

Financial Support to Disabled and Non-disabled Athletes

Meeting of Legislative Council Panel on Home Affairs on 11 May 2007

- Submission from the Equal Opportunities Commission -

Purpose

The Equal Opportunities Commission (EOC) is invited by the Legislative Council Panel on Home Affairs to provide views on whether the proposed 'Elite Athletes Grants' providing financial support to disabled (Disabled Elite Athletes) and non-disabled athletes (Elite Athletes) as set out in the paper entitled 'Sports Development in Hong Kong' (the Paper) would be in compliance with the Disability Discrimination Ordinance (DDO). This paper sets out EOC's analysis on the subject matter based on the relevant information available as to date.

Financial Support to Non-disabled Athletes

2. According to paragraph 4 of the Paper, direct financial support to elite athletes has mainly come from three funding sources, which are administered by Hong Kong Sports Institute (HKSI), namely HKSI stipends, Sports Aid Foundation Fund (SAFF), and Sports Aid for the Disabled Fund (SADF) which caters for the disabled athletes.

3. The SADF was established in 1985 with a grant of HK\$1.5 million from the Government, supplemented with a further HK\$5 million donated by the Hong Kong Jockey Club in 1992. The SAFF was established in 1987 with a transfer of HK\$577,000 from the former Governor's Special Fund and a donation of HK\$40 million from the Hong Kong Jockey Club. Both SADF and SAFF operate in such a way that interest from the capital fund is allocated to athletes to compensate for loss of earnings as a result of training or competition obligations, and to help pay for items such as special equipment and other training expenses. However, there is no information about the source of the HKSI monthly stipends to which disabled athletes are not entitled (paragraph 6 of the Paper refers).

4. It is noted from paragraph 10 of the Paper that the level of financial support for non-disabled elite athletes is much higher than those for the disabled athletes, be it under the current situation or the proposed unified scheme. *[Under the current*

situation, Elite A non-disabled athletes have a maximum of \$17,500 per month, whilst Elite A disabled athletes have an average of \$4,100 per month. Under the proposed Unified Scheme, Elite A non-disabled athletes' financial support ranges from \$21,250 to \$32,500 per month whereas the average monthly support for Elite A disabled athletes is \$5,400.]

5. In addition, Annex C of the Paper shows the breakdown of the HKSI Scholarship and Non-HKSI Scholarship disbursed to (*non-disabled*) Elite Athletes. However, there is no similar provision for Disabled Elite Athletes. It is noted that subsistence grant has been provided to Disabled Elite Athletes via the Hong Kong Paralympians Fund which is under the auspices of the Social Welfare Department. However, there is no information as to whether such grant is meant to be a substitute for as the scholarships mentioned above.

Considerations

6. As spelt out in paragraph 6 of the Paper, disabled Elite Athletes are not eligible for monthly stipends. In addition, the respective amounts of capital fund for SAFF (presumably provided for non-disabled Elite Athletes) and SADF (provided for disabled Elite Athletes) are substantially different, which would significantly affect the amount of earned interest available for supporting non-disabled and disabled Elite Athletes respectively. As a result the level of financial support provided for non-disabled Elite Athletes is much higher than those for disabled Elite Athletes. Paragraph 5 of the Paper also does not clearly spell out the source of funding for the HKSI monthly stipends. As indicated in paragraph 8 of the Paper, direct financial support to athletes is to be improved by the injection of additional recurrent funding of the Government.

7. In considering whether the proposed Elite Athletes Grants set out in the Paper complies with the DDO, the following information is relevant and essential:

- (i) The rationale and justifications why Disabled Elite Athletes are not entitled to the HKSI monthly stipends.
- (ii) Whether it is the Government or HKSI to determine the eligibility for the monthly stipends.
- (iii) It is noted that there is substantial difference in the level of assistance and support between non-disabled Elite Athletes and Disabled Elite Athletes funded under the SAFF and SADF respectively. Has the HKSI or the Government given thoughts to the possibilities of equalizing the grant under SAFF and SADF?

- (iv) The nature, funding source(s), eligibility and detailed operation of HKSI Scholarship and non-HKSI Scholarship, and whether they are open to Disabled Elite Athletes. If the scholarships are restricted to non-disabled Elite Athletes, whether there is similar provision for Disabled Elite Athletes and the rationale and justifications if the answer is not affirmative.

EOC's Views

8. The Government, through the HKSI, has assumed the functions of generally assisting elite athletes, both disabled and non-disabled. In doing so, the Government and the HKSI must not engage in disability discrimination.

9. On the material presently available, the Government and the HKSI clearly apply a distinction, and maintain differential treatment, between non-disabled Elite Athletes and Disabled Elite Athletes. The application of the DDO to the differential treatment between Elite Athletes and Elite Disabled Athletes hinges on whether it can be said that the relevant circumstances of the Elite Athletes are the same and similar to Elite Disabled Athletes. There are clearly differences between them, but there are also similarities. By way of illustration, factors of differences and similarities may include the following (and there may be other relevant factors):

Differences	Similarities
Format of competition	Sporting spirit
Number of participants	Personal dedication
General popularity as reflected in commercial value in event endorsement, audience size, prize money etc.	Training needs
	Honour for Hong Kong

10. Depending on the purposes of the Elite Athletes Grants, it is open for argument that the differential treatment is inequitable and discriminatory for Disabled Elite Athletes. If the purpose of the Elite Athletes Grants (including the monthly stipends) is to assist and enable non-disabled Elite Athletes to dedicate themselves to training, then the same circumstance also exist for Disabled Elite Athlete. For this purpose, there should be no difference in treatment between non-disabled Elite Athletes and Disabled Elite Athletes.

11. On the other hand, there are differences between the sports engaged in by the non-disabled Elite Athletes (13 elite sports) and the Disabled Elite Athletes (13 elite disabled sports). These differences are competition format, number of competitors,

general popularity and commercial values. The argument in favor of differential treatment would be that the non-disabled Elite Athletes and the Disabled Elite Athletes are engaging in different sporting events. The elite sports are strictly speaking open to people with and without disabilities. People with disabilities can become Elite Athletes if they do well enough. In short, the differential treatment is not on the ground of disability, but on the ground of different sporting events. On this analysis, there is no disability discrimination.

12. However, even though they do engage in different sporting events, the fact remains that Disabled Elite Athletes will always be people with disabilities, whereas non-disabled Elite Athletes are most likely to be people without major disabilities. It is because of their disabilities that Disabled Elite Athletes have to take part in different sporting events especially designed for them. It is a form of separate treatment aimed to give people with disabilities the experience of sporting excellence that is as far as possible equal to the experience for people without disabilities. The underlying principle is substantial equality. Where people with disabilities cannot take part in an activity because of their disabilities, there should be separate treatment for them to enable them to effectively have the same experience as far as possible. It is the same principle that requires a ramp to be built for wheelchair users as an alternative to staircases.

13. So even though Disabled Elite Athletes take part in separate sporting events from non-disabled Elite Athletes, the aim is to give them as far as possible effectively the same experience of sporting excellence. If the financial assistance for Disabled Elite Athletes is disproportionately less than the assistance for non-disabled Elite Athletes, Disabled Elite Athletes are not having effectively the same experience of participation as competitive sportsmen. On the material presently available, the difference in financial assistance is very significant and it can be reasonably questioned that Disabled Elite Athletes are not being given effectively the same experience; and no explanation is given as to why it is not possible to do so.

14. Nevertheless, there is no case law in Hong Kong which indicates how the DDO would actually be applied by the Courts to the present differential treatment between non-disabled Elite Athletes and Disabled Elite Athletes. Furthermore, there are gaps in the relevant information available, as outline above in paragraph 7. It therefore cannot be firmly asserted that the present differential treatment is in contravention of the DDO.

15. The case of Shepherd v. United States Olympic Committee and Hollonbeck and others v. United States Olympic Committee is instructive. There is a judgment in this

case by the United States District Court for the District of Colorado on 16 November 2006 on the issue of whether there is illegal discrimination under the American Disability Act (ADA) by the United States Olympic Committee (USOC) in its differential treatment between Olympic and Paralympic athletes, similar to the differential treatment between non-disabled Elite Athletes and Disabled Elite Athletes in Hong Kong.

16. In essence, the court ruled that the differential treatment is not illegal under ADA because the USOC's facilities and services are not available to the general public, whereas the ADA applies to facilities available to the public. Nevertheless, the court decried a culture that relegates Paralympians to second class status in the quantity and quality of benefits and support they receive from USOC. The court indicated that it was desirable to rectify the situation, but that it was for the legislature and the appropriate executive agency to do so.

17. Although the basic concepts of discrimination are similar, the DDO has different wording from the ADA. It may be possible to argue that the differential treatment falls within the DDO. In any event, as a matter of policy-making, the present differential treatment is open to challenge as being inequitable even on general principles. It is desirable for policy-makers to ensure that there is substantial equality for both non-disabled Elite Athletes and Disabled Elite Athletes.

Equal Opportunities Commission
May 2007