

**立法會**  
**Legislative Council**

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by the Administration)

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**Panel on Administration of Justice and Legal Services**

**Minutes of special meeting**  
**held on Tuesday, 26 October 2021, at 2:30 pm**  
**in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon CHEUNG Kwok-kwan, JP (Chairman)  
Hon Martin LIAO Cheung-kong, GBS, JP (Deputy Chairman)  
Hon Starry LEE Wai-king, SBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBM, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Elizabeth QUAT, BBS, JP  
Hon CHUNG Kwok-pan  
Hon Jimmy NG Wing-ka, BBS, JP  
Hon Holden CHOW Ho-ding  
Hon YUNG Hoi-yan, JP

**Member absent** : Dr Hon Junius HO Kwan-yiu, JP

**Public Officers attending** : **Agenda item I**

Administration Wing, Chief Secretary for  
Administration's Office

Mr Daniel CHENG, JP  
Director of Administration

Ms Eva YAM  
Deputy Director of Administration 2

Legal Aid Department

Mr Thomas KWONG, JP  
Director of Legal Aid

Mr Chris CHONG, JP  
Deputy Director of Legal Aid / Policy &  
Administration

**Attendance by  
invitation**

**: Agenda item I**

Hong Kong Bar Association

Mr Paul HARRIS, SC

Mr Johnny K C MA

The Law Society of Hong Kong

Mr Stephen HUNG Wan-shun  
Past President and Chair of the Criminal Law and  
Procedure Committee

Mr Kenneth FOK Wing-kuen  
Director of Practitioners Affairs

**Clerk in attendance**

**: Mr Lemuel WOO**  
Chief Council Secretary (4)6

**Staff in attendance**

**: Miss Joyce CHAN**  
Senior Assistant Legal Adviser 2

Mr Raymond SZETO  
Senior Council Secretary (4)6

Ms Janice HO  
Council Secretary (4)6

Ms Emily LIU  
Legislative Assistant (4)6

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Action

**I. Proposed enhancement measures to the legal aid system in Hong Kong**  
(LC Paper No. CB(4)1677/20-21(01) - Paper provided by the  
Administration)

Briefing by the Administration

Director of Administration ("DoA") briefed members on the package of enhancement measures to the administration of legal aid proposed by the Administration ("the proposed measures") to strengthen the prevention of potential abuse of the legal aid system, to strengthen case management as well as to enhance transparency and thereby the public's understanding of the work of the Legal Aid Department ("LAD") and confidence in the system.

Views of the Hong Kong Bar Association

2. Mr Paul HARRIS, SC, from the Hong Kong Bar Association ("the Bar Association") advised that the Bar Association welcomed in principle any proposals which would ensure a more equitable distribution of legal aid work and transparency of the relevant procedures. However, as the Administration's paper on the proposed measures was only available to the Bar Association in the afternoon of Friday, 22 October 2021, it did not allow for a considered response to be made in time to assist members in deliberating those measures. The Bar Association was also not able to arrange its leading expert in criminal cases, Mr Derek C.L. CHAN, SC, to give comments at the meeting as he was not available.

3. Mr Paul HARRIS, SC said that he and Mr Johnny MA from the Bar Association, who was also attending the meeting, were specialists in handling judicial review ("JR") cases but both were not personally affected by the imposition of new limits for assignment of JR-related legal aid cases ("JR case limits") and other measures. He remarked that the more senior barristers would in general be less affected by the new JR case limits since these barristers would usually handle not more than three JR-related legal aid cases a year owing to the magnitude and complexity of those cases, but its impact on young barristers would need to be examined more closely. However, he pointed out that the JR case limits might backfire as while more barristers might be afforded with the opportunities to handle JR-related legal aid cases, this might be at the expense of the merit of the current system in maintaining core lawyers with the necessary expertise to handle JR-related legal aid cases, especially the urgent ones, properly.

4. Mr Paul HARRIS, SC also remarked that lowering the limits for the assignment of civil legal aid cases ("civil case limits") in general would create conflicting interests between members of the Bar Association who were briefed

frequently for such cases and those who wanted more assignments. Therefore, it obviously begged the question of where to strike a proper balance. In concluding, Mr HARRIS, SC pointed out that Article 35 of the Basic Law ("BL 35") provides that Hong Kong residents shall have the right to, among other rights, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies. Therefore, any proposed measure affecting legally aided persons("APs")' right to the choice of lawyers must be carefully scrutinized to ensure its compliant with BL 35.

5. Mr Johnny MA pointed out that the respondent in JR cases were almost always the Government which would be represented by the Department of Justice ("DoJ") and DoJ could brief out such cases to external counsel(s) without any constraint. With the new JR case limits, however, the choice of lawyers for APs would be restricted since the lawyers with the appropriate expertise or experience they chose might have already been assigned with cases up to the limits. Mr MA was concerned that, as JR cases were usually time sensitive and the application for JR had to be lodged within three months, the APs concerned would have no choice but resort to the counsel assigned by LAD whose experience might not be on a par with the one they chose. This might affect the quality of advocacy in court so that it would tip the scales against the APs.

6. Mr Johnny MA noted that one of the purposes of the proposed measures was to facilitate the creation of a wider pool of qualified /experienced lawyers on the Legal Aid Panel ("LA Panel"). As such, he said that allowing junior counsel to be mentored by experienced counsel in the course of handling legal aid cases would certainly contribute to achieving that purpose and, in fact, the Bar Association had rolled out a scholarship programme to support junior barristers' participation in legal aid cases to allow them to gain the relevant experience. Mr MA said that the Bar Association's programme would be at odds with the proposed measure, under which legal aid would be discharged if additional private lawyers (albeit on a pro bono basis or eventually rejected by the Court) was engaged by APs (or the assigned lawyers) without the LAD's prior agreement. In view of the above, the Bar Association would like more details from the Administration on the conditions under which LAD would agree to the participation of junior barristers in legal aid cases.

7. Mr Paul HARRIS, SC believed that the Administration was hoping to make its decision by the end of the year and, therefore, the Bar Association was preparing a detailed response on the proposed measures with a view to submitting it to the Administration soon.

Views of The Law Society of Hong Kong

8. Mr Stephen HUNG from The Law Society of Hong Kong ("the Law Society") said that the Administration's paper was made available to the Law Society only in the afternoon of 22 October 2021 and therefore, similar to the problem faced by the Bar Association, the relevant committees of the Law Society (e.g. the Legal Aid Committee) did not have sufficient time to deliberate on the proposed measures. He could only comment on the measures relating to criminal legal aid cases in the capacity as the Chair of the Criminal Law and Procedure Committee of the Law Society, and could not comment on civil legal aid cases.

9. Regarding the proposal that the Director of Legal Aid ("DLA") would, as a matter of standard practice, assign lawyers to APs in criminal legal aid cases, Mr Stephen HUNG pointed out that this in fact had been LAD's practice prior to 1997. He said that the Duty Lawyer Service ("DLS") had also been assigning lawyers for the accused and he was not aware of any complaints of one not having his own choice of lawyer. Furthermore, the Court of Final Appeal ("CFA") had on various occasions ruled that the rights and freedoms provided in the Basic Law were not absolute and that public interests should be taken into account. Mr HUNG further said that there was the perception that an AP could have a criminal lawyer he nominated on public fund. That perception probably arose after the social events in 2019 and might be because LAD had been accommodating the nominations of APs. As legal aid was a publicly funded service, he considered it reasonable to introduce measures which could improve the legal aid system in the interest of the public. In view of the above and, as allowing APs in criminal legal aid cases to nominate their lawyers was in fact not a statutory right according to the Administration's paper, it was apparent that the proposed measures were not contrary to BL 35.

10. Mr Stephen HUNG then referred to various court applications for leave for judicial review of the decision of the DLS in 2013, which challenged DLS's refusal to assign more cases relating to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT cases") to a lawyer on the ground that the number of CAT cases that that lawyer handled already reached the limit set by DLS. While all the leave applications were refused by the High Court ("HC"), Mr HUNG observed that in these applications, the appellant had not disputed the legality of the assignment limit policy. That could be construed as a general acceptance of the notion that notwithstanding BL 35, the rights to choose and nominate lawyers were not absolute.

11. Mr Stephen HUNG pointed out in some other court cases, the courts had refused requests for adjournment of hearings in order to accommodate the diaries

of particular lawyers chosen by the litigants. He said that the courts were of the view that as there were other lawyers who could be equally competent to represent the litigants, there was no sufficient ground to accede to the litigant's insistence on being represented by a particular lawyer who could not appear in court at the scheduled time of hearing. He added that, if a case involved more than one defendant, and every defendant wanted to have his own preferred lawyer, it would hold up hearings if the court was to accommodate the diaries of each and every lawyer. That was not preferable or possible, and the Court would not usually agree.

12. Mr Stephen HUNG then referred to the above case management decisions of the court and pointed out that there were other factors to be considered. The rights for a litigant to choose and nominate his/her own lawyer were by no means absolute. With a view to enhancing the transparency of LAD's work, however, Mr HUNG suggested that the Administration should draw up and make known details of those exceptional circumstances under which nomination of lawyers by APs for criminal legal aid cases might be considered as stated in para. 17 of its paper.

13. On lowering of assignment limits, Mr Stephen HUNG agreed that that could help enlarge the pool of lawyers taking up legal aid work. He however said that it was equally important that the enlarged pool should be made attractive. He pointed out that the prevailing criminal legal aid rates were derisory, and did not meaningfully attract legal talents to the pool.

#### Declaration of interests

14. Mr Paul TSE declared that he and lawyers in his law firm had experience in handling legal aid cases but he was not handling any at the moment. Dr Priscilla LEUNG declared that she had been teaching courses related to JR for years.

#### General views

15. Members welcomed the proposed measures and agreed that they would help prevent the potential abuse of the legal aid system without foregoing the rule of law, protection of those in need of legal aid and the prudent use of public resources. Ms Elizabeth QUAT however pointed out that certain loopholes in the legal aid system which she had raised before, such as the mechanism to appeal against LAD's refusal to grant legal aid ("the appeal mechanism"), had not yet been addressed.

16. Dr Priscilla LEUNG considered that the proposed measures had reflected the concerns of members of the public and the legal profession, as well as her views expressed regarding the legal aid system on various occasions. She

considered that while individual lawyers handling a lot of legal aid cases might be affected, the proposed measures would benefit the legal profession as a whole.

17. Mr Paul TSE agreed with Mr Stephen HUNG's view that Hong Kong legal aid system was among the best in the world. However, it might sometimes put APs at a more favourable position than their opponents in litigation. He reckoned that if the defendant in a litigation was an AP but the plaintiff was not receiving any legal aid, the latter might have to assume a high risk in terms of costs since, firstly, the plaintiff had to pay legal fees out of own pocket, whereas there was no cap on the legal aid budget. Secondly, as APs were not liable to pay any costs under the law, the plaintiff might be exposed to further losses if the court made an order for costs against APs, or an agreement was entered into for the payment of costs by APs in favour of the plaintiff.

18. In view of the advantageous position of APs, Mr Paul TSE considered that the proposed measures were by no means unreasonable. However, he enquired why the Administration had to implement the proposed measures in such a haste so that both the Bar Association and the Law Society had expressed lack of time for consulting their members' views.

19. In response, DoA explained that members of the public had expressed there being a pressing need to address a number of concerns regarding the legal aid system and the proposed measures aimed to address those concerns. Furthermore, these measures would not involve any changes to the existing legal aid policies or legislative amendments but only changes to some existing practices or internal operational procedures of LAD. In view of the above, DoA said that the Administration considered that large-scale consultation exercise might not be necessary and would like to implement the proposed measures as soon as possible.

20. In response to Mr Paul TSE's view, DLA stressed that while there was no cap on the legal aid budget, LAD had always attached great importance to its role as gatekeeper of the legal aid resources and would scrutinize all legal aid applications vigilantly. It was also reasonable and fully justified, therefore, for LAD to implement the proposed changes which could improve the legal aid system and ensure the prudent use of legal aid resources.

#### Nomination of lawyers by the legally aided persons and assignment of cases

##### *Nomination of lawyers for criminal legal aid cases*

21. Ms Elizabeth QUAT considered that to adopt the standard practice for DLA to assign lawyers to APs in criminal legal aid cases would prevent unreasonable delays and ensure access to justice. Mr Paul TSE said that while he fully

appreciated the importance and value of BL 35 in protecting the lawful rights and interests of Hong Kong residents for representation in the courts and to judicial remedies, one should not overinterpret it as giving absolute right to choice of lawyers. He said that as legal aid was publicly funded resources, it was reasonable that the APs' choice of lawyers be subject to the balanced considerations of the relevant policy, procedures and prudent use of public resources. Mr TSE also asserted that, in reality, the right to choice of lawyers might not be exercisable owing to various circumstances and reasons, e.g. the busy schedule of the counsel chosen and hence his/her availability, potential conflict of interests, etc.

22. Mr Holden CHOW said that it might be due to its leniency that LAD had, in the past, allowed APs for criminal legal aid cases to nominate a lawyer and considered such nominations in a similar manner as that in civil legal aid cases, which led to the formation of the misconception that nomination of lawyers for criminal legal aid cases was APs' statutory "right". He agreed that DLA should assign lawyers to APs in these cases and urged that the Administration should sternly rectify that misconception.

23. Dr Priscilla LEUNG also urged the Administration to step up its efforts in curing the misunderstanding of members of the public that DLA's assignment of lawyers to APs would violate BL 35. She was convinced that after introduction of the proposed measures, LAD could still maintain a close communication with APs and have their trust. Dr LEUNG believed that politics should not override justice and lawyers' duty to act in the best interest of their clients, and APs should have confidence in the professionalism of legal aid lawyers. Nonetheless, it would also be reasonable to allow appropriate flexibility for APs to reflect their concerns if there were genuine issues of conflict of interests or performance of the lawyers assigned to him.

24. In response to members' views and concerns, DoA remarked that legal advice on the proposed measures had been sought from DoJ and it was clear that they were in compliance with the laws of Hong Kong and the Basic Law. He further explained that, while BL 35 provided that Hong Kong residents shall have the right to, among other things, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies, this was by no means absolute and DLA had all along had the discretion to decide whether to assign the lawyers chosen by APs under the Legal Aid Ordinance (Cap. 91). Furthermore, nomination of lawyers for criminal legal aid cases was not provided for under the Legal Aid in Criminal Cases Rules (Cap. 221D).

25. DoA also stressed that when assigning lawyers for APs, LAD would closely monitor the performance of the legal aid lawyers and DLA would take into

account the interests of APs and the efficient use of public funds when making the final decision. If appropriate, LAD would also consider the disciplinary actions or adverse comments previously made by the court on a legal aid lawyer, when deciding whether to assign a new case to him/her.

26. Ms YUNG Hoi-yan expressed support for the proposed measure in general. However, she relayed the concerns of some barristers that when assigning criminal legal aid cases to lawyers, it might not be fair if LAD merely looked at the number of cases handled by a lawyer without taking the number of court days into account. She pointed out that while a relatively simple case (e.g. plea of guilty) might be completed within just one day, a more complex case might involve a long trial period but both cases would be counted as just one case. In this connection, some lawyers might be reluctant to take up simple cases in order to reserve opportunities for handling cases with longer trials, hence affecting APs' access to justice.

27. In response, DLA reiterated that under the proposed measures, it would be the standard practice for DLA to assign lawyers to AP in criminal legal aid cases. He also said that it had been the practice that, in assigning criminal legal aid cases to counsel, one of the assignment criteria was that the fees received by the same counsel should not generally exceed \$1.5 million within the past 12 months

*Nomination of lawyers by legally aided persons*

28. Mr Paul TSE enquired whether JR-related legal aid cases were classified as civil legal aid cases so that the nomination of lawyers by APs for those cases would be allowed. DLA replied in the affirmative and stressed that the final decision would be subject to his consideration and the new JR case limits. Noting DLA's reply, Ms Elizabeth QUAT expressed her concern that the proposed measures might fail to eradicate the abuse of JR-related legal aid cases.

29. In response, DoA said that the new JR case limits had been proposed to address the problem raised by Ms QUAT. Furthermore, when processing legal aid applications, LAD would vigilantly monitor the merits of the applications, in particular JR-related ones, and would continue to monitor at various stages of proceedings after legal aid had been granted. Legal aid in those cases which ceased to have merits owing to changes in circumstances so that there was no case for further litigation, for instance, would be discharged. He further explained that LAD would set up a dedicated internal JR Monitoring Committee chaired by DLA to oversee the administration of assignments to lawyers for JR-related cases. DLA supplemented that if complicated legal issues were involved in considering the merits of a legal aid application or case, LAD might seek independent legal advice from counsel in private practice.

*Limits on the assignment of civil and judicial review-related legal aid cases*

30. Members agreed that lowering the civil case limits and imposing the new JR case limits would ease public concerns about the overconcentration of legal aid cases in a handful of lawyers. Mrs Regina IP and Ms YUNG Hoi-yan considered that the case limits would help offer more opportunities for solicitors and barristers on the LA Panel to gain experience in the handling of civil and JR-related legal aid cases, which would also help enlarge the pool of lawyers having the relevant expertise and experience ultimately. It would also help prevent the activities of champerty.

31. Mr Holden CHOW considered that besides the above advantages, the civil and JR case limits could benefit APs as well. He said that lawyers taking up too many legal aid assignments could not possibly focus their efforts on all their assignments concurrently, which would jeopardize their performance and APs' access to justice. Dr Priscilla LEUNG, however, cast doubt on whether lowering the civil case limits to 30 for solicitors and 15 for counsel would be sufficient to facilitate the creation of a wider pool of qualified/experienced lawyers on the LA Panel effectively.

32. In response, DLA said that the civil case limits had been subject to review and administrative adjustments from time to time. In the most recent change in 2018, the limits had been lowered from 45 to the current level of 35 for solicitors and from 25 to 20 for counsel. On the other hand, he believed that imposition of the JR case limits now proposed would facilitate the creation of a wider pool of qualified/experienced JR case lawyers who could also pass on their experience to the next generation of lawyers.

33. Mr Paul TSE said that while the handling of legal aid cases would provide good opportunities for junior lawyers to enrich their experience, lawyers should not rely on the handling of legal aid cases as their bread and butter but should only view them as social services to the community. Therefore, he supported lowering the civil case limits in general which would ensure a more equitable distribution of legal aid cases to legal aid lawyers.

Enlarging the pool of qualified lawyers to take up legal aid cases

34. Ms Elizabeth QUAT said that she had been told by some practising lawyers that the minimum experience requirements for selecting lawyers to LA Panel had imposed a high threshold which prevented young barristers from joining it. As example, Ms QUAT said that for counsel or solicitors to be selected for criminal legal aid cases, they should have at least 3 years of post-call/post-admission experience and have handled at least 5 cases in the past 3 years in the relevant areas of work. She said that those lawyers who failed to meet the minimum

requirements would not be selected to LA Panel but then they would have no chance to handle legal aid cases to accumulate that experience, and thus were caught in a vicious cycle. She also said that in this way, legal aid cases would still be monopolized by a handful of lawyers.

35. In response, DLA clarified that both legally aided and non-legally aided cases handled by lawyers in relevant areas of work, e.g. divorced cases, would be counted as relevant for consideration by LAD. He also said that if LAD had doubts and queries about the truthfulness of experience claimed by lawyers who wanted to be selected to LA Panel, LAD would conduct verification, e.g. by checking details of the relevant court cases of the claimed experience if appropriate.

36. Mr Paul TSE enquired whether the handling of cases assigned by DLS (including the provision of legal advice) would be counted as relevant experience for consideration as legal aid lawyers. DLA responded that since the scope of DLS cases, which were mostly handled at lower courts, was quite different from that of legal aid cases which were handled at District Court or above, DLS experience was normally not counted as relevant at present. However, he said that LAD would keep an open mind and see if the DLS cases handled were more complex in nature so that they could be recognized as relevant experience.

37. Mr Paul TSE and Dr Priscilla LEUNG considered that, while the handling of legal aid cases could provide valuable experience to junior lawyers, it should not be treated as training grounds for lawyers and LAD had absolutely no responsibility in training up legal aid lawyers, which should be the responsibilities of the two legal professional bodies. Mr TSE added that the Law Society and the Bar Association should take the lead and control in providing suitable training to enable junior lawyers to take up legal aid cases. DLA said that while he agreed to members' views, LAD had been keeping in touch with the two legal professional bodies to see what assistance could be offered in their training activities relating to legal aid cases. For example, LAD had been invited by the Law Society to deliver accredited continuing professional development talks.

### Strengthening Case Management

38. Ms Elizabeth QUAT said that as she had pointed out before, certain APs in cases relating to the social events in 2019 were found to have engaged additional lawyers as their legal representatives through other financial support, e.g. the 612 Humanitarian Relief Fund. She was pleased to note that one of the measures proposed for strengthening case management was to discharge legal aid (or reassign lawyers) when the AP (or the assigned lawyers) engaged additional private lawyers (albeit on a pro bono basis or eventually rejected by the Court)

without LAD's prior agreement.

39. Ms Elizabeth QUAT enquired under what circumstance(s) LAD's prior agreement might be given for the engagement of additional private lawyers. In response, DLA stressed that under no circumstance would an AP be allowed to engage additional lawyer to represent him/her with own financial resources if a legal aid lawyer had been assigned.

#### Enhancing transparency of the legal aid system

40. Ms Elizabeth QUAT noted that LAD would request the legal aid applicants to give written consent for disclosing the results and/or the reasons for granting or refusing their applications whenever DLA considered appropriate. Whilst agreeing that it was important to enhance transparency and the above measure would help remove misconception or misunderstanding about LAD's work, Ms QUAT enquired whether written consent was mandatory whenever a legal aid application was submitted or only when DLA considered it appropriate to do so. She also enquired what factors would be taken into account and whether an applicant's legal aid application would be considered if he/she refused to give the written consent.

41. In reply, DoA agreed that the disclosure of LAD's decision in granting or refusing a legal aid application, the reasons of refusal, and the results of appeal in case the applicants appealed against LAD's decision to refuse would certainly help enhance the transparency of the legal aid system. With respect to the common misconception that LAD's decisions of rejecting a legal aid application were frequently overruled on appeal by the applicants, DoA and DLA clarified that LAD was indeed successful in maintaining over 95% of its decisions under appeal.

42. In response to Ms Elizabeth QUAT's enquiry regarding the criteria and factors that would be given consideration by LAD in its conduct of the merits test as mentioned in paragraph 25 of the Administration's paper, DoA stressed that LAD would assess every legal aid application stringently according to the well-established merits test. DLA responded that the main focus was on JR-related cases. A monitoring committee comprising directorate officers of LAD would monitor the processing of JR-related applications, even for cases where leave to judicial review has been granted by the Court as there could be changes in circumstances or facts of the cases which might render continuation of the case unwarranted or where the issue could have been settled without litigation.

43. Ms Elizabeth QUAT requested the Administration to provide a written response to her questions (stated in paragraphs 39 and 40) raised at the meeting as the Administration reply was incomplete.

*(Post-meeting note: the written reply provided by the Administration was circulated for members' information vide LC Paper No. CB(4) 1728/20-21(01) on 8 November 2021.)*

#### Judicial review-related legal aid cases

44. Mrs Regina IP mentioned about a number of JR cases dismissed by the courts and various comments of the courts that the cases were not arguable, that the plaintiffs had no locus standi in lodging the applications, or the poor performance of lawyers in certain cases. She said that while DLA had advised previously that the annual costs incurred by JR-related legal aid cases only accounted for a small percentage of LAD's annual budget, LAD should be more stringent in screening JR-related legal aid applications. Mrs IP pointed out that the upsurge in the number of JR cases in the past had unnecessarily increased the workload of judges and thus delayed justice.

45. Ms Elizabeth QUAT, Dr Priscilla LEUNG and Mrs Regina IP shared the view that many JR cases concerning infrastructural projects had seriously delayed their progress and, after the cases were finally settled many years later, the construction costs had soared causing substantial economic burdens to society. Dr LEUNG considered that ordinary citizens might be incited by others out of various motives, including lawyers who might just wish to gain monetary benefits from handling the cases, to seek the court's leave to apply for JR with the support of legal aid resources, without regard to the actual needs and the social consequences such applications might bring. She urged the Administration to educate the general public regarding the serious consequences borne by society that JR proceedings might create, and to exercise great prudence in deciding to proceed with an application for leave to apply for JR.

46. In reply, DLA indicated that the annual costs incurred for JR-related legal aid cases accounted for about 3-4% of LAD's annual expenditure, i.e. around \$20 million on average per year, and the number of such cases constituted a small number of cases for LAD (23 cases in 2018, 18 cases in 2019 and 21 cases in 2020). He added that a decreasing trend was observed.

47. Ms Elizabeth QUAT said that while the figures provided by DLA might seem modest, the social cost borne by society in just one JR case (e.g. one which seriously delayed an infrastructural project) could be enormous. Furthermore, given that APs could still nominate lawyers for JR-related legal aid cases after implementation of the proposed measures, LAD should remain vigilant in processing the applications.

48. Noting that there had been a serious backlog of JR cases relating to non-refoulement ("NR") claims in the Judiciary. Dr Priscilla LEUNG expressed grave concern about the legal aid granted to NR claimants which would add to the serious burden. In reply, DLA explained that NR cases in which legal aid was granted was rare, with only 63 in 2019, 61 in 2020 and 52 in 2021 (up to the present time) respectively. He said that the majority of JR cases relating to NR claims were proceeded with without legal aid.

49. Some members expressed concerns about the JR case relating to "K" v Commissioner of Police and Another ("the Case"). Ms Elizabeth QUAT said that the court and the general public had criticized the case as being not arguable and without merits, but the applicant was still granted legal aid and was represented by a senior counsel. In reply to Mr Paul TSE's enquiry, DoA confirmed that the legal aid application relating to the Case was first rejected by LAD but the applicant's appeal to the Registrar of HC was allowed and legal aid was granted subsequently.

50. Ms Elizabeth QUAT said that she had called for a review and revamp of the appeal mechanism and the Case had clearly lent support to her suggestion. In reply, DoA said that the Administration was open to the idea and was willing to further consider the matter.

51. Dr Priscilla LEUNG said that while it was true that the JR mechanism could be abused, JR remained an important and effective judicial process to check against the Administration's acts. Dr LEUNG and Mr Holden CHOW both expressed their hope that, with the introduction of the proposed measures, public confidence in the legal aid system and the JR mechanism could be restored, and interests of APs could also be upheld through better management of assigned cases.

#### Other issues

52. Mr Paul TSE noted that DLA might waive the financial eligibility limit ("FEL") in meritorious cases in which a breach of the Hong Kong Bill of Rights Ordinance or an inconsistency with the International Covenant on Civil and Political Rights was an issue. He enquired about the approximate number of these cases where legal aid applicants' financial resources had exceeded the specified limit. In reply, DLA said that the number of legal aid applications falling within this category of cases was very few. However, even if FEL was waived, the AP concerned would have to pay to DLA a contribution which could be up to 65% of his financial resources assessed in accordance with Part 1 of Schedule 3 to the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B).

*(At 3:59 pm and 4:07 pm, the Chairman extended the meeting for 15 minutes to 4:15 pm and 4:30 pm respectively to allow sufficient time for discussion.)*

53. Mr Holden CHOW shared the view of Mr Stephen HUNG that the civil legal aid fees prevailing were much higher than those of criminal legal aid and had discouraged many young lawyers from pursuing criminal legal aid work. As such, he urged the Administration to keep on reviewing the criminal legal aid fees to ensure that they were attractive to lawyers.

54. Dr Priscilla LEUNG urged LAD to speed up the process of fee payment to legal aid lawyers as some of them had complained about the hardship owing to late payment and, in the most extreme cases, it might have taken five or seven years for payment to be settled. In response, DLA explained that LAD had expedited payment in recent years, in particular since the outbreak of the pandemic. However, delay in payment might at times happen when the law firms had forgotten to send the bills and documents to LAD. He assured members that LAD would proceed with payment promptly once all required documents had been submitted.

## **II. Any other business**

55. There being no other business, the meeting ended at 4:18 pm.