

LCQ4: Recovering arrears of maintenance payments

Following is a question by the Hon Elizabeth Quat and a reply by the Secretary for Home Affairs, Mr Caspar Tsui, in the Legislative Council today (May 26):

Question:

A survey conducted by the Census and Statistics Department in 2015 revealed that, among the divorced or separated persons (collectively referred to as divorcees) entitled to receiving maintenance payments from their ex-spouses who were interviewed, about 40 per cent had been unable to receive maintenance payments in full. Moreover, among those who had been owed maintenance payments, about 90 per cent did not take legal actions to recover the arrears of maintenance payments, and their reasons for this included application procedures for legal proceedings being too complicated, which was also very time-consuming (for instance, it took two years for some cases just to be set down for hearings). It is learnt that some people who are owed maintenance payments (especially single parents) have indicated that they often face financial difficulties. In this connection, will the Government inform this Council:

(1) whether, in order to help divorcees recover the arrears of maintenance payments more effectively, the Government will consider imposing punishments on those who have defaulted on maintenance payments (e.g. revoking their licences or prohibiting them from leaving the territory) so as to create a deterrent effect, as well as streamlining the mechanism for applying for an Attachment of Income Order to facilitate divorcees in recovering the arrears of maintenance payments through taking legal actions; if so, of the details; if not, the reasons for that;

(2) given that quite a number of divorcees are not eligible for applying for legal aid nor can they afford the legal costs, of the new measures in place to help them take legal actions to recover the arrears of maintenance payments; and

(3) whether it will, by drawing reference from the practices in countries such as the United States, Canada and Australia, consider afresh setting up a maintenance payment management board to coordinate matters relating to maintenance payments (including assisting in collecting, recovering and disbursing maintenance payments), or formulating a child support scheme for single parents; if so, of the details; if not, whether it will explore granting advanced payments for the arrears of maintenance payments to those who are owed their maintenance payments and thus facing financial difficulties, so as to enable them to meet pressing living expenses?

Reply:

President,

Family harmony is the foundation of a harmonious community. In the face of the challenges of economic and social changes, apart from providing different types of family education and support services, the Government is committed to enhancing the effectiveness of the system of collection of maintenance payments and enforcement of maintenance orders.

According to the Thematic Household Survey published by the Census and Statistics Department in 2016, there were about 362 200 persons who had ever divorced or separated between October 2015 and January 2016. Among these persons, about 80 per cent (i.e. about 300 000 persons or 83 per cent) of them had neither applied nor intended to apply for a maintenance order, among which about 90 per cent (i.e. about 296 000 persons or 98 per cent) did not enter into a relevant maintenance agreement with their ex-spouses. The major reasons were: "no such need" (56 per cent), "both parties agreed not to require each other to provide maintenance" (16 per cent), and "considered that men should not receive maintenance" (11.7 per cent), etc.

Meanwhile, the Government has all along put in place arrangements, including the Comprehensive Social Security Assistance (CSSA) Scheme and the Working Family Allowance (WFA) Scheme, to support persons and families facing economic difficulties, regardless of whether they are single parents or maintenance payees. Both the aforementioned schemes provide special assistance to meet the needs of single-parent families. For example, the CSSA Scheme provides a higher payment rate for single-parent families, whereas the WFA Scheme grants Child Allowance for each eligible child and the basic working hour requirement for single-parent families is only pitched at 36 hours per month which is much more lenient than the basic working hour requirement for non-single-parent families.

Having consulted the Labour and Welfare Bureau, the Social Welfare Department, the Department of Justice, the Judiciary and the Legal Aid Department, my consolidated reply to the Hon Elizabeth Quat's question is as follows:

(1) and (2) Over the years, the Government has implemented a series of measures to improve the system of enforcement of maintenance orders. These measures include relaxing the requirement for the Court to make an Attachment of Income Order (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 where it is in compliance with relevant legislation, and adjusting upward the amount of monthly maintenance that may be exempted from the Director of Legal Aid's First Charge etc., with the aim of assisting divorcees to recover maintenance payments and catering for their needs in a more effective manner.

Furthermore, the Government has been conducting publicity and education programmes to enhance public understanding of the responsibilities of maintenance payers, the rights of maintenance payees and the services

available to payees when they fail to receive maintenance payments.

Currently, if the paying party who is ordered by the Court to make maintenance payments is in default, the receiving party may take out enforcement proceedings to enforce the judgment or order. The enforcement proceedings include Judgment Summons, Charging Orders, Garnishee Orders, AIOs and Writs of Fieri Facias.

As regards Judgment Summons, during the proceedings for committal, if the Court is satisfied that the judgment debtor (i.e. the maintenance paying party) (i) has, or has had since the date of the order, the means to pay the sum in respect of which he/she has made default; and (ii) has refused or neglected, or refuses or neglects, to pay the sum, and rules that the judgment debtor is in contempt of court, then it may, in its discretion, make an order of committal and impose imprisonment of the judgment debtor. When the Court makes an order of committal as a penalty for contempt of court, it will consider relevant factors, including the amount and duration of maintenance arrears, whether the judgment debtor has continuously been in obvious defiance of the Court's order.

Besides, the maintenance payee can apply to the Court for a Prohibition Order to prohibit the maintenance payer from leaving Hong Kong to assist the collection of maintenance payments as set out in the maintenance order. The Prohibition Order will be valid for one month, and on the application of the judgment creditor, the Court may extend the order for a period which does not exceed three months.

We will continue to review the system of collection of maintenance payments and enforcement of maintenance orders so as to assist persons in need to recover maintenance payments.

(3) We understand that specialised agencies or schemes are in place in some overseas countries or places to handle matters relating to maintenance payments. In this connection, the Government has commissioned a research team through the Family Council to conduct a study to review the existing system of collection of maintenance payments and enforcement of maintenance orders, examine the pros and cons of overseas systems relating to maintenance payments and their arrangements of administrative and legislative measures, and analyse their applicability to Hong Kong, etc.

The study is underway at present. The report will be submitted to the Family Council for consideration and discussion upon completion of the study. The Government will, having regard to the findings of the study, views of the Family Council and other relevant factors, consider the way forward.