

Hong Kong, Family Welfare Society
Submission to LegCo Panel on Administration of Justice and Legal Services

Preamble:

1. Hong Kong Family Welfare Society (HKFWS) has been providing a wide range of social welfare services for families and individuals in Hong Kong for more than 52 years. We have served many clients who are in need of Legal Aid Services and / or who have received their services. In response to the rapid social changes and higher expectations of justice and services, we support the proposal of the Working Group on Legislation concerning the Provision of Legal Aid Services for a comprehensive review of the Legal Aid Services. This submission will highlight our principles and some views concerning the different aspects of the present system that needed to be addressed in the review.

Our Principle

2. We support a comprehensive review on the objective, adequacy and effectiveness of the existing legal aid regime, to enhance the accessibility of legal services to Hong Kong citizens. The legal rights of people should be respected and there should be no deterrent to people to access the courts, because of a lack of financial or other resources, psychological hurdles arising from the process of seeking legal assistance etc. We believe that the review should echo the spirit of the Civil Justice Reform "ensuring and improving access to justice at reasonable cost and speed".

Scope of Legal Aid

3. We agree to the proposals in principle.

It is justified to grant legal aid for defamation actions. This proposal is consistent with the policy for freedom of speech and protection of people's rights. People who are not wealthy should not be deprived of their legal rights because of costs.

Our Society has had some service users with problems relating to bankruptcies. These service users have usually lacked legal knowledge and financial resource to pay for the legal charges. We supported that SLAS or other forms of support be provided to them to apply for bankruptcy and during the litigation process.

Financial eligibility limits for legal aid schemes

4. We support the proposals in principle.

Access to justice is a fundamental right of people. It also echoes the spirit of the Civil Justice Reform "ensuring and improving access to justice at reasonable cost and speed."

Regarding criminal cases, the legal expenses are often very high while these cases usually have a bigger impact on the parties involved as well as on society as a whole.

Discretion of D LA to waive means test

5. We agree to the proposals/in principle. It is important to protect the rights to justice of those with less power. In our experience, in working with service users involved in the above- mentioned type of cases, many will withdraw in fear that they may have to bear the charges involved in the legal proceedings.

Assessment of financial resources

6. We strongly support these proposals.

The present economic down-turn shows that there is possibility of loss or reduction of future income and the value of capital. It is a problem faced by many of our service users who approach us for assistance because of negative equity and uncertainty about their employment. Besides, it is reasonable to take the median household expenditure as the index. Taking the 35-percentile household expenditure as the index seems to be 'mean' and unrealistic.

- 6a. Review Regulation 6 - Application in representative or fiduciary capacity

The regulation should be reviewed and the rights of people to have access to justice should be the paramount concern.

- 6b. Review Regulation 7 (1) - Resources of a spouse

The policy should be consistent with the general rules of litigation and the principle that every individual has the right to access justice. In fact, many 'litigation' cases are very individual, having nothing to do with the spouse. According to our working experience, the assumption that every couple will give financial support to the spouse is frequently not correct.

- 6c. Review Regulation 8 - Resources of an applicant who is an infant

We consider that children should have the right to access justice in the same way as any adult, and the government should have the role to protect their best interest. These two basic principles should be observed when considering legal aid for them.

The Society has come across cases where parents fight very fiercely for the custody of their child. Often a victim anyhow, the child should also be heard and represented in the litigation process. It is just to grant legal aid to the child to protect his/her best interest in such cases. Separate representation, a guardian for the child, is sometimes necessary but often not considered.

Costs and contributions

- 7a. Contribution in cases involving human rights issues

We support proposal (b). Rights are essential to freedoms and it is obviously correct that legal aid should be provided in a matter of principal and significant public interest.

7b. Contribution under the OLAS & SLAS

We strongly agree to these proposals. It is essential that the contribution, and when to pay the contribution, should be made very clear to the applicant. Leaflets explaining such issues should be user friendly and not produced in the usual legalistic or bureaucratic jargon. Some of our service users under OLAS and SLAS reported that they were not well informed of all these policies and some stated that they had to pay more than they expected.

7c. Interest accrued on DLA's first charge

We agree to both proposals. The present system has added to the financial burden of aided persons who are mostly grass roots people. The DLA should exercise discretion to help those in need and there should be a system for appeal.

7d. Interest accrued on monies due to aided persons

We consider it to be fair to have the interest accrued paid to the aided persons.

7e. Payment of costs by DLA on behalf of an aided defendant or respondent

We agree to review this provision to ensure justice to aided and non-aided persons.

Legal aid for alternative schemes

8a. “unbundled legal assistance”

We strongly support this proposal. Providing assistance at the very early stage may result in early settlement and save the legal cost in the long run. Besides, the psychological stress for people in the litigation process can also be alleviated and, hence, the possible negative social cost can be minimized.

Legal assistance should be granted for services such as completing and responding to documents in the legal proceedings. We have encountered some divorce cases in which there have been misunderstanding of their rights as well as the legal proceedings involved. Some of the defendants are illiterate and do not understand the legal documents served. With proper advice and assistance at the different stages of the proceedings, the rights of these people can be protected and better handling can also be facilitated.

8b. Alternative dispute resolution (ADR) schemes

We strongly support that legal aid should be available for mediation as an ADR. We consider that mediation should be the primary dispute resolution process and should be integrated into all the procedural processes of the court.

The adversarial system is very costly to the court and to the people involved. It will result in long term saving if people can be helped to resolve the disputes through mediation.

Concerning the divorce cases, our Society has introduced Divorce Mediation to assist divorce settlement since 1997. Our 3-year built-in research study has proved the effectiveness of the service, with 82% of cases having agreement reached and more than 83% of service users showed satisfaction about the different aspects of the service. Mediation can be part and parcel of the divorce proceeding and legal aid should be granted. In fact, as shown by research studies, this ADR can save legal costs on the one hand, and protect the best interests of all parties, especially the children, on the other.

The LAD also has a role to promote mediation, e.g. to organize information seminars etc., perhaps with NGO's and grassroots organisations.

Appeal from decision of DLA

9. Improvement on the appeal mechanism and administration efficiency is supported. Access to justice requires transparency.

Fees and costs payable to counsel and solicitors

10. We agree to the proposal. The DLA should provide fees guidance or pay the fee fully, as agreed between solicitor (DLA) and counsel.

Other suggestions

11. Transparency of the system and procedure

The system and procedure of Legal Aid Services should be made transparent to the public in a user-friendly manner. It is suggested to produce a leaflet/booklet with the following information:

- Eligibility for Legal Aid Services
- Application procedures
- Costs and contributions
- Considerations for choosing a lawyer
- System for choosing and changing a lawyer
- Appeal System

Service Charter, to include the rights and responsibilities of applicants

- Other relevant services, e.g. mediation and counselling
- Q & A to answer some common enquiries

12. **Service Monitoring**

Many service users have commented on the poor attitude and performance of some of the staff of the LAD and some of the solicitors allocated to them. There should be a more effective mechanism to monitor the service quality of the LAD and the solicitors, including collecting customers' feedback.

13. Easy access to advice, guidance and counseling

There should be measures to ensure easy access to advice, guidance and counselling to supplement the Legal Aid Service. The recent proposals for Community Legal Service Centres can be considered offer an effective means to promote grassroots access to the range of legal resources.

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