

Chapter 2

Assignment Guidelines and Policy

The Director of Legal Aid may assign departmental lawyers to act for aided persons. If the Director does not act for the aided person, he or the aided person may select a solicitor or counsel from the Legal Aid Panel to act.

2. Assignment of cases in-house is necessary to facilitate staff development and to keep departmental lawyers in touch with legal developments and current practices.

3. When a case is handled in-house, departmental lawyer will only act as instructing solicitors. Counsel on the Legal Aid Panel is assigned to represent the aided person for advice and/or to appear in court as advocate.

4. For criminal cases, all District Court trial cases are assigned out. The Department will take into account the following factors in determining if a Court of First Instance or appeal case should be assigned out:

- (a) whether the capacity and workload of the Criminal Litigation Section permits new cases to be taken up;
- (b) whether the aided person was already represented by a private practitioner before the grant of legal aid; and
- (c) whether the case involves multi-defendants where a conflict of interest arises or likely to arise that necessitates separate representation.

5. In general, the Department handles up to about 30% of all civil legal aid cases. Insolvency and seaman's wages claims are all handled exclusively by departmental lawyers. All public law cases are assigned out.

6. For civil cases, in considering whether the Director shall act for an aided person in personal injury/matrimonial proceedings, regard will be had to the following factors:

- (a) whether parties to the proceedings are both legally aided – if so, both parties or at least one of them must be represented by a private practitioner in accordance with Section 12 of the Legal Aid Ordinance;
- (b) whether a conflict of interest arises or is likely to arise, e.g. an action against the Legal Aid Department;

- (c) whether the aided person was already represented by a private practitioner before the grant of legal aid;
- (d) whether the case is connected to other cases which have been assigned out, if so, the case will usually be assigned to the same private practitioner; and
- (e) whether the capacity and workload of the Litigation Division permits new cases to be taken up.

7. Legal Aid Counsel involved in the assignment of counsel or solicitors for legal aid work are required, on a case by case basis, to declare interest where a conflict of interest arises or is likely to arise.