ODCO is to provide persons with permanent incapacity arising from occupational deafness with a one-off compensation as in the cases of employees who have contracted other occupational

diseases. This is in line with the local employees' compensation system. As OD persons can generally continue working or living normally, the ODCB, in the light of the special needs of OD persons, other than compensation also funds expenses relating to HADs and rehabilitation services in order to improve the communication and social capabilities of OD persons for their re-integration into society.

16. Some organisations suggested that the ceiling of monthly earnings for the calculation of compensation of claimants should be removed so that the amount of compensation of the claimant should be calculated with reference to the actual amount of average monthly earnings in respect of his employment for 12 months in aggregate immediately preceding the relevant date of application. We would like to reiterate that the existing method of calculating the amount of compensation is in line with the prevailing practices of the local employees' compensation system. The ODCO will follow the principles adopted by the current employees' compensation system in determining the amount of compensation.

17. Some organisations suggested that the maximum percentage of permanent incapacity of the claimant determined by the ODCB for calculating the amount of compensation should be increased from 60% to 100%. The Administration would like to point out that the present level of compensation for occupational deafness in Hong Kong is broadly equivalent to the level of permanent incapacity for the total hearing loss in many other places such as Singapore, Australia and the United States of America.

H. Other proposals

18. Some organisations suggested that the number of noisy occupations under the ODCO should be increased by adding new specified noisy occupations. The Administration would like to point out that we

conduct regular noise assessments to monitor the noise exposures of employees in individual work processes or procedures. Based on the data collected, the Administration would consider whether new noisy occupations need to be added in order to enhance employee protection.

19. Some organisations suggested that membership of the ODCB should include a representative of OD persons. The Administration would like to point out that the existing membership of ODCB and the ODMC, which is responsible for providing medical advice to ODCB, consist of a variety of representatives including employers' and employees', audiologists and otorhinolaryngologists for provision of professional advice in respect of hearing. As the persons benefited by the ODCO are all employees, their views and requests can be reflected through the employees' representatives of the ODCB. The current ODCB and ODMC have had suitable representatives for different parties.

I. Prevention, promotion and rehabilitation

20. Some organisations expressed the view that the Administration should invest more resources on strengthening measures of hearing loss prevention for workers. It should also enhance co-operation with other related organisations to arrange different kinds of promotional and educational activities and rehabilitation programmes.

21. As occupational deafness is incurable, ODCB has all along attached great importance to enhancing employers' and employees' awareness of the prevention of noise-induced deafness through different kinds of educational and promotional activities. These measures include arranging different kinds of promotional activities in public transport systems, such as posters, promotional cards in the train compartments and showing messages on electronic displays; staging a series of exhibitions in shopping malls and launching site visits at different noisy workplaces such

as construction sites and airports to promote the correct measures for hearing conservation. In addition, ODCB has organised training courses on management of noise at work for managerial or supervisory staff in industries with noisy processes. In 2009-10, the budget for expenditure of ODCB on promotion and education is \$4.5 million.

22. On the other hand, the Labour Department (LD) has also adopted multi-pronged strategies to publicise to the employers and employees the relevant legislation on noise at work and hearing conservation for employees working in noisy occupations. These include issuing a number of publications to introduce to employers and employees the requirements on controlling noise at work, to assist employers and employees in different industries in adopting suitable practices in preventing employees from sustaining noise-induced deafness, to explain to them the impact of noise on health, the symptoms of hearing loss and different ways to lower noise level, and to provide relevant information on workplace noise assessments. LD from time to time organises exhibitions and seminars on occupational deafness and provides outreaching education service on occupational health to individual organisations, with a view to increasing the knowledge of the employers and employees on the damaging effect of noise at work and hearing conservation.

23. Moreover, various stakeholders such as ODCB, the Occupational Safety and Health Council and LD jointly organise various promotional activities on occupational safety and health to encourage employers of noisy occupations to set and implement “hearing conservation projects”, and through organising the “Occupational Health Award” annually, publicise those organisations which have excelled in this aspect.

24. Some organisations suggested providing hearing tests for employees working in noisy occupations to alert them at an early stage the impact of noise on their hearing so as to increase their awareness in noise prevention. There are also organisations suggesting that resources should

be provided to encourage the improvement of noisy working environment. As the functions of the ODCB include conducting or financing educational and publicity programmes for the purpose of preventing noise-induced deafness by reason of employment, the Administration would pass the suggestions to ODCB for consideration.

25. In respect of rehabilitation, ODCB conducts and finances rehabilitation activities for persons suffering from occupational deafness to help them overcome the handicap brought about by the ailment and to re-integrate them into family and community activities. The rehabilitation programmes launched by ODCB are divided into three aspects, namely, aural, social and vocational rehabilitation. The goal of aural rehabilitation programmes is to assist OD persons in overcoming the hearing impairment through the provision of suitable HADs and the development of effective communication skills. For example, pre-fitting seminars are regularly held to help persons suffering from occupational deafness to have a better understanding on the use of hearing aids. Apart from inviting audiologists to give talks on the benefits of wearing hearing aids and how to choose a suitable one, staff of the ODCB would also brief the participants of the procedures of making application to the ODCB for reimbursement of expenses in relation of HADs. After OD persons have acquired hearing aids, many users would take time and effort in adapting to the new device. To help this group of applicants, the ODCB also organises post-fitting seminars for them. In the seminars, audiologists and social workers share with the participants information on how to make better use of hearing aids as well as developing the right attitude in the use of them. In the aspect of social rehabilitation, all the activities are organised under the Occupational Deafness Rehabilitation Network (ODRN), a set-up formed by the ODCB and its partnering organisations. The ODRN organises various rehabilitation activities for persons suffering from occupational deafness including home visits, communication workshops, rehabilitation activities for small groups, regular community meetings, interest groups and other social activities to re-integrate them into social life, broaden their social

circles and strengthen their motivation and skills to communicate with other people in the hope of letting them regain confidence and motivation to interact with people in the family and community. The rehabilitation activities also help OD persons to apply for community assistance such as helping OD persons to apply for household repair and maintenance service for the elderly who live alone. In addition, a pilot programme on vocational rehabilitation has been launched to provide career counselling, job skills training and placement service to persons suffering from occupational deafness who still have the capability and motivation to undertake employment.

26. Moreover, the ODCB publishes the good measures adopted by different organisations of both the public and private sectors in its website, to foster an inclusive environment in their facilities or services for hearing impaired persons. In the financial year 2009-10, the budget for the expenditure of the ODCB on rehabilitation programme is \$3 million.

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