

LCQ3: Legal aid

Following is a question by the Hon Elizabeth Quat and a reply by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, in the Legislative Council today (June 16):

Question:

In recent years, the applicants of quite a number of judicial review (JR) related cases have been granted legal aid, which enabled them to engage, by using public money, counsel of their choice to act for them in challenging the Executive Authorities' decisions. This has aroused queries from some members of the public that legal aid has been abused. Early this month, the Chief Executive indicated that details of the existing legal aid system such as the administration, allocation of cases and assignment of lawyers could be reviewed afresh. In this connection, will the Government inform this Council:

(1) of the number of JR-related cases in the past 10 years the applicants of which were granted legal aid; among such cases, the number of those in respect of which legal aid application was initially rejected but eventually granted upon appeal, as well as the number and percentage of those in which the court ruled in favour of the applicants;

(2) given that there were respectively 81 and 82 JR-related legal aid cases in the past two years, but such cases were assigned respectively to only 27 and 25 counsel among the 1 171 counsel on the Legal Aid Panel, whether it has assessed if such concentration of case assignment is related to the requirement, as set out in the selection criteria, of experience in handling cases in the relevant area of work, and to the arrangement that the aided persons may choose for themselves lawyers to act for them; whether it will reform the systems for lawyer selection and allocation of cases; if so, of the timetable; and

(3) whether the Legal Aid Department will, by drawing reference from the practice of the Judiciary in making public judgments and reasons for verdict on its website, make public on the Internet the justifications for granting or rejecting legal aid applications on the premise of not violating the principles of privacy protection and confidentiality, so as to enhance transparency?

Reply:

President,

In response to the Hon Elizabeth Quat's question, my reply is as follows:

The rule of law is a core value of Hong Kong and the cornerstone of its success. A law-abiding society comprises various vital elements including

clarity of the law, equality before the law, law-abiding awareness of members of the public and judicial independence. To ensure that Hong Kong residents can enjoy the protection granted under Basic Law Article 25 that "All Hong Kong residents shall be equal before the law", and that no one with reasonable grounds for taking or defending a legal action is denied access to justice or denied rights because of lack of means, the legal aid scheme plays a pivotal role in safeguarding the rule of law in Hong Kong.

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 nominated from the Legal Aid Panel (the Panel) by the DLA or the aided person. When an aided person nominates a lawyer by himself/herself, having regard to the interest of the aided person (for example, the nominated lawyer has been assisting the aided person at the earlier stage of the legal proceedings or at the lower courts), 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 suitable on grounds such as the number of assignments handled by the nominated lawyer has reached the limit, the nominated lawyer has previous records of unsatisfactory performance, the nominated lawyer is subject to disciplinary actions taken 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.

From 2015 to 2020, the LAD received around 4 680 legal aid applications related to judicial review (JR). These JR-related cases accounted for approximately 4.5 per cent of all legal aid applications. Among them, 386 were granted legal aid certificates. The success rate was about 8 per cent and they accounted for only approximately 0.75 per cent of all legal aid cases approved. Besides, the legal expenditure of JR-related legal aid cases accounted for about 4 per cent of the total legal aid expenditure.

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

(1) Information on JR-related legal aid cases is at Annex.

(2) Similar to the requirements of other legal aid cases, the solicitors and counsel assigned with JR legal aid cases should in general meet the minimum experience requirements set by the LAD, i.e., they should have at least three years of experience in the legal sector and handled a minimum of five JR-related cases in the past three years. Among the 1 171 counsel currently on the Panel, only 225 (or 19.2 per cent) of them have satisfied the abovementioned minimum experience requirements. In accordance with the established assignment criteria (including the limits on the number of assignments), the LAD will carefully consider and decide whether or not to accept the nomination made by an aided person.

To enable the legal aid services to keep pace with the times and meet

the needs of the community, the Chief Secretary for Administration's Office and the LAD are reviewing the legal aid system regarding JR-related applications in terms of operational matters such as administration, assignment of cases and selection of lawyer. We will consult the Legal Aid Services Council on the concrete proposals as soon as possible, and report to the Legislative Council Panel on Administration of Justice and Legal Services.

(3) The legal system in Hong Kong is based on common law, which is based on a system of case precedent to gradually establish legal principles in detail. Under the common law legal system, it is an established practice to make public the judgments and the related records handed down by judges. In addition, as the trial of cases are mostly held in public, the practice of making judgments public does not violate the principles of privacy protection and confidentiality.

However, the LAD is restricted by the provisions of LAO and Personal Data (Privacy) Ordinance (Cap. 486) and shall not disclose any information involving an individual applicant without consent of the applicant or aided person concerned, including the LAD's reasons for refusing or granting legal aid. Also, if the legal proceedings are ongoing, disclosure of relevant information or reasons may also affect the proceedings and cause unfairness to parties to the proceedings. We therefore need to handle the matter with great caution. We, however, understand the society's concern over certain JR-related legal aid cases. To enhance public understanding of legal aid work and avoid causing misunderstanding, we will carefully consider the feasibility of suitably enhancing transparency where practicable while conducting the above review.

Thank you, President.