

**For discussion on
22 May 2023**

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

**Updates on the Implementation of the Enhancement Measures to the
Legal Aid System**

PURPOSE

This paper briefs Members on the latest position regarding implementation of the enhancement measures to the legal aid system introduced by the Government in October 2021.

BACKGROUND

2. Prior to the introduction of the enhancement measures, there were growing community concerns over the potential abuse in the nomination of lawyers by legally aided persons (“APs”), in particular for judicial review (“JR”) cases (including those related to non-refoulement claimants). There were suggestions that some lawyers with certain political inclination might, by offering assistance to the APs first on a “pro bono” basis, encourage them to initiate JR cases against the Government, and the APs concerned would then formally nominate these lawyers for the Legal Aid Department (“LAD”) to assign them as legal aid lawyers of their cases. There were also concerns on whether some criminal legal aid cases and JR-related legal aid cases were concentrated in a handful of lawyers, law firms or chambers.

3. Given the importance of the legal aid system in upholding the rule of law in Hong Kong and to ensure that the system could continue to meet the aspirations of the community, the Government conducted a review of the legal aid system and accordingly proposed a wide array of enhancement measures to the system in October 2021. These enhancement measures aimed to –

- (a) enlarge the pool of qualified lawyers to take up legal aid

cases with a view to strengthening the prevention of over-concentration in **assignment** and benefitting APs in the long run;

- (b) enhance **transparency** of the LAD's work to raise public awareness and understanding of its work and confidence in the system; and
- (c) enhance the **management** of legal aid applications and cases to prevent potential abuse of the legal aid system.

4. All the enhancement measures have been fully implemented by the end of 2021. The position regarding implementation of the enhancement measures is reported in the ensuing paragraphs.

IMPLEMENTATION OF ENHANCEMENT MEASURES

(A) Assignment

(1) Reduced overall civil case assignment limits

5. Under this measure, the overall civil case assignment limits have been reduced from 35 to 30 for solicitors and 20 to 15 for counsel. Since its implementation, the average number of cases assigned to each panel lawyer has reduced (**Table A**), showing that this measure is useful in reducing the possibility of over-concentration of cases among certain solicitors/counsel, and widening of the pool of lawyers available for taking up legal aid cases in the long run.

Table A - Average number of civil cases assigned to each panel lawyer

	December 2021	March 2023
Solicitor	4.7	4.4
Counsel	4.8	4.1

(2) Setting up new assignment limit for JR cases

6. New assignment limits, at 5 for solicitors and 3 for counsel, have been imposed on JR-related legal aid cases among the overall limit for all civil legal aid cases. Save for a few group/connected group JR cases that are inextricably intertwined (e.g. JR cases involving members of the same family on the same cause of action) and hence assignment of the same lawyer is justifiable, no panel lawyer has been assigned JR cases exceeding the assignment limit.

7. Since the implementation of this measure, the number of JR cases every year has remained roughly the same. The average number of JR cases assigned to each panel lawyer have reduced significantly (**Table B**), showing that this measure has effectively eased the concern on over-concentration of cases among certain solicitors/counsel, while striking a balance between distributing cases more evenly to equally qualified lawyers and allowing APs to nominate their lawyers.

Table B - Average number of JR cases assigned to each panel lawyer

	December 2021	March 2023
Solicitor	7.5	4.2
Counsel	3.2	2.6

(3) Direct assignment of panel lawyers by LAD in criminal cases

8. LAD started to implement direct assignment of panel lawyers, in place of the APs' nomination, in criminal cases since October 2021. The percentage of criminal cases assigned to the panel lawyers by LAD's direct assignment increased from 51.26% in September 2021 to 100% in December 2022 and thereafter. This measure plays a pivotal role in eliminating the public's misconception that nomination of lawyers for criminal cases is a statutory "right" of APs.

9. Overall, the enhancement measures in relation to the assignment of lawyers have been effective in helping to forestall possible over-concentration of cases among certain solicitors/counsel, as supported by the statistics on the average number of legal aid cases handled by the top ten solicitors/counsel (**Table C**), which show a downward trend since the implementation of the above enhancement measures.

Table C - Average number of legal aid cases (including civil and criminal) handled by the top ten solicitors/counsel

	2020	2021	2022
Solicitor	41.8	35.7	30.1
Counsel	27.2	25.3	21.4

(B) Transparency

(1) JR applicants to provide consent to disclose details on legal aid applications, as necessary, such as their application result and why their application is approved or refused

10. It is observed that many concerns in the community towards LAD stem from certain misunderstanding and misconception of LAD's work. Often, LAD may not be able to clarify its stance or case details expeditiously as it is bound by legal professional privilege and certain privacy restrictions. Accordingly, this enhancement measure was rolled out such that JR applicants are requested to give written consent to LAD for disclosing the result and/or the reason for granting/refusing the applications whenever Director for Legal Aid (DLA) considers appropriate.

11. So far, a vast majority of JR applicants (e.g. 96% of the applicants in March 2023) have agreed to give consent. This measure equipped LAD with the necessary information and authority to clarify its stance or case details in most of the JR cases. Building on this, LAD will proactively develop a more structured publicity communication plan and work towards a swifter response mechanism to clarify its stance or case details in a prompt manner.

(2) LAD to disclose statistics regularly

12. LAD has regularly released legal aid statistics for various types of cases on its homepage (<https://www.lad.gov.hk/eng/statistics/index.html>), including but not limited to the number of successful legal aid applications and applications refused, distribution of legal aid assignments to legal aid practitioners, number of suspected champerty cases reported to Police and Regulation 11 Order issued, legal aid costs expended, damages and costs

recovered, etc. So far, over 7 500 hits on the statistics on LAD's homepage were recorded for 2022, showing that this measure helped facilitate LAD's work in raising public awareness and understanding of its work.

(C) Management

(1) Establishment of JR monitoring committee

13. A Departmental JR Monitoring Committee, chaired by DLA with directorate officers as members, has been set up since December 2021 to oversee the administration of JR cases. So far, regular meetings have been held by the Committee to discuss various issues relating to JR cases, including assignment statistics, enhancement of LAD's information system to cater for group/connected cases, monitoring of sensitive cases and cases where legal aid is granted as a result of successful legal aid appeal, review of reasons for APs in JR cases not giving consent to disclose case details, etc.

(2) Duty on assigned lawyer to inform LAD if they cannot perform their duty

14. LAD has amended its Guidance Notes to Counsel/Solicitors for handling civil/criminal cases requiring them to report in writing and return the papers immediately if it is foreseeable that they will not be able to perform their duties or will be under situations which render them unsuitable or unavailable for representing aided persons. Three solicitors and one counsel have reported and returned the papers under the new duty imposed so far. Any panel lawyers who failed to comply with this requirement will have their cases re-assigned. Such failure will also be referred to the Departmental Monitoring Committee for appropriate action, including issuing advisory letter, putting the name of the panel lawyer in the record of unsatisfactory performance, or removing his name from the Legal Aid Panel, etc.

(3) LAD to ask AP to declare alternative source of funding

15. Legal aid applicants have been required to declare at the time of

application, and also any other time during the subsistence of the legal aid certificates alternative source of funding, such as crowd funding. So far, LAD has not received any declaration of alternative funding by applicants and APs. If applicants/APs are found to have failed to report alternative source of funding, their application may be refused or legal aid certificates may be discharged/revoked. LAD may also refer the matter to the Police for investigation on the ground of false declaration.

(4) LAD to report to Legal Aid Services Council (LASC) regularly on its handling of JR applications and management of relevant approved cases where necessary

16. LAD has been regularly reporting to LASC its handling of JR applications and the management of relevant approved cases, including updated assignment statistics on JR cases, tightening up of the monitoring of JR cases, measure requiring applicants to give consent for LAD to disclose relevant details of their cases etc. LASC members took note of the fact that the enhancement measures on JR applications are effective in reducing possibility of over-concentration of cases among certain solicitors/counsel and widening the pool of lawyers taking up JR cases in the long run.

CONCLUSION

17. Members are invited to note the latest position of the enhancement measures. The Chief Secretary for Administration's Office and LAD will continue to closely keep in view the effectiveness of the measures.

Chief Secretary for Administration's Office
Legal Aid Department
May 2023