

INFORMATION NOTE

Free legal advice services in England and Wales

1. Introduction

1.1 This information note provides members of the Panel on Administration of Justice and Legal Services with information on free legal advice services in England and Wales. It briefly introduces free legal advice services, the responsible authorities and other relevant topics on the legal aid system, including parliamentary scrutiny on the provision of legal aid, organisations involved in the system, and the latest reform proposal.

2. Legal aid system

Legal Services Commission

2.1 The Legal Services Commission ("LSC") was established under the *Access to Justice Act 1999* ("Act") to provide legal aid services in England and Wales, replacing the Legal Aid Board in April 2000. It is a non-departmental public body sponsored by the Ministry of Justice ("MoJ") and engages contracted solicitors, barristers and not-for-profit agencies to provide legal aid services, including free legal advice services.¹

Scope

2.2 The primary statutory duties of LSC are to establish, maintain and develop two service programmes: the Community Legal Service ("CLS") and the Criminal Defence Service ("CDS").

¹ MoJ is planning to abolish LSC and transfer its functions into an executive agency of MoJ. See paragraph 6.5 for more information.

2.3 Under CLS, legal advice and representation services are provided for people involved in civil cases, encompassing different levels of services:

- (a) Legal Help, which provides initial advice and assistance;
- (b) Help at Court, in which a solicitor speaks on behalf of a person at certain court hearings without formally acting for that person in the whole proceedings;
- (c) Family Mediation, which provides mediation services in family disputes including finding out whether mediation is suitable or not;
- (d) Family Help (Lower), which is a provision of assistance to resolve family disputes by negotiation or otherwise; and
- (e) Legal Representation, which provides representation for a person in court proceedings.

2.4 Under CDS, legal advice and representation services are provided for people facing criminal charges, covering the following services:

- (a) advice and assistance, which includes provision of legal advice, writing letters, negotiation, getting a barrister's opinion and preparing a written case;
- (b) advocacy assistance, which includes preparing a case and representation in certain proceedings in the Magistrates' and Crown Courts, representation for prisoners facing disciplinary charges before the prison governor/controller or adjudicator, and representation for discretionary and automatic life sentences cases and those detained at 'Her Majesty's Pleasure' whose cases are referred to the Parole Board; and
- (c) legal representation, which includes preparing a defence before a court hearing, representation at court by a solicitor or barrister, and any dealings with bail and appeals issues.

2.5 LSC also manages the Public Defender Service under which solicitors, accredited representatives and administrators are employed to provide independent advice, assistance and representation on criminal matters.

2.6 Legal aid is not available for cases of personal injury, negligently caused damage to property, conveyancing, boundary disputes, making of wills, trust law, defamation or malicious falsehood, company or partnership law, matters arising out of carrying on a business, and attending an interview for an asylum claim.²

2.7 The eligibility requirements for legal advice services under CLS and CDS will be discussed in the next section.

Funding

2.8 According to the *Act*, the Lord Chancellor shall pay to LSC the sums which he determines are appropriate for the funding of services of CLS and CDS. Such funding is included in MoJ's departmental budget and received by LSC as grant-in-aid. The legal aid budget for the 2011-2012 Financial Year is £2.1 billion (HK\$26.0 billion).

² Free legal assistance is available to asylum seekers who either have no income or very low income. Legal advisers or lawyers may attend all asylum interviews. Nevertheless, their attendance is funded via the legal aid scheme only under exceptional circumstances. Such circumstances include interviews for unaccompanied children, asylum seekers in the "detained fast track" segment and asylum seekers in the Early Legal Advice Pilot in Solihull.

3. Free legal advice service

Community Legal Service

Scope

3.1 Under the CLS scheme, members of the public can use Community Legal Advice ("CLA") helpline to obtain initial advice and assistance. Calls are first dealt with by call agents who diagnose the nature of the issue and provide general legal advice. Where further assistance is required, call agents may refer callers eligible for legal aid to CLA specialist telephone advisers.

3.2 The CLA helpline provides specialist telephone advice in six categories of law, i.e. debt, education, benefits and tax credits, employment, housing, and family. Where necessary, it will provide translation service which is available in 170 languages.

3.3 People in need may seek face-to-face legal advice from legal aid service providers such as solicitors and not-for-profit agencies. In this event, those eligible for legal aid and whose case falls within the scope of the legal aid system would be offered such legal advice.

Eligibility

3.4 To qualify for free legal aid, a person should pass both the means test³ and the merits test. The former requires the person's monthly gross income not more than £2,657 (HK\$32,947)⁴, monthly disposable income not to exceed £733 (HK\$9,089)⁵, and disposable capital not more than £8,000 (HK\$99,200)⁶.

3.5 A person who is directly or indirectly in receipt of Income Support, Income Based Job Seekers' Allowance, Income Based Employment and Support Allowance or Guarantee State Pension Credit ("passporting benefits") automatically satisfies the means test for legal aid. People in receipt of National Asylum Support Service are also eligible for Legal Help, Help at Court and Controlled Legal Representation for asylum and immigration matters.

3.6 The merits test evaluates against criteria specific to a particular type of cases. Broadly speaking, it is to measure whether a person of moderate means would spend his or her own money on taking the case. Examples of consideration may include the prospects of success, any alternative sources of funding, and any other circumstances such as wider public interest or overwhelming importance to the applicant.

³ Civil legal aid is not means tested for certain types of proceedings, including parents in childcare or supervision proceedings, or child abduction proceedings, and people detained under mental health or mental capacity legislation seeking release.

⁴ A higher gross income limit applies to families with more than four dependent children, allowing an extra £222 (HK\$2,753) for the 5th and each additional child.

⁵ Deductions can be made from the disposable income amount for fixed allowances for a partner or each dependent child, which amount to £167.53 (HK\$2,077.37) and £271.58 (HK\$3,367.59) respectively, and for work related expenses, which are £45 (HK\$558). The cap of allowances for a household without dependants is £545 (HK\$6,758).

⁶ A lower capital limit, i.e. £3,000 (HK\$37,200), is set for controlled legal representation in immigration cases. For legal representation in Specified Family Proceedings, applicants with disposable capital between £3,000 (HK\$37,200) and £8,000 (HK\$99,200) shall pay a contribution from their capital whereas applicants with monthly disposable income between £316 (HK\$3,918) and £733 (HK\$9,089) are liable to pay a monthly contribution.

Criminal Defence Service

Scope

3.7 Under the CDS scheme, free legal advice and assistance shall be provided when a person is detained at the police station in connection with a criminal offence. Upon receiving the request for advice and assistance referred by the police station, the Duty Solicitor Call Centre will deploy a duty solicitor on roster or already based at the police station to provide advice. The detainee can also seek help from a private solicitor who has a contract with CDS free of charge. Advices can be provided by telephone or on a face-to-face basis, with the former always provided under the CDS Direct scheme for less serious criminal offences, such as drink driving, non-imprisonable offences, breach of bail or warrants.

3.8 For anyone who is unrepresented at the first appearance before the Magistrates' Court, he or she can get free legal advice from the court duty solicitor at the Magistrates' Court. This arrangement does not apply for less serious cases such as minor driving offences.

3.9 In other cases, solicitor's advice and assistance on criminal cases such as providing general advice, assistance in writing letters or preparing a case can be offered free of charge to a person who passes both the means test and the Interests of Justice test ("IoJ").

Eligibility

3.10 The means test adopted for the advice and assistance service⁷ requires an applicant's disposable income not to exceed £99 (HK\$1,228)⁸ per week and disposable capital under £1,000 (HK\$12,400)⁹.

⁷ Different means assessments are applied for other criminal legal aid services.

⁸ There are fixed allowances for dependants ranging between £33.65 (HK\$417.26) for a partner and £47.45 (HK\$588.38) for each child dependant.

⁹ For person with one or two dependants, the capital limits are set at £1,335 (HK\$16,554) and £1,535 (HK\$19,034) respectively, with additional £100 (HK\$1,240) for each extra dependant.

3.11 Persons under the age of 18 or in receipt of passporting benefits automatically meet the disposable income requirement. Others who are receiving Working Tax Credit plus Child Tax Credit, or Working Tax Credit with disability element will be exempted from the disposable income test, but subject to a test of gross income not to exceed £14,213 (HK\$176,241)¹⁰.

3.12 The IoJ test¹¹ will examine the following factors:

- (a) whether the charge is so serious that, if convicted, the person may be imprisoned or may suffer a loss of livelihood;
- (b) whether there are any complex legal and factual issues;
- (c) whether the person suffers from any lack of understanding of the issues such as language problem or disability; and
- (d) whether the case requires extensive legal preparation.

4. Parliamentary scrutiny on the provision of legal aid

4.1 The Lord Chancellor and Secretary of State for Justice, being the responsible Minister of MoJ, is the one ultimately accountable to the Parliament for LSC's activities and performance. The Chief Executive of LSC is the officer overseeing the delivery of legal aid services by LSC, and his or her responsibilities for accounting to the Parliament include:

- (a) signing the accounts of LSC and ensuring that proper records of those accounts are kept, prepared and presented in accordance with any directions issued by the Secretary of State;
- (b) signing a Statement of Accounting Officer's Responsibilities, and a Statement on Internal Control regarding the system of internal control, for inclusion in the annual report and accounts;

¹⁰ The capital limit must be assessed in all cases.

¹¹ For CDS services, defendants who appear in the Crown Court for trial are automatically deemed to have met the IoJ test.

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- (c) ensuring that effective procedures for handling complaints about LSC are maintained and made widely known within LSC;
 - (d) acting in accordance with the terms of the Treasury document, *Managing Public Money*, and other instructions and guidance issued from time to time by MoJ, the Treasury and the Cabinet Office; and
 - (e) giving evidence when summoned before the Public Accounts Committee on LSC's stewardship of public funds.

4.2 The Comptroller and Auditor General audits LSC's annual accounts and lays them before the Parliament together with a report.

4.3 In the House of Commons, the Justice Committee ("Committee")¹² is responsible for examining the expenditure, administration and policy of MoJ and its associated public bodies.¹³

4.4 The Committee comprises 12 Members and is chaired by Rt Hon Sir Alan Beith, a member of the Liberal Democrat. Its work is governed by Standing Order No. 152 of the House of Commons.

4.5 One of the major topics recently discussed by the Committee was the government's proposal on legal aid reform. The Committee deliberated over such proposal in March 2011 and acknowledged the need to reform the legal aid system in accordance with the budget cut plan of MoJ. However, the Committee had concerns over the impact of the changes, such as removing some categories of laws from the legal aid scope and reducing service fees payable under the legal aid system, on both the vulnerable people and service providers. Accordingly, it has asked the government to refine the proposal further in order to address their concerns, and examine alternative ways of achieving savings. Information of the proposal is provided in section 6.

¹² The Committee is also responsible for monitoring administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office. It does not cover individual cases and appointments and advice given within the government by Law Officers, i.e. the Attorney General and the Solicitor General.

¹³ It covers the work of staff provided for the administrative work of courts and tribunals, but exclude consideration of individual cases and appointments, the work of the Scotland and Wales Offices and the work of the Advocate General for Scotland.

5. Other relevant agencies

5.1 In England and Wales, there are many not-for-profit advice agencies funded by local authorities, charities, central government and LCS for providing legal services. Some of the major agencies are introduced below.

5.2 Law Centres, supported and promoted by the charity group, the Law Centres Federation, are not-for-profit legal agencies providing free legal advice and representation to disadvantaged people. There are 56 Law Centres in England, Wales and Northern Ireland, staffed by solicitors and barristers who specialise in areas of civil law, including employment, housing, discrimination, welfare benefits, education and immigration.

5.3 The Bar Pro Bono Unit is a charity group which helps to match volunteer barristers prepared to undertake pro bono legal work to those in need. Services are only provided to individuals and organisations who cannot afford to obtain legal aid. The group has organised an ongoing project called "Bar in the Community" to encourage barristers, other legal professionals, and law students to participate in volunteering work.

5.4 The Citizens Advice, a registered charity organisation, and its member Citizen Advice Bureaux ("CAB") provide various community services to the public in England and Wales. The Citizens Advice is responsible for setting standards for the quality of advice provided by CAB. It also provides training, information systems and support to CAB, totalling 394 branches across England and Wales in 2010. They help people resolve their legal, money and other problems by providing advice and information. Services are provided via face-to-face, telephone and email channels and a self-help website.

5.5 The Royal Association for Deaf People, which is a charity for promoting welfare and interests of the deaf people, provides specialist, independent legal advice in British Sign Language for deaf people. Advice is provided for those eligible for legal aid by using webcam and broadband connection. Its advice covers welfare benefits, housing, employment and debt issues.

6. Legal aid reforms

6.1 In November 2010, the government issued a consultation paper on reforming the legal aid system with an objective of reducing the annual cost for legal aid by £350 million (HK\$4,340 million). The proposed changes include reducing the level of fees paid to providers, tightening the financial eligibility rules for certain categories of applicants, making more users contributing to the cost of proceedings, introducing alternative sources of funding and improving efficiency and reducing bureaucracy in the administration of legal aid.

6.2 The government issued a report in June 2011 in response to the feedbacks received during the consultation. In the report, it concludes that the majority of feedbacks from the public do not support the proposed reform. To address some of the concerns, the government has amended the proposal and intended to, subject to parliamentary approval, take it forward in view of:

- (a) discouraging unnecessary and adversarial litigation at public expense;
- (b) targeting legal aid to those who need it most;
- (c) making significant savings in the cost of the scheme; and
- (d) delivering better overall value for money for taxpayers.

6.3 One of the controversial aspects in the original proposal was to remove some categories of cases out of the scope of legal aid funding. Under the revised proposal, the cases and proceedings to be removed have been adjusted moderately¹⁴, and they include, among others, clinical negligence, debt cases (except for cases where there is an immediate risk to the home), employment cases, education cases (except for cases of Special Educational Needs), housing matters¹⁵, private family matters (except for cases where domestic violence or child abuse is present), and welfare benefits.

6.4 There was a proposed change in the provision of telephone advice in the consultation.¹⁶ In view of the public feedbacks, the government has decided to:

- (a) implement a mandatory single telephone gateway for accessing legal aid in four areas of law: debt, community care, discrimination and Special Educational Needs;
- (b) introduce a phased expansion of the provision of specialist telephone advice, from the current six areas (as aforementioned in paragraph 3.2), into all areas of law within the scope of legal aid; and
- (c) run a pilot scheme to examine the feasibility of offering an option to users who are not eligible for legal aid to pay for legal advice over the telephone.

¹⁴ For example, in the original consultation paper, it was proposed to remove all education cases from the scope of legal aid. Since most respondents opposed such proposal, and in particular strongly objected to the removal of cases about Special Educational Need ("SEN") provision from the scope, the proposal was revised to retain legal aid for SEN cases and maintain the existing level.

¹⁵ The housing matters to be removed from the legal aid scope do not include those cases where the home is at immediate risk (but include "squatting"), homelessness assistance, housing disrepair cases that pose a serious risk to life or health and anti-social behaviour cases in county courts.

¹⁶ The objectives of the proposed change are:

- (a) to streamline and simplify the process for people seeking legal advice for common civil problems and provide more immediate access to specialist advice for users eligible for legal aid;
- (b) to ensure that users seeking legal aid services are provided with high quality advice and information delivered through the most appropriate and efficient channel;
- (c) to ensure that users are routed to the service best suited to resolving their problem, including Alternative Dispute Resolution options; and
- (d) to secure better value for money in respect of legal aid expenditure.

6.5 On improving efficiency of legal aid administration, the government intends to turn LSC from a non-departmental public body into an executive agency of MoJ. This change aims at improving financial management and performance, improving collaboration with other criminal and civil justice bodies, and increasing opportunities for administrative efficiencies through greater use of shared services across MoJ and the wider government. This proposal would be subject to the legislation process before being implemented.

6.6 Following the consultation, the *Legal Aid, Sentencing and Punishment of Offenders Bill* was submitted to the Parliament in late June 2011. A controversial aspect of the Bill is its clause 12, which provides that initial legal advice and assistance are made available to individuals arrested and held in custody at a police station if it complies with the determination of the Director of Legal Aid Casework. While the current practice is for advice and assistance to be provided free of charge and non-means-tested for persons detained at the police station, this clause requires the determination to be made with reference to the interests of justice. There is also a provision to allow the Lord Chancellor to make regulations to apply means testing and other criteria as part of the determination.

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