

LCQ20: Recovery of legal costs by Legal Aid Department

Following is a question by the Hon Elizabeth Quat and a written reply by the Chief Secretary for Administration, Mr John Lee, in the Legislative Council today (August 18):

Question:

At present, a legal aid recipient is required to contribute towards the legal costs incurred for his/her case on the basis of his/her financial resources, i.e. to pay a contribution to the Legal Aid Department (LAD); the LAD may also recover from the opponent the legal costs incurred (collectively referred to as "the arrears of legal costs"). It is learnt that in recent years, cases of the LAD failing to recover such arrears have been on the rise, with millions of dollars involved annually. On the other hand, the Audit Commission conducted in 2005 an audit on the recovery of legal costs by the LAD, and pointed out that as the LAD had allowed legal aid applicants to decide on their own whether to give consent to the Audit Commission's access to their files, the Audit Commission's had been unable to examine hundreds of selected files. In this connection, will the Government inform this Council:

(1) of the details of the existing procedure for the LAD to recover arrears of legal costs;

(2) among the legal aid recipients in each of the past five years, of the number and percentage of those who indicated consent to the Audit Commission's access to their files;

(3) of (i) the number of cases in which the LAD wrote off the arrears of legal costs and the total amount of money involved, and (ii) the respective numbers of such cases with and without sufficient and clear reasons for write-off, in each of the past five years (set out in a table);

(4) of the number of occasions in each of the past five years on which the LAD took actions or initiated court proceedings due to the opponents' failure to pay periodic payments, judgment debts or legal costs, as well as the number of cases involved and the percentage of such cases in the total number of relevant cases;

(5) given that the LAD had, due to human negligence, overpaid a legal aid recipient by \$418,000 of the damages from the opponent without first deducting the contribution payable and henceforth failed to recover that amount, and the LAD eventually wrote off over \$663,000 in 2017, of the improvement measures taken by the LAD in the light of this case and the effectiveness of such measures; and

(6) in respect of those opponents failing to pay arrears of legal costs,

whether the LAD will consider not granting them legal aid within a certain period of time; if so, of the details; if not, the reasons for that?

Reply:

President,

According to the Legal Aid Ordinance (the Ordinance), an aided person who litigates at public expense is required to contribute towards the costs and expenses (contribution) incurred by the Legal Aid Department (LAD), depending on his financial resources. If an aided person has not paid up his contribution, the LAD will take action to recover from him. If an aided person's case is successful, the LAD will recover the costs from the opposing party in accordance with the order for costs against the opposing party handed down by the court.

A reply to the various parts of the question is as follows:

(1) To ensure the proper use of public funds, the LAD has implemented a stringent financial control and monitoring system to ensure that all receivables are promptly collected. It will also take legal actions against the debtor (including aided person and opposing party) as necessary. The LAD will first issue a reminder. For some cases for which the LAD does not have the address of the opposing party, it will make enquiries with other government departments and statutory bodies. Should a debtor fail to respond to the reminders, legal proceedings for initiating compulsory enforcement (including the application for judgment summons, garnishee proceedings, charging order and prohibition order) will be taken against them.

When assessing whether legal proceedings for initiating compulsory enforcement should be taken, the LAD has to carefully consider a series of factors, including the debtor's financial circumstances and the amount of costs to be recovered in proportion to the likely costs of instigating such proceedings. The LAD has been following the established guidelines to write off the receivables only after all exhaustive actions taken to recover the amounts have failed and all written-off amounts are sufficiently justified.

(2) The number of cases where consent was given to the Audit Commission's access to the case file in each of the past five years accounts for over 85 per cent of the total number of cases. Detailed figures are as follows:

Year	No. of legal aid certificates	No. of cases where consent was given to Audit Commission's access to the case file	Percentage
2016	9 519	8 443	88.7%
2017	8 809	8 053	91.4%
2018	8 252	7 635	92.5%

2019	7 734	7 082	91.6%
2020	7 505	6 438	85.8%

(3) As mentioned in part (1) of the reply, the LAD will write off the receivables only after all exhaustive actions taken to recover the amounts have failed and all written-off amounts are sufficiently justified. Such justifications include the opposing party's inability to afford the costs (such as recipient of Comprehensive Social Security Assistance), the high costs of enforcement proceedings compared to the amount of costs to be recovered and the resulting unlikelihood of recovering the costs. The number of written-off cases with the respective total amount involved in each of the past five financial years are tabulated below:

Financial year	No. of cases involving opposing parties	Total amount written-off (involving opposing parties) (\$ million)	No. of cases involving legally aided persons	Total amount written-off (involving legally aided persons) (\$ million)
2016-17	178	7.05	3	0.25
2017-18	196	7.94	3	0.16
2018-19	183	8.60	0	0.00
2019-20	147	8.17	2	0.03
2020-21	121	10.98	2	0.12

(4) The number of cases where enforcement proceedings were taken by the LAD against opposing parties in each of the past five years is as follows:

Year	No. of cases
2016	277
2017	290
2018	255
2019	293
2020	169
Total	1 284

The LAD does not maintain statistics on the percentages of cases required legal enforcement proceedings among the total number of cases with arrears.

(5) Subsequent to the case mentioned in the question, the LAD has implemented a series of improvement measures to avoid recurrence of similar incidents. The improvement measures include reminding LAD staff of the proper work

procedures through various channels, dedicating the Office Support Unit in the Application and Processing Division in the finalisation of accounts of all cases involving first charge, arranging in-house thematic talks on a regular basis, and enhancing the computerised Case Management and Case Accounting System.

(6) If the situation of default in legal aid related payments was serious, the Director of Legal Aid reserves the right to reject an applicant's application on the basis that granting legal aid is considered unreasonable in accordance with section 10(3)(c) of the Ordinance.