

香港特別行政區政府
政務司司長辦公室轄下行政署



The Government of
The Hong Kong Special Administrative Region
Administration Wing,
Chief Secretary for Administration's Office

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By email

08 November 2021

Mr Lemuel WOO
Clerk to Panel on Administration of Justice and Legal Services
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr WOO,

Panel on Administration of Justice and Legal Services

**Follow-up actions arising from the
special meeting on 26 October 2021**

Thank you for your email dated 27 October 2021 regarding the captioned matter. Our response is set out at **Annex**.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nicholas CT Chan', written over a horizontal line.

(Nicholas CT CHAN)
for Director of Administration

c.c. Director of Legal Aid (Attn: Mr Chris CHONG)

Panel on Administration of Justice and Legal Services

Response to follow-up actions arising from
the special meeting on 26 October 2021

Engagement of additional private lawyers by legally-aided persons

In principle, the Legal Aid Department (“LAD”) does not accept any engagement by a legally-aided person or a counsel assigned by the LAD of an additional counsel who is not assigned by the LAD to assist in the case. However, the LAD may consider such request under certain special circumstances. For example, the counsel assigned by the LAD may wish to train another counsel who is less experienced and yet to meet the assignment criteria for legal aid cases, and suggest engagement of such counsel on a *pro bono* basis to assist in the case to gain experience. In the circumstances in which the suggestion concerned does not involve public expenditure and there is no objection from the Court, the LAD will give consideration. If the LAD agrees with the engagement of counsel not assigned by the LAD, the assigned legal team needs to record in the judgment and court record that the additional counsel is not assigned by the LAD.

Written consent to allow the LAD's disclosure of the result and/or the reason for approving or refusing legal aid applications

The LAD will request legal aid applicants in judicial review cases to give their written consent to allow the Director of Legal Aid (DLA) to disclose the result and/or the reason for approving or refusing their legal aid applications whenever DLA considers appropriate. After this initiative is implemented, the LAD will review whether to extend this requirement to other types of legal aid applications. As a matter of fact, legal aid applicants are now requested to sign a few consent forms/mandates at the time of their legal aid applications to allow the DLA, for the purpose of assessing means/merits of their applications, to disclose their case details to other parties such as other Government departments, relevant public bodies or organisations, or the opposite party. They are also required to give such a consent to the Audit Commission for the purpose of the audit exercise. Currently, more than 90% of legal aid applicants gave consent to allow the Audit Commission to access their case files.

Legal aid applicants' refusal to sign the consent form will be one of LAD's considerations on whether to grant legal aid. In case the applicant refuses to sign the consent form, the LAD will consider the extent to which information can be disclosed without breaching the relevant privacy provisions.

Considerations taken into account in merits test

Merits tests are always conducted in strict compliance with the Legal Aid Ordinance. Applicants are required to demonstrate reasonable grounds for taking, defending, opposing or continuing legal proceedings. In assessing the merits, the LAD will investigate and examine in a stringent manner the background of the case, evidence available and relevant legal principles before deciding whether it is justified to grant legal aid.
