

LCQ22: Legal aid services

Following is a question by Hon Tony Tse Wai-chuen and a written reply by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, in the Legislative Council today (March 18):

Question:

Under the Legal Aid Ordinance (Cap. 91), a person granted legal aid (aided person) may nominate solicitor/counsel of his/her own choice to be his/her legal representative. The Legal Aid Department (LAD) may, on the grounds that the number of legal aid cases assigned to that nominee has exceeded the limit, reject the nomination and ask the aided person to make another nomination from the Legal Aid Panel. However, some members of the legal sector have relayed that currently there are still quite a number of solicitors/counselors who have been assigned a large number of legal aid cases and, among those solicitors/counselors, some have delayed the handling of such cases on various grounds possibly due to excessive workload. Such situation may jeopardize the interests of various litigation parties and compromise justice. In this connection, will the Government inform this Council:

(1) of the respective numbers of solicitors and counsels to whom the number of legal aid cases assigned exceeded the limit, in each of the past five years;

(2) of (i) the respective numbers of legal aid cases taken up by the top five solicitors and counsels who were assigned the highest numbers of legal aid cases, and (ii) the total amount of fees received by each of the top five solicitors and counsels who had received the largest amounts of fees respectively for civil and criminal legal aid cases, in each of the past five years;

(3) whether the LAD has compiled information on its rejection of the nominations of solicitors/counselors made by aided persons;

(i) if so, of the number of such cases in the past five years, the respective numbers of solicitors and counsels involved, and the reasons for rejecting such nominations; if there were no such cases, whether the LAD will review if the current criteria and limits for assigning cases are too lax;

(ii) if not, how the LAD reviews the effectiveness of the criteria concerned, and whether the LAD will compile the relevant information; and

(4) whether the LAD uncovered, in the past five years, any case of solicitors/counselors unreasonably delaying the handling of the legal aid cases assigned to them; if so, whether the LAD reviewed if such solicitors/counselors had concurrently taken up too many legal aid cases, and of the LAD's follow-up actions taken?

Reply:

President,

According to section 13 of the Legal Aid Ordinance (Cap. 91) (the Ordinance), the Director of Legal Aid (DLA) may act for the aided person through Legal Aid Counsel or assign any lawyers in private practice who are on the Legal Aid Panel (the Panel) nominated by either the DLA or the aided person. Having regard to the principle that an aided person's interest is of paramount importance, if an aided person nominates a lawyer pursuant to the Ordinance, the Legal Aid Department (LAD) takes the view that the nomination should be given due weight and should not be rejected unless there are compelling reasons. Examples of such reasons include unsatisfactory past performance of the nominated lawyer, disciplinary actions taken against the nominated lawyer by regulatory body, or the number of assignments taken up by that nominated lawyer has exceeded the limit.

For the various parts of the question, my response is as follow:

(1) The LAD has established procedures on assigning lawyers to handle legal aid cases and assignment limits. According to the Manual for Legal Aid Practitioners, the overall legal aid (including civil and criminal) assignment limits for solicitors and counsel are respectively 60 and 45 within the past twelve months.

In the past five years, no solicitors or counsel have been assigned with cases more than the relevant permitted limits.

(2) The numbers of cases assigned to the top five solicitors and counsel in the past five years are listed in Annex 1.

The total civil and criminal legal aid fees paid to the top five solicitors and counsel in the past five years are listed in Annex 2.

(3) In the past five years, the numbers of times when the LAD rejected the nomination of solicitors or counsel by the aided persons are as follows:

| Year | Number of times |
|------|-----------------|
| 2015 | 643 |
| 2016 | 544 |
| 2017 | 658 |
| 2018 | 875 |
| 2019 | 815 |

Under certain circumstances, an aided person may nominate more than one solicitor or counsel with respect to the same case, or that he/she may request the change of representing lawyer(s) at different stages of a case. The LAD only keeps record on the number of times of rejecting aided persons' nominations, but not the number of cases involved, nor how many solicitors

and counsel are involved.

The reasons for the DLA's rejection of aided persons' nominations are mainly that the nominated solicitor or counsel has already been assigned with cases reaching the limits in the past twelve months. Other reasons include that the experience or expertise of the nominated solicitor or counsel has not yet satisfied the minimum requirement of the assigned case, or that there is record of unsatisfactory past performance or misconduct.

(4) The LAD has been monitoring and imposing sanctions on cases of unsatisfactory performance or misconduct of assigned solicitor or counsel according to the established mechanism. In the past five years, the LAD handled 34 cases where the assigned cases had been unreasonably delayed. Nonetheless, no evidence suggests that cases being unreasonably delayed are owing to a solicitor or counsel having been assigned with too many cases at the same time.

If it is proven that there is indeed unsatisfactory performance or misconduct (including cases being unreasonably delayed), the LAD can issue advisory letters to the solicitor or counsel concerned, put the solicitor or counsel in the Record of Unsatisfactory Performance/Conduct, or even remove his/her name from the Panel.