

**PROPOSED AMENDMENTS TO THE LEGAL AID
SERVICES COUNCIL ORDINANCE & OTHER
RELEVANT LEGISLATION**

SUBMISSION BY THE LAW SOCIETY OF HONG KONG

1. The Law Society understands and accepts the reasons for amendments to the Legal Aid Services Council Ordinance and other relevant legislation.
2. There are, however, certain aspects of the proposed amendments upon which the Law Society wishes to express its views. These are as follows:

2.1 Powers of the Council (s.3):

Whilst the amendments to section 3 appear to be general in nature we question the need for those set out in subparagraphs (e) and (g) given the purpose for which the Legal Aid Services Council was established.

2.2 Functions of the Council (section 4):

Section 24 of the Legal Aid Ordinance confirms that similar rights and privileges as those accorded to clients in their relationship with their solicitors attach to the relationship between the Director of Legal Aid and legal aid applicants and aided persons. Accordingly the proposed amendment should recognise that client confidentiality must not be breached in any transfer of information between the Director of Legal Aid and the Legal Aid Services Council. It is suggested that the proposed section 3A should be amended to read,

“...The Director of Legal Aid may refuse to disclose material to the Council if the disclosure of the material may have a prejudicial effect upon the proceedings to which the material relates and shall not disclose it if to do so would breach the rules of solicitor and client confidentiality and he certifies that it may have that effect or consequence.”

We assume that there would be no attempt to breach the rules relating to legal professional privilege in the transfer of information between the Legal Aid Department and the Council but this should be specifically clarified in the proposed amendments.

2.3 Secrecy requirements:

Sub-paragraph (1) (b) refers to a prohibition on communication other than the person to whom the matter relates or “his executor or the authorised representative of the person or executor.” It is difficult to envisage a situation where there would be justification for information to be passed from the Council to an executor or representative of a “legal aid client” unless the legal aid client was himself a legally aided executor or representative involved in legally aided proceedings. Solicitor/Client confidentiality continues after the death of the client.

Sub-paragraph (c) refers to the “records” of the Council. Has this word been defined and if not, to what does it refer?

2.4 Personal Data (Privacy) Ordinance:

What is proposed by the Council in relation to the transmission of communications between the Legal Aid Department and the Council would amount to a breach of the Personal Data (Privacy) Ordinance. We fail to see why such data, the Legal Aid Department or the Council should be exempt from the provisions of the Personal Data (Privacy) Ordinance. Other public bodies such as the Police are subject to the ordinance and no justification appears to have been made out to allow exemption for the transfer of data between the Department and the Council other than that already exempt by virtue of section 62 of the Personal Data (Privacy) Ordinance.

2.5 In practice we assume that on the majority of occasions when data is to be passed between the Legal Aid Department and the Council it will be done with the data subject’s consent. However, if for any reason that consent is not forthcoming, we do not consider that there should be an exemption under the Personal Data (Privacy) Ordinance so as to place the Director of Legal Aid or the Council in a privileged position.