

香港特別行政區政府  
保安局



The Government of the  
Hong Kong Special Administrative Region  
Security Bureau

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本函檔號 Our Ref.: SBCR 7/3221/15 Pt.8  
來函檔號 Your Ref.: CB2/HS/4/16

*By email*

20 February 2019

Clerk to Legislative Council Subcommittee to Follow Up Issues Relating  
to the Unified Screening Mechanism for Non-refoulement Claims  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong  
(Attn: Ms Betty MA)

Dear Ms Ma,

**Legislative Council Subcommittee to Follow Up Issues Relating to  
the Unified Screening Mechanism for Non-refoulement Claims**

**Follow-up to the Meeting of 15 January 2019 –  
Questions by the Hon Dennis KWOK**

I write in response to follow up questions raised by the Hon Dennis KWOK after the captioned meeting. In consultation with relevant parties, the Government provides the requested supplementary information as below.

**Pilot Scheme**

2. As mentioned in the paper (LC Paper No. CB(2)581/18-19(01)) submitted for the captioned meeting, the Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants (“Pilot

Scheme”) provides non-refoulement claimants with publicly-funded legal assistance (“PFLA”) with the same coverage as the “Legal Assistance Scheme for Non-refoulement Claims” of the Duty Lawyer Service (“the DLS Scheme”). The qualifications of lawyers under the Pilot Scheme are also the same as those on the roster of DLS Scheme. Similar to the independent operation of DLS, the Immigration Department (“ImmD”) is not involved in the administration of the Pilot Scheme, including the assignment of lawyers and provision of legal advice. The assigned lawyers under the Pilot Scheme would tender advice to their respective claimants independently based on the facts and merits of individual cases without interference from anyone. Hence, allegations quoted in the Hon KWOK’s Question (1) are entirely baseless.

3. The review of the Pilot Scheme will commence shortly. The Advisory Committee on Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants, which is chaired by a retired Registrar of the Court of Final Appeal (“CFA”) and comprises representatives from the two legal professional bodies and other members, will provide advice on the review.

### **Duty Lawyer Service**

4. Lawyers who provide PFLA to claimants throughout the screening procedures should be most familiar with the merits of claims and thus a suitable party to assess whether there are merits for appeal, based on the facts of individual cases and the relevant decisions made by ImmD. We also believe that the lawyers, who have received dedicated training arranged or endorsed by the two legal professional bodies, are all independent, competent and professional, and thus would duly consider the merits of each case and continue to provide the necessary legal assistance to the claimant if considered justified. DLS’ response to Question (2) of the Hon Dennis KWOK’s letter is attached at **Annex** for reference.

### **Appeals**

5. As reiterated above, whether a claimant will continue to be legally represented under PFLA at the appeal stage depends on the merits assessment by the lawyer. So far we do not see there is any evidence indicating that this arrangement would compromise the efficiency or fairness of the appeal procedures.

6. As regards the publication of Torture Claims Appeal Board's ("TCAB") decisions, since there remain some 6 400 appeals pending the handling by TCAB, and it is expected that the backlog will only be cleared in two to three years, in the short run, the focus of TCAB will need to be on the expeditious handling of appeals whilst ensuring high standards of fairness in the process. Nevertheless, the Government and TCAB would continue to look into the suggestion, taking into account the relevant legal, manpower and resource considerations.

### **Legislative Proposals**

7. Despite the progress made so far in respect of combatting illegal immigration and enhancing the screening efficiency, challenges ahead remain, especially in the handling of appeals and the removal of rejected claimants. Among other legislative proposals, given the positive outcomes of the various administrative measures adopted by ImmD in expediting the screening of claims, the Government considers it necessary to duly incorporate those effective measures into the law in order to prescribe statutory procedures, provide legal basis for the Unified Screening Mechanism ("USM"), and prevent re-emergence of procedural abuses. With the relevant requirements clearly set out in statute, any deliberate obstruction or delay can be tackled more effectively in future and unnecessary disputes can be avoided. Besides, expedited procedures for screening claims and handling appeals do not necessarily compromise the high standards of fairness required by the law. It should be in the interest of claimants and the society at large as claimants do not need to wait for a long time for a decision.

8. Separately, the comment that the earlier backlog of claims had resulted from the "defeats of lawfulness of previous screening mechanisms" is simply wrong. Indeed, among the some 23 000 claims which had to be screened by ImmD under USM, around 70% (16 000) were claims lodged for the first time only after the relevant CFA judgment in 2012 and 2013. Those were not claims which had been made or decided under previous procedures. The growth in pending claims since 2014 were mainly due to the sharp increase in illegal immigrants and overstayers, as well as the abuses by some claimants in order to delay the screening process at the early implementation of USM. In 2014 and 2015, the number of new claims increased by more than four times (i.e. from 102 per month on average between 2010 and 2013 to some 440 per month between March 2014 and December 2015).


### **School Placement**

9. For non-refoulement claimants who are school-age children and would unlikely be removed in the short term, consideration may be given on a case-by-case basis to allow them to receive education. When approached by the parents of these children for placement assistance, the Education Bureau (“EDB”) will seek comments of ImmD. If ImmD has no objection to allowing these children to attend schools in Hong Kong, EDB will provide placement assistance. Depending on factors such as age, educational background, etc. of individual cases, eligible children would be placed to schools within a short period of time. EDB has not compiled statistics on the average time for the placement services.

10. In 2017, EDB received a total of 193 applications from non-refoulement claimants requesting school placement assistance. ImmD had no objection to 189 applications (98%) among them. Successful applicants will be arranged placement at suitable schools, having regard to the districts they live in and their learning level.

11. Except those who were subject to removal in the short term, EDB has all along successfully placed all eligible school-aged children of non-refoulement claimants to schools in the past. Therefore, EDB does not consider it necessary to provide placement services for these students in collaboration with non-governmental organisations for the time being.

Yours sincerely,

  
(Cyrus Cheung)  
for Secretary for Security

總幹事  
王姬麗



**Grace S. Wong**  
Administrator

Ref: CAT1/Adm 1/19 XXII  
F1A/CSO

By email & By Post

18 January 2019

Director of Administration,  
Administration Wing,  
Chief Secretary for Administration's Office,  
26/F, West Wing, Central Government Offices,  
2 Tim Mei Avenue,  
Tamar, Hong Kong.

For the Attention of Ms. Queenie Lee

Dear Queenie,

**Letter dated 16 January 2019 from Hon. Dennis Kwok**

1. We refer to your email in the afternoon of 16 January 2019 to our Mr. Anthony Ma for our urgent input on Q2 of Hon. Dennis Kwok's letter to the Government dated 15 January 2019.
2. As a matter of maintaining a "high degree of fairness" as requested by the law, the Duty Lawyer Service as the provider of legal representation to these claimants are striving hard to provide all our claimants with the best legal service so far as our human and financial resources can afford to provide. Based on this principle it has always been the policy and practice of the Duty Lawyer Service that second opinion will be provided as set out hereinunder.
3. Whenever a decision of non-refoulement claim has been determined by the Immigration Department after the screening interview dismissing the claim; the said decision will be immediately sent to the handling duty lawyer for his/her urgent advice and for his/her considering whether there is any arguable ground and/or merit in appealing against the said decision by way of an appeal/petition to the Torture Claim Appeal Board.
4. Arrangement will be made for the handling duty lawyer to have a conference with the unsuccessful claimant after the duty lawyer has studied and considered the same. The contents of the Decision will be fully explained to the claimant with the assistance of an interpreter (where appropriate) including

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whether there is merit and/or arguable ground for appealing against the Decision by way of appeal/petition to the Torture Claim Appeal Board, if any.

5. If the handling duty lawyer is of the firm view that there is no arguable ground or merit in bringing any appeal/petition against the Decision, a fresh and/or second duty lawyer will be brought in and/or assigned to give a second opinion and to examine carefully if there is indeed no arguable ground of appeal/petition when there are:

(a) If the claimants do not accept the advice of the handling duty lawyer and requested for a second opinion, in our past experience such requests were made by various routes including:

(i) Making expressed request of such to the handling duty lawyer and/or DLS' Case Officer.

(ii) Seeking assistance through a Third Party via other NGO or Pressure Group or human rights lawyers who would make requests on their behalves. Please also see (d) below.

(b) The original assigned handling duty lawyer who despite advising that there is no arguable ground or merit for appeal and/or petition, is of the opinion that it is in the interest of the claimant, the claim should be reassigned to another duty lawyer for giving a second opinion of the same to the claimant afresh (such as in some “marginal cases”);

(c) In other justified circumstances, including that the originally assigned handling duty lawyer, for any reasons, was unavailable to have a conference with the claimant within the 14-day deadline but has given advice to us that there is no arguable ground for appeal/petition.

(d) For those cases where a claimant has approached another private lawyer on his own (without first notifying the Duty Lawyer Service) and that lawyer which the claimant approached subsequently informs the Duty Lawyer Service that he/she is of the view that there are grounds for appeal and/or petition, the Duty Lawyer Service will consider firstly whether or not those grounds mentioned by the claimant and/or the lawyer whom the



claimant approached have or have not been raised or considered by the original assigned handling duty lawyer before and secondly also to consider whether or not there has been any new piece of evidence provided by the claimant since the Notice of Decision was issued by the Immigration Department.

6. When assigning a fresh duty lawyer to give a second opinion to the claimant, it is our practice to consider:-

(a) The gender of the claimant (e.g. a female duty lawyer will normally be assigned to a female claimant);

(b) The complexity of the case in question;

(c) The seniority and experience of the original handling duty lawyer, that is, the duty lawyer giving a second opinion will normally be more senior and experienced than the original handling duty lawyer or at the very least in similar standing.

7. After we have assigned the second duty lawyer for giving a second opinion, a whole set of case papers will be dispatched to the second assigned duty lawyer, and thereafter, conference will be arranged as soon as possible so that the 14-day deadline could be met.

8. The original handling duty lawyer will be informed that a second opinion will be sought and provided to the claimant and his/her comment on that will be welcomed.

9. During the conference, the claimant will be further advised by the second duty lawyer that according to his/her legal expertise whether there is any arguable ground for appeal/petition. If the second duty lawyer considered that there are grounds for appeal, we will immediately assist the claimant to file the "Notice of Appeal" within the 14 days deadline or apply for late filing of appeal.

10. If the second duty lawyer confirms the opinion of the original handling duty lawyer that there is no arguable ground or merit for appeal/petition and is also of the view that there is no ground for appeal/petition, the Duty Lawyer Service



will cease to represent the claimant in any appeal, the claimant will be informed of our decision and be reminded once again about the dead-line and procedure for filing appeal by himself/herself.

11. It must be noted that a duty lawyer like any competent counsel can only be as good as his/her case. All lawyers must always bear in mind the Bar Code of Conduct which also applies to Solicitors acting as Advocates (i.e. duty lawyers) which states very clearly in Code 10.24 that “a practising Barrister should not (in criminal cases) settle grounds of appeal unless he considers that the proposed appeal is reasonably arguable”. The Duty Lawyer Service follows the same principle after providing all the necessary legal advice to these claimants.

12. The above have fully set out the Duty Lawyer Service’s principle, practice and guidelines on the “Review Mechanism” (for cases in which the original handling Duty Lawyer does not hold the view and advise that there is any arguable ground or merit for appeal/petition to the Torture Claim Appeal Board) and also the guideline on whether a claimant should be continued to be represented in any subsequent appeal/petition to the Torture Claim Appeal Board in the screening process in full response to the 2nd question posed by Hon. Dennis Kwok.

13. Please do not hesitate to contact us in case of any enquiry and/or information that you may wish from us.

Yours sincerely,

Grace S. Wong  
Administrator