

立法會 *Legislative Council*

LC Paper No. CB(4)240/17-18(05)

Ref : CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

Meeting on 27 November 2017

Background brief on transfer of the legal aid portfolio from Home Affairs Bureau to the Chief Secretary's Office

Purpose

This paper provides background information on the proposed transfer of the legal aid portfolio from the Home Affairs Bureau ("HAB") to the Chief Secretary for Administration's Office ("CSO") and summarizes major views and concerns of Members on this and related matter.

Background

2. Prior to July 2007, the Legal Aid Department ("LAD") was directly accountable to the Chief Secretary for Administration ("CS"). On 3 May 2007, the Chief Executive announced his proposals of re-organizing policy bureaux of the Government Secretariat. One of the proposals was the transfer of the legal aid portfolio from the Administration Wing of CSO to HAB. The Administration consulted the Panel on Administration of Justice and Legal Services ("the Panel"), the Establishment Subcommittee ("ESC") and the Finance Committee ("FC") on the proposal, among others, in May and June 2007. The Administration's proposals of re-organizing the policy bureaux of the Government Secretariat were approved by FC on 12 June 2007 and the changes took effect from 1 July 2007.

3. In late 2011, the Legal Aid Services Council ("LASC")¹ commissioned an external consultant to conduct a consultancy study on the establishment of an independent legal aid authority ("ILAA") which was completed in 2013 ("the

¹ LASC was established in 1996 under the Legal Aid Services Council Ordinance (Cap. 489) to oversee the administration of legal aid services provided by LAD and to advise the Chief Executive ("CE") on legal aid policy. In accordance with s4(5)(b) of Cap. 489, LASC is tasked to advise CE on the feasibility and desirability of the establishment of an independent legal aid authority.

Consultancy Study").² Having examined the institutional, financial, operational and governance dimensions of LAD, one of LASC's major recommendations was that LAD should be repositioned and made directly accountable to CS.

4. In the Chief Executive's 2017 Policy Address, it was announced that the Administration would implement LASC's proposal to transfer the responsibilities for formulating legal aid policy and housekeeping LAD from HAB to CSO to underline the independence of the legal aid system. In the policy briefing on the Chief Executive's 2017 Policy Address delivered by the Administration to the Panel in October 2017, members were informed that the proposed transfer of the legal aid policy portfolio from HAB to CSO would take effect after the necessary approval had been obtained from the Legislative Council ("LegCo").

Major views and concerns of Members

5. The transfer of the legal aid portfolio between HAB and CSO has been an issue for discussion by Members under different contexts over the years such as when the Panel considered LASC's study of the feasibility and desirability of establishing an ILAA. Major views and concerns of Members are summarized in the ensuing paragraphs.

Transfer of the legal aid portfolio from the Office of the Chief Secretary for Administration to the Home Affairs Bureau proposed by the Administration in 2007

6. When the Administration's proposals of re-organizing the policy bureaux in 2007 were considered by the Panel, ESC and FC, some members considered that the proposed transfer of the legal aid portfolio to a "policy bureau" would undermine the independence of the legal aid administration which was an integral part of the administration of justice, and therefore a retrogression. They considered that the proposal also raised the question of whether LAD would be subject to tighter control under the new set-up in respect of provision of legal aid in cases against the Government or in respect of allocation of resources to LAD. They considered that CSO, being free from taking

² LASC first studied the feasibility and desirability of the establishment of an independent legal aid authority in 1998 which recommended the establishment of such an authority. The Government decided in 1999 not to accept the recommendation. In the second study conducted in 2008, LASC recognized that there were already sufficient safeguards in statute and in practice to ensure the operational independence of LAD and did not see a pressing need to substitute LAD with an independent legal aid authority and proposed to revisit the issue in late 2011/early 2012.

responsibility for any specific policies, could carry out legal aid-related duties in a neutral manner. They were of the view that, as the Administration had not provided sufficient justifications on the need and urgency for the proposal to be implemented on 1 July 2007, status quo should be maintained.

7. A member, however, considered that the concerns raised were conceptual rather than real and was of the view that safeguards existed in statute and in practice to ensure that the Director of Legal Aid ("DLA")'s powers and functions were exercised in an impartial, transparent and accountable manner.

8. The Administration responded that since legal aid involved the provision of services to the community, it was appropriate to place the said portfolio under HAB. The Administration also explained that as legal aid was a stand-alone policy subject that was getting increasingly detailed and complex, it was appropriate to place the subject under a Director of Bureau on par with other equally important policies. The Administration also assured members that the transfer would not affect the day-to-day operation of LAD or its delivery of legal aid services in accordance with the relevant legislation, including those relating to judicial review of the Administration's decisions.

9. Members also noted LASC's comment on the proposal that, while the majority of its members did not have strong views on this administrative arrangement, there was some concern on the operational independence of LAD after the transfer. There was call for LASC to step up its supervisory role to ensure that the provision of legal aid services would be undertaken professionally and objectively without interference.

Proposal by the Legal Aid Services Council on reverting the Legal Aid Department back to the purview of the Chief Secretary for Administration in March 2013

10. At its meeting on 25 June 2013, the Panel was briefed by LASC on the Consultancy Study and LASC's recommendations on the issues. The Panel also received views from five relevant organizations³ at the meeting. One of the major recommendations of LASC was that there was no immediate need to establish an ILAA and LAD should remain a government department as the degree of independence upheld and exercised by LAD was considered sufficient. It was also recommended that LAD should be re-positioned and made directly accountable to CS, which was the arrangement prior to July 2007.

³ The five organizations were the Society for Community Organization, the Hong Kong Confederation of Trade Unions, Hong Kong Bar Association, The Law Society of Hong Kong and the Legal Aid Counsel Association.

11. At the meeting of the Panel on 24 June 2014, the Administration briefed members on its position on the way forward regarding LASC's recommendations. Members noted the Administration's decisions to accept in principle LASC's recommendation that the responsibilities for formulating legal aid policy and housekeeping LAD should be vested with CSO and DLA should report directly to CS; and to follow up on LASC's other major recommendations regarding LAD's governance and operational transparency while maintaining the existing legal framework governing LASC's oversight role under the Legal Aid Services Council Ordinance (Cap. 489) and legal aid funding support for LAD.

12. The Administration advised that it would consider the priorities and resource management of relevant offices in formulating the implementation timetable for the transfer of the legal aid portfolio from HAB to CSO. Before the transfer, the Administration would ensure the continuation of various reviews on legal aid and legal advice services.

13. In both the Panel meetings in June 2013 and June 2014 to consider the Consultancy Report and LASC's recommendations, members were generally supportive to the proposed transfer of LAD to CSO to enhance the independence of LAD. Nevertheless, they reiterated the need for the setting up of an ILAA. Of the five organizations which had given their views, the Society for Community Organization, the Hong Kong Confederation of Trade Unions and the two legal professional bodies supported the need for an ILAA. Members of the Legal Aid Counsel Association ("LACA"), however, were divided on such a need. LACA also indicated its disagreement with the rest of recommendations of the report of the Consultancy Study except the re-positioning of LAD back to CSO.

Latest position

14. HAB plans to consult the Panel at its regular meeting on 27 November 2017 on the initiative announced in the Chief Executive's 2017 Policy Address to transfer the responsibilities for formulating legal aid policy and housekeeping LAD from HAB to CSO.

Relevant papers

15. A list of the relevant papers which are available on the LegCo website (<http://www.legco.gov.hk>) is in the **Appendix**.

Transfer of the legal aid portfolio

List of relevant papers

Committee	Date	References
Panel on Administration of Justice and Legal Services	15.9.1998 (Item IV)	Report prepared by the Legal Aid Services Council Agenda Minutes
	13.10.1999	Agenda Minutes
	18.1.2000 (Item V)	Agenda Minutes
	28.5.2007 (Item III)	Agenda Minutes Legal Aid Service Council's follow-up paper Administration's follow-up paper
	25.1.2010 (Item IV)	Letter dated 16 October 2009 from the Chairman of the Legal Aid Services Council to the Chief Executive on independence of legal aid [Appendix to LC Paper No. CB(2)357/09-10(03)]
	25.1.2010 (Item V)	Agenda Minutes
	25.6.2013 (Item IV)	Agenda Minutes

Committee	Date	References
	24.6.2014 (Item IV)	Agenda Minutes
	30.10.2017 (Item IV)	Agenda
Establishment Subcommittee	22.5.2007 (Item I)	Agenda Minutes
Finance Committee	12.6.2007 (Item II)	Agenda Minutes (FC6/07-08) Minutes (FC10/07-08)
	-	Replies to initial written questions raised by Finance Committee members in examining the Estimates of Expenditure 2017-2018 (Reply Serial No. HAB315)

Council Business Division 4
Legislative Council Secretariat
22 November 2017