

LCQ20: Default on maintenance payments

Following is a question by the Hon Leung Che-cheung and a written reply by the Secretary for Home Affairs, Mr Lau Kong-wah, in the Legislative Council today (June 26):

Question:

The Social Welfare Department (SWD), in calculating the amounts of Comprehensive Social Security Assistance (CSSA) payments payable to CSSA recipients who are concurrently receiving maintenance payments, makes a deduction of the maintenance payments they may receive. If the CSSA recipients can prove to SWD that they have commenced legal proceedings to recover the arrears of maintenance payments, the deduction of their CSSA payments may be suspended. Some social welfare organisations have pointed out that it is very time-consuming to provide such a proof, and such recipients, who are mainly single parents, will immediately fall into financial difficulties once they are owed their maintenance payments. Besides, the work on implementing the maintenance order system falls within the remit of the Home Affairs Bureau and yet SWD, which provides support to single parents, is under the Labour and Welfare Bureau, resulting in a lack of coordination for and effectiveness of the relevant work. In this connection, will the Government inform this Council:

(1) whether it knows the number of maintenance orders granted by the court in the past five years, with a tabulated breakdown by the group to which the amount of monthly maintenance payments belonged (i.e. below \$2,000, \$2,000 to \$3,999, \$4,000 to \$5,999, and \$6,000 or more);

(2) of the respective numbers of requests for assistance (i) received and (ii) handled by SWD and non-governmental organisations in the past three years concerning default on maintenance payments;

(3) whether it has compiled statistics on the number of cases in the past three years in which legal proceedings were commenced to recover arrears of maintenance payments;

(4) whether it will dispense with the requirement for CSSA recipients to submit proof of having commenced legal proceedings, and stipulate that as long as they make a statutory declaration stating that they are owed their maintenance payments, the deduction of their CSSA payments will be suspended;

(5) whether it will put the work on implementing the maintenance order system under the purview of the Labour and Welfare Bureau so as to enhance the coordination for the work relating to default on maintenance payments and the support for the single parents concerned; and

(6) whether it will consider setting up a dedicated department to strengthen the support for single parents who are owed their maintenance payments?

Reply:

President,

After consulting the Judiciary, the Legal Aid Department (LAD), the Labour and Welfare Bureau (LWB) and the Social Welfare Department (SWD), a consolidated reply to the various parts of the question is as follows:

(1) According to the Judiciary, it does not keep information on applications for maintenance orders, granting of maintenance orders, nor the respective amount of maintenance payments.

(2) and (4) In assessing the amount of Comprehensive Social Security Assistance (CSSA) payments to be granted to a CSSA recipient, SWD will first assess his/her recognised needs. If the applicant has assessable income (including maintenance payments), the CSSA payments will be suitably deducted. Before the maintenance payments have been successfully recovered by the recipient, SWD will not, on account of such payments, reduce or stop the CSSA payments for which he/she is eligible. However, the recipients should declare on the designated undertaking their intention to take action in filing claims for maintenance payments.

SWD does not keep information on the number of CSSA cases involving default in maintenance payments.

(3) According to the statistics provided by the Judiciary, the number of judgment summons hearings and applications for Attachment of Income Orders (AIO) regarding the recovery of arrears of maintenance in the past three years are as follows:

	2016	2017	2018
Number of judgment summons hearings	844	839	783
Number of applications for AIO	12	14	9
Number of AIOs made	7	13	14

Note: AIOs might not be made in the same year as the applications were received.

LAD provides legal aid for eligible applicants who pass both the means and merits tests to recover arrears of maintenance. The number of judgment summons proceedings issued for cases handled by in-house lawyers of LAD is shown below:

	2016	2017	2018
Number of judgment summons proceedings issued	126	99	95
Number of cases closed	116	161	141
(i) Number of successful cases (%)	82 (71%)	104 (65%)	89 (63%)

(ii) Number of unsuccessful cases (%)	34 (29%)	57 (35%)	52 (37%)
---------------------------------------	-------------	-------------	-------------

Notes:

1. Cases may not be closed in the same year as the judgment summons proceedings were issued.
2. LAD does not keep statistics on the number of judgment summons proceedings issued for cases handled by lawyers in private practice on LAD's panel.

(5) The Home Affairs Bureau is responsible for the work on implementing the maintenance order system. The Government has no plan to transfer the work to the Labour and Welfare Bureau at present.

(6) The Government is committed to enhancing the effectiveness of the system of collecting maintenance payments and enforcing maintenance orders. The measures taken so far include relaxing the requirement for the court to make an AIO, imposing interest or surcharge against defaulting maintenance payers, allowing designated government departments to disclose the addresses of maintenance payers upon the request of legal professionals, increasing the amount of monthly maintenance that may be exempted from the Director of Legal Aid's First Charge, streamlining the referral procedures for CSSA applicants to apply for legal aid for recovery of arrears of maintenance, as well as strengthening efforts in publicity and education.

In addition, the Government commissioned through the Family Council a research team in June 2018 to conduct a consultancy study on various issues related to marriage and divorce, including whether it is appropriate to set up a dedicated department to handle maintenance-related matters, in order to facilitate our consideration of the way forward. The consultancy study is expected to be completed in 18 months (late 2019/early 2020).