

LCQ11: Legal aid cases related to judicial review

Following is a question by the Hon Mrs Regina Ip and a written reply by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, in the Legislative Council today (June 2):

Question:

Some members of the legal sector have relayed that in recent years, quite a number of legal aid cases related to judicial review (JR) have not been assigned in accordance with the principle of fairness to counsels who are on the Legal Aid Panel (the Panel). Moreover, some of the cases involved exorbitant legal costs, which often amounted to several million dollars and had to be paid out of public coffers. In this connection, will the Government inform this Council:

(1) of the respective numbers of (i) counsels and (ii) solicitors who are currently on the Panel, and the respective numbers of counsel's chambers and solicitors firms from which they come;

(2) of the following information about the JR-related legal aid cases in each of the past three years (set out in tables):

(i) the number of counsel's chambers from which the counsels who were assigned such cases came; the respective numbers of cases taken up by the top five chambers whose counsels were assigned the highest numbers of such cases,

(ii) the longest, shortest and average years of experience of the counsels who were assigned such cases,

(iii) a breakdown of such cases by nature (e.g. those involving torture claims, human rights, and the Basic Law),

(iv) the average time taken for hearing each of such cases, and

(v) the average amount of legal aid expenditure incurred for each of such cases; and

(3) whether it has reviewed if JR-related legal aid cases have been assigned mostly to certain solicitors/counsels; if it has reviewed and the outcome is in the affirmative, whether it has any improvement measures in place; if so, of the details; if it does not have any improvement measures, the reasons for that?

Reply:

President,

The policy objective of legal aid is to ensure that no one with reasonable grounds for taking or defending a legal action is denied access to justice because of lack of means. The Legal Aid Ordinance (Cap. 91) (LAO) provides that legal aid will only be granted to applicants who have satisfied both the merits test and the means test. After legal aid is granted, the Director of Legal Aid (DLA) may act for an aided person through in-house professional lawyer of the Legal Aid Department (LAD) or assign any lawyer in private practice selected from the Legal Aid Panel (the Panel) by the DLA or the aided person. When an aided person nominates a lawyer according to the LAO by himself/herself, having regard to the interest of an aided person, the LAD normally gives weight to such a nomination. However, the LAD may also reject the nomination if the lawyer nominated by the aided person is considered not appropriate on grounds such as having previous records of unsatisfactory performance, disciplinary actions taken against the nominated lawyer by his/her regulatory body, or language requirements of the proceedings which are likely to undermine the aided person's interest in the proceedings; or the aided person has made repeated or late requests for change of lawyer without reasonable grounds.

A reply to each part of the question is as follows:

(1) As at March 2021, there were 2 485 solicitors involving 821 solicitors' firms and 1 171 counsel on the Panel. The LAD does not maintain information about the number of counsel's chambers involved.

(2) (i) The LAD does not maintain the number of legal aid cases assigned on the basis of counsel's chambers.

(ii) Information on the years of experience of the counsel who were assigned with legal aid cases related to judicial review (JR):

Year	The least years of experience	The most years of experience	The average years of experience (calculated on the basis of the total number of all JR-related legal aid cases)
2018	3	44	14.7
2019	3	36	15
2020	3	29	12.7

(iii) The breakdown of JR-related legal aid cases by category:

Year	Government policies and related matters	Immigration matters (including non-refoulement claims)	Decisions of the Government and other organisations
2018	18	39	3
2019	13	65	3

2020	13	62	7
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(iv) As the time required for court hearing is subject to a number of factors, the LAD, after granting legal aid, will not set limitations on the time required for assigned lawyers to complete each case. As such, the LAD does not maintain information about the time taken for hearing of JR-related legal aid cases.

(v)

Financial year	The legal expenditure on JR-related legal aid cases (\$ million)
2018-19	29.5
2019-20	37.6
2020-21	34.0

â€‹The total annual legal expenditure on JR-related cases is the total relevant expenditure of the same year, including the expenditure on cases approved in the same and previous years. The LAD does not maintain the average amount of expenditure on JR-related legal aid cases.

(3) The LAD's assignment criteria set the limit on the number of assignments for each lawyer. Regarding the assignment of civil legal aid cases, the limits for each solicitor and counsel are 35 legal aid cases and 20 legal aid cases respectively in the past 12 months. As for JR-related legal aid cases, the numbers of solicitors and counsel assigned with such cases in the past three years are tabulated below:

Year	Number of JR-related legal aid cases	Number of solicitors assigned with legal aid cases	Number of counsel assigned with legal aid cases
2018	60	17	22
2019	81	22	27
2020	82	15	25

â€‹The LAD will closely monitor the work performance of the assigned counsel and solicitors and review the assignment limits set for each lawyer when appropriate.